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DEPARTMENT OF JUSTICE
STATE OF NEBRASKA
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Attorney General
A. EUGENE CRUMP
Deputy Attorney General

SUBJECT: Responsibility, if any, of the Department of Banking and Finance regarding lack of account insurance coverage for political subdivision accounts at state chartered credit unions

REQUESTED BY: Roger Hirsch, Acting Director, Department of Banking and Finance, Lincoln, Nebraska

OPINION BY: Robert M. Spire, Attorney General
LeRoy W. Sievers, Assistant Attorney General

QUESTION: What duty does the Department of Banking and Finance have upon discovery that contrary to state law, some political subdivisions have deposited their funds in state chartered credit unions and those funds are not insured?

CONCLUSION: Inform the affected political subdivision, and if applicable, the National Credit Union Administration

In your request for advice, you have set forth certain facts regarding the situation. Recently some cooperative credit associations in the State of Nebraska were converted to state chartered credit unions and obtained insurance for their accounts from the National Credit Union Share Insurance Fund which is administered by the National Credit Union Administration. Although not stated in your correspondence, apparently the Nebraska Department of Banking and Finance audits the state chartered credit unions and reports its findings to the National Credit Union Administration for those credit unions insured through the Administration.

As a result of these audits, it has been learned that some political subdivisions have left their funds deposited in the credit unions that

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previously had been deposited in the cooperative credit associations.

Political subdivisions were specifically authorized to deposit their funds in the cooperative credit associations pursuant to Neb.Rev.Stat. §21-1316.01. No such parallel statute authorizes the deposit of political subdivision funds in credit unions. In fact, such deposit of funds is prohibited. Neb.Rev.Stat. §§21-1773 and 1774 outline that the deposit of funds in credit unions can only be made by members, and to be a member, an entity must subscribe to shares of stock. The Nebraska State Constitution, Article XI, Section 1, provides in part, "No city, county, town, precinct, municipality, or other subdivision of the state shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein of any railroad or private corporation or association."

Additionally, Attorney General Opinion No. 132, dated September 12, 1985, concluded that with certain exceptions not applicable here, county funds cannot be deposited in mutual or non-stock savings and loan associations. This opinion was based in part upon the decisions of the Nebraska Supreme Court set forth in The National League of Savings and Loan Associations v. Mathes, 201 Neb. 122, 266 N.W.2d 720 (1978), and Nebraska League of Savings and Loan Associations v. Johnson, 215 Neb. 19, 337 N.W.2d 114 (1983). The reasoning of that opinion and those decisions in this case provides further support for the conclusion that those political subdivisions are not authorized to deposit funds in state chartered credit unions.

Federal credit unions pursuant to 12 U.S.C.A. §1757 and §1787 are authorized to accept funds from non-member counties, municipalities, or political subdivisions having official custody of public funds and lawfully investing the same. The Wild Card Statute, Neb.Rev.Stat. §21-17,120.01, allows state chartered credit unions to accept deposits if federally chartered credit unions would be authorized to accept similar deposits. Although, money can be deposited in federally chartered credit unions without a political subdivision becoming a member, no such parallel

provision exists for state chartered credit unions. Thus, although political subdivisions are prohibited from depositing funds in state chartered credit unions, those same credit unions are not prohibited from accepting the deposits.

You have been advised by the National Credit Union Administration that because no Nebraska law permits the deposit of political subdivision funds with state chartered credit unions, those funds which are deposited by political subdivisions will not be insured. Your duties in this situation are prescribed by the Nebraska Constitution, state law, the rules and regulations of your department, and any agreements with the National Credit Union Association that may pertain to this question. From what you have indicated in your correspondence, apparently your agreement with the National Credit Union Association provides that you must inform that Association of any such accounts. This department is unaware of any other obligation that applies to this situation other than the oath of office that the director of the Department of Banking and Finance must take which provides in part that the director shall support the Constitution of the State of Nebraska.

You have indicated that the Department of Banking and Finance has been advising those political subdivisions which have made deposits in state chartered credit unions that those deposits are unauthorized, are not permitted by Nebraska law, and are not insured. It is recommended that the Department of Banking and Finance continue to so advise such political subdivisions.

Very truly yours,

ROBERT M. SPIRE
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LWS:ccb

APPROVED:

Attorney General