ALAN WILSON
ATTORNEY GENERAL

November 08, 2019

The Honorable Curtis M. Loftis
South Carolina State Treasurer
Wade Hampton Building
1200 Senate St.
Columbia, SC 29201

Dear Treasurer Loftis:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

> The Board of Financial Institutions ("BOFI") requests the opinion of your office on several issues related to credit union fields of membership, including the interpretation of recent changes to the South Carolina Credit Union Act, S.C. Code § 34-26-100, *et seq.*, as well as whether, and to what extent, BOFI may limit out-of-state state-chartered credit unions from expanding their fields of membership within South Carolina.
>
> We are seeking guidance as to whether recent changes to the South Carolina Credit Union Act simply codified long-standing State regulations and Operational Instructions which allowed state-chartered credit unions in South Carolina to have the same types of fields of membership as federally-chartered credit unions, or whether the changes afford state-chartered credit unions more authority and flexibility to expand their fields of membership beyond that which the National Credit Union Administration ("NCUA") provides for federally-chartered credit unions. Additionally, there is some ambiguity regarding the extent to which BOFI has the authority and/or the statutory imperative to approve, and in certain cases limit out-of-state state-chartered credit unions to their existing fields of membership when those entities seek to conduct business in South Carolina. Thus, we are seeking guidance from your office.

Questions

1. Do the 2018 amendments to S.C. Code § 34-26-500(2) allow state-chartered credit unions to expand their fields of membership to multiple communities, rather than a single community as was previously allowed by State regulation and BOFI interpretive guidance?

2. May an out of state credit union expand its membership in South Carolina by way of merging with federally chartered credit unions? If yes, may this expansion of membership exceed that which is permitted by South Carolina law?

Law/Analysis

I. Did 2018 Act No. 186, § 2 amend S.C. Code § 34-26-500 to allow state-chartered credit unions to expand their fields of membership to multiple community groups?

It is this Office's opinion that a court likely would hold S.C. Code § 34-26-500, as amended by 2018 Act No. 186, § 2, does not permit state-chartered credit unions to expand their field of membership to multiple community groups. However, this conclusion is not free from doubt and further judicial, legislative, or administrative clarification may resolve this question differently. As is discussed further below, if the BOFI interprets section 34-26-500 to limit community-based credit unions to a single community group, a court would likely grant it administrative deference because the statutory language contains ambiguities. See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014); see also S.C. Code Ann. §§ 34-26-200 ("The Board of Financial Institutions shall be responsible for the supervision and regulation of credit unions incorporated under this chapter."); 34-26-210(1) ("The board may establish procedures to implement any provision of this chapter and to define any term not defined in the chapter.").

The South Carolina Credit Union Act of 1996, S.C. Code §§ 34-26-100 *et seq.*, was passed to "provide[] for the organization, operation, and supervision of cooperative nonprofit thrift and credit associations known as credit unions, and to provide for their duties, powers, and functions." 1996 Act No. 371. Prior to the passage of this act, the BOFI promulgated a regulation that authorized state-chartered credit unions to increase their fields of membership according to two methods:

> State-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 Interpretative Ruling and Policy Statement published in the Federal Register Volume 47, Number 120, Tuesday, June 22, 1982. ... 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 area. Secondly, a field of membership composed of persons who reside or work in a given area, but the combined field of membership is limited to a well defined neighborhood, community, or rural district.

S.C. Code Ann. Regs. 15-52. The policy statement ["IRPS"] referenced in Regulation 15-52 interpreted section 109 of the Federal Credit Union Act, 12 U.S.C. § 1759, to permit membership in a federal credit union either on "occupational" and "associational" bases or on a "community" basis. The IRPS distinguished between the first two types and the community groups by stating "a narrower geographic standard applies. If any portion of the field of membership is community based, i.e., serves all person who reside or work in a given area, the combined field of membership is limited to a well-defined neighborhood, community or rural district." IRPS 82-3, 47 Fed.Reg. 26808 (June 22, 1982). In Nat'l Credit Union Admin. v. First Nat. Bank & Tr. Co., 522 U.S. 479, 492 (1998), the Supreme Court described section 109 and the NCUA's interpretation of federal credit union membership as limiting. Justice Thomas wrote:

> By its express terms, § 109 limits membership in every federal credit union to members of definable "groups." Because federal credit unions may, as a general matter, offer banking services only to members, *see, e.g.*, 12 U.S.C. §§ 1757(5)-(6), § 109 also restricts the markets that every federal credit union can serve. Although these markets need not be small, they unquestionably are limited.

