

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

Delaware Federal Credit Union

Docket No. 00-FOM-006

Decision and Order on Appeal

This matter comes before the National Credit Union Administration Board (Board) on appeal from Delaware Federal Credit Union (Appellant). The Region II Director denied the Appellant's application to convert to a community charter.

Background

Delaware FCU is a multiple common bond credit union located in Dover, Delaware with five branches throughout the state. As of December 31, 1999, it had 21,589 members (potential of 34,000) and assets of \$79.7 million. The Appellant was chartered in 1960 as Delaware Highway Federal Credit Union to serve employees of the Delaware State Highway Department. It has since diversified by expanding its field of membership to serve more than 40 select groups and a low-income community. Its core membership group is employees of the state of Delaware, which includes employees of 25 government departments, a state-funded university and a community college. Since its inception, the FCU has undergone two name changes to reflect its evolving field of membership.

The Appellant submitted an application dated February 18, 2000, to convert from a multiple common bond credit union to a community charter. The requested community is the state of Delaware. According to the application, based on 1990 US Census Data, the population of the state is 666,168. The July 1, 1998, US Census Data indicates a population of 753,358. Delaware is 1,955 square miles, 96 miles long and from 9 to 35 miles in width. The state consists of three counties.

The Region II Director denied the application on March 28, 2000. The authority to deny an application to convert to a community charter has been delegated by the Board to the Regional Directors.^[1] The Regional Director states in her denial letter that "[w]hile the requested area is well defined, it does not comply with the *Chartering and Field of Membership Manual*, Chapter 2, Section V.A1." This provision of the Chartering Manual states that although states have well-defined boundaries, they do not meet the requirement that the proposed area be a local community. In addition, the denial letter states that "while it is a well-defined area, there is a lack of centralized interaction. . . . [M]uch of the information submitted in your package indicates, at a minimum, Delaware consists of at least two areas or communities: north of the canal and south of the canal." On May 25, 2000, Appellant appealed the denial to the NCUA Board.

Issue for Appeal

The issue for the Board on appeal is whether the state of Delaware meets the definition of a local community set forth in IRPS 99-1.

Law, Policy and Guidelines and their Application to Conversion

Application

For purposes of a community charter, Section 109(b)(3) of the Federal Credit Union Act (the Act) states that “the membership of any federal credit union shall be limited to . . . [p]ersons or organizations within a well-defined local community, neighborhood, or rural district.” Section 109(g) of the Act requires the Board to issue a regulation defining the term “well-defined local community, neighborhood or rural district.” In December 1998, the Board issued IRPS 99-1, NCUA’s Chartering and Field of Membership Manual (the Chartering Manual). 63 Fed. Reg. 71998 (December 30, 1998). The Chartering Manual contains this definition, as well as the Board’s chartering policy applicable to this appeal.

The Chartering Manual states that “NCUA policy is to limit the community to a single, geographically well-defined area where individuals have common interests or interact.” Chartering Manual at p.2-44. It then sets out a three part test:

- The geographic boundaries must be clearly defined;
- The charter applicant must establish that the area is a “well-defined local community, neighborhood, or rural district;” and
- The residents must have common interests or interact.

Id.

Clearly Defined Boundaries

The state of Delaware forms an area with distinct boundaries. However, the Chartering Manual states that although “. . . state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.” (Emphasis added.) Chartering Manual at p. 2-44.

Well Defined Local Community

Although the Board states in the Chartering Manual that a state does not qualify as a local community, the Region performed an analysis confirming that the state of Delaware is not a well-defined local community where residents have common interests and interact. As part of its analysis, the Region considered the size of the proposed community.

The FCU argues that the Act did not intend to limit the size of the local community and therefore, the Board should not consider size as a factor in making its determination. However, the preamble to the Chartering Manual states that:

[T]he Board concluded that the addition of the word “local” to the previous statutory language was intended as a limiting factor and that additional clarification was required relative to what would qualify as a community charter. The Board further concluded that a more circumspect and restricted approach to chartering community credit unions appeared to be the Congressional intent. . . . The Board believes that increased documentation requirements need to be met when either the geographic size or the population of the area is large.

63 FR 71998, 72012 (December 30, 1998). In support of its argument that

Delaware's size should not be a factor, the FCU lists seven community charter approvals by the Board with either a larger geographic area or a larger population, or both.^[2] The Board notes that none of these community charters were approved under the current Chartering Manual and are therefore not relevant for purposes of this appeal.

Review of Evidence

Although the state boundaries are well-defined areas, the evidence does not support a local community. The data submitted by the FCU shows that, geographically, Delaware is divided into two distinct areas. The Chesapeake and Delaware Canal runs east to west through the entire state dividing it into what is referred to as upstate and downstate or above the canal and below the canal. The demographics of these two areas are very different. The area above the canal (northern New Castle County) is urban and industrialized. It occupies only about 10% of Delaware's land area but has about two thirds of its population. The area below the canal is lower New Castle County, Kent County and Sussex County. Except for Rehoboth Beach and Dover Air Force Base, this area is rural. Delaware is rated the nation's sixth most urban and eighth most rural state. The information submitted by the FCU indicates that these are two distinct areas and notes that "Delaware is two very different worlds in one very small state."

