



# *The Commonwealth of Massachusetts*

*Office of the Commissioner of Banks*

*One South Station*

*Boston, Massachusetts 02110*

JANE SWIFT  
GOVERNOR

THOMAS J. CURRY  
COMMISSIONER

December 12, 2001

Daniel J. Egan, President  
Massachusetts Credit Union League, Inc.  
304 Turnpike Road  
Southborough, Massachusetts 01772-1709

Dear Mr. Egan:

This letter is in response to a question you raised during a Fall 2001, meeting with the Division of Banks ("Division") regarding the investment and lending authorities of Massachusetts chartered credit unions. Your question specifically concerns the financing of an ongoing educational and historic preservation project of the Credit Union Foundation ("Foundation").

The Foundation is seeking to restore a building in Manchester, New Hampshire that is the original site of the first credit union in the United States of America.<sup>1</sup> A museum will operate at the site focussing its exhibits upon the credit union movement. The Foundation intends to finance the museum's construction and operation through a syndicated loan or individual loans from participating credit unions throughout New England.

The Foundation's financing plans raise the following issue under G. L. c. 171, the Massachusetts Credit Union Act. May a Massachusetts state-chartered credit union directly, or by participation, lend on a secured or unsecured basis to an out of state nonprofit foundation or corporation created for the purposes of advancing the credit union movement and/or preserving its history by the renovation and operation of a museum.

As you know, G. L. c.171, ss. 57-66, the credit union lending statutes, do not contain any express provision authorizing a direct or indirect loan to a nonprofit organization such as the Foundation. Consequently, the Division has examined whether

<sup>1</sup> Although New Hampshire chartered the Nation's first credit union, St. Mary's Cooperative Credit Association, by special legislative act, Massachusetts was the first state to enact a comprehensive general law governing the chartering, operation and supervision of credit unions. See St.1909, c.419.



this type of lending power may be derived from other provisions of the Massachusetts Credit Union Act. The Division has specifically reviewed whether the Foundation would qualify as an "organization member" of participating Massachusetts credit unions under G. L. c.171, s. 1 and therefore become an eligible borrower under G. L. c.171, ss. 57-66. Alternatively, the Division has considered whether a credit union's investment in or loan to the Foundation would qualify as an "association benefiting credit unions" under G. L. c.171, s. 67A.

As a general rule, a credit union may only lend to its members or those persons or entities who are eligible to become members. Accordingly, the Division's initial inquiry is whether the Foundation is eligible to become a member of the participating credit unions. In order to do so, the Foundation must qualify as an "organization member" as defined by G. L. c. 171, s. 1. It provides:

"Organization member", any fraternal organization, voluntary association, partnership or corporation, having a usual place of business within the commonwealth and composed principally of individual members or stockholders who are themselves eligible to membership in a credit union or the Central Credit Union Fund, Inc.

The Foundation appears to meet most, if not all, of the definition's elements. It is a non-profit organization principally composed of local and out of state credit unions that are eligible to be members of the Central Credit Union Fund, Inc.<sup>2</sup> If the Foundation is deemed to have "... a usual place of business within the commonwealth..." it may be eligible to borrow from each participating Massachusetts-chartered credit union under the specific lending authorities found in G. L. c.171, ss. 57-66.<sup>3</sup>

The Division also has examined whether Massachusetts credit unions may invest in or make loans to the Foundation, as an "association benefiting credit unions," under G. L. c.171, s. 67A. The statute provides in relevant part:

A credit union may, by vote of its board of directors, obtain membership in certain organizations and *may make*

<sup>2</sup>See G. L.c. 171, s. 67(a); St.1932, c.216, s.3 (All Massachusetts chartered credit unions and any federally insured credit union including those based in New England, are eligible to become members of the Central Credit Union Fund, Inc).

<sup>3</sup>The facts are unclear with respect to the Foundation's corporate status or its Massachusetts activities. The Division is inclined to view this requirement liberally in educational or charitable membership contexts as opposed to member business activities. Consequently, it is possible that the Foundation might meet this criterion derivatively through the active sponsorship and fundraising support of the Massachusetts Credit Union League, which is located in Southborough, Massachusetts.

