



# Credit Union Department

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COMMISSIONER

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April 27, 1993

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Honorable Dan Morales, <sup>Opinions Committee</sup> Attorney General  
Office of Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

FILE #

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**RG-541**

Attention: Madeleine Johnson, Chairman  
Opinions Committee

Re: Request for Attorney General Opinion

Dear General Morales:

This is a request for a written Attorney General opinion regarding permissible activities of certain credit unions regulated by the Texas Credit Union Department. The question affects the public interest and also concerns the official duties of the Commissioner.

In April, 1991, the Texas Credit Union Commission appointed a task force to review credit union indirect financing. Indirect financing typically involves a relationship between a credit union and one or more automobile dealerships. The credit union will make credit available to its members through the dealership in order to facilitate the purchase and financing of automobiles. Typically, the member and the dealership will enter into a retail installment sales contract after it is determined that the member meets the credit union's standards of creditworthiness. The retail installment sales contract will then be assigned to the credit union upon payment by the credit union to the dealer of either a fixed fee or a fee determined by some alternative formula.

Frequently, members seeking to purchase automobiles at dealerships will fall within the field of membership of more than one credit union. This field of membership "overlap" frequently causes resentment and animosity between credit unions who compete for that member's business.

The Commission's task force did not recommend the creation of rules to govern the indirect lending issue and field of membership overlaps in 1991. However, it did recommend that many of the decisive issues associated with the program could be resolved through the existence of a third party entity which would operate as a processor of indirect paper for credit unions. This type of entity would enable credit unions to resolve their field of membership differences, and at the same time would enable smaller credit unions to participate in an indirect lending program which would otherwise be beyond their capability due to expense and staffing constraints.

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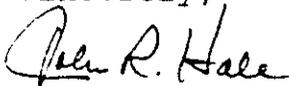
The logical "third party entity" for this type of program would be a Credit Union Service Organization, commonly referred to as a CUSO. State chartered credit unions are permitted to invest in CUSO's under Rule 91.801, Texas Rules for Credit Unions. Inasmuch as this venture would involve federally chartered credit unions as well, the more comprehensive CUSO regulation found in §701.27 of the National Credit Union Administration Rules and Regulations would also be pertinent. It appears that a cooperative effort through a CUSO in order to facilitate an indirect lending program for numerous credit unions would serve the purposes set out in Rule 91.200(1) of the Texas Rules for Credit Unions by more readily allowing credit unions to be sufficiently flexible and readily responsive to the marketplace, and at the same time resolving potentially decisive field of membership issues.

With the foregoing in mind, and within the framework of the state and federal credit union and CUSO regulations, please render your written opinion in connection with the following specific questions.

1. May a credit union make an investment in a Credit Union Service Organization, or otherwise contract with that CUSO where the primary activity of the CUSO would be to (a) serve as a direct contact with participating automobile dealers, (b) resolve field of membership issues, (c) serve as the assignee of dealer retain installment contracts, negotiate and set consideration for the purchase of those contracts and (d) service the loans.
2. The CUSO will be a corporation organized under the Texas Business and Corporation Act. Shares will be issued to credit unions only. It is contemplated that credit unions will buy participating interests in pools of loans assigned to the CUSO. In that event, is it permissible for such a CUSO to qualify as a lender regulated under Vernons Ann.Civ.St. §5069?
3. In the event that this program is affirmatively approved by the Texas Credit Union Commission under Rule 91.701(d)(6) and Rule 91.801 of the Texas Rules for Credit Unions, will the program be exempted from coverage under the State Anti-Trust Act, §15.05(g)?

Thank you for your attention to this request for your written opinion.

Sincerely,



John R. Hale  
Commissioner

JRH:lc

cc: Credit Union Commission  
Texas Credit Union League