

**Opinion No. 82-03**

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Mary M. McInerney, Assistant Attorney General

**TO:** Andrew Swarthout, Director, Financial Institutions Division, Lew Wallace Building, Santa Fe, New Mexico 87503

**FINANCIAL INSTITUTIONS**

Synopsis: Before issuing a certificate of approval to a proposed credit union the commissioner must be satisfied that the membership meets the limitation placed upon it by the Credit Union Act and that it can sufficiently fulfill the statutory purposes of a credit union.

**QUESTIONS**

What requirements under the credit union act must be met by an association before the commissioner can grant a certificate of approval?

**CONCLUSIONS**

See analysis.

**ANALYSIS**

A credit union is organized under the provisions of the Credit Union Act, Sections 58-11-1 through 58-11-33 NMSA 1978. It is defined in Section 58-11-1(C) as

". . . a cooperative society, incorporated for the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident and productive purposes."

**OPINION**

Section 58-11-7 authorizes and limits the membership of a credit union. Membership of a credit union other than the central credit union is limited to

"groups, of both large and small membership, having a common bond, occupation [or] association or to groups within a well-defined neighborhood, community or rural district."

The commissioner (director of the financial institutions division) is empowered by Section 58-11-1 to determine if the certificate and bylaws of a proposed credit union

conform with the Act and if the organization of the credit union "would benefit its members and be consistent with the purpose of the Credit Union Act."

No New Mexico court has ever interpreted the provisions of the New Mexico Credit Union Act affecting the decision-making power of the commissioner. The Act is patterned closely after the Federal Credit Union Act, which Act's interpretations may be persuasive before the New Mexico courts. See, definition of credit union in 12 U.S.C. Section 1752 (1), and limitation of membership in 12 U.S.C. Section 1759.

Federal regulations have been adopted interpreting the membership limitation of the Federal Act. A common bond is defined as

"the sharing of some unifying factor or characteristic among persons that simultaneously links them together and distinguishes them from the general public. This unifying factor must be something more than an unfocused, generalized agreement on a given topic, or a common belief or philosophy on matters of general concern." 12 CFR Section 701.1 (e)(1)(i).

Additionally, groups applying under the occupation, association or residency {273} categories are respectively defined:

"(ii) Occupational Federal credit unions may be chartered on the basis of a common bond of employment by the same employer, employment in certain related activities in the same general locality, or employment within a very limited specified area.

(iii) Associational Federal credit unions may be chartered on the basis of a common bond resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits, and mutual interests.

(iv) Community Federal credit unions may be chartered on the basis of a common bond among persons who reside or work in a well-defined neighborhood, community, or rural district." 12 CFR Section 701.1 (e)(1).

It appears that the commissioner should make an independent determination whether an association's activities develop the common loyalties, mutual benefits and mutual interests that unify the potential members of the credit union in a characteristic that is "more than an unfocused generalized agreement on a given topic or a common belief or philosophy on matters of general concern." The mere fact that an association is legally organized into a corporation or similar organization would not **per se** qualify the association within the membership limitation of the Credit Union Act.

After approval by the commissioner, a credit union is under the supervision and control of the commissioner. Credit unions are subject to examinations and investigations by the commissioner or his employees. The commissioner has the power under Section 58-11-8 to order correction of improper conditions, and if not corrected, to suspend or

revoke a charter and order involuntary liquidation if the credit union appears to be bankrupt or insolvent or has violated any provisions of the act or its charter or bylaws.

Therefore, it follows that the commissioner is required to make a determination of the economic stability of the proposed membership before approval of the credit union is given.

In the case of an application because of a common association, it would appear that the commissioner could consider the solvency of a formally organized association, such as a corporation, or of the membership of an informally organized association, such as a club. The commissioner could also consider the stability of the organization itself including such factors as its length of existence, performance toward established goals and purposes, its membership stability and its financial stability.

The commissioner is authorized to make the determination that a proposed credit union would benefit its members and be consistent with the Act. The general rule in New Mexico is that, on appeal, the court will not substitute its judgment for that of the administrative agency. As long as the administrative order is supported by substantial evidence, within the scope of authority of the agency and not arbitrary and capricious the court is obliged to uphold the order. **Otero v. New Mexico State Police Board**, 83 N.M. 594, 595, 495 P.2d 374 (1972); **Alto Village Services Corp. v. New Mexico Public Service Commission**, 92 N.M. 323, 325, 587 P.2d 1334 (1978).

Therefore, before issuing a certificate of approval to a proposed credit union the commissioner must be satisfied that the membership meets the limitation placed upon it by the Act and that it can sufficiently fulfill the statutory purposes of a credit union.

## **ATTORNEY GENERAL**

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