

Nebraska Ethics Advisory Opinion for Lawyers
No. 73-3

1) IT IS PERMISSIBLE FOR A LAWYER TO BE RETAINED BY A NON-PROFIT STUDENT SENATE ORGANIZATION TO PROVIDE LEGAL SERVICES TO THE SENATE AND ALSO TO PROVIDE GROUP LEGAL SERVICES TO THE STUDENT MEMBERS OF THE SENATE UNDER CURRENTLY EXISTING CONSTITUTIONAL INTERPRETATIONS, BUT ONLY IF: (A) THE RENDITION OF GROUP LEGAL SERVICE IS NOT A PRIMARY PURPOSE OF THE SENATE AND IS INCIDENTAL TO ITS PRIMARY PURPOSES, AND (B) THE SENATE DERIVES NO FINANCIAL BENEFIT FROM THE GROUP LEGAL SERVICES, AND (C) THE INDIVIDUAL STUDENT MEMBER, AND NOT THE SENATE, IS RECOGNIZED AS THE LAWYER'S CLIENT IN EACH INDIVIDUAL MATTER.

CODE PROVISIONS INTERPRETED

DR 2-103(D). A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other legal person : . . . (5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met: (a) The primary purposes of such organization do not include the rendition of legal services, (b) the recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization, (c) such organization does not derive a financial benefit from the

rendition of legal services by the lawyer, and (d) the member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

The above disciplinary rule is a clear departure from Canon 35, which specifically provided that a lawyer might represent an organization on its legal matters, but such employment should not include legal service to the members of the organization in respect to their individual affairs.

FACTUAL SITUATION

The Committee has received inquiries from the student senate of Kearney State College and from the student senate of the University of Nebraska as follows.

Each senate wishes to engage (or has engaged) a lawyer for a monthly retainer to render the following services:

(a) To represent the senate on all legal matters including lobbying activities.

(b) To provide legal services to individual student members of the senate on their individual legal problems. The fee for such services is to be included in the retainer (or optionally in the case of Nebraska University, where there may be an additional fee charged a student at a reduced pre-arranged rate).

(c) The attorney will be available for such student consultations on campus at specified periods of time.

DISCUSSION

DR 2-103(D)(5) would appear to permit the proposed group legal service if we are correct that the following assumptions do in fact exist: (a) That the senate is a non-profit organization, (b) that the student seeking legal assistance is in fact a member of the senate, (c) that the rendition of legal service is not a primary

purpose of the organization but is only an incidental one, (d) that the senate derives no financial benefit from the group legal service, and (e) that the attorney at all times maintains his personal and unfettered relationship of attorney and client with the individual student, and is thus free of all control by the senate.

It would appear immaterial as to whether the group service was fully included in the retainer fee or whether the individual students might pay an additional reduced fee. The Kearney senate indicated that the lawyer would merely give advice but would not represent the student (presumably in court). Under the disciplinary rule, it appears to be immaterial whether the service involves mere counseling or court appearances.

The disciplinary rule is conditioned upon the fact that the "controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities." This opinion is based upon current U. S. Supreme Court decisions apparently recognizing the prior and paramount needs of individuals to legal services. *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328 (1963); *Brotherhood of R.R. Trainmen v. Virginia*, 371 U.S. 1, 84 S.Ct. 1113 (1964); *United Mine Workers v. Illinois State Bar*, 389 U.S. 217, 88 S.Ct. 353 (1967). It is conceivable that a reversal of the above decisions would also reverse the approval of group legal services under the conditions imposed by the disciplinary rule.