

April 30, 1991

Ray Johnson  
1128 Audaz Lane SW  
Rochester, MN 55902

Re: Nominations for the Board of Directors

Dear Mr. Johnson:

Your request for a legal opinion on the bylaws for board of director nominations has been forwarded to this office by Robert K. Blachly, Associate Regional Director Region V (Suboffice).

#### ANALYSIS

Article VI, Section 1 of the IBM Mid-America Employees Federal Credit Union (FCU) bylaws provides that members seeking to be elected directors may be nominated by petition signed by 1% of the membership with a minimum of 20 signatures. This bylaw amendment was approved by the appropriate Regional Director in 1977. The current standard bylaw amendment provides for nominations by petition for the board of directors signed by no less than 20 members and no more than 500 members.

As an FCU member, you collected 681 signatures and submitted your petition to the FCU's nominating committee. The petition was audited, and it was discovered that 120 signatures were illegible and 59 signatures were of nonmembers. The audit revealed 502 signatures were from valid members of the FCU. The nominating committee declined to place your name on the ballot because 1% of the membership equals 543; therefore a petition requires 543 valid signatures.

You believe that your name should have been placed on the ballot because you met the requirements of the current standard bylaw amendment. This argument is without merit. The FCU has a properly approved bylaw amendment and it controls the requirements for placing names on the ballot. The FCU's actions were not improper and did not violate NCUA's Regulations or the FCU Act. The current standard bylaw amendment is of no affect to the FCU until it is validly adopted by the FCU board.

You also believe that, barring fraud or intent to deceive, by extrapolation, approximately 89.5% of the illegible signatures would be of valid members, giving you 609 signatures which would qualify you for nomination. Your position is not a valid method for counting signatures. As long as the internal auditor made a reasonable attempt to verify illegible signatures, no unverified illegible signature should be counted.

Sincerely,

HATTIE M. ULAN  
Associate General Counsel

GC\MM\sg  
SSIC 3701  
91-0222

cc: Robert K. Blachly  
Region V

