STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#99050
NO.
STATE OF NEBRASKA
OFFICIAL
NOV 24 1999
DEPT. OF JUSTICE

DATE: November 15, 1999

SUBJECT: Is a federal government employees' credit union a place of "public accommodation" within the meaning of Neb. Rev. Stat. § 20-133? Does the Nebraska Equal Opportunity Commission have jurisdiction to investigate a complaint against a federally owned credit union?

REQUESTED BY: Mr. Alfonza Whitaker, Executive Director
Nebraska Equal Opportunity Commission

WRITTEN BY: Don Stenberg, Attorney General
Suzanna Glover-Ettrich, Assistant Attorney General

You have requested an Attorney General's Opinion which addresses the issue of whether a federal government employees' credit union would be considered a "public accommodation" within the meaning of the Nebraska Act Providing Equal Enjoyment of Public Accommodations, Neb. Rev. Stat. § 20-133 (hereinafter "the Nebraska Public Accommodations statute"). We conclude that a federal government employees' credit union would not be considered a "public accommodation" under the Nebraska Public Accommodation statute.

You have also asked whether the Nebraska Equal Opportunity Commission ("NEOC") would have jurisdiction to investigate a complaint filed against the Government Employees Credit Union. We conclude that because a federal government employees' credit union is not subject to the Nebraska Public Accommodations statute, the NEOC would not have jurisdiction to investigate a complaint filed under the statute.

This issue arose when a member of the Government Employees Credit Union in Lincoln, Nebraska, filed a complaint against the credit union, alleging that the credit union unlawfully denied his application for a signature loan on the basis of his race, in violation

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of Neb. Rev. Stat. § 20-134, which guarantees equal access to "public accommodations." The Government Employees' Credit Union serves only federal government employees.

Neb. Rev. Stat. § 20-132 of the Nebraska Public Accommodation statutes provides:

> All persons within this state shall be entitled to a full and equal enjoyment of any place of public accommodation, as defined in sections 20-132 to 20-143, without discrimination or segregation on the grounds of race, color, sex, religion, national origin, or ancestry.

In general, financial institutions and banks would be considered a "place of public accommodation" under the Nebraska Public Accommodations statute. The definition of "public accommodation" is more expansive in the Nebraska statute than in the federal statute upon which it is based. *See Neb. Op. Atty. Gen. No. 98010.* Under the federal statute, the following establishments which serve the public are places of accommodation if their operations affect commerce:

> 1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishments as his residence;
>
> (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;
>
> (3) Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
>
> (4) Any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

See 42 U.S.C. § 2000a.

Arguably, an establishment is not a "public accommodation" under the federal statute if it does not fall within one of the four defined categories. Therefore, it appears that a credit union would not be considered a "public accommodation" under the federal act. However, the definition contained in the Nebraska Public Accommodations statute, though similar to the federal statute, is more expansive. Under § 20-133, "public accommodations" are defined as:

> [A]ll places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public and such public places providing food, shelter, recreation, and amusement including, but not limited to:
>
> (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to any such facility located on the premises of any retail establishment;
>
> (3) Any gasoline station, including all facilities located on the premises of such station and made available to the patrons thereof;
>
> (4) Any motion picture house, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
>
> (5) Any public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation, and any such facility supported in whole or in part by public funds; and
>
> (6) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of such covered establishment.

Under this definition, a credit union or financial institution which offers its services to the general public would be considered a "public accommodation" because its services are for the "welfare" of the public.

However, the particular credit union at issue in the instant case, the Government Employees Credit Union, is not a public accommodation within the meaning of § 20-133 because its services are only offered to a limited segment of the general public. In order for an establishment to be a "public accommodation" under § 20-133, its goods or services must be offered to the "general public." Because the credit union's services are only offered to federal government employees located in Lincoln, and not to the general public, the credit union would not be considered a "public accommodation" under § 20-133.

In determining whether a federal government employees credit union would be covered under the Nebraska Public Accommodations statute, it is also necessary to examine § 20-138 of the statute, which provides a "private club" exception to the statute:

> The provisions of this act shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of section 20-133.

This section holds that the public accommodations statute does not apply to private clubs or other establishments that are not open to the public, **except** to the extent that the private club or establishment allows its facilities to be used as an establishment that is open to the public and would be covered under section 20-133 of the Act. In other words, if a private club or private establishment which is not open to the general public opened an establishment at its facilities and made the goods or services offered by that establishment available to non-members, it could not withhold those goods or services from members of the public based on race, color, sex, religion, national origin, or ancestry. An example of this would be if a private club such as the Kiwanis Club opened a restaurant on its premises and made the restaurant facilities available to non-members. To the extent that the Kiwanis Club created an establishment which is within the scope of section 20-133, such as a restaurant, and made that establishment's facilities available to the general public, it could not deny goods or services to members of the public based on race, color, sex, religion, national origin, or ancestry. In the present case, there is no indication that the exception to the statute's "private club" exemption would apply.

The next issue to be addressed is whether the NEOC has jurisdiction to investigate a complaint filed against the Government Employees Credit Union. If the credit union is an agency of the federal government, then principles of sovereign immunity and federalism would most likely prevent the application of the state's public accommodations statute to the credit union, therefore preventing the NEOC from investigating the complaint. However, if the credit union is a private corporation that caters to federal government employees, the doctrines of sovereign immunity and federalism would not apply. In addition, if the credit union is a federally organized corporation, it could be argued that the NEOC would have jurisdiction over the matter:

> Speaking generally, the decisions may be said to support the proposition that unless the contrary is expressed in, or must be implied from, controlling legislation from Congress, a federal corporation is, as to its business and property within a particular state, ordinarily subject to the valid applicable laws of the state insofar as they do not, when applied, conflict with the lawful control and supervision of its own creature by the Federal Government or with the performance by the corporation of legitimate functions as an agency of such government. 36 Am Jur 2d, Foreign Corporations, § 123.

Therefore, while Nebraska's public accommodations statute could not interfere with a credit union's legitimate functions as an agency of the federal government, it could be argued that a federal government employees credit union would be subject to a state discrimination statute if it is a federally organized corporation. However, in the instant case, the NEOC would still lack jurisdiction even if the Government Employees Credit Union was a federally organized corporation because the credit union does not offer goods or services to the general public, nor does it make its facilities available to be used as an establishment that would normally be covered under the statute, such as a restaurant which is open to the public. Lacking jurisdiction, the NEOC would not be able to investigate the charge of discrimination.

In conclusion, because the Government Employees Credit Union's services are provided only to a limited number of federal government employees, and not to the general public, it would not be considered a "public accommodation" within the meaning of Neb. Rev. Stat. § 20-133. Further, the credit union's operations would not fall under the statute's exception to the "private club exemption" because it does not allow its facilities to be used as an establishment that would fall under section 20-133. Therefore, the Government Employees Credit Union would not be subject to the Nebraska statute and the NEOC would have not have jurisdiction to investigate the complaint.

Sincerely,

DON STENBERG
Attorney General

Suzanna Glover-Ettrich

Suzanna Glover-Ettrich
Assistant Attorney General

APPROVED BY:

Attorney General

33-096-14-3