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June 11, 2004

ANNOUNCEMENT

In October of 2003, the Department of Banking and Finance at the request of the Georgia Credit Union Affiliates, asked the Georgia Attorney General to answer two questions about the law governing state credit unions.

First, we asked whether the "articles" or "charter" of a credit union in existence before April 1, 1975, would be limited by the common bond restrictions in the law enacted as the 1975 Act. The law in question is now O.C.G.A. § 7-1-636, which provides in subsection (a), "Nothing in this chapter shall be construed to impair the validity of the charter of a credit union existing on April 1, 1975."

The Attorney General answered in Official Opinion 2004-6 (attached). The opinion provides that "a pre 1975 credit union's qualifications for membership were not affected by the 1975 Act." Further, it provides that "current state law governing credit unions which were in existence and validly operating prior to April 1, 1975, allows those credit unions to maintain the fields of membership that they possessed prior to April 1, 1975."

Therefore, since "charter," the original word in § 41A-3007 (the precursor of § 7-1-636) means petition and bylaws, whatever a credit union's petition and bylaws provided as to their field of membership as of April 1, 1975 was not disturbed by the 1975 law.

Code Section 7-1-636(a) is a "grandfather clause" that applies to the articles of a credit union existing on April 1, 1975. It "permits continuation of a practice by those already so engaged, in order not to disrupt settled practice". Attorney General Opinion 84-22, citing Andrew G. Nelson, Inc. v U.S., 355 U.S. 554, 561 (1958). Such clause must be construed narrowly, however, because it creates an exception to the enforcement of a general statutory provision. In a Georgia Supreme Court case, Burton v. Campbell, 270 Ga. 564 (1999), the court was faced with interpretation of a grandfather clause. That court states "The usual function of such a clause is not to create anything, but to preserve something from immediate interference." They also state, "Because it (referring to the grandfather clause) creates an exception to enforcement of the general distance requirements, the clause must be strictly construed." Thus this grandfather clause in § 7-1-636 must also be strictly construed, because it creates an exception. The Attorney General has said in the 2004-6 Opinion, that whatever field of membership existed on April 1, 1975, was not to be disturbed.

Consequently, if on April 1, 1975 a credit union allowed all employees of a certain company, or all residents within a well defined community, to be members, the new law could not disturb that provision. If the bylaws in place as of April 1, 1975 contained restrictions based on employment by a particular company, the interpretation by the Attorney General indicates that the credit union would be entitled to the membership permitted at that time and any subsequent amendments to their field of membership would be subject to subsequent applicable statutory and regulatory limitations. This is because the clause is not meant to "create anything," Burton at 564. Rather, it permits a field of membership to continue where the new law might restrict it.

The second question was whether a subsequent merger of two credit unions would affect the field of membership of a pre 1975 credit union. The Attorney General found that the undisturbed field of membership was an "interest" pursuant to § 7-1-667. That being so, it could be transferred to the surviving credit union.

The Department concludes, then, that a credit union that was validly chartered before April 1, 1975 may continue to have whatever field of membership was described in their petition and approved bylaws on that date. That information would need to be documented by those records. Other changes (after 1975) will be processed according to current law and regulations. Mergers will be conducted according to law and if so stated in the plan of merger, a pre 1975 field of membership may be an interest that is transferred to the surviving credit union.

David G. Sorrell
Commissoner

Department of Law
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OFFICIAL OPINION 2004-6

To: Commissioner
Department of Banking and Finance

May 7, 2004

Re: Current state law governing credit unions that were in existence and validly operating prior to April 1, 1975, allows those credit unions to maintain the fields of membership that they possessed prior to April 1, 1975. The current statutory provisions governing mergers of state-chartered credit unions allow the field of membership of a pre-1975 credit union to be included in a plan of merger and assumed by the surviving credit union.

You have requested advice concerning two questions related to state-chartered credit unions. In your first question, you ask whether state-chartered credit unions that were in existence and validly operating prior to April 1, 1975, continue to have broad and general memberships in light of certain statutory amendments that occurred in 1975. In your second question, you ask whether, when two state-chartered credit unions merge pursuant to O.C.G.A. § 7 1 667 (1997), the property, property rights, and interests that flow to the new, resulting credit union include the vested right to a broad field of membership, assuming such interest or property was held by one of the merging credit unions.

