

VOLUME NO. 37

OPINION NO. 163

CREDIT UNIONS - Powers limited to those expressly or implicitly granted by statute; CREDIT UNIONS - Operation of branch offices not authorized absent approval of department; CREDIT UNIONS - Administrative procedure, application for special order granting additional powers under section 14-676, R.C.M. 1947; REVISED CODES OF MONTANA, 1947 - Sections 14-603(2)(a), 14-603(5), 14-607(1), 14-611, 14-613, 14-614, 14-676.

HELD: State chartered credit unions are not authorized to open branch offices similar to those referred to in section 5-1028, R.C.M. 1947, absent authorization from the Department of Business Regulation under section 14-676, R.C.M. 1947.

3 October 1978

Kent Kleinkopf, Director
Department of Business Regulations
805 North Last Chance Gulch
Helena, Montana 59601

Dear Mr. Kleinkopf:

You have requested my opinion on the following question:

May a state chartered credit union maintain a branch office or facility of the type spoken to in section 5-1028, R.C.M. 1947?

Your question is somewhat unclear in that section 5-1028 refers to two types of facilities: branch offices and remote electronic banking machines. However, your letter and memoranda focus on the power of credit unions to open branch offices, and I will therefore interpret your question as follows: Does a credit union organized under Title 14, chapter 6, R.C.M. 1947, have the power to establish a branch office for the transaction of business with its members?

A credit union, like any other financial institution, is a creature of statute, possessing limited powers. See Iowa Credit Union League v. Iowa Dept. of Banking, ___ Iowa ___, 268 N.W.2d 165, 171 (1978). As a prior Attorney General's opinion noted in relation to banks, "the extent of its powers is measured not by what is prohibited but by what is granted by law." 16 OP. ATT'Y GEN. NO. 191 (1935). The

answer to your question therefore depends on whether the power to establish branch offices may be found among the powers granted, implicitly or explicitly, by the Montana Credit Union Act.

Initially, it is suggested that authority to branch may be inferred from section 14-6-603(2)(a), which requires a credit union's Articles of Incorporation to include the location of its "principal place of business." In my opinion, however, the use of the term "principal place of business" is not sufficient, by itself, to mandate the conclusion that the Legislature intended to allow a credit union to establish other places of business. It should be noted that statutes relating to both banks and savings and loans use the phrase "principal place of business," even though neither entity may legally branch. See, e.g., sections 5-214, 7-102, R.C.M. 1947. Further, the use of the phrase "principal place of business" in section 14-603 is balanced by the provision of section 14-607(1), which states: "A credit union may change its place of business within this state upon written notice to the department of Business Regulation." (Emphasis added.) This inconsistency suggests that the Legislature did not intend to convey any special meaning by the use of the word "principal" in section 14-603, and any suggestion that power to branch be inferred therefrom is ill-founded.

The powers of a credit union are set forth in sections 14-613, 14-614. Section 14-613 is a listing of expressly granted powers. The power to establish branch offices is not among them. However, the Montana Credit Union Act also recognizes the existence of certain implied and incidental powers in section 14-614:

Incidental Powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state including those that are necessary to enable it to promote and carry on most effectively its purpose.

The statute expresses two concepts. The first clause states that a credit union is a corporation and that it possesses the "incidental" powers which exist in all corporations organized under Montana law. Significantly, the statute does not grant full general corporate powers but only those that are incidental to the existence of the corporate entity regardless of its purpose. Cf. West's Cal. Fin. Code,

section 14807. These powers include the power to maintain perpetual existence, the power to hold and convey property for corporate purposes, the power to sue and be sued, the power to adopt a corporate seal, the power to make by-laws, and the power to receive and expel members. 6 W. Fletcher, Cyclopedia of Corporations, section 2485 (Perm. Ed. 1968).

These powers are common to all corporations and they plainly do not include the power to branch. Both banks and savings and loan associations possess the incidentals of corporateness, and neither is empowered to branch under Montana law. It appears that the first clause of section 14-614, relating to incidental powers, was placed in the act to ensure that the enumeration of powers in section 14-613 would not be held to divest credit unions of any unenumerated incidental attributes of corporateness. It does not convey the power to establish branch offices.

The second clause of section 14-614 provides that the powers granted shall include "those that are necessary to enable it to promote and carry on most effectively its purpose." This clause expresses the concept that in addition to expressly granted powers, credit unions possess certain powers which must necessarily be inferred therefrom if it is to achieve "most effectively" its corporate purpose of promoting thrift and establishing a source of credit for its members. The question is whether the power to open a branch office is among those implied powers.

