

Opinion No. 209.

Credit Union Associations—State  
Examiner—Bank Examiner—Super-  
vision, Meaning of

Held: The State Examiner and ex-official Superintendent of Banks—by reason of his duty of supervision of credit union associations—may make and enforce such reasonable recommendations as may be necessary to reduce the risk of unwarranted losses to the membership of such association.

2. Credit union associations may employ such employees as are necessary for proper and efficient operation.

3. Credit union associations have the power to own and hold real and personal property; and, hence, they may purchase necessary equipment and may make needed alteration in office and working quarters.

October 15, 1946.

Mr. W. A. Brown  
State Examiner and Ex-Officio  
Superintendent of Banks  
State Capitol  
Helena, Montana

Dear Mr. Brown:

You have forwarded a Report of Examination of a credit union association and have stated this problem:

A review of the report discloses the credit union has some very serious problems to solve. Due to inadequate help, lack of modern equipment and office space, the examination disclosed a large number and amount of past due paper and over-extended real estate loans, together with delinquent interest, and other minor irregularities, and unless immediate steps are taken to correct this unfortunate state of affairs, unwarranted heavy losses will be suffered by the entire membership.

We would thank you to advise if this department, under the present credit union law enacted by the legislative session of 1929, has the authority to make and enforce such recommendations as in our opinion will correct the situation as disclosed by the examination. Also, can the directors employ additional help on a salary or commission basis, purchase (when available) necessary equipment, and make the needed alteration in the office and working quarters, all of which will greatly expedite the handling of the credit union's steadily increasing volume of business?

Chapter 26 of Volume 3 of the Revised Codes of Montana, 1935, governs the incorporation, powers, membership, functions, and supervision of credit unions. Section 6109.12, contained therein, provides credit unions "shall be under the supervision of the state examiner and ex-officio superintendent of banks whose duty it shall be to enforce all laws with respect thereto." Section 6109.16 provides no by-laws or amendments thereof shall be effective "until first approved by the state examiner and ex-officio superintendent of banks . . ." Section 6109.17, which relates to examination of credit unions by the state examiner, commences with this unequivocal language: "Credit

unions shall be under the supervision of the state examiner of the state of Montana."

Section 6109.21 provides in part: "If the said state examiner and ex-officio superintendent of banks determines that the credit union is violating the provisions of this act, or is insolvent, the state examiner and ex-officio superintendent of banks may serve notice on the credit union of his intention to revoke the certificate of approval."

Section 6109.22 is somewhat repetitious of Section 6109.16, in that it reiterates the approval of the state examiner is necessary to amendment of the by-laws of a credit union association. A record of the names and addresses of the members of the board and committees and the officers of a credit union association shall be filed with the state examiner and ex-officio superintendent of bank within ten days of their election, under the provisions of Section 6109.23.

In order to engage upon the process of voluntary dissolution, pursuant to Section 6109.35, four-fifths of the entire membership of a credit union association must file with the state examiner and ex-officio superintendent of banks a statement of their consent to dissolution; and, under the section's further provisions, it is the duty of the state examiner to determine whether or not the credit union is solvent.

Section 6109.36 provides a credit union may change its place of business on written notice to the state examiner and ex-officio superintendent of banks.

I point out the many references to the state examiner and ex-officio superintendent of banks contained in Chapter 26 of Volume 3 of the Revised Codes of Montana, 1935, to emphasize the frequency with which the legislative assembly seemed to rely upon that officer to direct, approve, and facilitate the functions of credit union associations. The chapter has not been interpreted by our Supreme Court; but it is an elementary rule of statutory construction, applicable here, sections which are a part of the same legislative enactment and treat of the same subject matter are to be construed together. (*Edwards v. Lewis and Clark County*, 53 Mont. 359, 165 Pac. 297.)

In the construction of a statute the intention of the legislature is to be pursued if possible, and to ascertain

that intention recourse must first be had to the language employed and to the apparent purpose to be subserved. (State ex rel., *Krone v. Holmes*, 114 Mont. 372, 136 Pac. (2d) 220.)

