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CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 7, 1996

The Honorable Richard Eckstrom
Chairman, State Board of Financial Institutions
Calhoun Office Building, Third Floor
Columbia, South Carolina 29211-1778

Re: Informal Opinion

Dear Mr. Eckstrom:

You indicate that the State Board of Financial Institutions voted to request an opinion regarding "the authority under current law for a state-chartered credit union to increase its field of membership by including employees or members of other groups whose common bond of occupation or association is different from the original sponsor's common bond. Stated in the alternative, must each such group have a common bond with the original group that established the credit union." You also state the following:

> [u]ntil on or about July 1, 1996, the Board in administering South Carolina Code Sections 34-27-30 and 37-27-40 (1976, as amended) and Regulation 15-52 had approved applications for expansions of fields of memberships for state-chartered credit unions applying the same criteria used by the National Credit Union Administration (NCUA), pursuant to the Federal Credit Union Act (FCUA), for federally-chartered credit unions. ... Generally, the NCUA does not require groups being added to a federal credit union's field of membership to have a common bond with the original sponsoring group that established the credit union. However, there are two developments that have or may have impacted the Board's policy for approving applications for expansions of fields of membership.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Request Letter

> First, the General Assembly through Act No. 371 of 1996 repealed Chapter 27, Title 34 of the 1976 Code and adopted the South Carolina Credit Union Act. Section 34-26-500 thereof provides the current common bond requirements the Board must administer. The language used for that purpose is new. The Board would request that in addressing the aforementioned questions, you provide guidance on the impact of the Act on the viability of Regulation 15-52.
>
> Second, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on July 30, 1996, overturning the NCUA interpretation of the common bond requirement for adding occupational groups to federal credit unions which have been in effect since 1982. The court's holding in First National Bank and Trust Company v. NCUA ... was as follows:
>
> > Based upon the text and the purpose of the FCUA, we conclude ... that all the members of an FCU (federal credit union) must share a common bond. If there are multiple occupational groups with a single credit union, then it is not sufficient that the members of each different group have a common bond to that group only.

Law / Analysis

As you indicate, Act No. 371 of 1996 repealed Title 34, Chapter 27, of Code, adopting the South Carolina Credit Union Act of 1996. Section 34-26-200 makes the Board of Financial Institutions "responsible for the supervision and regulation of credit unions incorporated under this chapter." Article 3 of the Act provides for the method of formation of a credit union in South Carolina. Section 34-26-340 requires that the "name of every credit union organized under this chapter shall include the phrase 'credit union'." Article 4 provides for the powers bestowed upon a credit union.

Article 5 of the new Act deals specifically with a credit union's membership. Section 34-26-500 provides as follows:

> [t]he membership of a credit union shall consist of those persons who share a common bond set forth in the bylaws,

have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares, and have complied with such other requirements as the articles of incorporation and bylaws specify.

(2) Credit union membership may include persons within one or more groups having a common bond or bonds of similar occupation or association, or to persons within a defined business district, building, industrial park or shopping center, and members of the family of such persons who are related by either blood or marriage.

(3) A credit union may add additional groups not to exceed one hundred potential members to its field of membership, from time to time, provided such groups can reasonably be served by one of the credit union's service facilities, such groups having provided a written request for service to the credit union and does not presently have credit union service available. However, the Board of Financial Institutions may revoke the power of any credit union to add groups under this provision upon a finding that permitting additions under this provision are not in the best interest of the credit union. The adding of such groups shall be consistent with the following:

(a) In order to add such additional groups, a credit union must first obtain a letter on the group's letterhead, where possible, signed by an official representative identified by title, requesting credit union service and stating that the group does not have any other credit union service available form any source. The groups must indicate the number of potential members seeking service. This document must be maintained by the credit union permanently with its bylaws.

(b) A credit union adding such group must maintain a log of groups added. The log must include the following: the date the group obtained service, the name and location of the group, the number of potential members added, the number of miles to the nearest main or branch office, and the date of the approval of such group by the board of directors.

> (c) Upon complying with the above procedures, board approval shall not be necessary to add such groups with no more than one hundred potential members to a credit union's field of membership. Approval of the Board of Financial Institutions shall be obtained prior to the addition of groups in excess of one hundred.

(emphasis added).

