



NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

May 29, 1987

GC/JT:sg
3600

Office of General Counsel

Mr. Richard R. Tupy, Jr.
51 Iroquois Avenue
Oceanport, New Jersey 07757

Dear Mr. Tupy:

This is in response to your letters of February 3, 1987, and March 8, 1987, which asked whether a Federal credit union (FCU) member's right to inspect the minutes of meetings of the board of directors extended to both "regular" board meetings and "executive session" board meetings.

We should begin by stating that the member's right to inspect the minutes is a qualified right. The inspection must be made in good faith and for a proper purpose. The inspection cannot be to satisfy mere curiosity or for vexatious purposes. However, it is legitimate to inspect minutes for the purpose of ascertaining the manner in which credit union business is being conducted.

You stated that you wanted to review the minutes in which the appropriateness of the bills of the FCU's attorney were discussed. It is well settled that a "proper purpose" for reviewing corporate books and records, including minutes, exists where a shareholder is trying to determine the financial condition of the corporation or examine the conduct of the directors. Your request appears to fall within these categories of "proper purpose." However, in accordance with Article XIX, Section 2 of the FCU Bylaws, before making the minutes available for inspection, the FCU must delete any confidential material that identifies the transaction of, or personal information about, other FCU members.

Your letter specifically asked whether a board can invoke "executive session" as a reason for withholding minutes of its meetings from members. The term "executive session" is generally used to refer to a meeting that is closed to the public. In order to comply with the confidentiality requirement of Article XIX, Section 2 of the Bylaws as cited above, FCU board of directors meetings are usually closed, but the minutes are available for member review.

Your request to review the minutes was referred by the FCU to legal counsel, which concluded that you could not review minutes

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of meetings held in executive session. The basis for this opinion rested on an interpretation of Article IV, §9 of Robert's Rules of Order. This section provides that matters of discipline should be handled in executive session, and that a motion to go into executive session is a question of privilege. The FCU's legal counsel, who is presumably not the same attorney or associated with the attorney whose bills are at issue, concluded that because the matters discussed in executive session pertained to the attorney-client privilege and matters of discipline, the discussions were appropriately held in executive session. We do not agree.

It is appropriate to look to Robert's Rules as a guide in setting procedures for meetings or to resolve any issues that arise during meetings that are not covered by the Bylaws. It is important to note, however, that Robert's Rules have not been incorporated into the FCU Act, the NCUA Rules and Regulations, or the Bylaws. When resort is made to Robert's Rules, it must be in a manner consistent with the letter and spirit of the FCU Act, NCUA Rules and Regulations, and the Bylaws.

We fail to see how minutes of discussions about the appropriateness of bills of the FCU's legal counsel are within the attorney-client privilege. It is clear that the amount of the attorney's bills, as well as the attorney's employment contract, are not within the privilege. See e.g., In Re Richardson, 31 NJ 391, 157 A. 2d 695 (1960), and cases cited therein. Furthermore, under general principles of corporate law, shareholders have the right to inspect employment contracts of the corporation. See, e.g., Kemp v Gloss-Sheffield Steel and Iron Co., 128 N.J.L. 322, 26 A. 2d 70 (Sup. Ct. 1942). This Office has consistently taken this same position with respect to FCU's.

We also fail to see how the minutes at issue involve a matter of discipline. If the attorney's bills have in fact been inappropriate, the proper remedy for the FCU would be to terminate the attorney's contract and pursue an action in court. An FCU has no authority to discipline an attorney who is, presumably, an independent contractor of the FCU. It is our opinion that the above-cited provision of Robert's Rules is not intended to apply to the situation at hand. Moreover, we do not believe that the provision should be used to deny a member his qualified right to review the minutes.

Your letters stated that the FCU's legal counsel is refusing to allow the Supervisory Committee, and two directors who were unable to attend the initial executive sessions, to review the minutes. Article XIX, Section 6 of the Bylaws explicitly provides that the books of account and other records of the FCU shall at all times be available to the directors and committee members. You further stated that the FCU's legal counsel has refused to allow the two directors to attend subsequent meetings where the executive sessions were discussed. Such action clearly

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constitutes a violation of the FCU Act, the NCUA Rules and Regulations, and the Bylaws. In light of the serious nature of your allegations, we are referring this matter to an NCUA Regional Office for investigation.

We hope this has been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

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