Sections 6109.12, quoted in part above, declares credit union associations shall be under the "supervision" of the state examiner. Webster's New International Dictionary, Second Edition, 1941, defines "supervision" with these words: "Act or occupation of supervising; inspection; oversight." The same text defines the verb "super-*vis*e" to mean: "To oversee for direction; to superintend; to inspect with authority."

In 1942, in the case of *People v. Brophy*, 120 Pac. (2d) 946, 953, the California District Court of Appeals—considering that portion of the California constitution which gives to the California Attorney General "direct supervision over every district attorney and sheriff"—stated "supervision" does not contemplate complete control. In 1887, in the case of *State ex rel., Board of Transportation v. Fremont, E. & M. V. R. Co.*, 35 N. W. 188, 124, the Supreme Court of Nebraska—considering a statute which granted "general supervision of all railroads operated by steam" to the Board of Transportation said:

"... The board . . . is clothed with the power of overseeing, inspecting, and superintending the railways within the state, for the purposes of carrying into effect the purpose of this act, and they are clothed with power to prevent unjust discriminations against either persons or places . . . The act is remedial in its nature, and is designed to prevent and punish abuses, in the management of some or all of the railways of the state; and in construing remedial statutes there are three points to be considered, viz.: The old law, the mischief, and the remedy; that is, how the law stood at the making of the act, what the mischief was for which the former law did not provide, and what remedy the legislature has provided to cure the mischief; and it is the business of courts so to construe the act as to suppress the mischief and advance the remedy . . ."

Our legislative assembly very obviously had good reason for placing

credit union associations under the supervision of your office. No other state department is so readily able to protect the public interest in affairs of finance. No other state department is so well equipped to provide periodic scrutiny of the books and records of a credit union association. No other state department is so well prepared to evaluate and analyze the findings of such an examination. No other department has a background more adapted to timely recommendation of corrective measures, if ever needed.

Hence, I am of the view your power of supervision over credit union association clothes you with the power and authority to inspect and superintend such associations for the purpose of carrying into effect the provisions of the statutes under which they are created. This power is not control, I am careful to point out. You do not have the power and authority to prescribe whether John Doe or Richard Roe shall be the recipient of loans; but the responsibility which rests upon you by reason of your duty of "supervision" is, I believe, one of the protecting of the membership of credit union associations from unwarranted losses. Since this power at best is difficult of narrow and exact definition, it is understandably one which must be exercised with discretion and reasonableness.

You inquire whether the directors of a credit union association may employ additional help; and I believe your question is answered by Section 6109.24 of the Revised Codes of Montana, 1935, which provides in part:

"... It shall be the duty of the directors to have general management of the affairs of the credit union, particularly: . . .

"(c) To fix the amount of the surety bond which shall be required of all officers and employees handling money . . ." (Emphasis mine.)

The section above quoted presumes credit unions shall have employees. I am of the view, therefore, credit union associations may employ such help as is necessary to their efficient functioning.

You ask also whether credit union associations may purchase necessary equipment and make needed alteration in the office and working quarters. Section 6109.19, Revised Codes of Montana, 1935, provides in part:

"A credit union shall have the following powers: . . .

"(g) To own and hold real and personal property."

The power to own and hold real and personal property necessarily carries with it the power to maintain, repair, service, and alter such property; and hence I answer your question in the affirmative.

In summary, it is my opinion:

(1) The State Examiner and ex-officio Superintendent of Banks—by reason of his duty of supervision of credit union associations—may make and enforce such reasonable recommendations as may be necessary to reduce the risk of unwarranted losses to the membership of such associations.

(2) Credit union associations may employ such employees as are necessary for proper and efficient operation.

(3) Credit union associations have the power to own and hold real and personal property; and, hence, they may purchase necessary equipment and make needed alteration in office and working quarters.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General