



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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November 29, 2004

Interpretative Letter I-04-05

“A”

Subjects: Can board of directors meet in an executive session and exclude the supervisory committee members?

Must the board of directors keep minutes of an executive session?

Dear “B”:

Thank you for your email messages dated October 20, 2004 and November 22, 2004 in which you asked questions about executive sessions held by the board of directors and the responsibility of the supervisory committee to be fully informed about decisions made by the board of directors.

Issue

Can the board of directors meet in an executive session and exclude the supervisory committee members? Must the board of directors keep minutes of an executive session?

Analysis

To answer your inquiry, we first reviewed provisions in the Washington Credit Union Act and the “C” Credit Union’s Bylaws concerning meetings of the board of directors.

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RCW 31.12.225 (5) states that the board of directors must hold regular board meetings at least once a month. (Note: The board of a small credit union¹ is eligible for less frequent than monthly regular board meetings.) The Act also authorizes special meetings of the board in certain circumstances. See RCW 31.12.630 and RCW 31.12.474.

“C” Credit Union’s bylaws provide the ability for the board to meet in regular and special board meetings. See Article V. Board of Directors, Section 4 Regular and Special Meetings.

Thus, both the Washington Credit Union Act and “C” Credit Union’s bylaws recognize regular board meetings and special board meetings. Neither the Act nor the bylaws reference executive sessions of the board. However, the practice of holding executive sessions in which attendance is limited to specific individuals is common amongst boards and governmental bodies.² RCW 31.12.335 (2) authorizes the supervisory committee to have at least one member of the committee attend each regular board meeting. The Washington Credit Union Act does not specifically address attendance by a committee member at an executive session called by the board.

The board of directors is responsible to manage the business and affairs of the credit union. If the board is to fully carry out its duties, it is essential that the board have full and frank discussions on all matters affecting the credit union. Open discussion among the board members may be stifled by the presence of others, even a supervisory committee member. The board is in the best position to judge when an executive session is necessary for the purpose of such discussions. As a result, if the board decides to convene an executive session, the board may exclude persons who are not board members.

Further, we considered your concern about the responsibility and duty of the supervisory committee members to be fully informed as to the financial condition of the credit union and the decisions of the credit union’s board. In order for the supervisory committee to be fully informed, the supervisory committee should have access to the minutes of regular and special meetings of the board of directors.

¹ Chapter 208-472 WAC provides regulatory relief for small credit unions. WAC 208-472-030 allows board of directors of small credit unions to meet less frequently than monthly. “C” Credit Union does not meet the definition of a “small credit union”.

² Black’s Law Dictionary defines “executive session” as follows: A session of the board or governmental body that is closed to the public and that only invited persons may attend. See Black’s Law Dictionary, Seventh Edition, West Publishing Company, 1999, page 591.

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The Washington Credit Union Act and “C” Credit Union’s bylaws are silent regarding minutes of a regular or special board meeting. In the absence of clear direction in the Act, we looked to see how the legislature has dealt with this issue in parallel contexts. The Washington Business Corporation Act, Title 23B RCW, and the Washington Corporation and Association (Non-profit) Act, Title 24 RCW, require board of directors to keep minutes of board meetings. See RCW 23B.16.010 and RCW 24.03.135. These statutes also do not specifically address executive sessions but we note that it is anticipated that actions taken by the board of directors will be entered into the minutes or filed with the corporate records. RCW 23B.08.210. Minutes should contain all motions exactly as moved and a very brief description of all major activities.³

Conclusion

We find that a credit union board of directors may meet in an executive session and may restrict who attends the session. While supervisory committee members may be excluded from an executive session of the board, at least one supervisory committee member may attend a regular board meeting.

In order to fulfill its statutory duties, the supervisory committee should be provided copies of the board minutes of regular and special board meetings.

It is up to the board of directors to determine whether minutes will be taken at an executive session of the board. However, while minutes may not be kept, we encourage the board to ratify, at the next regular board meeting, any actions taken by the board in an executive session.

Sincerely,



Linda K. Jekel
Director of Credit Unions

Cc: “D” Supervisory Committee Chair
“E” Board of Directors Chair

³ Francis, Fred and Peg, Democratic Rules of Order, Seventh Edition, published by Francis, 2003, page 39.