

MINUTES OF THE MEETING
OF THE STATE CREDIT UNION BOARD

September 19, 2000

First item in order of business: Acting Chairman Kathy Ward called the regularly scheduled bi-monthly meeting of the State Credit Union Board to order at 10:00 a.m. pursuant to the agenda which was posted for public display prior to 10:00 a.m. on September 18, 2000. The meeting was held in the conference room of the Oklahoma State Banking Department, Oklahoma City, Oklahoma.

Second item: Roll call - the following members were present:

Kathy Ward, Acting Chairman

Floyd Atha
Troy Higgins
Les Rector

Member Cotten was absent.

Also present for the Department: Dudley Gilbert, General Counsel; Lisa Jones, Secretary.

Third item: Approval of the Minutes of the Regular Scheduled Meeting held July 18, 2000.

Kathy Ward: Asked for any changes or additions to the minutes from the Board.

Member Higgins: Made a motion to accept the minutes as written.

Member Atha: Seconded the motion. Minutes were approved unanimously as follows:

Member Higgins - Yes
Kathy Ward - Yes
Member Atha - Yes
Member Rector - Yes

Fourth item: Commissioner's Report - Kathy Ward said Mick isn't here today, he is making a speech at the capitol.

Kathy Ward: Kandace Natale is at school this week in California, and Terry Slagle attended the league conference last week. Two examinations are in process and two were completed this month.

Fifth item: Request by Member Higgins to discuss mileage issues in the SEP procedures.

Member Higgins: Thank you for putting that on the agenda. This particular issue came up in our discussions at the last meeting. The Department has provided us a copy of the Streamline Expansion Procedures. There is a bullet point in there that the group must be located within 25 miles of one of the

credit unions service facilities. This seems kind of archaic in today's electronic world. The reason for my request was consideration in adjusting or even eliminating these mileage procedures.

Dudley Gilbert: With respect to the SEP, or addition of multiple common bonds, we didn't have statutory authority for multiple common bonds. Multiple common bonds were kind of an evolution over a period of years. In order to make a rule you have to have statutory authority, of course. There wasn't any clear statutory authority, other than the evolution of the multiple common bond idea. The board and the Department created this procedure. Now we do have statutory authority for multiple common bonds, community credit unions and single common bond credit unions. I would advise the board to hesitate to create any policy or procedure, absent of the rule making process. We do have the SEP procedure in place right now, and I am not suggesting that we just throw it out the window, as something that is unauthorized. It is my understanding that the rules that are being produced right now, will have some sort of process for the streamline procedure. I would suggest that the board follow the rule making procedure with respect to any changes or implementation of the streamline process.

Member Higgins: Counsel, I can understand certain issues where the rule making process is necessary for understanding practices and procedures, where they have major implications for the industry at large. But in what manner does the State Credit Union Board have the opportunity, or allowance so to speak of, to adjust what may be minor issues? So we don't engage ourselves into formalized rule making processes that might be longer as with respect to outcome.

Dudley Gilbert: I agree. I am not suggesting that everything you do has to be set forth in a rule. My only concern is just looking at the definition of a rule in the Administrative Procedures Act. I wrote it down. It says, "a rule means any statement or group of related statements of general applicability, and future effect that implements, interprets, or prescribes law or policy or describes the procedure and practice requirements of the agency." I think that our Streamline Expansion Procedure, is a statement of general applicability that describes a policy. So, if it is one of those things that you want to set in place, a process or procedure that will affect all credit unions statewide, you are actually engaged in rule making. To give you an example, the State Banking Board was criticized when it approved a couple of merger transactions back in 1998. It was criticized as doing ad hoc rule making, meaning, that at the board meeting itself it was creating a policy or procedure that applied industry wide, and it had done so without going through rule making process. The Supreme Court ultimately said that the State Banking Board did not have that authority to make those broad announcements. That is the definition of a rule, and the history of what I have observed.

Member Higgins: In the Credit Union Act, where it talks about we can regulate our own procedures and practices, except what is provided by law. In this instance what I am trying to clarify, is would an adjustment to the mileage fall under that umbrella that it would be a broad practice that would be applicable or would that not be part of the board's duties to look at and adjust or modify issues that seem to make sense without going through to formalized rule making process. If they don't fall under such a broad umbrella and say okay every time we adjust them, we have to formalize the change with this process. I mean, I am not explaining myself well, but I just don't want to set a trap where we have to formalize everything through the rule making process when some of that seems like it should be part of the responsibilities of the board.