Your question specifically concerns what effect this new statutory enactment has upon Regulation 15-52. Such Regulation provides as follows:

> [s]tate-chartered credit unions are authorized after approval of the State Board of Financial Institutions, to increase the field of membership as authorized for federally chartered credit unions by Section 109 of the Federal Credit Union Act and as that act has been interpreted by the National Credit Union Administration in its Interpretive Ruling and Policy Statement published in the Federal Register Volume 47, Number 120, Tuesday, June 22, 1982. The interpretative ruling also provides that a federally chartered credit union may purchase loans of a liquidating credit union and may offer full membership rights and services to the borrowers whose loans it has purchased. The interpretative ruling further provides for two kinds of fields of membership for new credit unions. Firstly, a group field of membership where each employer must have its own common bond but all employers must be located within a well defined areas. Secondly, a field of membership composed of persons who reside or work in a given area, but the combined field of memberships is limited to a well defined neighborhood, community, or rural district.

(emphasis added).

Because the Regulation authorizes state-chartered credit unions to "increase the field of membership" as is authorized by Section 109 of the Federal Credit Union Act and as it has been interpreted by NCUA in its Interpretative Ruling of June 22, 1982, we must, therefore, determine the present status of the federal law in this regard.

In First National Bank and Trust Company v. National Credit Union Administration, 90 F.3d 525 (D.C.Cir. 1996), the Circuit Court of Appeals for the District of Columbia Circuit recently addressed this issue. There, the Court was faced with the question whether an occupational FCU must share a single "common bond of occupation" or whether "membership may be drawn from multiple unrelated groups, each within its own common bond." The lower court had concluded that the NCUA's interpretation that the Federal Credit Union Act authorized members of unrelated groups to join a single credit union provided that a common bond exists among members of each constituent group, was reasonable.

The Court of Appeals reversed, however. Section 109 of the Federal Credit Union Act provides that

> [f]ederal credit union membership shall be limited to groups having a common bond of occupation ... or to groups within a well-defined neighborhood, community, or rural district. (emphasis added).

It can be seen that Section 109, like our own Section 34-26-500 (2), uses the phrase "groups having a common bond ... ." The Court in First National concluded that both the text and purpose of Section 109 supported the interpretation that such provision requires a "common bond" for all groups who are members of the credit union, not simply within a single group. With respect to the text of the federal statute, the Court reasoned as follows:

> [n]onetheless, use of the word "groups" in § 109 does support FNBT's interpretation and not the NCUA's. As a lending dictionary of the time put it, a group is an "assemblage ... having some resemblance or common characteristic." Webster's New International Dictionary 955 (1927). By this definition, a common bond is implicit in the term "group." Therefore, if two or more "occupational groups" can be said to have a common bond, it must be because there is a characteristic common to each and every member of the several groups.
>
> Our viewing the question another way, the term "common bond" would be surplusage if it applied only to members of each constituent group and not across all groups of members in an FCU. Instead of limiting membership to "groups having a common bond of occupation," the Congress

> could, without affecting the meaning of the statute, have simply said "occupational groups." The addition of the term "common bond" is necessary only to import the idea that the bond is one shared by all members of the FCU-regardless whether the FCU is composed of one or of multiple groups. If the members of a group are by definition bonded, then it is tautological to say that a single group has a common bond; but if multiple groups are said to have a common bond then there is no tautology - the members of each group share the same bond as the members of the other groups.

90 F.3d at 525. (emphasis added). The Court summarized its conclusion as follows:

> [i]n sum, the FCUA requires by its terms that all members of a credit union share a single common bond ... . If the statute is to be read as it is written, ... the one thing that the agency may not do is permit unrelated groups to form a single FCU unless a common bond unites all of the members.

Id. at 529.

The purpose of § 109 was consistent with this textual reading of the statute, concluded the Court. Such purpose was fulfilled because

> [t]he Congress intended that each FCU be a cohesive association in which the members are known by the officers and by each other in order to "ensure both that those making lending decision would now more about applicants and that borrowers would be more reluctant to default. That is surely why it was thought that credit unions, unlike banks, could 'loan on character.'" Id. There can be little doubt that growth on the scale achieved by ATTF is inconsistent with that purpose.

Independent of federal law, other cases employ the same reasoning. For example, in North Carolina Savings and Loan League v. North Carolina Credit Union, 302 N.C. 458, 276 S.E.2d 404 (1981), the North Carolina Supreme Court emphasized that the "common bond" requirement meant that there must be a "common bond" among all of the membership, not just a particular group therein. North Carolina's statute provided that "[c]redit union membership may include groups having a common bond or similar occupation, association or interest, or groups who reside within an identifiable neighbor-

hood, community or rural district, or employees of a common employer, and members of the immediate family of such persons." Again, the language "groups having a common bond ... " is identical to our own Section 38-26-500 (2).

