



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

August 22, 1991

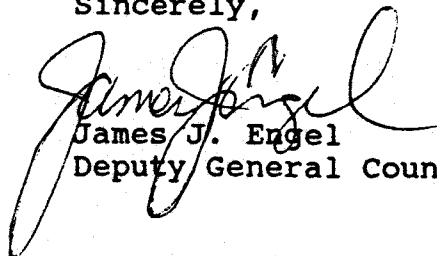
Tom Haider, Esq.
Staff Attorney
Minnesota League of Credit Unions
2788 East 82nd Street
Bloomington, Minnesota 55425

Re: Preemption of Minnesota Law Regarding
Transaction Accounts (Your August 9,
1991 Letter)

Dear Mr. Haider:

You asked whether Section 701.35 of NCUA's Rules and Regulations preempts Section 48.512 of the Minnesota Statutes (1990), governing transaction accounts, and recent amendments thereto. In our opinion, both Section 48.512 and the amendments made by Chapter 256 of the 1991 Minnesota Session Laws are preempted by Section 701.35(c). We have enclosed a copy of a recent opinion on this issue.

Sincerely,


James J. Engel
Deputy General Counsel

Enclosure

GC/MRS:sg
SSIC 3500

91-0818

FOIA Vol. V, K 2



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

August 1, 1991

Terry R. Meyer,
Chief Examiner
Minnesota Department of Commerce
133 East 7th Street
St. Paul, Minnesota 55101

Re: Minnesota Law Regarding Transaction Accounts
(Your (July 18, 1991 Letter)

Dear Mr. Meyer:

You inquired whether Section 48.512 of the Minnesota Statutes (1990) and the amendments thereto made by Chapter 256 of the 1991 Session Laws of Minnesota are applicable to federal credit unions ("FCUs") in Minnesota. Section 48.512 imposes requirements for the opening of "transaction" accounts. Both the current version of Section 48.512 and the amendments to Section 48.512 made by Chapter 256 are preempted by NCUA's Rules and Regulations and do not apply to FCUs.

Background

Section 48.512 of the Minnesota Statutes sets forth procedures for opening checking, or "transaction" accounts. Recently, Minnesota enacted Chapter 256 of its Session Laws (1991), which amends Section 48.512 and several other sections relating to checks and financial institutions. You asked that we review Section 48.512 and Chapter 256 and determine their applicability to FCUs.

We note that while you enclosed a complete copy of Chapter 256 with your letter, your specific question related to Section 48.512 and the procedures for "opening transaction or checking accounts." It appears that you are concerned only with Section 48.512 (as amended), rather than with all the Minnesota statutes amended by Chapter 256, and we will therefore discuss only Section 48.512 and the amendments thereto.

Terry R. Meyer
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However, we would apply the same type of analysis if called upon to review the other statutes amended by Chapter 256.

Analysis

Section 48.512 governs the opening of transaction accounts, and applies to financial intermediaries, i.e., businesses offering transaction accounts to the public. "Transaction account" is defined as:

a deposit or account established or maintained by a natural person or persons . . . on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, or other similar device for the purpose of making payments or transfers to third persons or others, including demand deposits or accounts subject to . . . share draft

On its face, the statute appears to apply to FCUs. However, Section 701.35 of NCUA's Rules and Regulations, 12 C.F.R. §701.35, states:

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. 1757(6))
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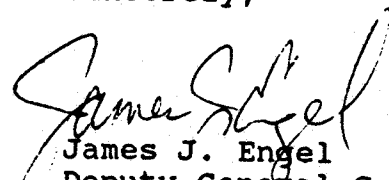
(c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

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Section 701.35(c) preempts any state law governing the activities described in the regulation, including the opening of share draft accounts. Therefore, both the current and amended versions of Section 48.512 are preempted by Section 701.35(c), and are inapplicable to FCUs.

I hope that we have been of assistance.

Sincerely,



James J. Engel
Deputy General Counsel

GC/MRS:sg
SSIC 3500
91-0731