Dudley Gilbert: When the Board takes action that affects the industry as a whole, and also affects not only the credit union industry but affects the public at large, then you need to go through the rule making procedures. Absent rule making procedures, you could be criticized for not giving appropriate notice and opportunity to comment. For instance, in this agenda where we want to discuss the mileage issue, or even if we were more specific, and said that we wanted to increase the mileage from 25 to 100 miles or get rid of it altogether, if you did that, then you could be criticized by credit unions, federal credit unions, banks, individuals that would say they did not have opportunity or notice to comment on this issue. When you are doing something that will affect the public at large, it's considered a rule.

Member Atha: Did the original SEP form, did it go through the rule making process?

Kathy Ward: No, it was just voted on by the Board.

Member Atha: I don't really have a position on this. Why would we have to say it's a rule making process, if the thing that we are modifying didn't go through it.

Dudley Gilbert: I think that it is better to correct something. There was never statutory authority for the multiple common bonds. For the board to take any action on anything, it needs statutory authority for its action. The board makes its decision based on its statutory authority. With respect to the multiple common bond issue, there was never clear statutory authority. In fact, the Attorney General said that there was no statutory authority for multiple common bonds. Nevertheless, the multiple common bond evolved, and likewise the SEP procedure evolved. It is my conclusion that the SEP procedure did not have statutory authority. It was an evolution like the multiple common bond. Now that we have statutory authority I think that the board should follow with a rule.

Marvin Cottom: Does the same rule making procedure apply to the Commissioner?

Dudley Gilbert: What do you mean?

Marvin Cottom: Well, the Commissioner has issued certain rules, without going through the rule making procedure.

Dudley Gilbert: The Commissioner has issued interpretive statements. The Commissioner is allowed to issue interpretive statements, that don't have the force and effect of law. If you want to challenge one of the interpretive statements, you are perfectly entitled to do so. It is in the Code that the Commissioner's interpretive statements don't have the force and effect of law. What the Board does by rule is law. Just as if the legislature had passed a statute.

Kathy Ward: What Dudley is saying is that the streamline procedure would be more legal if we made it a rule.

Brent Taylor: This is a follow up question. Can the Board issue interpretive statements?

Dudley Gilbert: The Board doesn't have the authority to issue interpretive statements. They do have the authority to issue declaratory orders. But a declaratory order is a very narrow judgement on the

Board's behalf. If you have a specific set of facts, from a specific credit union, and a request for the board's ruling, then the Board can make a declaratory order with respect to a very specific set of facts, for that particular credit union. If the board decides not only can one credit union act a certain way, but all credit unions can perform this particular act, then that is considered rule making.

Marvin Cottom: The original SEP procedure was issued by the Commissioner and not by the Board.

Kathy Ward: It was developed by the Department and approved by the Board.

Member Higgins: The recollection that I have on the evolution of streamline expansion procedure was that at that time there was some debate over did section 2023 cover field of membership issues with respect to competition their powers state verses federal. The federal board for the sake of dealing with smaller SEG groups, and not having a process for them to go through, developed the streamline expansion procedure on the Federal side. Taking that we adopted by the state board after it went through a process of interaction between the credit union industry and the Commissioner's Department. When that was concluded he brought these procedures in front of the Board, which we approved. The department would be alleviated some of the tasks dealing with small companies applying for select employee groups. That evolution occurred while there were some discussions, some pretty intense discussions, as to what field of membership ours were in the state of Oklahoma. What happened is we have traveled a little further down the road.

Dudley Gilbert: That was during the time when we were operating under the assumption that 2023 may still apply to field of membership. All of this was developed prior to the Attorney General's opinion. That is what caused Senate Bill 1344.

Member Rector: Troy, haven't we amended this one time? Wasn't the group size less than 500?

Member Higgins: That is correct. It has been amended before. I think what counsel is pointing out is the standards that apply when we deal with broad rule making for the industry at large. What the board is wrestling with is formalized rule making process for what we see as changes to archaic language. My perspective would be permissible, but I understand that counsel's duty to come and exercise the statements to us by this roadmap.

Member Rector: I believe that the Commissioner also voted for that change.

Kathy Ward: That was pre - Dudley.

Dudley Gilbert: What is more important is not that it was prior to me being here it was actually June of 1999. I was at that meeting. But the difference is that meeting was held prior to the Attorney General's opinion with respect to the multiple common bond issue. So, again, we were operating under that unofficial idea of multiple common bonds. We had this unofficial multiple common bond authority, and likewise we had these unofficial procedures. We didn't have the statute on which to base this. That was in June of 1999, when we last amended this, which was prior to Attorney General's final declaration that we didn't have this authority yet.