Id. The Court continued:

> Section 109 consists of two parallel clauses: Federal credit union membership is limited "to groups having a common bond of occupation or association, *or* to groups within a well-defined neighborhood, community, or rural district." 12 U.S.C. § 1759 (emphasis added). The NCUA concedes that even though the second limitation permits geographically defined credit unions to have as members more than one "group," all of the groups must come from the *same* "neighborhood, community, or rural district." *See* Brief for Petitioner NCUA 37. The reason that the NCUA has never interpreted, and does not contend that it *could* interpret, the geographical limitation to allow a credit union to be composed of members from an unlimited number of unrelated geographic units, is that to do so would render the geographical limitation meaningless.

Nat'l Credit Union Admin., 522 U.S. at 501–02 (emphasis in original).[1] The Court interpreted the Federal Credit Union Act to permit a community based federal credit union to draw its membership only from a single well-defined geographic area. Id. Moreover, according to the plain language of IRPS 82-3, the NCUA promulgated policy statement intending for community based federal credit unions to be confined to a "narrower" geographic standard. Consequently, because S.C. Code Ann. Regs. 15-52 cites Section 109 and IRPS 82-3 as a template, it is fair to interpret state chartered credit unions' authority to increase membership as being similarly limited for community based credit unions under S.C. Code Ann. Regs. 15-52.

In 2001, the BOFI issued operation instructions "to provide parity with Federally chartered credit unions." Operational Instruction issued by the State Board of Financial Institutions, February 7, 2001. The operational instruction permitted South Carolina state-chartered credit unions to apply "to serve persons who live in, attend school in, or work in a community and have common interests or interact. The area to be served must be a well-defined neighborhood, business district, community, or rural district where the credit union maintains a service facility, has a membership presence, and has the ability to serve those who qualify for and request credit union service." Id. The instruction continued to state "well-defined" means that an "area has specific geographic boundaries." Id. Further, the instruction provided that "[g]eographic boundaries may include a city, township, county, or clearly identifiable neighborhood." Id.

The request letter notes, "[P]rior to the 2018 amendment, it was the view of BOFI that fields of membership for state-chartered credit unions are limited by the provisions of S.C. Code § 34-26-420, which states that 'the powers granted by state law or regulation to a state-chartered credit union shall not exceed those provided by federal law to a federally chartered credit union.'" It is this Office's understanding that BOFI interpreted this limitation to mean that a state-chartered credit union whose field of membership is community based is geographically limited to a single city, township, county, or clearly identifiable neighborhood.

The 2018 Amendment to the South Carolina Credit Union Act, 2018 Act No. 186, was signed into law on May 15, 2018. In relevant part, it was titled, "An act to amend section 34-26-500, relating to membership in a credit union, so as to provide the procedure for a credit union to serve new community groups and underserved communities ..." The Act amended section 34-26-500(2) to add community as a "common bond" of membership as follows:

> Credit union membership may also consist of groups having different common bonds of occupation, association, community, or persons employed within a defined business district, building, industrial park or shopping center, and

[1] Following the Court's decision in Nat'l Credit Union Admin. v. First Nat. Bank & Tr. Co., Congress amended the Federal Credit Union Act by passing the Credit Union Membership Access Act ("CUMAA"), Pub. L. No. 105-219, 112 Stat. 913 (1998). The CUMAA "loosen[ed] size limitations on certain federal credit unions" and added other reforms. Am. Bankers Ass'n v. Nat'l Credit Union Admin., 934 F.3d 649, 658 (D.C. Cir. 2019).

> members of the family of such persons who are related by either blood or marriage.

S.C. Code Ann. § 34-26-500(2) (emphasis added). Subsection 4 was also added to establish community based credit union membership criteria:

> (a) For the purposes of this subsection:
>
> (i) "Well-defined" means that the area has specific geographic boundaries.
>
> (ii) "Geographic boundaries" may include a municipality, city, county, or clearly identifiable neighborhood.
>
> (b) State chartered credit unions may apply to the board to serve community groups. A community group shall consist of persons who live in, attend school in, or work in a community and have common interests or interact. The area to be served must be a well-defined neighborhood, business district, community, or rural district where the credit union maintains a service facility, has a membership presence, and has the ability to serve those who qualify for and request credit union service. More than one credit union may share the same community. The credit union requesting to serve a community must provide to the board:
>
> (i) documentation describing how the area meets standards for community interaction or common interests and clearly defining the geographic boundaries of the proposed service area;
>
> (ii) documentation establishing the area as a well-defined local neighborhood, community, rural district, or business district; and
>
> (iii) current financial statements and a plan showing how the credit union intends to market its products and services to the entire community, and the credit union must have been determined by recent examinations to have a strong financial position.
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> (c) Upon compliance with the above procedures, approval of the Board of Financial Institutions must be obtained in order to add a community group to a credit union's field of membership.

