Opinion No. 78-02

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OPINION OF: Toney Anaya, Attorney General

BY: Andrea Buzzard, Assistant Attorney General

TO: Tito D. Chavez, State Senator, 1503 Mountain Road, N.W., Albuquerque, New Mexico 87104

NEW MEXICO STATE BAR; EXPENDITURE OF DUES FOR LOBBYING

The United States Constitution requires that any member of an integrated bar association be permitted to prevent expenditure of his dues by the bar for legislative activity, such as lobbying, to which he may object, where the proposed legislation is unrelated to the regulatory purpose of the state bar.

QUESTIONS

1. Can the New Mexico Bar Association, as an integrated bar, use dues of dissenting members, which dues are required to be paid and mandatory for membership in the Association and to practice law in the State of New Mexico, for purposes of paying a lobbyist to lobby legislators on political issues related to legislation?

2. If it can, what protection is afforded to those dissenting members whose views on the political issues involved in the legislation are different from the official position of the bar as expressed by the paid lobbyist?

CONCLUSIONS

1. See Analysis.

2. See Analysis.

ANALYSIS

The question presented requires consideration of (1) whether the hiring of a lobbyist in connection with particular legislative proposals is authorized under Supreme Court Rules and Organizational Bylaws, and (2) if so, whether members of the New Mexico State Bar may, nevertheless, demand as a constitutional right that their dues not be used to finance such otherwise authorized legislative activity.

OPINION

The hiring of a lobbyist by the State Bar may be legal, in the sense that it is authorized under Supreme Court Rules and Organizational Bylaws, even though financed with compulsory paid bar dues. According to several cases, the authority of the governing body of a state bar to engage in legislative activity depends on whether the activity is consonant with one of the purposes of the organization.

In **Bridegroom v. State Bar,** 27 Ariz. App. 47, 550 P.2d 1089 (1976), certain members of Arizona's integrated bar filed suit requesting that the Board of Governors of the State Bar be required to account for all expenditures advanced in support of a proposed constitutional amendment and to make restitution to the State Bar for all such expenditures. The court stated as follows:

"Appellants maintain that expenditure of State Bar funds in support of Proposition 108 was beyond the powers of the Board of Governors. We agree with the lower court that the expenditure was not. Rule 27(d), Rules of the Supreme Court, states in part that the Board shall:

3. Promote and aid in the advancement of the science of jurisprudence and improvement of the administration of justice.

4. Make appropriations and disbursements from funds of the state bar to pay necessary expenses for carrying out its functions."

The court cited as authority the decision in **In re Florida Bar Board of Governors Action,** 217 So.2d 323 (Fla. 1969), in which the Florida Supreme Court denied a petition for review filed by members of the Florida Bar seeking a determination of the propriety of the action of the Board of Governors of the Florida Bar in publicly advocating the adoption by the electorate of a proposed constitutional amendment and the expenditure of funds derived from membership dues for this purpose without first obtaining the approval of a majority of the members of the Florida Bar. The court in **Bridegroom** approved the following statement made by the Florida court:

"It is apparent that the Board of Governors of the Florida Bar has been granted the exclusive power to expend funds in behalf of the projects designed to carry out the purposes of The Florida Bar as they are set forth and limited by the Integration Rule and the by-laws. Thus, if the matter for which the funds are to be expended is one designed to promote one of the purposes of The Florida Bar, as the case herein, the Board of Governors may expend bar dues in support thereof." 217 So.2d at 325.

The court in **In re Florida Bar Board of Governors Action, supra,** noted the numerous examples of legislative activity performed by the Board of Governors of the Florida Bar in which it prepared and advocated adoption by the state legislature of numerous laws, and in which it sponsored adoption by the legislature and the electorate of Florida of several constitutional amendments. It also advocated in the legislature various improvements in the judicial system.

Finding that the complaint of a member of the Georgia Bar, an integrated bar, stated a claim on which relief could be granted, the court in **Sams v. Olah,** 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, observed the following:

"The lawyer is required to pay an annual license fee to the State Bar in order to practice his profession. Should the State Bar spend the funds derived from license fees on activities not in harmony with the purposes of the State Bar, this would deprive the lawyer of his property without due process of law.

"Some of the allegations of illegal expenditures are obviously without merit. For example, the appellee complained that the State Bar illegally used its funds by 'hiring and paying a lawyer to draw charges against the petitioner with funds collected from this petitioner, which is against his desires and wishes.' **The test is not whether the funds are being spent contrary to the wishes of the lawyer, but whether the expenditures are for purposes for which the State Bar was created.** The maintenance of high standards of professional conduct by members of the bar is one of the most important functions of the State Bar, and the dues of its members can certainly be legally used for this purpose, whether or not it is the wish of an individual member that his professional conduct be investigated. . . .

"The trial judge based his ruling that the complaint stated a claim as to alleged illegal expenditures on the alleged use of funds "to foster legislation and promote ideologies and political issues and candidates he opposes in violation of named clauses and sections of the State and Federal Constitutions." The promotion of political issues and candidates is not within the purposes of the State Bar as expressed in the act and the rules and regulations. **The fostering of legislation and the promotion of ideologies may, or may not, be consonant with the purposes of the State Bar, according to the nature of the legislation and the ideologies."** (emphasis supplied.)

