STATE OF MICHIGAN

DEPARTMENT OF COMMERCE

FINANCIAL INSTITUTIONS BUREAU

IN RE: REQUEST BY MICHIGAN SERVICES CREDIT UNION AND THE MICHIGAN CREDIT UNION LEAGUE FOR A DECLARATORY RULING THAT A CREDIT UNION MAY INVEST IN OR CONTINUE AN INVESTMENT IN A SERVICE ORGANIZATION ENGAGED IN ACTIVITIES APPROVED BY THE COMMISSIONER UNDER THE LAW AS IT EXISTED PRIOR TO 1986 P.A. 278.(1)
_____/

DECISION

Statement of Facts

Michigan Services Credit Union (Credit Union) is a Michigan state-chartered credit union; the Michigan Credit Union League (League) is a voluntary trade association having Michigan state-chartered credit unions among its members. The Credit Union and some League members invest in service organizations which engage in certain activities for and provide services to credit unions. The Commissioner has approved several such investments in response to applications made by credit unions pursuant to the Michigan Credit Union Act of 1925, as amended (1925 Act). The 1925 Act gave a credit union the power:

> "To invest, with the approval of the commissioner, an aggregate amount not to exceed 5% of its capital in the shares, stocks, or obligations of an organization, corporation, or association whose principal purpose is to service or otherwise assist credit unions in the performance of the powers granted to them under this act."

The legislature amended the Act in 1986 P.A. 278 (1986 Amendment). The 1986 Amendment, effective on December 19, 1986, grants a credit union the power to:

---

(1) We will use the term "investment" to include both equity investments and loans.

"In addition to loan and investment powers otherwise authorized by this act, organize, invest in, and make loans to corporations or other organizations which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union, or which furnish services to credit unions. The commissioner shall determine by rule or order the activities and services which fall within the meaning of this subdivision. A credit union shall notify the commissioner of any such investment or loan that would cause the aggregate of such investments and loans to exceed 2% of the credit union's shares, deposits, undivided earnings, and reserves. Investments and loans described in this subdivision shall not, in the aggregate, exceed 5% of the shares, deposits, undivided earning and reserves of the credit union. A credit union may not invest in or make loans to a corporation or other organization pursuant to this subsection unless the corporation or other organization agrees in writing to allow the commissioner to conduct an examination of the corporation or other organization to the same extent that the commissioner is authorized to examine credit unions and agrees in writing to make such reports to the commissioner as the commissioner may require from time to time." MCL 490.4(2)(gg).

In the request for a declaratory ruling, the Credit Union and League state that credit unions have been permitted, under the 1925 Act, to invest in service organizations providing the following twelve services:

1. Data processing services, including:

   a. Share draft processing
   b. Credit card processing
   c. Other processing of credit union documentation

2. Microfilming services

3. Printing services, such as printing forms, applications, business cards, etc.

4. Service center functions

5. Financial planning services, including the development and administration of individual retirement accounts and Keogh accounts

6. Functioning as a data processing financing conduit

7. Owning real estate

8. Automated teller machine services

9. Collection activities

10. Arranging discount automobile purchases

11. Finding regular and temporary employees

12. Services used in connection with real estate loan activities, such as appraisals, closings, etc.

The Credit Union and League request that the Commissioner rule that a credit union may invest in or continue its investment in service organizations providing those services after December 19, 1986, the effective date of 1986 P.A. 278.

## Discussion

A comparison of the 1925 Act and the 1986 Amendment shows that the legislature has broadened the power of a credit union to invest in service organizations. Under the 1925 Act, permissible activities for service organizations were those which a credit union could do directly. The 1986 Amendment allows investments in organizations which further a credit union's purposes, engage in activities incidental to the credit union's conduct, or which furnish services to credit unions. Because the 1986 Amendment allows investment in an organization which provides a service to credit unions and does not require a credit union to have the authority to itself engage in the activity, it follows that any activity which met the more narrow requirements of the 1925 Act would fall within the meaning of the 1986 Amendment. Accordingly, any investment which was approved upon the application of an individual credit union under the 1925 Act would constitute a legal investment for any credit union after December 19, 1986.

The Bureau's records do not agree with the Credit Union and League as to which investments were approved by the Commissioner under the 1925 Act. According to Bureau records, the following activities listed by the Credit Union and League have not yet been approved:

- printing services, such as printing forms, applications, business cards, etc.
- collection activities
- arranging discount automobile purchases
- finding regular and temporary employees

Additionally, item 7 on the Credit Union and League's list, "owning real estate," was an approved activity under the 1925 Act, but under different authority than that for service organizations. The 1986 Amendment specifically states that the legality of investments in corporations owning land and buildings made before the effective date of the Amendment are not affected by the Amendment. The 1986 Amendment also authorizes credit unions to invest in corporations owning land and buildings. See MCL 490.4(2)(hh) and MCL 490.4(2)(ii). Again the statutory authority to invest in corporations owning land and buildings is different from that authorizing investments in service organizations. MCL 490.4(2)(hh) and MCL 490.4(2)(ii) should be consulted for the requirements which apply to investments made after December 19, 1986 in corporations owning land and buildings.