S.C. Code Ann. § 34-26-500(4).[2]

The request letter asks for this Office's opinion on whether the 2018 amendment simply codified the 2001 BOFI operational instruction regarding community based credit union field of

[2] Subsection (5) addresses separate criteria for adding "underserved communities" to a South Carolina State chartered credit union's field of membership.

membership or instead allows a credit union to include multiple communities within its field of membership. In order to address this question, this opinion will review 2018 Act No. 186 according to the rules of statutory construction. The primary rule of statutory construction is to "ascertain and give effect to the intent of the legislature." Kerr v. Richland Mem'l Hosp., 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) (citations omitted). The South Carolina Supreme Court has held that when the meaning of a statute is clear on its face, "then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 525–26, 642 S.E.2d 751, 754 (2007) (citations omitted) (internal quotations omitted); see also Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (holding that where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

Moreover, it is this Office's long standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013). In Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014), the South Carolina Supreme Court explained, "[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." The Court stated that the determination of whether deference is afforded to an agency's interpretation of the statutes and regulations it administers involves two separate steps. Id.

> First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. See Brown v. Bi–Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("We recognize the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation. Nevertheless, where, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." (citations omitted)); Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("Where the terms of the statute are clear, the court must apply those terms according to their literal meaning."). If the statute or regulation "is silent or ambiguous with respect to the specific issue," the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference. Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); see also Brown v. Bi–Lo, 354 S.C. at 440, 581 S.E.2d at 838.

Kiawah Dev. Partners, II, 411 S.C. at 32–33, 766 S.E.2d at 717.

As is discussed more fully below, it is this Office's opinion that a court may well find S.C. Code Ann. § 34-26-500 is ambiguous regarding whether a community based credit union field of membership is limited to a single community. Under Kiawah Dev. Partners, II, the BOFI's interpretation of Section 34-26-500 would be afforded deference as it is authorized to define any undefined terms in the South Carolina Credit Union Act and to regulate credit unions incorporated thereunder. See S.C. Code Ann. §§ 34-26-200, -210(1). However, it is this Office's understanding that the BOFI has not yet interpreted S.C. Code Ann. § 34-26-500. In the absence of either an administrative interpretation or judicial opinion on point, this opinion will look to the plain language of the statute and, where appropriate, its legislative history to ascertain legislative intent.

The plain language of Section 34-26-500 does not clearly demonstrate legislative intent either to limit community based credit union fields of membership to a single community or to permit fields of membership to encompass multiple communities. Subsection (2) states "[c]redit union membership may also consist of groups having different common bonds of occupation, association, community or persons employed within a defined business district, building, industrial park or shopping center ..." S.C. Code Ann. § 34-26-500(2) (emphasis added). This language appears to permit a field of membership to consist of multiple groups based on any collection of common bonds of occupation, association, or community. Unlike the language of FCUA Section 109 discussed in Nat'l Credit Union Admin., 522 U.S. at 501–02, subsection (2) does not create a clear dichotomy between occupation and association groups on the one hand, and community based groups on the other. Prior to the 2018 amendment, subsection (2) more closely mirrored the language of the federal statute to permit fields of membership consisting of "[1] groups having different common bonds of occupation or association or [2] persons employed within a defined business district, building, industrial park or shopping center." S.C. Code Ann. § 34-26-500 (Supp. 2017) (emphasis added). Under the prior language, the only geographically based group that could compose a credit union's field of membership was limited to "a defined business district, building, industrial park or shopping center," meaning a single discrete geographically bound area. The current language of subsection (2) continues to use the article "a" for "persons employed within a defined business district, building, industrial park or shopping center", and added "community" to the subset of "groups having different common bonds." Arguably, the addition of the word "community" to the subset of "groups having different common bonds," rather than the second subset of "persons employed within a defined" geographically bound area, could be interpreted to permit multiple community groups within a field of membership as long as there are different common bonds between them.

