CREDIT UNIONS: Cannot engage in general banking business.

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Hon. Russell Maloney
Commissioner of Securities
Secretary of State's Office
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of July 13, 1939, which reads as follows:

> "Several Credit Unions in the State of Missouri which includes the Green City Credit Union have according to reports by our Examiners been pursuing the following practices.
>
> "1. Depositing funds and withdrawing with an order (similar to a check.) These deposits and withdrawals are made in such a manner as to indicate that the intention of the depositer was not to buy shares in the credit union, nor do the withdrawals indicate a withdrawal of the shares or borrowing.
>
> "2. Drafts are issued to persons who have made deposits, as well as persons who have not made deposits.
>
> "3. Fees are charged for the issuance of checks or orders, and drafts.
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> "4. The method of depositing and withdrawing as well as the issuance of drafts indicate that the intention is to do a banking business.
>
> "This department would appreciate your advice as to the legality of the actions of these credit unions."

We understand from the above letter and also from another communication from you that the Green City Credit Union is engaging in a banking business by keeping money on deposit subject to check, or at least checks or instruments similar to checks, and fulfilling the same purpose, are being written by so-called depositors and are being honored and paid by the credit union upon presentation; that such banking business is carried on in a variety of other ways through the use of drafts issued by persons who have made deposits in such credit union, as well as to persons who have not made deposits; that regular fees are charged for the issuance of checks, orders or drafts and for the cashing of checks issued by the so-called depositors.

The laws governing the formation and operation of credit unions are found in Article 15, Chapter 32, R.S. Missouri, 1929, Sections 5079 to 5099, inclusive.

Section 5079 provides that any seven persons, residents of the State of Missouri, may apply to the Commissioner of Securities in the Office of the Secretary of State for permission to organize a credit union by signing and acknowledging in duplicate a certificate of organization and entering into articles of agreement. Further, that a copy of the by-laws shall be submitted to the Commissioner of Securities at the same time which, among other things, shall contain information as to the following:

> "The conditions under which shares may be issued, transferred and withdrawn, loans made and repaid, and the funds otherwise invested."

Section 5082 gives the powers of credit unions. This section reads as follows:

> "A credit union shall have the following powers:
>
> "(1) It may receive the savings of its members in payment for shares.
>
> "(2) It may make loans to members, through the credit committee and on deposit in the way and manner hereinafter provided.

> "(3) It may invest, through its board of directors, in the bonds of the United States, or of any state thereof or of any municipality, the bonds of which municipality are legal investments for savings banks in the state of Missouri. It may deposit its funds in savings banks, state banks, trust companies and national banks. The funds of the credit unions shall be used first, however, for loans to members in the way and manner hereinafter provided and preference shall be given to the smaller loan in the event the available funds do not permit all loans which have passed the credit committee to be made."

Section 5083 pertaining to the membership, provides as follows:

> "The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same in the whole or in part, with the entrance fee as required by the by-laws, and have complied with such other requirements as the certificate of organization may contain. Credit union organizations shall be limited to groups (of both large and small membership) having a common bond of occupation or association or to groups residing within a well defined neighborhood, community or rural district."

Section 5087 provides that the Board of Directors shall have the duty, unless the same be specifically reserved to the members, to

> "(1) To act upon all applications for membership and on the exclusion of members.

"(2) To determine, from time to time, rates of interest which shall be charged on loans.

"(4) To fix the maximum number of shares which may be held by the maximum amount which may be loaned to any one member; to declare dividends and recommend amendments to the by-laws."

As to the making of loans, Section 5088 provides:

"The credit committee shall approve every loan or advance made by the credit union to members. Every application for a loan shall be in writing, on a form prepared by the board of directors, and shall state the purpose for which the loan is desired and the security, if any, offered. Security must be taken for any loan in excess of fifty dollars; endorsement of a note or assignment of shares in any credit union shall be deemed security in the meaning of this section. No loan shall be made unless it has received the unanimous approval of the members of the committee present when the loan was considered, which number shall constitute at least a majority of the committee, nor if any member of the committee shall disapprove thereof."

As to what the capital and reserve funds of a credit union shall consist of, Section 5090 provides:

"The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. A credit union shall have a lien on the shares of any member and on the dividends payable thereon for, and to the extent of any loan made to him and of any dues and fines payable by him."