Member Rector: Could the Commissioner by declarative statement change that.

Dudley Gilbert: I suppose that we could try to find some authority where the Commissioner could issue an interpretive statement.

Member Higgins: There are some important ramifications outside just this issue of 25 miles. That was just a catalistic thought to the question. It may be that at this point we don't need to take action on this agenda item. It was merely for discussion and education. Perhaps further work to be done between the industry and counsel's office. How do we go about conducting our business here where we don't encumber ourselves with rule making, when it doesn't meet the spirit what the rule making is for.

Dudley Gilbert: What was pointed out at the League meeting is that now as a state credit union, we now have more authority than Federal credit unions. So it is my understanding that mileage issues, especially with multiple common bonds, are not going to be considered by this credit union board, where they would be by the NCUA. We might take the opportunity, that we could define this mileage issue, so that we don't have to amend it or get rid of it.

Kathy Ward: Any more discussion?

Sixth item: (A) Request by WEOKIE Credit Union, Oklahoma City, Oklahoma to add Employees of Adams Manufacturing Company, Bartlesville, Oklahoma to their field of membership.

Kathy Ward: Asked for any questions from the board?

Member Rector: Made a motion to approve the request.

Member Higgins: Seconded.

Motion passed as follows:

Member Higgins - Yes
Kathy Ward - Yes
Member Atha - Yes
Member Rector - Yes

(B) Request by WEOKIE Credit Union, Oklahoma City, Oklahoma to add Employees of Chaffin Manufacturing, Inc., Holdenville, Oklahoma to their field of membership.

Member Atha: Made a motion to approve the request.

Member Rector: Seconded.

Motion passed as follows:

Member Higgins - Yes
Kathy Ward - Yes
Member Atha - Yes
Member Rector - Yes

Seventh item: Request by Oklahoma Employees Credit Union, Oklahoma City, Oklahoma to amend their bylaws, Article X, Section 1, Board of Directors.

Kathy Ward: Any questions from the board?

Member Higgins: Made a motion to approve the request.

Member Atha: Seconded.

Member Atha: Are we voting on both changes?

Member Higgins: My motion was for Article X, Section 1.

Member Atha: We are on Article X, Section 1 as presented, but I thought they were submitting 2.

Member Higgins: One for Article X, Section 1, and one for Article IV, Section 6. Member Atha is correct we are only showing on the agenda Article X, Section 1, Board of Directors. Are we then restricted from dealing with the second item?

Dudley Gilbert: I think from the standpoint of it not being on the agenda, we would be precluded from that. I am trying to think of way we can do this under new business, but I don't think it would be considered new business. I think this is an oversight.

The motion passed as follows:

Member Higgins - Yes

Kathy Ward - Yes

Member Atha - Yes

Member Rector - Yes

Kathy Ward: What was the decision on going ahead with the second request?

Dudley Gilbert: We will not vote on that.

Mark Kelly: Do we need to re-submit that request?

Kathy Ward: We will just put that on the next agenda, sorry.

Mark Kelly: No problem.

Eighth Item: Request by Oklahoma Central Credit Union, Tulsa, Oklahoma to amend their bylaws Article 10, Sections 1,2,5,6 and 7, Board of Directors; Article 12, Section 2, Supervisory Committee; Article 14, Section 1,2 and 3, Meeting of the Members; and to add Article 10, Section 3, Board of Directors.

Kathy Ward: Any questions from the Board?

Member Atha: Section 6 not less than 4 shall constitute a quorum, not less than 7 or more than 11 directors. Would 4 board members be a quorum?

Dudley Gilbert: What if you have 11?

Kathy Ward: Then you would not have a quorum.

Member Atha: Then if I have 2 board members there, can I define that as a quorum?

Dudley Gilbert: No, the majority has to attend to be a quorum.

Member Atha: This is for my own information.

Dudley Gilbert: What ever the statute says overrides the bylaws. If it says not less than 4, then they could without changing their bylaws, if they added a new member. If they had 10 then 6 would be a quorum, 9 then 5 would be a quorum, or if you had 4 show up and you had 9 board members, then you would not have a quorum.

Member Atha: Made a motion to approve the request.

Member Rector: Seconded.

Motion passed as follows:

Member Higgins - Abstain
Kathy Ward - Yes
Member Atha - Yes
Member Rector - Yes

Ninth item: Request by Oklahoma Central Credit Union, Tulsa, Oklahoma to add Employees of John Scoggins Company, Sallisaw, Oklahoma to their field of membership.

Kathy Ward: Any questions from the board?

Member Atha: Made a motion to approve the request.

Member Rector: Seconded.

The motion passed as follows:

Member Higgins - Abstain
Kathy Ward - Yes
Member Atha - Yes
Member Rector - Yes

Tenth Item: Request by Tulsa Teachers Credit Union, Tulsa, Oklahoma to have investment authority to invest in general obligation and revenue obligations of Canada, and Canadian Province, or any

political subdivision thereof and any wholly owned corporation of such municipalities, with certain criteria regarding ratings, maturities, insurance, limitations and divestiture being met.

Kathy Ward: Any questions from the board?

Member Higgins: Give me the history on this.

Mr. Lyons: We have been investing in domestic municipalities for 2 years now, and we felt like the state statute did not adequately address this issue. It does not say specifically that you cannot invest in municipalities. Therefore, we would like a couple of these in our portfolio. Our last examination, that was pointed out to us, state statute, that is what prompted this.

Member Higgins: In going back to our earlier discussions, my understanding is that this board can look at the present investments that you have and under our powers in the act we would be able to make a decision to permit those to continue in those investments. However in general policy, to be able to invest in dollars Canadian issues, I would like to know from this discussion from the board as to whether that would be permissible as a broad application that would go beyond what we are allowed in the act with respect to the investments outlined as permissible there. I think you are submitting this under the board's authority to invest in section 2006 B-13. I think that one policy was one that general fortitude, I had some difficulty coming to that conclusion, but I had no problem looking at particular investments that you made as far as permissibility to continue to hold those in your portfolio other than non-conforming rules.

Kathy Ward: Our examiner and I were looking at B3 general obligations and revenue obligations of any state or political subdivision. We interpreted "state" to mean of the United States. Two actually says of the United States of America, talks about governmental bonds. But this talks about municipalities. We interpret "state" to mean any state in the United States of America. Of course the board has the right to authorize anything beyond that.

Member Higgins: These are dollar denominated backed by general obligations, is that correct? They are ranked by an agency?

Mr. Lyons: Yes, U.S. rating services. I might also add that they are insured by United States national guarantor. They have a triple A rating. We will look at that once a year to make sure the rating hasn't changed. Once they insure a U.S. Corporation or municipality that which deposits, of course that is why they're very important to us.

Kathy Ward: I understand my and Terry's concern wasn't so much with the quality of the investments, but with the type of investment. Looking at the state statutes and not being permissible unless the board approves it.

Mr. Lyons: We felt at the time we ran this through our investment committee, the statute itself does not use the "state" is not capitalized. It is our understanding that in some legal interpretations that if it is not capitalized does not mean these United States.

Member Higgins: But these are actively traded?

Mr. Lyons: Yes, we are able to get market values.

Member Higgins: And the current U.S. service rating is what?

Mr. Lyons: AAA .

Member Atha: Les is obviously going to abstain, and Kathy probably will too. Do we have a quorum?

Dudley Gilbert: I think that Kathy can vote, because even though being a party to the action she called it as a violation only because they did not have statutory authority. Now they sought authority under subsection 13, so she can participate in that. If they were seeking authority under subsection 3, then she would likely have to vote no.

Member Higgins: What dollar amount are we talking about with that particular instrument?

Mr. Lyons: That represents about 2% of our total.

Member Higgins: Does the Department need any further identification within the motion?

Kathy Ward: We set a precedence in the prior investments, and also in the agenda we said regarding ratings, maturities, and in the letter we sent you.

Member Atha: If we are discussing precedence, prior exceptions have been offered with a full 100% reserve.

Member Higgins: That dealt with equity issues. This is permissible as a non-conforming market to market.

Mr. Lyons: Yes, that is true.

Dudley Gilbert: My suggestion would be to limit your approval to their request.

Mr. Lyons: I know that this board has approved U.S. corporate investing under this same provision without specific limitations.

Member Atha: Made a motion to approve the request as outlined in their letter with limitations as outlined in their request letter.

Member Higgins: Seconded.

The motion passed as follows:

Member Higgins - Yes

Kathy Ward - Yes

Member Atha - Yes

Member Rector - Abstain

Eleventh Item: Kathy Ward asked if there was any new business to become before the board.

Linda Ewerth of MWC Credit Union: Back in May there was a request made by the former president, who passed away last month, to using SEP'. I sent a letter on August 30 in response to that complaint to the Board members and to Mick. I don't know what other requests I need to make on that. I believe everyone got the letter. It dealt with the overlap issue, which I now know is going to happen. It was just the way it was handled, that we felt there was a problem with. She intended to write a letter, I don't know what kind of request she was going to make of the Board. I don't know how that works.

