



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

August 7, 1991

Ray Johnson
1128 Audaz Lane SW
Rochester, MN 55902

Re: Nomination Procedures for the Board of
Directors (Your June 6, 1991, Letter)

Dear Mr. Johnson:

You have requested a legal opinion concerning alleged irregularities in the nominations for director at the IBM Mid-America Employees Federal Credit Union (FCU).

BACKGROUND

As an FCU member, you collected 681 signatures on a petition for a position on the board of directors and submitted your petition to the FCU's nominating committee. The petition was audited, and it was discovered that 120 signatures were illegible and 59 signatures were of nonmembers. The audit revealed 502 signatures were from valid members of the FCU. The nominating committee declined to place your name on the ballot because 1% of the membership equals 543; therefore a petition requires 543 valid signatures.

You have three concerns with the nominating process. First, although members under 16 are not allowed to vote, they are counted in the total membership for the purpose of determining the number of signatures required on the nomination petition. Second, the FCU did not interview you although the FCU stated it would interview potential nominees in its election notification in Shareholder Magazine. Third, the FCU failed to provide you with information you requested on election procedures.

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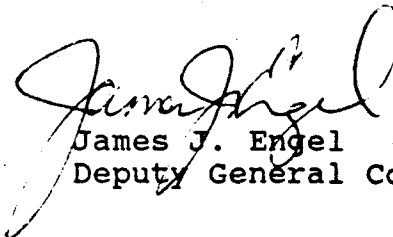
ANALYSIS

Although your position that individuals who can not vote should not be counted in the membership total is reasonable, the issue is controlled by the corporate common law of the state in which the credit union is located. Although we did not conduct an exhaustive review of Minnesota law, we are not aware of any Minnesota statute or caselaw that specifically addresses this issue. Further consultations with your local counsel may prove helpful.

The bylaws do not mandate that each petitioner receive an interview or be given detailed information on the credit union's nomination and election procedures. While we understand your concern with the credit union's violation of its own procedures, it is not a violation of the FCU Act, NCUA's Regulations or the FCU's bylaws and thus it is an issue that should be resolved by the FCU's board of directors or the FCU's supervisory committee. We do not believe that it would be appropriate for NCUA to insert itself into what is essentially an internal problem within the credit union's power to resolve.

Bylaws function as a contract which governs the relationship between the credit union and its members, and disputes over the meaning of its provisions such as the present one should be resolved in another forum. I must emphasize to you that the NCUA will not at this time become involved in this dispute. It is neither a court of law nor an arbitrator. The parties must seek to resolve this dispute among themselves. Should you wish to pursue this matter, we suggest that you continue to consult with local counsel for an opinion based on Minnesota corporate law.

Sincerely,



James J. Engel
Deputy General Counsel

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