



United States Department of Justice
Washington, D.C. 20530
May 11, 1981

cc: Shane
Marcuse
Olson
Simms
Sudol
Retrieval(not on tape)
File

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

*out by
telecom
Horowitz
9:17 a.m. - 5/11/81
preparing for
hand letter in
day*

MEMORANDUM FOR MICHAEL J. HOROWITZ
Counsel to the Director for Policy Analysis and Law, OMB

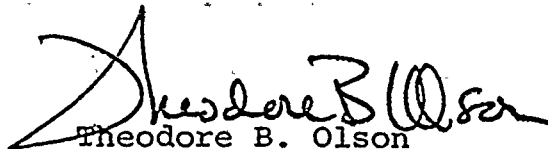
On behalf of Frank Sollars, Chairman of the Board of the National Consumer Cooperative Bank, you have asked for our views concerning whether, if vacancies exist on the Board of Directors of the National Consumer Cooperative Bank, the President may fill such vacancies immediately on an interim basis. This question is answered on the face of § 103(a) of the National Consumer Cooperative Bank Act, 12 U.S.C. § 3013(a) which provides:

If a vacancy occurs on the Board for any reason other than a resignation pursuant to subsection (b) of this section [pertaining to resignations triggered by various stages in the capitalization of the Bank], a new member shall be appointed by the President to serve until the next annual meeting of the Bank

The presidential authority conferred by this provision is not qualified by any other provision of the Act or by the Act's legislative history. Consequently, we read this provision on its face to permit the President to appoint interim Directors, whether government officers or members of the public as prescribed in § 103(a), except to fill vacancies created by the resignations of those directors required to resign because of the capitalization of the Bank. The President thus is empowered, for example, to fill immediately any vacancies created by the removal from Government office of any director appointed from among the officers of the Government, or by the presidential dismissal of a director with or without cause.

Your next question is whether directors appointed by the President to fill vacancies on an interim basis can take action that is legally binding on the Bank and, if so, how quickly. The Act does not deal with this subject expressly, but simply empowers the Bank to "operate under the direction of its Board of Directors," without making any distinctions between the powers of Directors appointed by the President with advice and consent, by the President on an interim basis, or by stockholders. The Bank's bylaws likewise make no such distinction.

In the absence of any such distinction, we read the Act as intending that interim directors be empowered to exercise the full power of directors immediately upon appointment. Although the legislative history of the Act does not elaborate on the President's authority to appoint interim directors, the obvious purpose of empowering the President to appoint interim Directors is to permit the Bank to continue to function notwithstanding the creation of vacancies on the Board. This purpose would be defeated if interim Directors could not exercise all the authority of directors. It is thus readily inferable that they may exercise such authority.


Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel