

November 29, 1995

Daniel P. Bradley, Executive Vice President
DM Federal Credit Union
P.O. Box 15115
Tuscon, AZ 85708-0115

Re: Bylaw Amendments
Your November 6, 1995, Letter

Dear Mr. Bradley:

You have asked this office to review proposed bylaw amendments that relate to qualifications to serve on a federal credit union's (FCU's) board of directors. Specifically you ask if your bylaws could be amended as follows:

Proposed bylaw 1 and 2 would prevent employees and employees' spouses from serving on the board. Attached is a copy of Article VIII, Section 7 of the FCU Standard Bylaw Amendments which specifically provide for this limitation. But, as noted in the attached October 18, 1994, letter from me to Ms. Helen McFarland, "(u)nder any of these provisions, an individual may run for the board and be elected; he then has the choice of retaining his position as an employee or serving as a director."

Proposed bylaw 3 places term limits on directors. This is not a permissible nonstandard bylaw amendment. See attached August 19, 1992, letter from Hattie M. Ulan, Associate General Counsel to Mr. Clarence Fry which specifically addresses this issue.

Proposed bylaw 4 places a maximum age on directors. For the reasons stated in the attached August 19, 1992, letter, this is not a permissible nonstandard bylaw amendment.

You then ask if a policy that is not permissible as a nonstandard bylaw amendment could be a permissible nominating committee policy, and if so, why. Article VI of the FCU Bylaws gives the nominating committee discretion to set standards for determining who it may nominate. However, this does not bar someone who does not meet the nominating committee's standards from seeking nomination by petition and/or from the floor, whichever the bylaws allow. The opinions letters already cited will provide additional guidance. Although Article VI gives the nominating committee discretion to set standards, the policies should be carefully reviewed to ensure that they are rationally related to the duties of a director and do not violate any laws. For example, a policy setting a maximum age may fail both tests.

Sincerely,

Richard S. Schulman
Associate General Counsel

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Enclosures

