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ATTORNEY GENERAL OPINION NO. 79-310

Mr. John Rucker, Administrator
Kansas State Department of Credit Unions
535 Kansas Avenue, Tenth Floor
Topeka, Kansas 66603

Re: Corporations--Credit Unions--Reserve Funds

Synopsis: The application of well-recognized rules of statutory construction to K.S.A. 1979 Supp. 17-2217 mandates that the reserve funds of a credit union with share insurance may be used only to offset losses on loans that it incurs. All other credit unions may use their reserve funds for the more general purpose of meeting "contingencies."

* * *

Dear Mr. Rucker:

Your predecessor, Mr. Lovelle Frazier, requested of us a clarification as to the proper use of the regular reserve fund required by the provisions of K.S.A. 1979 Supp. 17-2217 to be maintained by credit unions.

This statute provides the statutory framework for the creation of the regular reserve fund, and also controls dispersals from the fund. The statute is uniform in its requirement that all credit unions have a regular reserve fund, and it also delineates the reserve requirements for each type of credit union, but because of some conflicting language contained in the statute there is some question as to what losses are properly deductible from the reserve fund.

As noted in your letter, the limitation contained in subsection (a) of the statute provides that the fund shall be used "as a regular reserve against losses on loans and against such other losses as may be specified by regulation." (In this regard, no such regulations have been passed to date.) Subsection (b) of the same statute provides that the fund "shall be held to meet contingencies." K.S.A. 1979 Supp. 17-2217.

The problem arises in that within the confines of subsection (a), only credit unions with share insurance are mentioned while subsection (b) also contains mention of credit unions with share insurance in addition to credit unions without share insurance and central credit unions. The mention of credit unions with share insurance in both subsections coupled with the absence in either subsection (a) or (b) of any language that indicates what credit unions are covered by the respective reserve use limitations crystalizes the problem thusly: the "loan loss" limitation contained in subsection (a) is apparently applicable to credit unions with share insurance, in that it is the only type of credit union mentioned in the subsection; however, it is not clear whether the "contingencies" language of subsection (b) applies to all credit unions or to only those credit unions without share insurance and central credit unions. For the reasons outlined below, the statute, as presently written, compels the conclusion that the reserve funds of credit unions which have share insurance are subject to the "loan loss" limitation imposed by subsection (a), while credit unions without share insurance and central credit unions may use their reserve funds to meet "contingencies."

Initially, it must be understood that to hold the "contingencies" language of subsection (b) to be controlling as to all credit unions would be to render inoperable the "loan loss" language found in subsection (a). Such a conclusion would find itself in contravention of a rule of statutory construction that favors an interpretation which will leave every word of a statute operative, rather than a construction which leaves some word or provision meaningless because of inconsistency. See Hessell v. Lateral Sewer District, 202 Kan. 499 (1969), and United States v. Smith, 553 F.2d 1239 (1977).

An alternative which finds itself in accord with the above-stated rule would be to give effect to both limitations. This result can be achieved by finding the "contingencies" language in subsection (b) to be applicable only to those credit unions without share insurance and central credit unions.

Another rule of statutory construction which is helpful to our inquiry provides that, unless a legislative intention to the contrary clearly appears, special or particular provisions control over general provisions. Harris v. Shanahan, 192 Kan. 629 (1964).

In this regard, the language of subsection (b) is general in scope, in that there are no specific words of limitation included with reference to the credit unions to which it applies, and because of this it is possible to conclude, reading subsection (b) by itself, that it applies to all credit unions. However, the language of subsection (a) is very specific in its application to credit unions with share insurance. Therefore, in accord with the above-stated rule of statutory construction, the specific language must be deemed controlling, and credit unions with share insurance are subject to the limitation found in subsection (a). This conclusion leaves the limitation in subsection (b) applicable only to credit unions without share insurance and central credit unions. Also, it is important to note that the application of this rule of statutory construction results in a conclusion which is in agreement with the first rule of statutory construction which we have cited, because it construes all the words in the statute as being operable.

Finally, we note that a reading of the statute reveals that the credit union administrator is vested with the discretion to require of credit unions with share insurance the establishment of other "special reserves to protect the interests of members." However, the administrator has no such authority over credit unions without share insurance or over central credit unions. The question then arises: why did the legislature empower the administrator to require special reserves of credit unions with share insurance? In this regard, it is consistent with our conclusion to find that this "special reserve" authority was granted, at least partially, in recognition of the fact that credit unions with share insurance may have a need for additional monies given their more restrictive access to their regular reserve fund ("loan losses" as opposed to "contingencies"). All other credit unions have a more liberal access to their regular reserve fund and, thus, have no apparent need for "special reserve funds."

Therefore, for the above-stated reasons, it is our conclusion that the limitation on the use of regular reserve funds provided in K.S.A. 1979 Supp. 17-2217(a), which allows such funds to be used only to offset loan losses, is applicable to a credit union with share insurance, but all other credit unions may use their reserve funds to meet "contingencies," as provided for in K.S.A. 1979 Supp. 17-2217(b). A contrary conclusion would contravene well-recognized rules of statutory construction.

Very truly yours,

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RTS:BJS:MDK:gk