

February 13, 1991

Len Topolski, Manager
Mutual Federal Credit Union
1353 Gage Road
Toledo, Ohio 43612

Re: Conflict of Interest (Your January 11, 1991, Letter)

Dear Mr. Topolski:

This responds to your request for a legal opinion as to whether a conflict of interest would arise if Mutual Federal Credit Union ("Mutual") were to hire a board member's son to act as its attorney. Based on the limited facts you provided, we do not see any conflict.

Background

Mutual is in the process of hiring an attorney to represent it in various legal matters, including collections. One of the candidates for the position is the son of a member of Mutual's board of directors. The candidate is also a member of the credit union. You inquired as to whether his serving as Mutual's attorney would present a conflict of interest.

Analysis

While NCUA's Rules and Regulations (the "Regulations") contain several conflict of interest provisions, the only one of those provisions arguably applicable to this matter is contained in Section 701.21(c)(8) of the Regulations (12 C.F.R. ~701.21(c)(8)). That Section states:

A Federal credit union shall not make any loan or extend any line of credit if, ei-

ther directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with the underwriting, servicing, or collecting of the loan or line of credit. However, salary for employees is not prohibited by this Section. For purposes of this Section, . . . "immediate family member" means a spouse or other family member living in the same household.

It does not appear from your letter that the board member's son lives in the same household as the board member, and we assume that they have separate residences. Therefore, the son is not an "immediate family member" for purposes of Section 701.21(c)(8), and there is no conflict. Of course, our response would be different if the son were in fact a member of the board member's household; in that case, we would find a conflict.

We also draw your attention to Article XIX, Section 4 of the Federal Credit Union Bylaws, which prohibits an FCU board member from participating in the deliberation upon or determination of any matter affecting his pecuniary interest or the pecuniary interest of any corporation, partnership or association in which he is directly or indirectly interested. It does not appear from the facts presented in your letter that the board member's pecuniary interest would be affected by the selection of his son as Mutual's attorney, and we do not believe that there is any conflict under this bylaw provision.

We caution you, however, that an FCU's bylaws are interpreted according to the common law of the state in which the FCU is located. Therefore, we suggest that Mutual obtain an

opinion from its local counsel as to whether the situation you describe presents a conflict of interest under the common law of Ohio.

Sincerely,

Hattie M. Ulan
Associate General Counsel
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SSIC 3500
91-0115