The Financial Institutions Code of Georgia (hereinafter the "1975 Act"), a substantial recodification of Georgia's financial institution laws, including those regulating state-chartered credit unions, was enacted at 1974 Ga. Laws 705 and became effective on April 1, 1975. *Id.* at 955, now codified at O.C.G.A. § 7 1 860 (1997). The 1975 Act included the following section, now codified at O.C.G.A. § 7 1 636 (1997):

(a) Nothing in this chapter shall be construed to impair the validity of the charter of a

credit union existing on April 1, 1975.

(b) Each credit union existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration.

The term "charter" is not defined in the 1975 Act but is generally understood to mean in the context of financial and similar institutions "[a] document issued by a governmental authority permitting [the entity] to conduct business." BLACK'S LAW DICTIONARY 228 (7th ed. 1999) (referring specifically to banking).[1] In the context of the law existing prior to 1975, a credit union's petition (now called "articles"[2]) and its bylaws constituted its "charter." 1925 Ga. Laws 165. Thus, the General Assembly's stated intention in the 1975 Act was for the provisions of an existing credit union's petition and bylaws to remain in force and effect without impairment by the provisions of the 1975 Act. A pre-1975 credit union's qualifications for membership were stated in its bylaws. In light of O.C.G.A. § 7 1 636, as construed above, a pre-1975 credit union's qualifications for membership were not affected by the 1975 Act.

Your second question is whether the merger of two state-chartered credit unions affects the broad field of membership when at least one of them is a pre-1975 credit union. As discussed above, pre-1975 credit unions retain the fields of membership they possessed prior to April 1, 1975, on account of the provisions of O.C.G.A. § 7 1 636 (1997). Code section 7 1 667 provides for the merger of credit unions and reads as follows:

A credit union may, with the approval of the department and in accordance with such uniform rules and regulations as it shall make and promulgate, *be merged with another credit union* under the articles of such credit union, *upon any plan agreed upon by the majority of the board of each credit union joining the merger and approved by not less than two-thirds of the members of each credit union* present and eligible to vote at meetings called for that purpose. *All property, property rights, and interests of the credit union so merging shall, upon merger, be transferred to and vested in the credit union under whose articles the merger is effected* without deed, endorsement, or other instrument of transfer; and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose articles the merger is effected; and thereafter the articles of the credit union so merging shall be void.

O.C.G.A. § 7 1 667 (1997) (emphasis added). The language "all property, property rights, and interests of the credit union so merging shall . . . be transferred to and vested in the credit union under whose articles the merger is effected" evidences an intent on the part of the General Assembly to permit a liberal retention of those aspects of the merging credit unions which constitute property, property rights, and interests. *Id.* In common legal usage, "interest" is "[t]he most general term that can be employed to denote a property in lands or chattels. . . . More particularly, it means *a right to have the*

advantage accruing from anything . . . ." BLACK'S LAW DICTIONARY 950 (4th ed. 1968) (emphasis added). *Accord Bryan v. Michigan Funeral Dir. Ass'n*, No. 5:00-CV-99, 2001 U.S. Dist. LEXIS 580 (W.D. Mich. 2001); *United States v. Beatrice Foods Co.*, 344 F. Supp. 104, 111-12 (D. Minn. 1972). Therefore, the power to establish fields of membership of the merging credit unions is clearly an "interest."[3] Thus, a pre-1975 credit union's membership provisions may be included in a plan of merger and vested in the surviving credit union.

Therefore, it is my official opinion that current state law governing credit unions which were in existence and validly operating prior to April 1, 1975, allows those credit unions to maintain the fields of membership that they possessed prior to April 1, 1975. The current statutory provisions governing mergers of state-chartered credit unions allow the field of membership of a pre-1975 credit union to be included in a plan of merger and assumed by the surviving credit union.

Prepared by:

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[1] For an illustration in a similar context, see O.C.G.A. §§ 33 14 4 through 6 (provisions for "chartering" a domestic insurance company in Georgia under the review and approval of the Commissioner of Insurance).

[2] O.C.G.A. § 7 1 630 (1997).

[3] In your letter you refer to a memorandum of advice from this office dated June 19, 1997, which suggested that a credit union's field of membership might constitute either a "property right" or an "interest." Because a field of membership is an "interest" of the credit union that can be included in the plan to be agreed upon by each merging board and membership under the terms of O.C.G.A. § 7 1 667 (1997), it is not necessary to address the question whether it is property or a property right.