In **Lathrop v. Donohue,** 367 U.S. 820, 6 L. Ed. 2d 1191, 81 S. Ct. 1926 (1961), a lawyer sued for the refund of dues paid to the Wisconsin State Bar. The dues were required to be paid. The plaintiff contended that the requirement violated his constitutionally protected freedom of association because the dues were used by the State Bar to formulate and to support legislative proposals to which plaintiff objected. In that case the executive director of the State Bar was a registered lobbyist and lobbying expenses had been paid. Four justices found that the dues requirement was not on its face unconstitutional. However, the court did not by majority opinion reach the issue of whether dues of dissenting members could be used to finance the State Bar's legislative activities opposed by those dissenting members. Three justices would have agreed with the Wisconsin Supreme Court that the use of dissenting members' dues for that purpose was not unconstitutional. Four justices refused to consider the issue believing the complaint to lack sufficient specificity.

The authority cited herein indicates that expenditures made by the governing body of the State Bar for the purpose of fostering and promoting legislation is legal, so long as in furtherance of one of the purposes for which the State Bar was created. But see **In re**

Integration of the Bar, 25 N.W.2d 500 (Wis. 1946), in which the court commented that were the court to integrate the State Bar, the integrated bar could not use dues to maintain a "legislative agent." The more recent authority is contrary to the latter case.

With respect to the authority of the New Mexico State Bar to hire a lobbyist and engage in legislative activity, we note that Article II of the Bylaws of the New Mexico State Bar provide as follows:

"ARTICLE TWO PURPOSES AND OBJECTS:

The purposes and objects of the State Bar:

To take such affirmative action as may be necessary to aid in the analysis and solution of societal problems which are or may be affected with legal or other implications of concern to lawyers as citizens dedicated to the preservation of the rule of law;

To aid the Courts in the administration of justice;

To foster and maintain high ideals of integrity, learning, competence and public service;

To foster and maintain high standards of conduct;

To provide a forum for the discussion of subjects pertaining to the practice of law, law reform, continuing legal education, technical fields of substantive law practice and procedure."

Accordingly, to the extent that legislative activity, including the hiring of a lobbyist, furthers one of the purposes of the Bar, expenditures for such activity would be within the authority of the governing body of the Bar.

Inasmuch as you have not requested our opinion with respect to any specific legislation which the State Bar may desire to promote, we will not attempt to identify legislative proposals which may or may not be consonant with the purposes of the State Bar.

Where legislative activity of the State Bar is authorized by the Bylaws, **Abood v. Detroit Board of Education,** U.S. , 52 L.Ed 2d 261, 97 S. Ct. (1977) requires consideration of the First Amendment rights of those opposed to the legislative activity. In **Abood v. Detroit Board of Education, supra,** the Court dealt with a First Amendment challenge to the expenditure of compulsory union dues, called service fees, by the union for ideological and political purposes unrelated to collective bargaining. The Court found justifiable infringement of First Amendment rights with respect to compelled financial support of collective bargaining activities, even though ideological objections might be leveled with respect to those activities. However, concerning unrelated ideological activities for which compulsory dues were expended, the Court found that the complaint by those objecting to such activities stated a cause of action under the First Amendment. The Court noted, in **Abood,** that Michigan law sanctioned the expenditure

of union dues for purposes other than collective bargaining. As noted by the Michigan appellate court, some of those other activities could be termed political in nature, such as supporting candidates sympathetic to the union cause and lobbying for the passage of bills in the legislature. 60 Mich. App., at 99, 230 N.W.2d, at 326.

Abood, therefore, stands for the proposition, broadly stated, that compelled financial support of a group works no unjustified First Amendment infringement "As long as they [the leaders of the group] act to promote the cause which justified bringing the group together . . ." **Id.** at 276. **Abood** noted the difficulties with the distinction as follows:

"There will, of course, be difficult problems in drawing lines between collective bargaining activities, for which contributions may be compelled, and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited."

Applying **Abood** to presumably authorized legislative activity of the New Mexico State Bar, it is necessary to ascertain the "cause which justified" integrating the Bar because, as with expenditures relating to collective bargaining, expenditures relating to this "cause" are constitutionally permissible regardless of ideological objections raised to such. In **In Re Integration of Bar, supra,** the court stated:

"The justification for integrating the bar and compelling payment of fees . . . is rather that the court has inherent power to control and regulate its bar as officer of the court. . . ."

In **Sams v. Olah, supra,** the court stated:

"Clearly, the purport of the State Bar Act is to authorize the establishment of a regulatory body to regulate the practice of law. . . ."

See also **Application of Sedillo,** 66 N.M. 267, 347 P.2d 162 (1959); Opinion of the Attorney General No. 77-21 (issued June 30, 1977) and cases cited therein. To the extent that any ideological activity, such as legislative, undertaken by the State Bar is unrelated to the justification for integration, which is regulation of the practice of law and governance of the legal profession, **Abood** requires that dissenting members not be compelled to subsidize such activity. We cannot, as the Court in **Abood** could not, definitively draw lines between related and unrelated ideological activity. The remedies suggested by **Abood** to protect dissenters in the case of unrelated ideological activity are as follows:

First, the association or union could be enjoined from expending for political causes opposed by each complaining employee of a sum, from those monies which are intended to be spent for the political activity, which is so much of the monies extracted from the dissenting individual as is the proportion of the union's total expenditures made for the activity to the union's total budget. The second alternative was restitution of a fraction of dues paid equal to the fraction of total union expenditures that were made for political purposes opposed by the employee.

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