If S.C. Code Ann. § 34-26-500(2) is read in isolation, a court may well construe the statute to find the Legislature intended to allow state-chartered credit unions to expand their fields of membership to multiple communities. Yet, when the subsections of S.C. Code Ann. § 34-26-500 are read together, a court may well interpret a credit union's field of membership to

be limited to a single community group. Howell v. United States Fid. & Guar. Ins. Co., 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006) ("Statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). Subsection (3) establishes the criteria for adding "occupation and association groups" to "a credit union." The plain language of subsection (3) which permits "a credit union's field of membership" to add occupation and association "groups" clearly demonstrates legislative intent to permit a single credit union to expand its field of membership to multiple occupation and association groups. In contrast, subsection (4) employs the plural noun "community groups" when referring to "credit unions" and employs the singular noun "a community group" in reference to "a credit union's field of membership." The distinction between allowing the addition of "occupation and association groups" and while only allowing the addition of "a community group," in subsections (3) and (4) respectively, to a credit union's field of membership, provides evidence of legislative intent to only permit a single community group to a field of membership at a time. Id.

Further, subsection (4)(b)'s authorization to add "community groups" to "credit unions" that meet the listed application criteria does not necessarily suggest an intent to permit multiple community groups in a single credit union. Section 2-7-30(A) provides that the following rule of construction for statutes in the South Carolina Code:

> The words "person" and "party" and any other word importing the singular number used in any act or joint resolution shall be held to include the plural and to include firms, companies, associations, and corporations and all words in the plural shall apply also to the singular in all cases in which the spirit and intent of the act or joint resolution may require it. ...

S.C. Code Ann. § 2-7-30(A). In light of the spirit and intent demonstrated by the remainder of subsection (4), the language permitting the addition of "community groups" may be better understood to permit each credit union that applies to serve a community group to do so if the listed criteria is satisfied. See First Nat. Bank & Tr. Co. v. Nat'l Credit Union Admin., 90 F.3d 525, 528 (D.C. Cir. 1996), aff'd, 522 U.S. 479, 118 S. Ct. 927, 140 L. Ed. 2d 1 (1998) ("[T]he plural noun "groups" could refer not to multiple groups in a single [credit union] but to each of the groups that forms a credit union ..."). Indeed, an interpretation which reads "community groups" as allowing a single community group to each credit union that seeks to expand its field of membership would be consistent with the final sentence of subsection (4)(b) which reads, "The credit union requesting to serve a community must provide to the board..." Id. (emphasis added). Therefore, while it is this Office's opinion that the text of S.C. Code Ann. § 34-26-500 is ambiguous regarding the General Assembly's intent to allow state-chartered credit unions to expand their fields of membership to multiple communities, it is this Office's opinion a court would likely construe the statute to permit a credit union to serve only a single community group.

Beyond the plain language of the statute, there are additional considerations which favor interpreting Section 34-26-500 to permit only a single community group in a state-chartered credit union. The legislative history of the 2018 Amendment shows that an amendment to the bill was offered on March 7, 2018. The Senate Journal records that Senator Davis explained the amendment which was then adopted. See Senate Journal p. 42. Senator Davis stated, "What the amendment does is it aligns the credit union rules with the operating instructions that have been issued by the Board of Financial Institutions." As discussed above, the BOFI issued the operation instruction "to provide parity with Federally chartered credit unions." Operational Instruction issued by the State Board of Financial Institutions, February 7, 2001. The BOFI interpreted this operational instruction to permit a state-chartered credit union's field of membership to include a single community based group. While Senator Davis's statement is not necessarily dispositive of the General Assembly's intent in adopting the 2018 Amendment, a court may find it to be persuasive. See Chrysler Corp. v. Brown, 441 U.S. 281, 311, 99 S. Ct. 1705, 1722, 60 L. Ed. 2d 208 (1979) ("The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history."). A court may well view Senator Davis's statement as persuasive evidence of legislative intent to codify the BOFI's administrative interpretation to allow community groups, and to only permit a single community group in a credit union's field of membership.

Finally, other states' credit union legislation expressly permits multiple community groups or a "combination" of political subdivisions to comprise community groups. See, e.g., Alaska Stat. § 18.66.990(7) (1998) (defining "local community entity" as "a city or borough or other political subdivision of the state, a nonprofit organization, or a combination of these") (emphasis added)). If the General Assembly intended to permit credit union fields of membership to include multiple community groups or allow noncontiguous political subdivisions to comprise a single community group, it likely would have used similar language in the 2018 Amendment. Certainly, the General Assembly could have used similar language as it did to permit the addition of occupation and association groups if it intend to allow multiple community groups as well. See S.C. Code Ann. § 34-26-500(3) ("A credit union may add additional occupation and association groups ...").

