



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

September 6, 1955

Hon. H. L. Bengtson
Deputy Banking Commissioner
Department of Banking
Austin, Texas

Letter Opinion No. MS-233

Re: Forced liquidation
of credit unions

Dear Mr. Bengtson:

With reference to your request for advice of this office concerning the authority of your department relative to the liquidation of credit unions, we have examined Title 46, Articles 2461-2484b, Vernon's Civil Statutes.

Your first question deals with voluntary liquidation wherein your main concern is in securing a responsible person to execute a certificate of final liquidation after liabilities and share accounts have been paid. We agree that Article 2483 relates to voluntary liquidation only. Because Section 1 of Article 2483 provides for the election of a committee to liquidate the assets of the association, and because that section also orders such liquidation proceedings to be under the supervision of the Banking Commissioner, there is here ample authority for the Commissioner to require the chairman of the designated liquidation committee or any of its members to execute a certificate of final dissolution.

You further request information on the procedure for involuntary liquidation due to insolvency. The credit union law is silent on the subject of involuntary liquidation. Therefore, since credit unions are a form of corporate organization, resort must be had to the general corporation laws for involuntary liquidation because of insolvency. Chapters 7 and 8 of Title 32, V.C.S., prescribe the procedure for involuntary liquidation and dissolution of insolvent corporations generally. Article 1379 provides that it shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this State, or to exercise or retain any franchise or permit or charter granted from or by this State. Article 1380 provides that the Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit. If the Commissioner should determine that a credit union is insolvent, he should refer the matter to the Attorney General for necessary action under these provisions.

You also ask whether the Banking Commissioner is vested with the power to demand a restoration of capital impairment in order to avoid a forced liquidation. Article 2463 provides for the incorporation of a credit union with the approval of the State Banking Board. The charter of such approved organization to do business in conformity with provisions of Title 46 issues from the Banking Commissioner. Article 2465 requires credit unions to maintain such books and records as the Banking Commissioner may deem necessary. Article 2467 also requires the approval of the Banking Commissioner of the by-laws and any subsequent amendments. Article 2483 vests general powers of supervising voluntary dissolution and conversion in the Banking Commissioner. Moreover, credit unions must file an annual report with the Commissioner under the provisions of Article 2484. These provisions give legislative authority to the Banking Commissioner to supervise the affairs of credit union associations which are chartered under Title 46.

As a concomitant to his supervisory power, whenever the Banking Commissioner finds that the capital of a credit union is seriously impaired he may, if he deems it proper, notify the credit union to take the necessary action to correct the impairment. However, such notification is within the discretion of the Commissioner in arriving at what steps are to be taken to protect the public interest. If the impairment is not corrected and insolvency develops, the Commissioner's recourse is to refer the matter to the Attorney General for appropriate action.

We are not unmindful of the language in Attorney General's Opinion No. O-4733, July 31, 1942. The question presented in that opinion is clearly distinguishable from that here considered. The holding is not inconsistent.

APPROVED:

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Reviewer

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JFJ:wb

Very truly yours,

JOHN BEN SHEPPERD
Attorney General

By 
J. Fred Jones
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