Section 5092 provides as follows:

> "A credit union may lend to its members at reasonable rates of interest, which shall not exceed one per cent a month on unpaid balances or invest the funds accumulated as herein provided."

Section 5093 provides as follows:

> "A credit union shall have the power to borrow from any source, but the total of such borrowing shall at no time exceed twenty-five per cent of the capital, surplus and reserve fund of the borrowing credit union."

As to loans, Section 5094 provides:

> "A credit union may loan to its members, as herein provided, for such purposes and upon such security as the by-laws may provide and the credit committee shall approve except that no unsecured loan shall be made in excess of fifty dollars and no secured loan shall be made in excess of one thousand dollars."

Therefore, it seems clear that a credit union can take into its membership only such persons, societies, associations, co-partnerships and corporations "as have been duly elected to membership and have subscribed to one or more shares and have paid for the same in whole or in part"; that loans can only be made to "members" when approved by the credit committee; that the only method a credit union has of receiving funds is through payments made by members for shares of stock other than such funds that might be borrowed as provided in Section 5093. We find no statute which provides that a credit union might receive money by way of a general or special deposit and pay it out on demand on the check or other similar device of the depositor in such a way as to thereby establish the relation of debtor and creditor between such company and the depositor. Furthermore, it appears to be clear that

no corporation organized under the laws of this state, except the bank, has authority to receive or keep moneys on general or special deposit and pay the same out on checks on the bank.

In the case of State ex inf. Crow, Attorney General, v. Lincoln Trust Company, 144 Mo. 562, the Attorney General proceeded by quo warranto against the defendant trust company because the defendant, a trust company only, was maintaining checking accounts and was doing a banking business, although not chartered to do so. The court said at l.c. 585:

> "But the question here is, are trust companies authorized by statute to receive money on general deposit, and pay it out on check at sight or on demand? If they have any such powers it must be found in the statute, for they possess only such express powers as are conferred upon them thereby, and such as are necessarily implied from the language used. In Matthews v. Skinker, 62 Mo. 329, it was said: 'Corporations have only such powers as are especially given by their charters, or are necessary to carry into effect some specified power. St. Louis v. Russell, 9 Mo. 507; Blair v. Perpetual Ins. Co., 10 Mo. 559; Ruggles v. Collier, 43 Mo. 353. They must act strictly within the scope of the powers conferred on them by the act calling them into being; and where a grant of power from the legislature is relied on, the mode prescribed in that grant for doing any particular thing must be pursued according to the law creating them. Railroad v. Marion Co., 36 Mo. 294. The distinction between natural persons and corporations is, that while the former may make any contract not prohibited by law or not against public policy, the latter can exercise no powers not expressly conferred on them by their charters.' Bank v. Young, 37 Mo. 398.

While the Matthews case was subsequently overruled by the Supreme Court of the United States (98 U.S. 621) in some respects, its soundness as to the powers of corporations under their charters was not doubted nor has it ever been called in question.

"The only words in the statute which have any tendency whatever to sustain respondents' position, are those in the first clause of said section 4 which authorize trust companies to receive moneys and 'to allow such interest thereon as may be agreed, not exceeding the legal rate,' and those in the fifth clause which authorize them 'generally to have and exercise such powers as are usually had and exercised by trust companies.' It is quite clear that no express power is conferred upon trust companies by said section to receive moneys by way of general deposit, nor can any such power be implied from the language quoted from that section. Implied powers must result from the charter by necessary implication, regard being had for the object and purpose of the corporation. And if there be any uncertainty or doubt as to the terms of the charter they must be resolved in favor of the public. In Minturn v. Larue, 23 How. 435, the court said: 'It is a well settled rule of construction of grants by the legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature, must be resolved in favor of the public. This principle has been so often applied in the construction of

corporate powers that we need not stop to refer to authorities.' Carroll v. Campbell, 108 Mo. 559; Charles River Bridge v. Warren Bridge, 11 Pet. 420; Mills v. St. Clair Co., 8 How. 569. There is nothing in the words used that would justify their extension by implication in favor of the respondents beyond the natural and obvious meaning of the words employed, and these do not support the right asserted. The fact that respondents are incorporated as trust companies seems to be inconsistent with the relation of that of debtor and creditor, and in favor of the relation of trustee and cestui que trust.