The Court emphasized that in construing the meaning of the term "common bond", legislative intent must be ascertained, which can best be gauged from "'the language of the act, the spirit of the act and what the act seeks to accomplish.'" Concluding that it was "obvious" from the language of the Act that "all persons eligible for membership in a credit union must share one and the same common bond", the Court, therefore, reasoned that if the common bond was occupation "then each member must share a similar occupation with every other member ... " and, likewise, if the commonality were based upon association or interest, "all persons within the field or membership must possess the same association or interest." Id. at 410. Moreover, reckoned the Court,

> ... if the common bond requirement were anything but universal for the entire membership, it would be rendered meaningless. For example, it is beyond question that there are certain groups of county and municipal employees who share similar occupations with state employees; both state and local governments employ law enforcement officers, public health personnel, tax collectors, etc. If the requisite degree of commonality required for a "common bond" to exist could be met by sharing similarity of occupation for sub-groups of the membership only, the scope of eligible membership would know no bonds and the Legislature's enactment of the common bond requirement would be rendered a nullity.

The purpose of such a provision was fully effectuated by an interpretation which required the "common bond" characteristic to apply to all group members. Said the Court,

> [u]ndoubtedly, the Legislature enacted the common bond provision to promote the financial stability of credit unions by requiring that the members possess substantial unity of character and interest. Only with some assurance of stability can the purpose of credit unions be achieved ... . To ensure the financial stability of credit unions the Legislature imposed the requirement that all persons eligible for membership in a particular credit union possess a commonality of interest ... . Thus, the nature of the common bond itself must provide some guarantee of financial cohesiveness and stability. Not all

> shared interests carry even a minimal assurance of financial success, and for that reason, not all shared traits constitute common bonds. Only those factors common to the entire field of membership which, of themselves, tend to promote financial stability qualify as common bonds. It does not follow, however, that all factors which provide some guarantee of financial stability satisfy the common bond requirement. To qualify as a common bond, the trait or factor must be common to all eligible for membership, and its very nature must provide the assurance of stability; we are bound by the limitations inherent in that means and cannot ignore those limitations simply because we see a better way to achieve the Legislature's purpose.

Of course, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E. 788 (1948). The language of a statute must be given its ordinary or generally accepted meaning. Greenville Enterprise v. Jennings, 210 S.C. 163, 41 S.E.2d 868 (1947). In construing a statute, it will be presumed that the General Assembly did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938).

The language used in new Section 34-26-500 (2), that "[c]redit union membership may include persons within one or more groups having a common bond or bonds ..." convinces me that the foregoing cases are applicable. Both the First National Bank and Trust Company case and the North Carolina Savings and Loan League case are logically reasoned and fully effectuate legislative intent. It would serve little or no purpose to have simply required that members of a sub-group, as opposed to the group as a whole, possess a "common bond". Inherently, such sub-group does possess a common bond already.

Here, Section 34-26-500 (2) specifically states that there should be a "common bond" within one or more groups ... ." It would thus appear to me that this provision not only anticipates that the "common bond" should exist among the "groups" and not just within each group, but mandates such conclusion.

It is true that Regulation 15-52 was promulgated pursuant to Section 34-1-110 which does not appear to have been explicitly repealed by the new statute. Section 34-1-110 provides in pertinent part that

> ... in addition to all of the powers granted under Chapters 1 through 31 of Title 34 ... the State Board of Financial Institutions ... (3) may by regulation permit cooperative credit unions to engage in any activities that are authorized for federally-chartered credit unions by federal law or by regulation of the National Credit Union Administrations ... .

In light of the Court's ruling in the First National Bank case, however, federal law does not presently "authorize" a federally-chartered credit union to increase its field of membership unless such group has a "common bond" with the entire group. Thus, even though Regulation 15-52 was authorized by Section 34-1-110, such Regulation has now been called into question by First National Bank. Moreover, in light of newly enacted Section 34-26-500, it would appear that the better construction of provisions similar to Section 34-26-500 is contained in the First National and North Carolina Savings and Loan League cases. Accordingly, it is my opinion that Regulation 15-52 has been superseded by our new Credit Union statute and the interpretations of similar statutes referenced above. Of course, if the General Assembly does not believe this interpretation is in accord with its intent, I would suggest that the statute could be clarified upon the General Assembly's return.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph