



**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS**

P.O. Box 41200 · Olympia, Washington 98504-1200

January 22, 2004

“A”

Subject: Response to Your Email Regarding the Member Petition for Special Meeting

DCU Interpretive Letter (formerly Opinion Letter) O-04-01 **Redacted Version**

Dear “A”:

On January 16, 2004, you delivered to the Division of Credit Unions of the Washington State Department of Financial Institutions (hereinafter, “DFI”), on behalf of a group of petitioners for Special Membership Meeting of “B” Credit Union (“B”), a request for an opinion regarding (1) when the receipt of a Petition for Special Meeting (hereinafter, “Petition”) should commence and (2) the issues addressed by the Petition.

INTRODUCTION

Petition for Special Membership Meeting. The Petition is a written request to the Secretary of “B’s” Board of Directors (hereinafter, “Board”), made pursuant to Article III, Section 4 of the Amended and Restated Bylaws of “B” (hereinafter, “Bylaws”) and delivered as of January 14, 2004, calling for a Special Membership Meeting (hereinafter, “Special Meeting”), for the following purposes:

- Vote to rescind the adoption of the proposed “Plan of Conversion whereby “B” Credit Union will change from a Washington state-chartered credit union to a Washington state-chartered mutual bank,” which was presumptively adopted at a Special Meeting held on November 3, 2003 (hereinafter, “Plan of Conversion”).
- Vote to remove all nine (9) of the “B” Credit Union Board of Directors due to an allegation by the group of members that proffered the Petition (hereinafter, “Petitioning Group”) that they have breached their fiduciary responsibility in promoting and implementing the Plan of Conversion.
- Elect Interim Directors pursuant to Article V, Section 13 of the Bylaws to replace each Member of the Board.

“B”’s Present Position Statement Regarding Methods of Review. In making your request for an opinion, you have also asked the Division of Credit Unions to review and opine on the

document that was delivered to your group from “B’s” attorney, entitled “B” Credit Union Receipt and Review of Petition" (hereinafter, “B’s” Position”). “B’s” Position with respect to the Petition is as follows:

- “B” will commence a review of the Petition to confirm there are 2,000 “valid member signatures” upon receipt of the Petition.
- “B” will verify the signatures from account signature cards available from “B’s” 11 branches.
- An outside audit firm will independently review and verify the signatures using the account signature cards.
- As directly stated in “B’s” position: “Once the audit firm has completed its review and validated signatures, the Board will review the petition for acceptability under applicable law.”
- Only then, after “acceptance” of the Petition, will the Secretary of the Board designate a time and place for the Special Membership Meeting and “notify the members of the Special Meeting to be held within 20-30 days.”

It is unclear from “B’s” Position whether the time thresholds required in RCW 31.12.195 will be met. Therefore, while this opinion may be in direct response to your request, it is also specifically intended for the benefit of “B” and its legal counsel.

Matters Not Addressed. This opinion letter does not address our concerns or conclusions regarding the methods and procedures by which the Special Meeting for the pending Plan of Conversion, dated November 3, 2003 (hereinafter, “Conversion Meeting”) was conducted. The National Credit Union Administration (hereinafter, “NCUA”) has previously disapproved the methods by which the vote was taken and the procedures applicable to the vote (hereinafter “Conversion Vote”), pending an investigation; and its investigation remains ongoing. Only if the NCUA subsequently approves the conversion vote would approval of the Plan of Conversion be before the DFI’s Division of Banks for consideration. Any substantive issues regarding the Conversion Meeting are separate from the specific questions presented by your request and are not addressed in this opinion.

OPINION

Sufficiency of Form of Petition. Composed of three (3) substantively identical forms, the Petition was signed by 3,593 persons claiming to be Members of “B”. All three petition forms call for the same questions to be voted on by the Members at a Special Meeting. The only difference is that one of these forms lacks a clause, which is present in the other two forms, that alleges a breach of fiduciary responsibility by the present Board in promoting and implementing the Plan of Conversion. However, based on the DFI’s review of each of these signed forms, we conclude that the 3 forms do not vary materially in the nature of their request and that they therefore constitute, in substance, a single Petition having 3,593 signatures.

Number of Signatures. The Washington Credit Union Act, RCW 31.12 (hereinafter, “Act”), at RCW 31.12.195(1), provides that —

“a special membership meeting of a credit union may be called by a majority of the board, a majority vote of the supervisory committee, or *upon written application of at least ten percent or*

two thousand of the members of a credit union, whichever is less.”

[Italics added.]

This requirement is reiterated in Article III, Section 4 of the Bylaws.

Assuming “B’s” membership has not substantially decreased from the 59,102 members reported in the September 2003 Call Report, the lesser amount required in RCW 31.12.195 (1) would be 2,000 member signatures. Accordingly, since the Petition contains 3,593 signatures of persons purporting to be Members, the Petition presumptively contains more than the requisite number of signatures necessary to properly call a Special Membership Meeting.

Mandatory Date for Special Meeting. RCW 31.12.195(3) is a controlling provision of the Act upon which “B’s” conduct must depend. It declares:

Upon receipt of a request for a special membership meeting, the secretary of the credit union shall designate the time and place at which the special membership meeting will be held. The designated place of the meeting must be a reasonable location within the county in which the principal place of business of the credit union is located, unless provided otherwise by the bylaws. *The designated time of the membership meeting must be no sooner than twenty, and no later than thirty days after the request is received by the secretary.* The secretary shall give notice of the meeting within ten days of receipt of the request or within such other reasonable time period as may be provided by the bylaws. The notice must include the purpose or purposes for which the meeting is called, as provided in the bylaws. If the special membership meeting is being called for the removal of one or more directors, the notice must state the name of the director or directors whose removal is sought.

[Italics added.]

Article III, Section 5 of the Bylaws is consistent with RCW 31.12.195(3) in requiring that the Special Meeting take place not less than 20 nor more than 30 days after receipt of request for a Special Meeting. However, nowhere in the statute does it state that the absolute “20-30 days” requirement is tolled while the *acceptability* of signatures are obtained. Indeed, the use of the term “acceptable” appears only in Article III, Section 5 of the Bylaws and in the text of “B’s” Position, and then only in the latter case in terms of “B” deciding whether the form of the Petition and propositions sought to be voted on are “acceptable” under applicable law. It is the mandatory and absolute nature of the statute in this regard that is controlling and not the language of the Bylaws.

Therefore, notwithstanding any language in the Bylaws, the mandatory nature of the Act controls. We conclude that the “20-30 days” requirement is absolute. The Secretary of the Board must hold the Special Membership Meeting regarding the Petition no later than thirty (30) days after the date of receipt of the Petition. The request was received on January 14, 2004, and the Special Meeting must be conducted by no later than Friday, February 13, 2004.

Date for Publishing and Mailing Notice. RCW 31.12.195(3) requires that the “[S]ecretary shall give notice of the meeting within ten days of receipt of the request or within such other reasonable time period as may be provided by the bylaws.” Article III, Section 6 of the Bylaws adopts the “10-day rule” set forth in the statute rather than fixing another time for notice. Accordingly, we conclude that “B’s” Secretary must publish and mail the Notice of Special Meeting to the Members no later than Saturday, January 24, 2004.

Sufficiency of Petition Itself. We have reviewed the propositions to be voted upon at the Special Membership Meeting as set forth in the Petition, both as to language and substance. In so doing, it is our opinion that the Act and the Bylaws permit Members of “B” to deliberate and decide upon such propositions at a Special Meeting.

- Rescinding” the Plan of Conversion. The Members are each equal, beneficial equity owners in “B”. The Plan of Conversion, notwithstanding any merits disclosed to the Members, seeks to fundamentally abrogate their equity ownership in the credit union. For this reason, action by all the Membership is required pursuant to RCW 31.12.464 before any Plan of Conversion may be said to have been approved by “B”. If Members may and, indeed, are required to vote on a Plan of Conversion, it follows that it is proper for a special meeting of members to be called to “rescind” any Plan of Conversion previously voted upon. We therefore conclude that the first proposition called for in the Petition is proper and acceptable.
- Propriety of Removing Entire Board. The Act, at RCW 31.12.246, declares, in pertinent part, that —

The members of a credit union may remove a director of the credit union at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose.

[See also Article III, Section 4 of Bylaws and RCW 31.12.195(2)] As provided in RCW 31.12.195(3) and Article III, Section 6 of the Bylaws, any Petition to remove a director or directors must state the name or names of the director or directors to be removed. In the form, the Petition seeks to remove all present members of the Board and has correctly stated each of their names. Therefore, we conclude that the second proposition called for by the Petition is proper and acceptable in both form and substance.

- Requirement of Interim Directors. The Act, at RCW 31.12.246, declares, in pertinent part:

“. . . If the members remove a director [at a special membership meeting], *the members may at the same special membership meeting elect an interim director to complete the remainder of the former director's term of office* or authorize the board to appoint an interim director as provided in RCW 31.12.225.”

[Italics added.]

In addition, RCW 31.12.225(4) provides that “any vacancy on the board must be filled by an interim director appointed by the board, unless the interim director would serve a term of fewer than ninety days.”

The Act permits the Membership to vote for Interim Directors to fill the unexpired terms of all directors sought to be removed, up to a maximum of nine (9) in accordance to the Bylaws, Article V, Section 1. However, since the next Annual Meeting of “B” is set for March 16, 2004, those positions with an unexpired term less than ninety (90) days need not be filled until the upcoming Annual Meeting.

Therefore, we have concluded that the third proposition for the Special Meeting is also proper and acceptable in form and in substance.

Sole Business of Special Meeting. Based on the language of Article III, Section 4 of Bylaws and RCW 31.12.195(3), the only propositions that can be voted on at the Special Meeting are the ones listed in the Petition, which we have concluded above are proper and acceptable.

Chairing of Special Membership Meeting. RCW 31.12.195(4) provides that “if the removal of all board officers is sought, the chairperson of the supervisory committee shall preside over the special meeting.” Therefore, we conclude that the chair of the Special Meeting can only be the chairperson of the Supervisory Committee (hereinafter, “Supervisory Committee Chair”).

Governing Parliamentary Procedure. On January 13, 2004, the Board adopted an Amendment to Article III, Section 9 of the Bylaws, governing parliamentary procedure (hereinafter, “January 13th Amendment”). Based on the January 13th Amendment, Article III, Section 9 of the Bylaws now states as follows:

“Article III, Section 9. Parliamentary Procedure. Meetings held under this section shall be conducted according to those parliamentary procedures described in Robert’s Rules of Order *except as provided in any written membership meeting procedure approved by the Board.*”

[Italics added, which reflect the January 13th Amendment.]

Amendment of Bylaws; Adoption of Temporary Rules. The Division of Credit Unions would have concern regarding any latent amendments to the Bylaws, or procedural rules adopted by resolution of the Board (as now permitted by the January 13th Amendment), which could materially affect the resulting outcome of a Special Membership Meeting in a manner different than would otherwise happen if the Board did not adopt the amendments or temporary rules.

We conclude that the Board may adopt written membership meeting procedures that (1) are reasonably necessary, (2) are fair to the Membership, and (3) provide fair advance notice to the Membership of how the Special Meeting may be conducted, including the nomination and election of Interim Directors.

- Presently, the Act and the Bylaws are generally silent as to how Interim Directors may be nominated at a Special Meeting (as opposed to Annual Meeting). In the absence of “written membership meeting procedures” provided for in the January 13th Amendment, *Robert’s Rules of*

Order Newly Revised 10th Edition (© 2000), §46 governs the procedure for nomination of directors, including nominations from the floor (Page 417) and nominations by petition (Page 424), the latter of which is expressly permitted for nominations of directors by members at Annual Meetings pursuant to Article IV, Section 2 of the Bylaws.

CONCLUDING REMARKS

Please be advised that the DFI is not in a position to offer legal advice concerning any of your rights and remedies as a Member of "B", and we recommend that both the Petitioning Group and "B" Credit Union consult with legal counsel regarding the legal issues involved in the Petition.

Sincerely,

Linda K. Jekel
Director, Division of Credit Unions

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