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Description of document: National Credit Union Administration (NCUA) Legal Memorandum on Alcoholic Beverages at NCUA Events 2000

Requested date: 21-October-2021

Release date: 06-December-2021

Posted date: 14-November-2022

Source of document: FOIA Request  
National Credit Union Administration  
Attn: Office of General Counsel  
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Alexandria, VA 22314  
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National Credit Union Administration  
Office of General Counsel

December 6, 2021

SENT BY E-MAIL

RE: #22-FOI-00003

This responds to your Freedom of Information Act request to the National Credit Union Administration, #22-FOI-00003, received October 21, 2021. You requested a “copy of the May 11, 2000 legal memorandum from then General Counsel Robert Fenner to then Executive Director Carolyn Jordan.”

The request is granted in part. Attached is the responsive record, with some redactions. Redacted information is exempt from release under the FOIA exemptions at 5 U.S.C. § 552(b)(5) or (6). Exemption 5 protects interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency. Exemption 6 protects information about individuals when its disclosure would constitute a clearly unwarranted invasion of personal privacy.

For further assistance or to discuss your request, you may contact me, as well as our FOIA Public Liaison, by e-mail to [FOIA@ncua.gov](mailto:FOIA@ncua.gov) or office phone, 703.518.6540. You also have the option to contact the Office of Government Information Services at the National Archives and Records Administration to inquire about FOIA mediation services. Contact information for OGIS: NARA is by e-mail to [ogis@nara.gov](mailto:ogis@nara.gov) or phone, 202.741.5770 or 1.877.684.6448.

If you are not satisfied with the response, you may file an administrative appeal. It must be in writing and submitted within 90 days from now. If you file an appeal, please send it by e-mail to [FOIA@ncua.gov](mailto:FOIA@ncua.gov) with “NCUA Office of General Counsel-FOIA APPEAL” in the subject line.

Sincerely,

REGINA METZ  
Digitally signed by  
REGINA METZ  
Date: 2021.12.06  
17:04:00 -05'00'

Regina Metz  
Senior Attorney Advisor

GC/RM:EH  
22-FOI-00003

TO: Carolyn Jordan, Executive Director  
FROM: Robert M. Fenner, General Counsel  
SUBJ: Alcoholic Beverages at NCUA Functions  
DATE: May 11, 2000

(b)(5)

(b)(5) With Board authorization and in appropriate circumstances the NCUA may purchase alcoholic beverages at "representational" events involving NCUA hosting of nonagency personnel. (b)(5)

(b)(5)

The Comptroller General of the United States generally considers liquor, along with food and other refreshments, as a form of entertainment. 14 Comp. Dec. 344, 346 (1907).<sup>2</sup> The Comptroller views entertainment as essentially personal, even where it occurs in a business-related context. (b)(5)

(b)(5)

<sup>2</sup> This is the most recent Comptroller opinion that specifically discusses alcohol consumption in other than a travel reimbursement context. The Comptroller treats alcoholic beverages differently from other consumables for purposes of travel reimbursement. By statute, government travelers will be reimbursed for "subsistence" items and the Comptroller has determined that alcoholic beverages are not subsistence items. B-202124, July 17, 1981.

(b)(5)

(b)(5)

No statute specifically authorizes or prohibits NCUA spending on representational entertainment, including alcohol. In accordance with the DOJ analysis, such expenditures are legally permissible if the Board determines them to be necessary or incident to the achievement of an NCUA purpose.<sup>4</sup> (b)(5)

(b)(5)

<sup>4</sup> In NCUA's case, the DOJ's call for deference to an agency's decision is bolstered by the NCUA Board's statutory authority to expend funds "as *it* may deem necessary or appropriate." (emphasis added). 12 U.S.C. §1766(i)(2).

(b)(5)

The views stated above extend only to the legality of purchasing alcohol with agency funds. Whether such purchases are good policy is another matter. DOJ, for example, has determined that DOJ itself may legally make certain expenditures, including the purchase of food and beverages, in support of the Combined Federal Campaign.

(b)(5)

(b)(5); (b)(6)

(b)(5) good judgement and precautions must be exercised . . . relative to the amount of the expenditure, the quantum of the expenditure, the quantum of benefit to be gained, the importance of the benefit to the mission and goals served by the appropriation, prior practice, and public perceptions of the expenditure.

These words of warning are particularly appropriate when the expenditure involves alcohol. Alcohol may lead to embarrassment or poor duty performance if it is consumed at the wrong place, at the wrong time, or in excessive amounts. The NCUA may be sued if alcohol consumption precipitates personal injury or property damage. The media, the trades, or the public-at-large might also perceive any policy authorizing expenditures on alcohol, even a carefully-crafted policy, as inappropriate.

(b)(5)