*contributions* and subscribe for services subject to the conditions and requirements of this section.

(1) A credit union may become a member of *any association organized to protect and promote the interest of credit unions* and may pay for such membership its proportionate share of expenses as is reasonable and necessary. (Emphasis supplied.)<sup>4</sup>

The Foundation's underlying historical and educational purpose and mission appear to meet the requirements of G. L. c.171, s. 67A(1). The establishment of a museum specifically dedicated to the history and advancement of the credit union in New England and the United States would qualify as an enterprise organized "to protect and promote the interest of credit unions." Moreover, this statutory provision does not impose any geographical restrictions on contributions to an eligible credit union organization. As a result, a Massachusetts chartered credit union may join the Foundation and may expend or contribute such amounts as authorized by G. L. c.171, s. 67A(1).

The Division notes that G. L. c. 171, s. 67A(1) does not expressly contemplate credit unions making extensions of credit to eligible organizations, such as the Foundation. Nevertheless, it may be argued that a credit union may make a "contribution" "payment" or "subscription" in the form of a loan or through a loan participation arrangement. This type of financial support to the Foundation, however, may not be an enforceable obligation of the Foundation, even if it is executed in the form of a promissory note. Moreover, there may be some accounting issues associated with the preceding type of transaction. A credit union may be required to write off any such "loan" to the Foundation and treat any voluntary repayments as recoveries. Accordingly, the Division would recommend that participating credit unions check with their independent auditors for advice on the appropriate accounting treatment for this type of transaction.

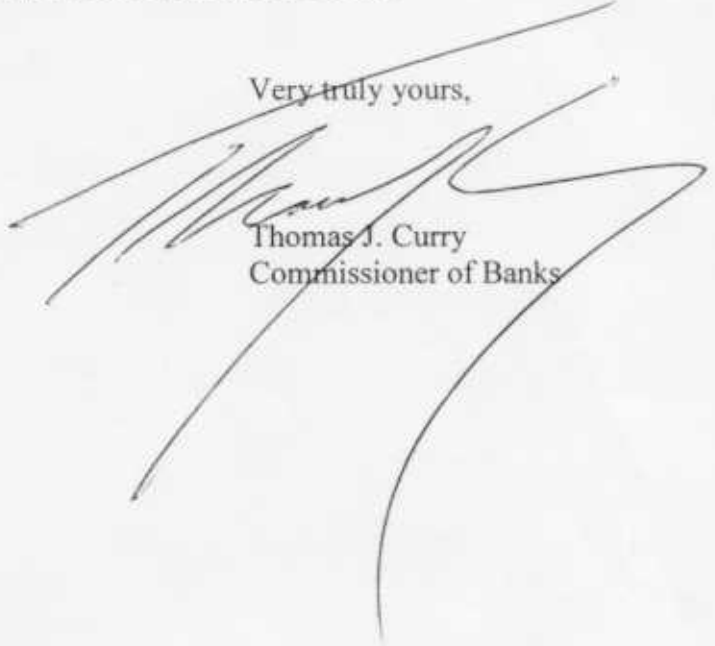
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<sup>4</sup> G. L. c. 171, s. 67A(2) may not provide the necessary authority for state-chartered credit unions to invest in or contribute to the Foundation. The statute provides: "(2) A credit union may become a member of or contribute to *any other association or organization in the commonwealth* if, in the opinion of its board of directors, such membership or contribution is reasonable and of substantial benefit to such credit union and its members." (Emphasis supplied.) The statute's geographical restriction may eliminate contributions to the Foundation, if it is determined to be an organization located out of state. G. L. c. 171, s. 67A(3) also is inapplicable in as much as it relates to the preservation and protection of credit union assets.

Daniel J. Egan, President  
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Please contact Joseph A. Leonard Jr., Deputy Commissioner of Banks and General Counsel, if you have any questions regarding this letter.

Very truly yours,

A large, stylized handwritten signature in black ink, likely belonging to Thomas J. Curry, is written over the typed name and title.

Thomas J. Curry  
Commissioner of Banks

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