Member Higgins: I understood that the 2 credit unions had met and that Anne and the person from the other credit union sat down and were able to come to some agreement on this.

Linda Ewerth: Yes, as far as I know the other credit union president and Anne, members of the League were present, and there was a discussion where there was an apology made and a promise not to do it again. We felt like there should have been some discussions between the presidents of the credit unions at the time when they were approached by the members. If a member comes to us and says we want to join your credit union, and we ask them, do you already have a credit union, and they say yes, but I am ticked off at so-and-so, at least an opportunity would have been given to our credit union president to be aware that there was that much dissension among the members and we could have addressed it. Then we would not have been surprised when a group of members came in and informed us that we didn't want them anymore. Which was never the case.

Member Higgins: Are you satisfied to the conclusion to this issue?

Linda Ewerth: Well, that is what I am saying. I don't know that the Board has any authority to do anything more, because of the overlap issue.

Kathy Ward: We are in the process of rule making, and anybody can submit anything to our Department, to suggest further rules that need to be made, a proposed rule on overlaps.

Dudley Gilbert: This situation is one where we at the state level don't have laws with respect to overlaps that can be enforced. We have certain interpretations and we have treated overlaps with respect to our SEP procedure in a certain way. At the state level we don't have laws related to overlaps. Its kind of an ad hoc basis on how they are treated. If a law is going to be passed, that is how it is going to have to be addressed.

Linda Ewerth: I read the letter that she wrote, but I wasn't at the meeting when anything was discussed. I have no direct knowledge to withdraw a request. Anne called Kathy, because we wanted to know if we were going to be on the agenda after that meeting had taken place. They said we had to put something in writing, and Anne never had that opportunity.

Kathy Ward: That is what we decided, the only option you have at this point is to make comments on the rules regarding overlaps.

Dudley Gilbert: You do have the right to come before the board and seek the board's disapproval of Federal Employees Credit Union adding this group to their fold. Unfortunately when you come before the board seeking disapproval, then you need to say, "I request your disapproval and the law says this."

Unfortunately you would just be coming before the Board without any support from a legal standpoint. You can always bring something before the Board and say I want you to decide this issue. But you will be much better served if you have the law behind you. Unfortunately, right now we just don't have that.

Kathy Ward: Any further discussion.

Member Rector: When was this originally before the board?

Kathy Ward: I don't think it was ever on the agenda. It was brought up once under new business.

Member Atha: I asked at the last meeting if there were any new developments on this issue. The response was that there had not been. The meeting before that the question was similar, and you were in the process of investigating.

Kathy Ward: There wasn't any specific request.

Member Atha: So what you decided is that Federal Employees did nothing that was against the law.

Kathy Ward: We don't have the laws to govern that.

Member Higgins: I am not sure that I understand it that particular way. It has been our practice where overlaps are involved that we see the industry and the position with attempting to protect through overlap issues of where there is disagreement between 2 credit unions with respect to particular to primary membership, and that may be another issue. The letter that was sent to the board and to the Department the efforts were made to see if the credit unions could accommodate an agreement as to how this would be resolved. And it was my understanding that is where it was left at, and that there was some agreement was reached, so that no further action by the board was required.

Kathy Ward: Anne just left me with the idea that she didn't want for it to happen in the future. Then the way we get that is through rule making, if that is what you decide.

Member Atha: Why didn't we ask that question before?

Dudley Gilbert: Again, because our multiple common bond ideas were an evolution of the NCUA's multiple common bond which included overlap issues.

Kathy Ward: They were 500, if you look at it.

Member Atha: The number of primary members involved?

Linda Ewerth: Around 100

Member Atha: Approximately 100.

Linda Ewerth: Rules of the streamline as written to follow the rules it was an attack on the primary membership. As a small credit union, we have 2200 members so that's about 1/2 of 1% of our membership, with family members it could be up around 200.

Member Atha: We have no rules or guidelines in attracting members, offering bonuses to sign up. There is nothing.

Kathy Ward: Any further discussion?

Twelfth Item: Kathy Ward asked if there was a motion to adjourn.

Member Atha: Made a motion to adjourn.

Member Higgins: Seconded.

Motion passed as follows:

Member Higgins - Yes

Kathy Ward - Yes

Member Atha - Yes

Member Rector - Yes

Adjournment was at 10:45 am.

Kathy Ward, Acting Chairman

Troy Higgins

Floyd Atha

Les Rector