Based on the plain language of S.C. Code Ann. § 34-26-500 as amended by 2018 Act No. 186, the amendment's legislative history, and a comparison of similar legislation adopted in other states, it is this Office's opinion that a court would likely find South Carolina state-chartered credit union's fields of membership are limited to a single community group. Again, this conclusion is not free from doubt and an administrative interpretation from the BOFI or legislative clarification may be warranted.

II. May an out-of-state credit union expand its membership in South Carolina by way of merging with federally chartered credit unions? If yes, may this expansion of membership exceed that which is permitted by South Carolina law?

It is this Office's opinion that a court would likely find an out-of-state chartered credit union may merge with a federally chartered credit union that has a presence in South Carolina. However, such an out-of-state credit union's ability to conduct business in South Carolina is subject to BOFI approval and compliance with Southeastern Regional Cooperative Interstate Agreement for the Supervision of State-Chartered Credit Unions ("SRCI Agreement").

This opinion understands the question to refer to a situation where a federal credit union and an out-of-state chartered credit union merge with the resulting credit union being a state chartered credit union based in a state other than South Carolina. The Federal Credit Union Act provides procedures for a federal credit union to convert to a state credit union. 12 U.S.C § 1771(a). After a federal credit union's directors approve such a conversion by majority vote, it must "take such action as may be necessary under the applicable State law to make it a State credit union." 12 U.S.C § 1771(a)(3). After the credit union receives its state credit union charter, it must file the charter with the National Credit Union Administration. Id. Thereafter, it "cease[s] to be a Federal credit union." Id.

In Heritage Credit Union v. Office of Credit Unions, 247 Wis. 2d 589, 634 N.W.2d 593 (Wis. Ct. App. 2001), the Wisconsin Court of Appeals found that a federal credit union that converted to an out-of-state credit union was subject to regulatory oversight by the Wisconsin Office of Credit Unions ("OCU") when it sought to operate branch offices within Wisconsin. The Court found that while 12 U.S.C § 1771(a) addresses the impact of a conversion on a credit union's ownership and obligations, it "does not address whether a former federal credit union may continue to operate in one state when it has chosen to be chartered under the laws of another state." Heritage Credit Union, 247 Wis. 2d at 600, 634 N.W.2d at 598. The Court further held that the OCU was given authority "to regulate whether and where a foreign state credit union may operate branch offices in Wisconsin." Heritage Credit Union, 247 Wis. 2d at 604, 634 N.W.2d at 600. The Court ultimately concluded that the OCU could apply Wisconsin statutory and regulatory limitations on the out-of-state credit union's operations in Wisconsin as a reasonable application of the principle of reciprocity. Heritage Credit Union, 247 Wis. 2d at 612, 634 N.W.2d at 604 ("The board decided that using this as a basis for determining where to allow foreign state credit unions to operate branch offices in Wisconsin was reasonable because it applied the same limitation to foreign state credit unions that the legislature had imposed on Wisconsin credit unions."). While the Heritage Credit Union opinion is not controlling authority in South Carolina, our state courts may find it persuasive and conclude that a federal credit union that converts to a state credit union with an out-of-state charter must apply to the BOFI to conduct business in South Carolina.

The BOFI was granted similar statutory authority as the Wisconsin OCU to regulate out-of-state credit unions that seek to do business in South Carolina. Out-of-state credit unions must seek approval from the BOFI to conduct business in South Carolina. S.C. Code Ann. § 34-26-370(1). First, the out-of-state credit union's chartering state must allow South Carolina credit unions to conduct business in that state "under conditions similar" to listed provisions. Id.

> Before granting the approval, the board must find that the out-of-state credit union:
>
> > (a) is a credit union organized under **laws similar to this chapter**;
> > (b) is financially solvent;
> > (c) has account insurance comparable to that required for credit unions incorporated under this chapter;
> > (d) is examined and supervised by a regulatory agency of the state in which it is organized or the federal government; and
> > (e) needs to conduct business in this State to adequately serve its members in this State.