"Moreover, the powers conferred upon respondents are expressly enumerated, which implies the exclusion of all others not enumerated. In Thomas v. Railroad, 101 U.S. 71, the court observed: 'We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others.'

"It can not be implied from the fact that trust companies have the power to receive moneys and to allow such interest thereon as may be agreed not exceeding the legal rate, that they have the power to receive moneys on general deposit, and pay it out on demand. They can go no further than the statute expressly permits. The clause under consideration grants the right to accept

money and allow interest upon the same. This necessarily authorizes them to create the relation of debtor and creditor as to funds so deposited, but only to that extent. If they can receive money and agree to pay interest thereon, this money may be payable on demand, as well as at such times as may be fixed by agreement, and upon checks or written orders or otherwise as may be most convenient. This is as far as they can go. They have no authority to operate a general deposit account and receive money in any sums whatever upon which no interest is 'allowed' and pay out such funds upon the depositor's checks. It is enough to say that the legislature has not given such power.

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"In Railroad v. Canal Comm'rs, 21 Pa. St. 9, it was said by Black, C.J.: 'But corporate powers can never be created by implication nor extended by construction. No privilege is granted unless it be expressed in plain and unequivocal words, testifying the intention of the legislature in a manner too plain to be misunderstood. When the State means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the powers which belong to her, it is so easy to say so that we will never believe it to be meant when it is not said; and words of equivocal import are so easily inserted by mistake or fraud, that every consideration of justice and policy requires that they should be treated as nugatory, when they do find their way in the enactments of the legislature. In the construction of a charter, to be in doubt is to be resolved; and every resolution which

springs from doubt is against the corporation.'

"Section 7, article XII, of the Constitution of this State, provides that: 'No corporation shall engage in business, other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized,' etc. See, also, People ex rel. v. Father Matthew Society, 41 Mich. 67. By section 26, article XII, of our Constitution under the title, 'Act creating banks, to be submitted to the people,' it is provided that: 'No act of the General Assembly authorizing or creating corporations or associations with banking powers (except banks of deposit or discount) nor amendments thereto, shall go into effect, or in any manner be enforced, unless the same shall be submitted to a vote of the qualified voters of the State, at the general election next succeeding the passage of the same, and be approved by a majority of the votes cast at such election.' The manifest purpose of this latter constitutional provision was to prevent the incorporation of banks of issue even with the sanction of the legislature, without such an act being first submitted to the people and approved by them.

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"It thus seems clear that no corporation other than a bank organized according to the laws of this State has the power to receive moneys on general deposit and pay them out on demand, on check or otherwise."

CONCLUSION.

It is, therefore, our conclusion that the Green City Credit Union, in carrying on the banking practices you mention, are exercising powers in excess of those granted, and in violation of the provisions of Article 15, Chapter 32, R.S. Missouri, 1929, governing such associations. This act provides definitely the way, and the only way, in which funds can be given to members, and to members only - that is, through the unanimous approval of the credit committee. From what you say as to the method by which funds are being disbursed, the statutory proceeding is not being followed. In this connection you have also asked what procedure you should follow. We can only suggest that you follow the provisions of Section 5084, which reads in part as follows:

> "Credit unions shall be subject to the exclusive supervision of the commissioner of securities and shall make a report of condition to him at least semi-annually, on blank forms to be supplied by said commissioner in January and July of each year, notice of which reports shall be sent out by said commissioner. * * * * * * * * * * * * * * *
> If it appears to said commissioner of securities that a credit union has violated any of the provisions of this article he may, by an order made over his official seal, after hearing or an opportunity for a hearing has been given said credit union, direct said credit union to discontinue its illegal methods and practices. If a credit union is insolvent or has, within a reasonable time, failed to comply with any order mailed to the last address filed by said credit union with said commissioner of securities he shall immediately, or within a reasonable time thereafter, take possession of the business and property of the credit union and retain possession until such time as he may permit it to resume business or its affairs are finally liquidated."

After you have directed the credit union to discontinue such practices and it fails or refuses to comply therewith your only alternative is to take possession of its business and property and retain such possession until such time as, in your opinion, the matters complained of are fully rectified.

Respectfully submitted,

J.F. ALLEBACH
Assistant Attorney General

APPROVED By:

(Acting) Attorney General

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