

Opinion No. 94-04

July 6, 1994

OPINION OF: Tom Udall, Attorney General

BY: Elizabeth A. Glenn Assistant Attorney General

TO: The Honorable George Buffett State Representative 8812 Harwood, N.E.
Albuquerque, New Mexico 87110

QUESTIONS

Do the limitations imposed on regulated industry solicitations under the Campaign Reporting Act apply to New Mexico Supreme Court justices and candidates for that office and prohibit them from soliciting contributions from attorneys?

CONCLUSIONS

Yes. Section 1-19-34.2 of the Campaign Reporting Act prohibits Supreme Court justices, candidates for that office, and persons authorized by justices or candidates to solicit campaign contributions on their behalf to knowingly solicit contributions from attorneys who are licensed to practice in New Mexico.

FACTS

The Campaign Reporting Act restricts officials who work for regulatory offices or candidates for such offices to solicit campaign contributions from entities or persons regulated by the offices. A question has arisen about whether this restriction affects the ability of members of or candidates for the Supreme Court to solicit contributions from attorneys.

ANALYSIS

Section 1-19-34.2 of the Campaign Reporting Act provides:

It is unlawful for an elected state official, public officer or employee who works for a regulatory office, or a candidate who seeks election to a regulatory office, or any one authorized by a candidate to solicit funds on his behalf, to knowingly solicit a contribution from an entity, its officers or employees, or a person that is directly regulated by the office.

The Statute does not define "regulatory office," but Section 1-19-34.2 goes on to provide that

For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the office or when a license to do business in the state is determined by the office.

Thus, a "regulatory office" is one that sets or approves fees charged by an entity or person or determines a license to do business in the state is determined by the office.

The New Mexico Supreme Court fits the criteria for a regulatory office covered by Section 1-19-34.2. It prescribes the qualifications and requirements for admission to the practice of law. **See** Rule 15-102 of the Rules Governing Admission to the Bar ("Rules"). Persons who qualify under the Court's rules are admitted by the Court and granted a license. Rule 15-302. Although the Board of Bar Examiners (created by the Supreme Court under Rule 15-401) is charged with certain tasks, including investigating the professional qualifications and moral character of applicants, arranging for examinations and making recommendations regarding admission, **see** Rules 15-301, 15-401, the Supreme Court has "ultimate responsibility to grant or withhold an admission to practice law." **Nall v. Board of Bar Examiners**, 98 N.M. 172, 175, 646 P.2d 1236 (1982).

Deviation from the literal meaning of the statute to exclude members of or candidates for the Supreme Court does not appear warranted in this case. In general, courts follow the plain language of a statute unless a literal interpretation would lead to absurd results, **State ex rel. Valles v. Brown**, 97 N.M. 327, 329, 639 P.2d 1181 (1981), injustice or contradiction, **Atencio v. Board of Educ.**, 99 N.M. 168, 171 655 P.2d 1012 (1982), or would defeat the intent of the legislature. **Cueto v. Stahmann Farms, Inc.**, 94 N.M. 223, 224, 608 P.2d 535 (Ct. App. 1980). Here, the apparent intent of the legislature was to avoid any appearance of conflict or undue influence that might result when members of or candidates for an office seek campaign contributions from persons whose licenses to conduct business depend on the office.

Although the legislature may not have had the Supreme Court specifically in mind when it enacted Section 1-19-34.2,¹ the purposes of the provision are served when applied to the Supreme Court equally as effectively as when applied to any other regulatory office contemplated by the provision, and there is no obvious injustice or absurdity in applying the provision to the Supreme Court. In fact, the Code of Judicial Conduct promulgated by the Supreme Court already recognizes the potential for conflict in this area and limits the ability of judges to personally solicit campaign contributions from attorneys. **See** Rule 21-800(a), (D) of the Code of Judicial Conduct.²

Accordingly, we conclude that Section 1-19-34.2 of the Campaign Reporting Act precludes justices of and candidates for the New Mexico Supreme Court, either directly or through anyone they authorize to solicit funds on their behalf, to knowingly solicit campaign contributions from attorneys licensed in New Mexico. Section 1-19-34.2 is, however, directed at the **solicitation** of funds, and does not prohibit Supreme Court justices or candidates from accepting voluntary, unsolicited contributions from attorneys.³

ATTORNEY GENERAL

TOM UDALL Attorney General

GENERAL FOOTNOTES

[n1](#) The title of Section 1-19-34.2 is "Regulated industry solicitations prohibited." Arguably the legal profession is not generally thought of as an "industry," and the use of the term "regulated industry" suggests that the legislature was focusing on other kinds of businesses. However, the body of Section 1-19-34.2 does not refer to "regulated industries," and, as discussed, is based on a broader concept of directly regulated persons and entities. Accordingly, we do not believe that the term "regulated industry" in the title should significantly affect how Section 1-19-34.2 is interpreted. **See State v. Ellenberger**, 96 N.M. 287, 288, 629 P.2d 1216 (1981) (a legislatively drafted section heading may not be used to create an ambiguity in an otherwise clearly drafted statute).

[n2](#) Rule 21-800 provides that "[a] judge or candidate, in his own campaign, shall not personally solicit [funds] from a litigant in a case presently pending before him in court or from any attorney" and that "[a] judge shall not knowingly accept contributions from any person who is before him as a litigant or an attorney in a pending case." Thus, the Rule is less restrictive than Section 1-19-34.2 because its restrictions on campaign contributions apparently extend only to those personally solicited by a judge or candidate, but do not apply to persons or committees soliciting contributions on the judge's behalf. However, the Rule also is more restrictive to the extent it applies to all judicial offices, not just the Supreme Court, and, in some circumstances, prohibits judicial candidates from accepting unsolicited contributions from attorneys.

[n3](#) In addition, Section 1-19-34.2 would not prevent lawyers or organizations (of lawyers or other citizens) from soliciting contributions for a justice or candidate for Supreme Court justice if they were not authorized by the justice or candidate to solicit contributions on his or her behalf.