Id. (emphasis added). Further, an out-of-state credit union may not conduct business in South Carolina unless it "complies with the consumer protection provided by law and provisions and regulations applicable to credit unions incorporated under" the South Carolina Credit Union Act. S.C. Code Ann. § 34-26-370(2)(b). Finally, the BOFI has authority to revoke the approval of the out-of-state credit union to conduct business in South Carolina if it finds any of the following:

> (a) the credit union no longer meets the requirements of subsection (1);
> (b) the credit union has violated the laws of this State or regulations or orders issued by the board;
> (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices; or
> (d) continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic, or other interests of residents of this State.

S.C. Code Ann. § 34-26-370(3).

This statute requires the BOFI to address the laws of the chartering state to determine their similarity to the South Carolina Credit Union Act. Additionally, the BOFI can investigate the credit union's activities for compliance with South Carolina laws, regulations, and orders issued by the BOFI. The South Carolina Credit Union Act, as is discussed above, places restrictions on membership. It appears reasonable, therefore, for the BOFI to compare these membership requirements to those imposed by the chartering state. Certainly, if a chartering state's laws allowed an out-of-state credit union "to expand its membership and presence in South Carolina without limitation" as stated in the request letter, it would be reasonable for the BOFI to conclude that the credit union is not "organized under laws similar" to the South Carolina Credit Union Act. S.C. Code Ann. § 34-26-370(1)(a).

Finally, the State of South Carolina signed onto the SRCI Agreement in 2017. The stated purpose of the agreement is to "promote interstate commerce and cooperation on a reciprocal basis among the Southeastern States that are a signatory to this agreement." SRCI Agreement at 2. The agreement provides the following procedure for the expansion of a credit union's field of membership:

> 3) Where not otherwise inconsistent with applicable State law, credit unions may request to serve additional limited fields of membership from previously approved interstate branches, subject to the same statutory, regulatory, and policy requirements that state-chartered credit unions domiciled in that state would be subject to, and the requirements of the Home State Supervisor. In addition, credit unions in that Host state must have similar reciprocal authority to apply for additional limited fields of membership in the Home state of the credit union making application.
>
> All such applications for branching shall initially be made with the Home State who will then be responsible for forwarding the application to the Host State for consideration. ...

SRCI Agreement at 4 (emphasis added). The agreement expressly limits the out-of-state credit union's expansion in a host state subject to the same requirements as host state credit unions. Therefore, if an out-of-state credit union is chartered in a state that is a party to the SRCI Agreement, its expansion would be subject to the limitations on expansion as provided by the South Carolina Credit Union Act, related regulations, and BOFI operational instructions. Based on the authorities above, it is this Office's opinion that a court would likely find an out-of-state credit union does not have a greater ability to expand its field of membership in South Carolina than that of a credit union chartered in South Carolina or as permitted by South Carolina law.

Conclusion

It is this Office's opinion that a court likely would hold S.C. Code § 34-26-500, as amended by 2018 Act No. 186, § 2, does not permit state-chartered credit unions to expand their field of membership to multiple community groups. The BOFI's 2001 operation instruction and the statute's legislative history, including Senator Tom Davis's explanation of the 2018 amendment on the Senate floor, reinforce this conclusion. However, this conclusion is not free from doubt and further judicial, legislative, or administrative clarification may resolve this question differently. As is discussed further below, if the BOFI interprets section 34-26-500 to limit community-based credit unions to a single community group, a court would likely grant it administrative deference because the statutory language contains ambiguities. See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014); see also S.C. Code Ann. §§ 34-26-200 ("The Board of Financial Institutions shall be responsible for

the supervision and regulation of credit unions incorporated under this chapter."); 34-26-210(1) ("The board may establish procedures to implement any provision of this chapter and to define any term not defined in the chapter.").

Further, it is this Office's opinion that a court would likely find an out-of-state chartered credit union may merge with a federally chartered credit union that has a presence in South Carolina. However, such an out-of-state credit union's ability to conduct business in South Carolina is subject to BOFI approval and compliance with Southeastern Regional Cooperative Interstate Agreement for the Supervision of State-Chartered Credit Unions ("SRCI Agreement"). If an out-of-state credit union is chartered in a state that is a party to the SRCI Agreement, its expansion would be subject to the limitations on expansion as provided by the South Carolina Credit Union Act, related regulations, and BOFI operational instructions. Based on the authorities above, it is this Office's opinion that a court would likely find an out-of-state credit union does not have a greater ability to expand its field of membership in South Carolina than that of a credit union chartered in South Carolina or as permitted by South Carolina law.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General