



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

November 18, 1986

Office of General Counsel

GC/YG:sg
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Neil B. Halprin, Esq.
7370 Green Meadow Drive
Helena, Montana 59601

Dear Mr. Halprin:

This responds to your letter dated August 6, 1986, concerning the permissibility of Federal credit union (FCU) investment in the Attorney's Title and Financial Services, Inc. (ATFS) CD Program.

According to your letter, the ATFS CD Program involves the purchase of a Jumbo CD (\$100,000) by an FCU, which is subsequently pledged as security for a line of credit extended to ATFS, by a specified bank. The FCU simultaneously enters into a "debenture agreement" with ATFS providing for the payment of interest on the pledged CD over and above that being paid on the CD by the bank. As discussed more fully below, it is our opinion that the CD Program is in the nature of a loan by the FCU to ATFS and as such, constitutes an illegal loan to a nonmember.

Pursuant to the debenture agreement, the FCU would purchase a general obligation note and allow the funds on deposit (the CD) to serve as security for a line of credit in the name of ATFS. In return, ATFS will pay the FCU a higher rate of interest than would normally be available on the CD. This arrangement, while represented as an investment is, in reality, a loan transaction (the FCU is making a loan to ATFS). Pursuant to Section 107(5) of the FCU Act, 12 U.S.C. §1757(5), an FCU may only make loans to members. Inasmuch as ATFS is not a member of any of the FCU's it is soliciting for the CD Program, participation by an FCU would constitute an illegal loan to a nonmember.

Further, your reliance on Section 107(16) of the FCU Act, 12 U.S.C. §1757(16), "incidental powers" clause, and Section 701.23(d)(1) of the NCUA Rules and Regulations, 12 C.F.R. §701.23(d)(1), are misplaced. The test to determine whether an activity is an incidental power is whether it is incidental to an express power. Inasmuch as FCU's do not have the authority to offer loans to nonmembers, express or otherwise, it cannot be said that the pledging of assets to fund such loans is authorized as an incidental power.

FCUA Vol. I Part C. 11.

Mr. Neil B. Halprin

Page Two

Lastly, we do not concur with your analysis of an FCU's authority to pledge "eligible obligations." FCU authority to pledge eligible obligations is expressly authorized in Section 107(13) of the FCU Act, 12 U.S.C. §1757(13). Section 701.23 implements Section 107(13). Eligible obligations are defined in Section 701.23(a)(1) as a loan or group of loans. A CD would not fall within this definition. Accordingly, Section 701.23 has no application to your proposed CD Program.

In conclusion, it is the opinion of this Office that Federal credit unions may not legally participate in the Attorney's Title and Financial Services, Inc., CD Program.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

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