NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

November 7, 1986

GC/TG.59
4660

Office of General Counsel

Maxwell W. Wells, Jr., Esq.
Wells & Morrison
340 North Orange Avenue
Orlando, Florida 32801-1611

Dear Mr. Wells:

This responds to your letter dated September 4, 1986, to Mr. Robert Fenner of this Office concerning the legality of a Federal credit union (FCU) serving as a guarantor against losses caused by other FCU's receiving public deposits as a prerequisite to its receipt of public deposits.

Florida Statutes, §280.03, requires all public deposits to be secured by collateral. In furtherance of that requirement, Florida Statutes, §§§280.04 and 280.043 require the public depository to pledge collateral equal to 110 to 125 percent of the uninsured public deposits held by such depository. In addition, Florida Statues §280.07 requires each public depository which accepts public funds to guarantee public fund depositors against losses caused by the default or insolvency of other public fund depositories of the same type (i.e., banks guarantee against losses caused by other banks, savings and loans guarantee against losses caused by other savings and loans). The types of collateral to be pledged pursuant to §§280.04 and 280.043 are government securities and certain other assets such as corporate bonds. See, Florida Statues §§280.13 and 280.14.

Florida is now considering an amendment to its statutes which would include credit unions as public depositories. As can be seen from the above, there are two major legal obstacles embodied in the Florida statutes which would prevent Federal credit unions from being able to accept public deposits in Florida.

First, Florida requires the pledging of government securities and other securities to secure all public funds deposits, whether or not the FCU guarantees against the losses caused by other FCU's. However, FCU's have no general express power to pledge their assets as security for share accounts placed at the FCU.

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FCU's may only pledge their assets pursuant to Section 107(13) of the FCU Act, 12 U.S.C. §1757(13), and Part 701.23(d) of the NCUA Rules and Regulations, 12 C.F.R. §701.23(d), which expressly authorize FCU's to pledge eligible obligations of their members. "Eligible obligations" is defined in Section 701.23(a)(1) to mean a loan or group of loans. Accordingly, it has been the longstanding position of this Office that, while an FCU can pledge loans of its members as collateral for shares (deposits), no express authority exists for the pledge of other assets (e.g., government securities) for such purpose except for the purpose of receiving public monies of the United States. Further, courts have held that such authority must be expressly provided and cannot be said to be implied or incidental.

Similarly, there is no authority, either under the FCU Act or the NCUA Rules and Regulations, which would allow an FCU to serve as guarantor against losses caused by another FCU or any other financial institution for that matter. Moreover, from a policy standpoint, we find that the requirement would create unacceptable safety and soundness concerns as well as greatly complicate our ability to merge FCU's which accept public deposits in Florida.

In conclusion, it is the opinion of this Office that if Florida law is amended to allow credit unions to serve as public depositories, Federal credit unions would still be unable to legally accept public deposits of Florida for the reasons set forth above.

I hope that we have been of assistance. Please let me know if you have further questions.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

YG:sg