In addition to the demographic information, Appellant submitted voluminous documentation on the requirements to support a community. This information included:

Defined Political Jurisdictions

The Appellant notes that Delaware is a state with one state government. However, Delaware is comprised of three county governments, as well as additional city and municipal governments. These county governments have their own libraries and police, fire and rescue departments.

Major Trade Areas

Shopping

The Appellant identified three major shopping areas, but offered no valid evidence to support that the same residents shop at all three. Market Street Mall, located in Wilmington, and Christiana Mall, located in Newark, are both above the canal. Rehoboth Outlet Center located in Rehoboth Beach is below the canal. In its appeal, the Appellant concludes, without factual support, that since the entire state is only 100 miles long that it is common for residents to shop at all three malls. The Appellant further concludes based on "a random sampling that Christian Mall and the Rehoboth Outlet Mall are frequented by the shopping population." The Appellant did not provide the results of the sampling with its appeal.

Traffic Flows

The Appellant provided evidence that community residents can reach any destination in the community effectively. The Board agrees that the highway system supports travel throughout the community but notes that the upper urban

portion has an interstate highway system and the lower rural area does not.

Shared Common Facilities

Education

The application lists four higher education institutions with multiple satellite facilities throughout the state. The main concentration of students and campuses are in the northern urban portion of the state. The Board concludes that the fact that the state is served by four higher education facilities with multiple satellite facilities throughout the state is indicative of multiple, rather than a single community.

Transportation

DART FIRST STATE provides transit service throughout the state. However, the majority of the bus routes are in the urban northern portion of the state and there are only two inter-county bus routes. Blue Diamond Lines provides state-wide bus service. New Castle County Airport located just south of Wilmington accommodates 373 aircraft per day and is the largest of several small airports throughout the state.

Health Care

There are seven general hospitals and several other medical related facilities throughout the state. There is no evidence that they are under the management of a single state-wide organization. There is no evidence of interaction amongst these facilities or the citizens that use them.

Delaware Health and Human Services is identified as a shared common facility. In reality, it is the umbrella organization for 14 service centers located throughout the three counties.

Organizations and Clubs

There is a Delaware State Chamber of Commerce that represents the interests of 3,400 member businesses. However, there are several additional chambers at the county and town levels. These additional chambers, serving small portions of the state, indicate that Delaware is comprised of more than one community.

The Delaware Association of Nonprofit Agencies comprises more than 350 charitable organizations. These organizations do not serve Delaware residents from the state level but rather from local charters and offices. For example, the Delaware American Red Cross serves residents from local chapters in Wilmington, Dover and Milford. The existence of local chapters indicates that the state of Delaware is not a local community.

Museums, State Parks, Performing Arts and Community Events

The appellant provided a list of museums, state parks, performing arts centers and community events. The majority of these places and activities are located in or take place in northern Delaware. There is no evidence indicating statewide support of these various places and events.

Newspapers/Media

The state is served by two major daily newspapers: *The News Journal* and the *Delaware State News*. Their daily circulations are 125,000 and 30,000 respectively.

In summary, much of the information submitted shows interaction within individual segments of the state, specifically above the canal and below the canal, but not within the entire state as a community. As the Chartering Manual notes, it is more difficult for an area covering multiple counties, in this case three, with significant population, in this case 735,538, to have significant interaction and common interests to meet the requirements of a local community. Chartering Manual 2-45.

The documentation submitted, rather than showing interaction within the entire state as a community, supports a finding of two distinct communities, an urban community above the canal and a rural community below the canal. This is supported by the demographics of the two geographically distinct areas. Although there is one state government, there are three county governments with taxing authority and several municipal governments. The application identified three major shopping areas. As the Chartering Manual states, "numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area." Chartering Manual 2-45. The strongest evidence supporting interaction was the state's highway and transportation system. This is not enough to overcome the overwhelming evidence that indicates more than one community.

Conclusion

The Board upholds the Region II determination that Appellant's application for a community charter to serve the state of Delaware does not meet the Chartering Manual's standards for a community charter. As provided in the Chartering Manual, state boundaries do not satisfy the requirement that an area be a local community, neighborhood, or rural district.

Order

For the reason set forth above, it is ORDERED as follows:

The Region VI Director's denial of Delaware Federal Credit Union's request to convert to a community charter credit union is upheld and the appeal is denied.

So Ordered this 7th day of September, 2000, by the National Credit Union Administration Board.

Becky Baker
Secretary of the Board

[\[1\]](#) NCUA Delegations of Authority, Chartering 3C. No concurrences from other offices are required.

[\[2\]](#) Hawaii Tel. Employees FCU (Island of Oahu, 597 sq. mi., 871,766 pop.), Network FCU (Clark County NV, 7,911 sq. mi., 1,162,130 pop.), Kennedy Space Center FCU (Volusia & Brevard Counties FL, 2,125 sq. mi., 892,218 pop.), Point Mugu FCU (Ventura County CA, 1,846 sq. mi., 736,833 pop.), CBC FCU (Ventura County CA, 1,846 sq. mi., 736,833 pop.), El Paso Employees FCU (El Paso County TX, 1,013 sq. mi., 714,802 pop.), and Ent FCU (Teller & El Paso Counties CO, 2,684 sq. mi., 509,613 pop.)