The Commissioner has previously approved the other activities or services listed by the Credit Union and League. Such approval permitted those activities or services to be provided only to or for credit unions and their members, and not other financial institutions or the general public. A credit union may continue its investment in, or make a new investment in, a service organization engaged in a previously approved activity. A new investment after December 19, 1986 shall be made in compliance with the 1986 Amendment, as discussed below.

While the above discussion answers the specific question asked by the Credit Union and League, the Bureau notes that the 1986 Amendment gives rise to additional questions.

First, when the Legislature broadened a credit union's power as to the kinds of organizations in which it may invest, the Amendment to the statute also created some new requirements for a credit union which invests in or loans to a service organization. The 1986 Amendment requires credit unions to:

- notify the Commissioner of any investment or loan which would cause the aggregate of investments and loans in or to service organizations to exceed 2% of the credit union's shares, deposits, undivided earnings, and reserves;

- limit aggregate investments and loans to service organizations to 5% of the credit union's shares, deposits, undivided earnings, and reserves; and

- invest in or loan to only those service organizations which have signed a written agreement allowing the Commissioner to examine the organization and agreeing to provide written reports upon the Commissioner's request.

Therefore, the question arises: Under what circumstances will a credit union be required to comply with those requirements? The rule of statutory construction to be applied was stated in Wade v Farrell, 270 Mich 562,567 (1935):

> "When a statute continues a former statute law, that law common to both acts dates from its first adoption, and only such provisions of the old act as are left out of the new one are gone, and only new provisions are new laws. Where an Act is amended 'so as to read as follows' the part of the original act which remains unchanged is considered as having continued in force as the law from the time of its original enactment and the new portion as having become the law only at the time of the amendments." 25 R.C.L. 907.

Applying that rule, an investment approved under the 1925 Act may continue without complying with the 1986 Amendment so long as the investment remains unchanged. But, any renewal of a loan or investment which existed on December 19, 1986 or any new loan or investment made after December 19, 1986 must be made under the authority of the 1986 Amendment and, therefore, must comply with the requirements created by the 1986 Amendment.

Second, the 1986 Amendment does not require the Commissioner's approval of each investment, as was required by the 1925 Act. Rather, the Commissioner must determine by rule or order whether the activities or services fall within the meaning of the 1986 Amendment, MCL 490.4(2)(gg). The Commissioner intends to promulgate a rule listing those activities permitted under the 1986 Amendment. Until that rule is promulgated, the determination shall be made by order on a case-by-case basis, and pursuant to an application or request. A credit union desiring to invest in or loan to a service organization engaged in an activity or providing a service which was not approved under the 1925 Act may seek an order determining that the activity or service falls within the meaning of MCL

490.4(2)(gg). The Commissioner will consider only those applications for an order which are in writing. The application shall specifically describe the service organization's proposed activity or service, and shall provide adequate support for the applicant's contention that the activity or service falls within the meaning of MCL 490.4(2)(gg). If an order is issued declaring a particular service or activity does fall within the meaning of the 1986 Amendment, MCL 490.4(2)(gg), credit unions other than the credit union requesting the order may also use the authority of the order to invest in service organizations which engage in that activity or provide that service.

## Conclusion

The 1986 Amendment has affected a credit union's power to invest in a service organization in three ways:

1. Any credit union may continue its investment in, or make a new investment in, a service organization engaged in an activity or providing a service which had been approved by the Commissioner under the 1925 Act. No application is required for a new investment in a service organization engaged in a previously approved activity or providing a previously approved service.

2. Any renewal of an existing investment or any new investment, after December 19, 1986, in a service organization engaged in a previously approved activity or providing a previously approved service will require the credit union to comply with the requirements of the 1986 Amendment.

3. Until a rule is promulgated, a credit union desiring to invest in a service organization which will engage in an activity or provide a service which has not been approved under the 1925 Act or the 1986 Amendment shall apply for an order determining that the proposed activity or service falls within the meaning of MCL 490.4(2)(gg).

Such application shall be in writing, shall specifically describe the proposed activity or service, and shall provide adequate support for the applicant's contention that the activity or service falls within the meaning of MCL 490.4(2)(gg).

Eugene W. Kuthy

Eugene W. Kuthy, Commissioner
Financial Institutions Bureau
Department of Commerce

Date: January 30, 1987