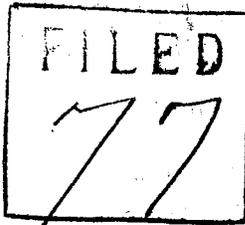


CREDIT UNIONS:

Proposed plan to separate and exchange accounts of two credit unions may not be carried out in view of Section 370.340 RSMo 1949 which specifically covers expulsion and withdrawal of members.



April 29, 1955

Honorable J. A. Rouveyrol
Commissioner of the Division of Finance
Department of Business and Administration
Jefferson Building
Jefferson City, Missouri

Dear Mr. Rouveyrol:

The following opinion is rendered in reply to your request that this office review a proposed plan to separate credit union accounts of two credit unions, namely, Clayton-Brownbilt Credit Union, and Brownbilt Credit Union. The proposed plan would involve eight steps, as outlined in your letter of February 25, 1955, in the following language:

- No. 1 Transfer all share accounts now held in the Brownbilt Credit Union by employees at the Clayton office to the Clayton Brownbilt Credit Union.
- No. 2 Transfer all loan accounts now held in the Brownbilt Credit Union by employees of the Clayton office to the Clayton Brownbilt Credit Union.
- No. 3 Transfer all interest on loans applicable to the above loan accounts from October 1, 1954 to date of separation to Clayton Brownbilt Credit Union.
- No. 4 Determine the ratio or percentage of loans held by the members at Clayton to the total amount of loans in the Brownbilt Credit

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Union, and transfer a like percentage of the reserve fund to the Clayton Brownbilt Credit Union.

- No. 5 Determine the ratio or percentage of shares held by the members at Clayton to the total amount of shares in the Brownbilt Credit Union and transfer a like percentage of the undivided earnings account to the Clayton Brownbilt Credit Union.
- No. 6 Transfer from the reserve fund of the Brownbilt Credit Union the amount of entrance fees at 25¢ each to cover all members accounts transferred who do not at present have an account in the Clayton Brownbilt Credit Union.
- No. 7 Transfer necessary cash or bonds less an agreeable amount of expenses from the Brownbilt Credit Union to the Clayton Brownbilt Credit Union to cover the shares, reserve fund, undivided earnings, entrance fees, and insurance.
- No. 8 Transfer that portion of prepaid loan insurance collected on loans being transferred from the Brownbilt Credit Union to the Clayton Brownbilt Credit Union."

Credit unions are creatures of statute law and in Missouri they are specifically governed by Chapter 370 RSMo 1949. Section 370.040 RSMo 1949 sets forth preliminary steps to be taken by organizers of a credit union, and when such requirements are met and a certificate of organization is issued, the statute provides:

"4. Thereupon the organizers shall become and be created a corporation under the name used in the certificate of organization."

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To dispel any doubt as to the corporate character of a credit union we may look to Section 351.690 RSMo 1949, a statute in The General and Business Corporation Law of Missouri, for appropriate reference to this type of corporation in the following language:

"(3) Only those provisions of this law which supplement the existing laws applicable to railroad corporations, union stations, co-operative companies for profit, credit unions, street railroads, telegraph and telephone companies, boating and rafting companies and exposition companies, and which are not inconsistent with, or in conflict with the purposes of, or are not in derogation or limitation of, such existing laws, shall be applicable to the type of corporations mentioned above in this subdivision (3); * * *."

The proposed plan to separate credit union accounts, in the two credit unions with which we are dealing, will necessarily involve the withdrawing of members from one credit union and taking up membership in another credit union. Section 370.340 RSMo 1949 treats of the expulsion and withdrawal of members of a credit union, and provides:

"1. At any regularly called meeting the members, by a two-thirds vote of those present, may expel from the credit union any member thereof.

"2. A member may withdraw from a credit union, as herein provided, by filing a written notice of such intention.

"3. The share balance of an expelled or withdrawing member with any dividends credited to his shares to the date of expulsion, or withdrawal shall be paid to said member but only as funds therefor become available, and, after deducting any amounts due to the credit union by said member. The share balance of an expelled or withdrawing member, with any dividends credited to his shares shall be paid to such member, subject to sixty days' notice, and after deducting any amounts due to the credit union by said member.

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"4. Said member, when withdrawing shares shall have no further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve such member from any remaining liability to the credit union."

The above quoted statute on withdrawal and expulsion of members discloses a legislative policy in definite language regarding disposition of share balances and interest of withdrawing or expelled members of a credit union. The transfer of loan and share accounts of members of one credit union to members of another credit union is not contemplated by the statute being construed. A review of the plan of separation of accounts submitted in this instance cannot be harmonized with the specific and applicable language of Section 370.340, RSMo 1949. In Mutual Bank & Trust Co. v. Shaffner, 248 S.W. (2d) 585, l.c. 589, the Supreme Court of Missouri referred to the rule on corporate powers in the following language:

"The parties agree that 'the settled rule is that a corporation possesses only such powers as are expressed or fairly implied in the statute by or under which it is created'. Hanlon Millinery Co. v. Mississippi Valley Trust Co., 251 Mo. 553, 158 S.W. 359, 363. They also agree that implied powers 'are defined to be those possessed by a corporation, not indispensably necessary to carry into effect others expressly granted, and comprise all that are appropriate, convenient, and suitable for that purpose, including as an incidental right a reasonable choice of the means to be employed in putting into practical effect this class of powers.'
* * *"

To attempt to draw on implied powers in order to allow the separation of credit union accounts under the proposed plan would be an attempt to substitute a plan different from that spelled out in the applicable statute and would amount to legislation rather than interpretation of the law.

CONCLUSION

It is the opinion of this office that a proposed plan to separate and exchange accounts of two credit unions

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operating under Chapter 370 RSMo 1949 may not be carried out in view of Section 370.340 RSMo 1949, which specifically covers expulsion and withdrawal of members.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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