

Office of the Attorney General
State of North Dakota

Opinion No. 83-43

Date Issued: December 16, 1983

Requested by: Marilyn Foss
Commissioner
Department of Banking and Financial Institutions

--QUESTION PRESENTED--

Whether the State Credit Union Board has the power to authorize state-chartered credit unions to engage in trust activities either through direct acquisition of stock in a trust company or through establishment of a wholly-owned subsidiary credit service corporation which, thereafter, purchases trust company stock.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the State Credit Union Board does not have the power to authorize state-chartered credit unions to engage in trust activities either through direct acquisition of stock in a trust company or, indirectly, through establishment of a wholly-owned subsidiary credit service corporation which, thereafter, purchases stock in a trust company.

--ANALYSIS--

The State Credit Union Board has the same powers over state-chartered credit unions as the State Banking Board has with respect to financial corporations subject to Title 6 of the North Dakota Century Code. See Section 6-01-04, N.D.C.C. Section 6-01-04, N.D.C.C., grants the State Credit Union Board rule-making power as well as the power to make and enforce necessary and proper orders for the governance of credit unions and provides, in part, as follows:

6-01-04. POWER AND DUTIES OF THE STATE BANKING BOARD AND STATE CREDIT UNION BOARD.--The board shall have power to make such rules and regulations for the government of financial corporations mentioned in section 6-01-01 as in its judgment may seem wise and expedient, but such rules and regulations shall not conflict with any law of this state or of the United States. . . . The board shall make and enforce such orders as, in its judgment, may be necessary or proper to protect the public and the depositors or creditors of said (credit union). . . .

(Emphasis supplied)

The State Credit Union Board has been granted broad supervisory powers over state-chartered credit unions by Section 6-01-04, N.D.C.C., and is specifically prohibited from adopting any rule that conflicts with state law. It, therefore, follows that any order issued by the State Credit Union Board must conform to and be authorized by state law and, to the extent that an order conflicts with state law or lacks statutory authorization, it would be null and void. Therefore, whether the State Credit Union Board has the power to authorize a state-chartered credit union to engage in trust activities by the acquisition of trust company stock either directly or by the formation of a subsidiary credit service corporation which, thereafter, purchases stock in a trust company depends on whether such state-chartered credit unions have been expressly granted such power by statute, or whether such power is a necessary incident to the routine operations of state-chartered credit unions.

State-chartered credit unions, as well as state-chartered banks, trust companies, and other financial institutions are organizations of enumerated powers. See *Iowa Credit Union League v. Iowa Department of Banking*, 268 N.W.2d 165, 171 (Iowa 1978) (credit unions); see also *Divide County v. Baird*, 212 N.W. 236, 238 (N.D. 1926) (banks); and *Michigan Savings and Loan League v. Municipal Finance Commission of the State of Michigan*, 79 N.W.2d 590, 596 (Mich. 1956) (savings and loans). As an organization of enumerated powers, a state-chartered credit union may only exercise those powers expressly granted to it by statute and such powers as are incidental to the powers expressly granted. *Iowa Credit Union League v. Iowa Department of Banking*, 268 N.W.2d 165, 171 (Iowa 1978). Incidental powers are restricted to those powers necessary to carry on the routine business of a credit union. See, generally, *Divide County v. Baird*, 212 N.W. 236, 238 (N.D. 1926).

Express powers of state-chartered credit unions are set forth in Section 6-06-06, N.D.C.C. Section 6-06-06, N.D.C.C., does not expressly grant state-chartered credit unions the power to purchase stock in trust companies (directly or indirectly) or to engage in trust activities. However, Section 6-06-06(11), N.D.C.C., grants the State Credit Union Board the power to authorize state-chartered credit unions to engage in any activity that a federally chartered credit union could engage in. The powers of a federally chartered credit union are contained in 12 U.S.C. § 1757, and provide, in relevant part, as follows:

§ 1757. POWERS.

A federally chartered credit union . . . shall have power . . . to invest its funds:

(7)(I) in the shares, stocks or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to one percentum of the total paid in an unimpaired capital and surplus of the credit union with the approval of the board; provided, however,

that such authority does not include the power to acquire control directly or indirectly, of another financial institution . . .

(Emphasis supplied)

As to the question of whether federal credit unions may invest in credit union service organizations (CUSO) that own trust company stock, a letter from the Assistant General Counsel of the National Credit Union Administration (NCUA) (a copy of which is attached hereto and made a part hereof) provides as follows:

This provision (12 U.S.C. § 1757(7)(I) has been implemented by a longstanding NCUA policy of prohibiting federal credit union ownership of financial institution stock, including trust company stock.

This letter concludes that:

1) Federal credit unions cannot own trust company stock, 2) trust company stock ownership is not associated with the routine operations of federal credit unions, thus making CUSO's owning trust companies an impermissible investment for federal credit unions, and 3) since trust company stock ownership is not, on its face, associated with the routine operations of credit unions, this possible CUSO activity is not one that the NCUA Board may ratify as a permissible CUSO investment for federal credit unions.

Thus, it is clear that federally-chartered credit unions cannot invest in or own trust company stock; that acquisition and ownership of trust company stocks by a federally-chartered credit union is not associated with the routine operations of federal credit unions; and that the NCUA Board may not authorize such investment or ownership. Accordingly, Section 6-06-06(11), N.D.C.C., is not operative, and the State Credit Union Board is without express power to authorize a state-chartered credit union to acquire trust company stock directly, or by means of a wholly-owned subsidiary credit service corporation.

Since Section 6-06-06, N.D.C.C., does not expressly grant such powers to state-chartered credit unions, then the power, if it exists at all, must necessarily be incidental to the express powers.

In *Iowa Credit Union League v. Iowa Department of Banking*, 268 N.W.2d 165 (Iowa 1978), the court considered whether share draft business engaged in by several state-chartered Iowa credit unions, although not expressly granted by statute, was, nevertheless, incidental to the credit union business. The court held that the share draft business was not incidental to the credit union business and observed:

In resolving this issue we are influenced by several considerations. One is that financial institutions, such as credit unions and banks, are organizations of enumerated powers. Since the operation of financial institutions is fraught with hazards to the public, such institutions have only the authority they are given. They cannot operate on the basis

that they can proceed with a new function unless it is forbidden; they must show that it is within the intendment of their statute--either granted by the statute in express terms or necessary or requisite to a granted power. (Citations omitted Iowa Credit Union League v. Iowa Department of Banking, 268 N.W.2d 165, 171 (emphasis in the original))

A state-chartered credit union that acquires stock in a trust company and engages in trust activities either by direct purchase or through formation of a wholly-owned subsidiary credit service corporation which purchases trust company stock, certainly is entering into a new function and one that is not necessary nor incidental to its routine business. A credit union is a cooperative nonprofit association organized principally to encourage savings by its members, and to create a source of credit at reasonable interest rates to its members. A trust company, on the other hand, is a corporation formed for such purposes as transacting business as an annuity, safe deposit, surety, or as acting as a trustee for purposes of trust administration. The expertise, regulations, and administration of each differs substantially. Therefore, as the court in Iowa Credit Union concluded with respect to share draft business, a state-chartered credit union's direct purchase of trust company stock or its indirect purchase through its wholly-owned credit service corporation and the engagement by such credit union in trust activities is not incidental to the routine business of a credit union and the State Credit Union Board is without express or implied authority to approve of such an arrangement.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Allan Benson
Assistant Attorney General