

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments, [ ] Federal Credit Union

DATE: October 23, 2003

You have asked this office to review and comment on proposed nonstandard bylaw amendments submitted for approval by [ ] Federal Credit Union to amend Article VI to add a director emeritus position. The credit union proposes to add three new sections to Article VI. The first two govern the appointment of a director emeritus. The third would permit a director emeritus to attend board meetings and to serve and vote on any committee. You recommend approving the amendments provided that the federal credit union (FCU) adopts alternate wording that would prohibit the director emeritus from voting on any proposal before a committee. We concur with your recommendations and make a few suggestions for clarity.

The FCU proposes to establish a maximum of four directors emeritus positions for which former directors and supervisory committee members are eligible if they served the FCU for at least fifteen years. The term of appointment is three years. The proposed amendment requires director emeriti to attend a minimum of four board meetings a year and permits them to serve on any committee. The FCU also proposes that director emeriti can vote on any proposal before a committee but prohibits them from chairing any committee, holding a board office, and making or voting on board motions.

In previous legal opinions, this office determined that a board of directors may appoint an advisory committee under Section 113(13) of the FCU Act that consists of individuals given director emeritus status. See attached OGC 90-0321, dated April 17, 1990; OGC 93-0527, dated June 29, 1993; OGC 95-0116, dated February 2, 1995. This office, therefore, has no legal objection to the FCU adopting a bylaw that provides for the appointment of director emeriti to function as an advisory committee. We suggest that the bylaw amendment clarify that director emeriti will be appointed as a committee.

We agree with you that the bylaw amendment should not authorize a director emeritus to vote on proposals before the FCU's committees. In fact, we believe that the sentence in proposed Section 12, "[a] director emeritus may serve on any committee" is ambiguous and recommend that this provision be revised. While we believe these individuals can attend and provide advice at board meetings or committee meetings, it would be improper for these individuals to have voting authority. In their role as directors emeritus, these individuals are not

given any responsibilities or standards for which they would be held accountable, other than attending a set number of board meetings. The FCU's proposal does not address whether director emeriti could move between committees or how long these directors would be required to serve on other committees. This ambiguity may pose several problems, particularly if a director emeritus is permitted to vote on committee issues. A director emeritus should not be able to float between committees by virtue of this honorary title or have a voice in a committee's decisionmaking if they are not truly members of the committee. Voting authority should be limited to committee members that are seated in accordance with the bylaws and charged with the full responsibility of their position for the term appointed. This is especially important if the FCU expected director emeriti to participate on the credit or supervisory committees.

Another reason for our objection to allowing a director emeritus to vote at committee meetings is that this person may improperly alter the makeup of other committees established under the FCU's bylaws, causing technical violations of the FCU Bylaws. The FCU Bylaws require the FCU's board to appoint between three and five members to the supervisory committee and to establish the number of members on an FCU's credit committee, if it chooses to have one. FCU Bylaws, Articles IX, Sec. 1 and VIII, Option 1, Section 1 (Rev. Oct. 1999). If a director emeritus is allowed to vote on any committee matter, he or she effectively becomes a member of the committee and increases the number of members on the committee in a manner likely to violate the FCU's bylaws. To avoid this problem and comply with the FCU Act, the FCU would have to submit corresponding bylaw amendments for review and approval. In addition, members of the supervisory and credit committees are seated with specified terms. By allowing a director emeritus to join any committee as a voting member, at any time, disrupts this process.

As we have noted above, we have no legal objection to a director emeritus assisting the board or any committee in an advisory capacity. We suggest, however, that the amendment clarify a director emeritus may be seated on committees as a regular committee member, in addition to the advisory committee, under all of the terms and conditions established by the bylaws for FCU members that are seated on such committee. Alternatively, we suggest that the FCU remove the objectionable sentence in Section 12. This change would leave the matter silent, allowing for the board to appoint a person, who happens to be a director emeritus, to a committee in accordance with the bylaws like any other FCU member.

We also note that, although the board of directors may appoint an advisory committee as discussed, we cannot foresee any need for the FCU to provide expense reimbursement or insurance benefits to these officials under Section 701.33. Our rule allows these limited benefits only as a result of an official carrying out the responsibilities of his or her credit union position. Given that the

FCU grants this honorary title in recognition of past FCU service and that director emeriti simply provide experience-based advice, these people will not incur expenses such as those related to training or travel.

Attachment