



GC/TPM:sg
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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

June 13, 1988

Office of General Counsel

Thomas A. Troutner
President, Professional Federal Credit Union
1710 St. Joe River Drive
P.O. Box 5466
Fort Wagne, RN 46895-5466

Re: FCU Payroll Processing for Members' Employers (Our May
24, 1988, Letter) (Your June 7, 1988, Response)

Dear Mr. Troutner:

Amendment to the Federal Credit Union Act requires an act of
Congress, with the President's approval. We suggest you contact
your congressman and the trade associations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy P. McCollum', written over a printed name and title.

TIMOTHY P. McCOLLUM
Assistant General Counsel

TPM:sg

FOIA Vol. III (c)(2)(a)



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/HMU:sg
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May 24, 1988

Office of General Counsel

Thomas A. Troutner, President
Professional Federal Credit Union
P.O. Box 5466
Fort Wayne, IN 46895-5466

RE: Payroll Processing (Your March 28, 1988, Letter)

Dear Mr. Troutner:

You asked us whether a Federal credit union ("FCU") can perform automated payroll processing for an employer of its members. An FCU does not have the authority to provide such services. An FCU may be able to provide such services through a credit union service organization ("CUSO").

FCU Not Empowered

An FCU can only engage in activities that are either expressly authorized by the FCU Act or are incidental to one of the express powers pursuant to the incidental powers clause -- Section 107(16) of the FCU Act [12 U.S.C. 1757(16)].

An FCU is not expressly authorized to provide payroll processing services for members' employers. The FCU Act does not expressly authorize an FCU to provide any services to members' employers.

In Arnold Tours, Inc. v. Camp, 472 F. 2d 427 (1st Cir. 1972), a court defined incidental powers for national banks as:

[an activity that] is convenient or useful in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act. If this connection between an incidental activity and an express power does not exist, the activity is not authorized as an incidental power.

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The court then held the travel agency business was not an incidental power for a national bank. In American Bankers Association v. Connell, 447 F. Supp. 296 (D.D.C. 1978), the court applied the "convenient or useful" test of incidental powers to Federal credit unions.

We do not believe that the "convenient or useful" test between one of an FCU's express powers and member employer payroll processing has been met. The fact that there may be a benefit to the FCU and/or the membership is insufficient, by itself, to establish the activity as an incidental power.

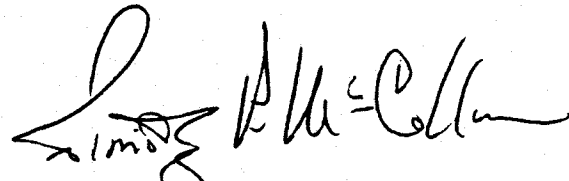
CUSO Alternative

Section 701.27 of NCUA's Rules and Regulations (12 C.F.R. §701.27) governs FCU investments in and loans to CUSO's. Two of the permitted services that a CUSO may perform are accounting services and payment item processing. [12 C.F.R. §701.27(d)(5)(i).] Payroll processing would be included within these services. However, a CUSO is limited in its customer base. Section 701.27(d)(4) provides:

A Federal credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of affiliated credit unions (as defined in paragraph (c)(1) of this Section).

A CUSO may provide some services to an employer of its members as long as it is "primarily" serving credit unions and members of affiliated credit unions.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

HMU:sg