NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

December 1, 1986

Office of General Counsel

GC/46:59
3500

Mr. Robert Gagnon
Myles Standish Federal Credit Union
P.O. Box 560
Marshfield, MA 02050

Dear Mr. Gagnon:

This responds to your letter dated September 14, 1986, to Mr. Robert Fenner of this Office concerning whether your Credit Union is involved in a prohibited management interlock relationship.

The facts, as provided in your letter, indicate that a member of your Credit Union is serving as an honorary board member and as a member of the Supervisory Committee while also serving on the board of directors of a federally-chartered bank. Both the bank and the Credit Union each have more than $20 million in assets. Although you indicate that the bank is a local institution with its main office in the same county as your Credit Union ("branch offices may be closer"), it is not clear if both the bank and the Credit Union have offices in the same community. It is presumed, however, that the offices are located in the same metropolitan statistical area.

Section 711.3 of the NCUA Rules and Regulations, 12 C.F.R. §711.3, states in relevant part:

> (a) "A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:
>
> (1) both are depository institutions and each has an office in the same community;
>
> * * *
>
> (b)(1) both are depository institutions, each has an office in the same . . . metropolitan statistical area, and either has total assets of $20 million or more; . . . "

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"Management official" is defined in Section 711.2(h)(i) to include an honorary director and would also include a member of the supervisory committee.

The statute upon which Part 711 of the rules is based (12 U.S.C. §3201) establishes a per se test for determining whether a given interlock is prohibited. Congress determined that interlocks that meet the established criteria will be deemed to be anticompetitive and thus prohibited, whether or not there is a likelihood of anticompetitive collaboration in a particular case. Part 711, while carving out some specific exceptions to the general per se prohibitions (none of which are relevant here) mirrors the approach taken by the statute. Unfortunately, it appears that the case at hand presents an interlock that, although unlikely to foster anticompetitive collusions, falls squarely within the per se prohibition.

We are not aware of any basis upon which the Agency could grant an exemption in this case. None of the specified exemptions contained in the regulation at Section 711.4, e.g., for low income or newly-chartered institutions, are present here. Therefore, the interlock is a prohibited one and must be terminated.

Please let me know if you have further questions.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

YG:sg