

OPINION  
75-9

July 7, 1975 (OPINION)

Mr. G. W. Ellwein  
Commissioner  
Department of Banking and  
Financial Institutions  
State Capitol  
Bismarck, ND 58505

Dear Mr. Ellwein:

This is in response to your letter of May 19, 1975, wherein you request an opinion of this office relative to payment of interest on deposit accounts by State-chartered credit unions. You submit the following in your letter:

The results of recent examinations made by this Department of certain state-chartered credit unions indicate that the credit unions are paying interest on deposits in excess of limitations as provided by Section 6-06-26, North Dakota Century Code, as amended.

Section 6-06-06(1), N.D.C.C. - "To receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within its membership,"

Section 6-06-12(2), N.D.C.C. - "To determine interest rates on loans and deposits;"

Section 6-06-12(4), N.D.C.C. - "To recommend dividends;"

We respectfully request an opinion:

Are State-chartered credit unions in North Dakota permitted to pay an interest rate on deposit accounts in excess of 6%?

We would initially note that Section 6-06-26 of the North Dakota Century Code relates to "dividends" rather than "interest." We do not believe that the two words are interchangeable but rather that two distinct meanings are intended by their use in the statute. We would note the limitations of said Section 6-06-26 of the North Dakota Century Code, as amended, as follows:

6-06-26. DIVIDENDS. - A credit union, upon action by its board of directors, may declare a dividend to be paid from the remaining net earnings. The board of directors shall establish the dividend period; however, dividends shall not be paid more frequently than quarterly. The members may fix the maximum rate of dividends which shall be paid. Dividends may be computed on a daily basis. Such dividend, not to exceed six percent in any case, must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans if required by the state credit union board.

A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for special reserve for delinquent loans if required by the state credit union board." (emphasis supplied)

If, as your letter tends to suggest, a credit union is paying for authorizing the payment of dividends in excess of the statutory limitation, there can be little question but that the same is in violation. However we recognize that the limitation is applicable only to the payment from net earnings of the credit union. It may be possible that the payment of percentages in excess of the statutory limitations are not in fact payment of dividends, but the payment of interest upon loans made by the credit union. Payment of such items would not have bearing upon the investment and resulting dividends from the operating capital available from share accounts.

We would note that Section 6-06-06(1) of the North Dakota Century Code, as amended, provides that credit unions may ". . . receive the savings of its members either as payment on shares or as deposits, . . ." (emphasis supplied). Accordingly, the statutes make distinction between shares and deposits. We would also note that Section 6-06-12 which enumerates the powers of the directors provides in subsection 2 thereof that they may ". . . determine interest rates on loans and deposits; . . ." and separately provides in subsection 4 thereof that they may ". . . recommend dividends; . . .". This separate grant of powers also tends to draw distinction between "interest" and "dividends." We do not find that Section 6-06-26 specifies a maximum interest rate nor does the same refer to interest on deposits. It appears that the same contemplates only the payment of dividends which shall be paid on all outstanding and paid up shares.

Again giving credence to the grant of authority and powers to the directors as specified by Section 6-06-23 of the North Dakota Century Code, noting that "the directors shall have general management of the credit union and it shall be their duty particularly: . . . (2) To determine interest rates on loans and deposits . . .", there being no further limitation or specification as to amount or rate of interest on deposits, we can only conclude that the directors hold the discretion to determine such interest rates on deposits with no maximum or minimum.

In direct response to your inquiry, we are of the opinion that State-chartered credit unions in North Dakota are permitted to pay an interest rate on deposits in excess of six percent (6%).

Sincerely,

ALLEN I. OLSON

Attorney General