The question appears to be one of first impression. The Montana Supreme Court has not construed the implied powers clause of the Montana Credit Union Act, and my research reveals no decisions on point from the four other states with similar statutory provisions. Ariz. Rev. Stat., section 6-509(18). My research also discloses no cogent legislative history on the meaning of section 14-614. However, a statute should be construed in light of the other portions of the act of which it is a part, with an eye toward harmonizing all parts of the act if possible. State ex rel. Malott v. Bd. of County Commissioners, 89 Mont. 37, 87, 269 P. 1 (1931). Following this rule and reading section 14-614 in light of the remainder of the Montana Credit Union Act, I hold that a credit union may not open a branch office for the transaction of business absent prior approval by the Department of Business Regulation (hereinafter "the department").

Unlike corporations organized for general business purposes, a credit union is a financial institution regulated in the

public interest by an agency of state government. In order to incorporate, it must, inter alia, comply with technical requirements similar to those required of all corporations organized under the laws of Montana, viz. draft and file articles of incorporation and by laws, select a board of directors, etc. See R.C.M. section 14-603, cf. R.C.M. sections 15-2248, 2249. Unlike general business corporations, however, credit unions, savings and loan associations and banks must make a further showing that they are organized on sound financial foundations and that their incorporation will serve the public interest. R.C.M. section 14-603(5) (credit unions); 7-106 (savings and loan associations); 5-202 (banks). As a necessary element of its determination whether the public will benefit from the establishment of a credit union, the department must inquire whether the proposed credit union has demonstrated a likelihood of success in its "proposed field of operation." Obviously, the department must consider the competitive climate of the area in which the credit union will operate; if that climate is such that a new financial institution is unnecessary, or that success in the area is unlikely, it is incumbent on the department to deny certification. The Credit Union Act further requires the department to conduct periodic financial examinations or audits to ensure that the affairs of the credit union are competently managed. Section 14-611, R.C.M. 1947.

The rationale for the high degree of regulation is two-fold. A credit union is in the business of providing a source of credit at reasonable rates for those persons who invest their savings in the credit union. The Legislature has determined that due regard for the safety of the investor requires the exercise of regulatory control over the operation of the other credit unions, banks, and savings and loan associations in the area. The department must also regulate with an eye toward protecting the investors in these other institutions.

Against this regulatory backdrop, it is clear that the power to branch is not implied by section 14-614. The department's regulatory control over the competition among sources of credit would be severely curtailed if credit unions could establish branch offices at will without regard to the extent and quality of existing services. See 29 OP. ATT'Y GEN. NO. 2 (1961) which held that indiscriminate branching by savings and loan associations would weaken the regulatory

control of the state over such enterprises. The Legislature did not intend to allow the department's extensive regulatory power over financial institutions to be undermined by allowing credit union branch offices. Such power is antithetical to the most effective achievement of the purpose for which credit unions were authorized, and therefore may not be implied under section 14-614.

It should be noted, however, that the department does have the power, on a case-by-case basis, to allow credit unions, organized under Montana law, to branch. Section 14-676, R.C.M. 1947, provides:

The director may authorize any credit union to engage in any activity in which such credit union could engage were it operating as a federal chartered credit union.... *** Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this State.

Since it is generally recognized that federally chartered credit unions may branch, see 12 CFR section 740.3(a), the department could, in its discretion, authorize a state credit union to do likewise upon written request if the interest of the state credit union and the economy of the state should so require. See also 37 OP. ATT'Y GEN. NO. 86 (1977).

The statute calls upon the director to make dual findings on each written request received under section 14-676: (1) the activity for which authorization is sought is one which federal credit unions may undertake; and (2) the public interest would be served by a grant of authority. The statute necessarily implies that the director take evidence from interested parties on the factual questions involved, under a procedure similar to that followed by the department in an application for an original charter, with similar avenues of judicial review available from an adverse ruling. The provisions of the Montana Administrative Procedure Act governing contested cases do not appear to be applicable, since a hearing is not expressly required by law. See section 82-4202(3), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

State chartered credit unions are not authorized to open branch offices similar to those referred to in section 5-1028, R.C.M. 1947, absent authorization from the Department of Business Regulation under section 14-676, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General