



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 3, 1991

Barry W. Mancz, Esq.  
Rogers & Greenberg  
2160 Kettering Tower  
Dayton, Ohio 45423

Re: Heartland Federal Credit Union - Motion by  
Member at Annual Meeting (Your April 11, 1991  
Letter)

Dear Mr. Mancz:

You asked whether the board of directors of Heartland Federal Credit Union ("Heartland") is bound by a vote of the membership taken on a motion put forward by a member at the annual meeting, directing the board not to adopt ATM card charges. In our opinion, the board is not required to take the action directed by the membership. We caution you, however, to review Ohio corporate common law for a definitive answer to this question.

**Background**

At Heartland's recent annual meeting, a member obtained the floor and put forward a motion to require the board of directors not to institute ATM card charges without prior membership approval. The membership voted on, and passed the motion. You advised the board that "an effort of the members to direct the Board of Directors in regard to credit union policy is null and void and any action taken on a motion in furtherance of such a directive would have no force and effect and must in fact be ignored by the Board of Directors." You request that we confirm your advice to the board.

**Analysis**

Section 111(a) of the Federal Credit Union Act, 12 U.S.C. §1761(a), provides:

The management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee.

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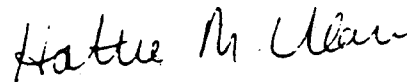
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Section 113 of the Act, 12 U.S.C. §1761b, states, "The board of directors . . . shall have the general direction and control of the affairs of the Federal credit union."

Membership vote is permitted or required for certain federal credit union ("FCU") actions, such as election of directors, 12 U.S.C. §1761 and certain expulsions, 12 U.S.C. §1764. When the action in question relates to the "general direction and control of the affairs" of the FCU, however, a membership vote is unnecessary, as direction and control of the affairs of the FCU is entrusted to the board of directors. Motions for member votes purporting to direct the board on such matters need not be recognized. In the event that such a motion is recognized, voted on and approved by the membership, it may be treated by the board as a member recommendation, rather than a directive. In our opinion, imposition of ATM charges is an issue relating to general direction and control of an FCU, and one on which the membership has no power to direct the board. We agree with you that the vote in question had no force vis-a-vis board action. We do not, however, agree with your assertion that such a vote must be ignored by the board. The board may ignore the membership's recommendation, but should be sensitive to the members' needs and interests in determining whether a given service or charge is appropriate for the FCU.

The foregoing opinion is based upon our interpretation of the Federal Credit Union Act. We note that as a rule, matters affecting the conduct of shareholder meetings are governed by state corporate common law. For that reason, we suggest that you investigate the corporate common law of Ohio in order to evaluate its effect on the outcome of this issue.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

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