



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 6, 1989

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8200

Office of General Counsel

Francis J. Capaldo, Esq.
Vice President
Legal and Government Affairs
Pennsylvania Credit Union League
4309 North Front Street
Harrisburg, Pennsylvania 17110-1691

Re: Michigan's Interest on Lawyer Trust Account
(IOLTA) Program (Your January 19, 1989, Letter)

Dear Mr. Capaldo:

You have asked that we reconsider our February 1, 1988, opinion regarding the ability of a Michigan attorney to maintain an account at a Federal credit union ("FCU") in connection with Michigan's Interest on Lawyer Trust Account ("IOLTA") Program. In our prior opinion we concluded that a revocable ("agent") account could be established at an FCU in connection with Michigan's IOLTA Program only if all the principals (presumably the clients) could establish member accounts there. We further stated that a suitable irrevocable trust account could be established only if all the settlors (presumably the clients) or the beneficiary Michigan Bar Foundation could establish a member account there.

You stated that characterizing the funds in an IOLTA Program as trust funds makes it unworkable for an FCU to participate in the Program since an FCU would be required to determine if each deposit into an IOLTA account came from a member of the FCU. You have asked that we reconsider our position and determine that the FCU membership requirement be satisfied by an attorney/law firm's membership in the FCU. You noted that this issue is of particular importance given the goal of the IOLTA Program and the fact that it exists in 48 states. Even if we view IOLTA funds as escrow accounts rather than trust accounts, owners of the funds (clients) would have to qualify for membership in order to

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establish legal insurable accounts under the current NCUA Rules and Regulations.

BACKGROUND

Generally, under an IOLTA program, an attorney or a law firm pools clients' escrow accounts into a single IOLTA account. Instead of the dividends on the account going to the clients for the duration of the escrow, the dividends are instead transferred to the IOLTA fund where they are used to fund legal services for the indigent. In Michigan, the Attorney General has rendered an opinion that the Michigan Bar Foundation will own the entire beneficial interest in and will have exclusive right to all the interest or dividend income earned on trust accounts established under the IOLTA Program.

ANALYSIS

You have asked that this Office reconsider its position that the funds in an IOLTA Program are trust funds. In support of this position you state:

. . . there are several unique features about the IOLTA program that do not readily fit into any traditional pattern. The funds in an IOLTA fund are escrow funds. If a client has advanced funds to an attorney as prepayment for future services, such funds would be placed in escrow. If funds are placed under the care of an attorney pending a real estate settlement between two parties, these funds would likewise be placed in an escrow account. In both cases, these funds would be placed under IOLTA accounts.

These IOLTA funds differ from trust accounts for the following reasons:

--There is no opening of a trust account. These escrow accounts are held not for the payment to a future beneficiary, but as funds temporarily held in custodial care by the attorney/law firm; - - There are no outside trust documents. There are no statements by a settlor creating the trust. In the absence of such statements, no trust (revocable or irrevocable) exists.

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Generally, escrow accounts are established as agent accounts. The insurance of escrow accounts is governed by Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. §745.3(a)(2)) providing:

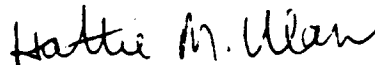
Accounts held by agents or nominees. Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to \$100,000 in the aggregate.

In determining the insurance of escrow accounts which are set up as a type of agent account, the membership of the principal/owner of the funds is the critical factor. (See 12 C.F.R. 745.0.) The owners of the funds (presumably the clients) would be required to be members of the FCU.

You also asked that we view funds in the IOLTA program as analogous to funds held by a guardian for a minor. Such accounts are insured pursuant to Section 745.3(b) of NCUA's Rules and Regulations. Either the guardian or ward must qualify for membership under this section in order to have an insured account. Unfortunately, the IOLTA Program is factually not within this provision.

To make it practical for an FCU to participate in an IOLTA Program, you suggested that we determine that an attorney/law firm's membership in the FCU is sufficient to satisfy the membership requirement. In that case, the account would be insured as the firm's account under Section 745.6. Individual clients would not be separately insured.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

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