

July 9, 1998

“A”
“C”

Subject: Control of Non-profit Charitable Foundation by “C” Credit Union
Opinion No. 0-98-8 (**Redacted version**)

Dear “A”:

This letter is in response to your letter dated May 5, 1998 and follow-up e-mail dated May 19, 1998 on behalf of “C” Credit Union. Your letter requested our opinion regarding the power and authority of the credit union to exercise control over the policies and activities of a non-profit charitable foundation, the “D” Foundation (Foundation), originally sponsored and funded by the credit union.

Conclusion. Based on the facts set forth below and in your letter and e-mail, I have concluded that “C” may exercise control over the policies and activities of the Foundation as an incidental power necessary or convenient to enable “C” to conduct the business of the credit union. RCW 31.12.402(23). My conclusion is based on the analysis set forth below.

Facts. I understand that the Foundation is a non-profit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code as a public charity. The Foundation’s principal activities will be to award scholarships based on academic achievement and community service efforts. The Foundation’s current policy is to limit the award of such scholarships to members of “C” Credit Union (“C”) who are recommended and approved by the Foundation Board of Directors. “C” has made a sponsoring endowment to the Foundation of \$XX. This endowment will ensure permanent funding for at least 25 scholarships and cover certain administrative costs. The Foundation intends to raise additional funds by soliciting contributions from individual “C” members and from other private sources, in order to fund further scholarships and to maintain its public charity status under the Internal Revenue Code.

Analysis.

Investments in the community through contributions to a non-profit. A state-chartered credit union is empowered to make “investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation

pursuant to section 501(c)(3) of the Internal Revenue Code.” RCW 31.12.402(20). The original endowment made by “C” to the Foundation is such an authorized investment in the community, since the Foundation is both a section 501(3)(c) public charity and the purpose of the Foundation’s activities is to further meet the educational needs of “C” membership.

Exercising control over non-profit. Investments in the community such as the endowment made by “C” to the Foundation are part of the business of a credit union, since such investments are specifically authorized by RCW 31.12.402(20). A credit union making such investments has a direct interest in ensuring that the recipients of its contributions maintain their tax-exempt status and that these investments are otherwise permissible under RCW 31.12.402(20).

Therefore, under RCW 31.12.402(23), we find that when a credit union makes authorized investments through contributions to a charitable non-profit organization, it is at least convenient, if not necessary, for the credit union to exercise some control over the policies and activities of the non-profit. This is particularly true if the credit union intends ongoing contributions to the non-profit and is willing to permit the non-profit to solicit further charitable contributions from the credit union’s members.

Depending on the structure of the non-profit organization, the credit union may exercise such control indirectly either through common overlapping directors or through corporate officers and employees that also serve as officers or directors of the non-profit organization. Alternatively, a credit union may exercise more direct control as voting members of the non-profit, if the non-profit is organized as a member controlled non-profit corporation under Chapter 24.03 RCW. Of course, depending on the exact nature of the relationship between “C” and the Foundation, “C” exercise of control over the Foundation may create some exposure for the credit union. I assume “C” will take appropriate precautions to minimize such exposure.

Please be aware that a change in the facts as presented in your letter and e-mail may require a different conclusion. If you have any further questions about these matters, please contact me at (360) 902-8778.

Sincerely,

J. Parker Cann
Assistant Director