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NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

November 15, 1988

Office of General Counsel

Mr. Alfred V. Evans, Jr.
Max Federal Credit Union
P.O. Box 17930
Montgomery, Alabama 36193-2501

Re: Request for Legal Opinion on Propriety of
Reimbursement (Your August 26, 1988, Letter)

Dear Mr. Evans:

You have asked whether the Max Federal Credit Union ("FCU") may reimburse you for the expense you incurred in hiring a substitute teacher to cover your classes while you attended a board of directors meeting of the FCU. It may not. The NCUA Board has determined that an FCU may not reimburse an FCU official for pay or leave lost while attending meetings of the board of directors or committee meetings. The reimbursement you describe is, in effect, reimbursement for lost pay.

BACKGROUND

You are employed as an adjunct professor at Alabama State University (the "University"). You are also a director at the FCU. Your contract with the University requires you to pay a substitute to teach your classes when you are unable to. Your salary from the University is not reduced when you miss a class. The amount you pay the substitute teacher is less than the amount of your salary on a per-class basis. In order to attend a meeting of the board of directors, you had to miss a class. You have asked whether the FCU may reimburse you for the cost you incurred in hiring a substitute teacher.

ANALYSIS

Section 701.33(b) of NCUA's Rules and Regulations [12 C.F.R. 701.33(b)] states:

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III A4 Directors Officers

Mr. Alfred V. Evans, Jr.

November 15, 1988

Page 2

(1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed

Earlier this year, the NCUA Board issued a proposal to amend Section 701.33 that would allow an FCU to reimburse its officials for pay or leave lost while attending board of directors or committee meetings (see 53 Fed. Reg. 4992, February 19, 1988). However, the comments received on that proposal indicated that the majority of FCU's felt that such reimbursement was unnecessary and could be harmful to the credit union movement. The Board decided not to go forward with the proposal, and clarified its position in the preamble to the final amendments to Section 701.33 (53 Fed. Reg. 29640, August 8, 1988):

The NCUA Board also hereby clarifies that under NCUA's current Rules and Regulations reimbursement of officials for lost pay or leave is not permitted. (Emphasis added.)

You have stated that the cost you incurred in hiring a substitute is an expense that should be reimbursed under Section 701.33 as a "reasonable and proper cost." You state that such reimbursement should not be viewed as reimbursement for lost pay since the cost of hiring a substitute is less than the amount you receive in salary on a per-class basis. We do not agree.

It is clear that if the University did not pay you when you were unable to teach one of your classes, the FCU could not reimburse

Mr. Alfred V. Evans, Jr.
November 15, 1988
Page 3

you for the lost pay. It is also clear that if the University reduced your salary by an amount necessary to pay for all or part of the cost of hiring a substitute, and then hired a substitute on your behalf, the FCU could not reimburse you for this reduction in pay. To reach a different result in your case because the University does not reduce your salary, but instead requires you to hire a substitute, would be to promote form over substance. In each case, there is a loss of pay. An FCU may not reimburse its officials for such a loss. The fact that in your case there is not a complete loss since the cost of the substitute is less than what you are paid does not change this result.

Sincerely,



HATTIE M. ULAN
Acting Assistant General Counsel

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