

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-02

Date issued: February 19, 1999

Requested by: Representative George Keiser

- QUESTIONS PRESENTED -

I.

Whether the State Credit Union Board is required by statute or rule to allow a continuing credit union to acquire the field of membership of a merged credit union.

II.

Whether the limitations of N.D.C.C. § 6-06-07 apply to a continuing credit union's assumption of the field of membership of a merged credit union.

III.

Whether the field of membership of a particular continuing credit union complies with the "well-defined rural or urban district" requirement of N.D.C.C. § 6-06-07.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the State Credit Union Board is not required to allow a continuing credit union to assume the field of membership of the merging credit union.

II.

It is my opinion that the membership restrictions found in N.D.C.C. § 6-06-07 apply to a continuing credit union's assumption of the field of membership of a merged credit union.

III.

Because the question of whether the field of membership of a particular continuing credit union complies with the "well-defined rural or urban district" requirement of N.D.C.C. § 6-06-07 involves the resolution of factual issues on which I may not issue an opinion, I must decline to answer question number three.

- ANALYSES -

I.

N.D.C.C. ch. 6-06 contains the statutes applicable to credit unions. N.D.C.C. § 6-06-36 applies to mergers of credit unions, and states that "[a]ny credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board." The State Credit Union Board is also required to promulgate rules concerning the merger of credit unions by N.D.C.C. § 6-06-37.

The State Credit Union Board's administrative rules governing mergers of credit unions are located in N.D. Admin. Code ch. 13-03-05. In the context of a merger of credit unions, the phrase "'[c]ontinuing credit union' means the credit union whose charter continues upon merging with the merging credit union." N.D. Admin. Code § 13-03-05-00.1(1). The phrase "'[m]erging credit union' means the credit union whose charter ceases to exist upon merging with the continuing credit union." N.D. Admin. Code § 13-03-05-00.1(2).

When the State Credit Union Board has approved a merger of two credit unions, the continuing credit union has the option of applying to the board for permission to assume the field of membership of the merging credit union. N.D. Admin. Code § 13-03-05-01(6). The requirements of N.D. Admin. Code ch. 13-03-14, which deal with a credit union's field of membership, apply to the continuing credit union's application. Id.

However, nothing in N.D. Admin. Code ch. 13-03-14 actually requires the State Credit Union Board to approve that application. Accordingly, it is my opinion that the State Credit Union Board is not required to allow a continuing credit union to assume the field of membership of the merging credit union.

II.

N.D.C.C. § 6-06-07 provides the membership restrictions for a credit union: "[c]redit union membership is limited to groups having a common bond of occupation or association or to groups within a well-defined rural or urban district." N.D.C.C. § 6-06-07. N.D.C.C. §§ 6-06-36 and 6-06-37 require the State Credit Union Board to promulgate administrative rules governing the merger of credit unions. Those sections, however, do not alter the membership restrictions found in N.D.C.C. § 6-06-07.

Furthermore, the State Credit Union Board may not promulgate an administrative rule that reduces the membership restrictions found in N.D.C.C. § 6-06-07. See N.D.C.C. § 6-01-04; Steele v. North Dakota Workmen's Comp. Bur., 273 N.W.2d 692, 701 (N.D. 1979). Both N.D.C.C. § 6-06-07 and N.D.C.C. § 6-06-36 may be construed together and harmonized without rendering either section surplusage by interpreting N.D.C.C. § 6-06-36 to permit the merger of credit unions with the understanding that the resulting field of membership will meet the requirements of N.D.C.C. § 6-06-07. See Medcenter One v. N.D. State Bd. of Pharmacy, 561 N.W.2d 634, 638 (N.D. 1997); Thompson v. N.D. Dept. of Agriculture, 482 N.W.2d 861, 863 (N.D. 1992). Accordingly, it is my opinion that the membership restrictions found in N.D.C.C. § 6-06-07 apply to a continuing credit union's assumption of the field of membership of a merged credit union.

III.

N.D.C.C. § 6-01-04 gives the State Credit Union Board the general authority to adopt administrative rules affecting credit unions. N.D.C.C. §§ 6-06-36 and 6-06-37 require the State Credit Union Board to promulgate administrative rules governing the merger of credit unions. The State Credit Union Board therefore has the necessary statutory authority to promulgate rules affecting credit unions' fields of membership both generally and as a result of a merger.

N.D. Admin. Code ch. 13-03-05 contains the administrative rules governing mergers of credit unions. N.D. Admin. Code § 13-03-05-01(6) states that, upon the board's approval of a merger, "the continuing credit union may apply to assume the field of membership of the merging credit union, pursuant to the requirements of [N.D. Admin. Code] chapter 13-03-14." N.D. Admin. Code ch. 13-03-14 contains the administrative rules governing the field of membership of credit unions.

Because the continuing credit union's assumption of the merging credit union's field of membership would presumably enlarge the

continuing credit union's field of membership, it does constitute an "expansion" of the continuing credit union's field of membership as that term is used in N.D. Admin. Code § 13-03-14-02. The expansion must be in accord with the provisions of N.D.C.C. ch. 6-06, which include the membership restrictions contained in N.D.C.C. § 6-06-07. N.D. Admin. Code § 13-03-14-02(1). N.D. Admin. Code § 13-03-14-02(2) contains the factors the State Credit Union Board must consider when deciding whether to grant a field of membership expansion. The factors include the proposed geographical boundaries of the field of membership, the impact on other financial institutions, and relevant public comment. N.D. Admin. Code § 13-03-14-02(2). Thus, the State Credit Union Board's consideration of those factors is necessarily fact-intensive.

While the State Credit Union Board is vested with the responsibility of resolving the factual issues presented by an application for an expanded field of membership, this office may not issue an opinion concerning a question of fact. See 1994 N.D. Op. Att'y Gen. 96, 99; 1997 N.D. Op. Att'y Gen. 69, 71. Accordingly, because the question of whether the field of membership of a particular continuing credit union complies with the "well-defined rural or urban district" requirement of N.D.C.C. § 6-06-07 involves the resolution of factual issues on which I may not issue an opinion, I must decline to answer question number three.

- EFFECT -

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

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