Conference of Circuit Judges, lobbying

Number: INFORMAL

Date: February 25, 2013

Mr. Peter M. Dunbar
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Tallahassee, Florida 32302-2095

Dear Mr. Dunbar:

On behalf of Circuit Judge Olin Shinholser, Chairman of the Conference of Circuit Judges of Florida, Inc. ("Conference"), you ask substantially the following question:

Whether section 11.062(1) or section 216.345(1), Florida Statutes, restricts or prohibits the Conference (a non-profit corporation and tax-exempt organization) in the use of funds received from private parties (including voluntary donations made by individual judges) for the purpose of contracting with a general counsel and authorizing its general counsel to register and lobby on behalf of the Conference.

In sum:

Neither statutory provision restricts the Conference's use of funds in these circumstances. Because the Conference is not an "executive, judicial, or quasi-judicial department," the lobbying-related restrictions of section 11.062(1), Florida Statutes, do not apply. Further, section 216.345(1), Florida Statutes, which authorizes state entities in certain circumstances to pay "dues for membership in a professional or other organization[,]" does not restrict the lobbying activities of dues-receiving entities.

In 1959, the Legislature by statute created the "Conference of Circuit Judges of Florida," comprised of all active and retired judges of the state's judicial circuits. *See* Section 26.55, Florida Statutes. The Legislature assigned this body the limited duty of reporting to the Supreme Court and to the Legislature on proposed improvements to the judicial system and laws of this state. In addition to carrying out this statutorily-assigned role, the Conference hosts conferences and seminars and performs other educational activities. For many years, the Conference of Circuit Judges operated as an unincorporated association. Then, in 2005, the Conference of Circuit Judges formed a Florida non-profit corporation and tax-exempt 501(c)(6) organization. You have indicated that the Conference of Circuit Judges has been represented by non-employees performing paid lobbying services since at least the mid-1970s.

You have advised that the Conference receives no direct appropriations from the Legislature. Instead, the Conference receives funding from four distinct sources: (1) annual dues from Conference members (which the state pays on the members' behalf, under the authority of

section 216.345, Florida Statutes); (2) revenues received from members attending conferences and educational seminars sponsored by the Conference (some of these revenues include state-reimbursed member expenses or conference fees); (3) fees from private vendors for displays and marketing at Conference functions; and (4) voluntary contributions from Conference members. You have further advised that the Conference pays its general counsel from sources (3) and (4), *i.e.*, sources that necessarily originate as private funds.

Your question asks about the application of two statutory provisions, only one of which directly relates to lobbying. Specifically, section 11.062(1), Florida Statutes, provides that funds "appropriated to, or otherwise available for use by, any executive, judicial, or quasi-judicial *department*" shall not be used for "lobbying purposes." (emphasis added). The other provision referenced in your question, section 216.345(1), Florida Statutes, authorizes state entities in certain circumstances to pay "dues for membership in a professional or other organization." But section 216.345(1) imposes no restrictions on the lobbying activities of dues-receiving entities; accordingly, it cannot be the source of any prohibition or restriction on the Conference's payment for lobbying activities.

The answer to your question about the application of section 11.062(1), Florida Statutes, turns on the fact that the Conference—even if one assumes that the Conference, although organized as a non-profit corporation, is for some purposes a state entity—cannot reasonably be classified as a "department," the type of entity named in and therefore governed by that provision. While the Florida statutes contain no definition of a *judicial* "department," section 20.03(2), Florida Statutes, which pertains to the executive branch, defines the term "[d]epartment" as "the principal administrative unit within the executive branch of state government." Similarly, the dictionary defines the word "department" as: "A distinct, usually specialized division of a large organization, especially . . . a principal administrative division of a government." *American Heritage Dictionary*, 3rd ed. (1992).

Viewed in the larger context of the Florida statutes, it is evident that the term "department" is not synonymous with "any state agency" or with "any state entity." Nor is the term "judicial department" synonymous with the judicial branch generally. For example, there is a clear contrast between the Legislature's use of the term "department" in section 11.062(1) and its far more expansive reference in section 216.345(1), Florida Statutes, to "[a] state department, agency, bureau, commission, or other component of state government, or the judicial branch[.]" *See also* section 216.011(1)(qq), Florida Statutes (indicating that the term "department" refers to a subset of the broader class of entities that can constitute a "state agency" or an "agency"). Similarly, section 216.347, Florida Statutes, which prohibits the use of "grants and aids appropriations" for lobbying, imposes restrictions on "[a] state agency, a water management district, or the judicial branch[.]"

To reach the conclusion that the Conference is not a "department" for purposes of section 11.062(1), Florida Statutes, one need not determine every possible application of that term. This opinion does not suggest that the term must be interpreted mechanically or that an entity's label is controlling. Instead, the opinion concludes only that, whatever the term "department" means, it cannot reasonably be understood to include the Conference—which receives no direct appropriations, administers nothing, governs nothing, and is statutorily charged only with making periodic reports and recommendations. Only by disregarding the word actually chosen by the

Legislature can one reach the opposite conclusion.

Finally, the very fact that the state historically has paid for judges' membership dues in the Conference bolsters the conclusion that the Conference is not a "department" within the meaning of section 11.062(1), Florida Statutes. The authority to pay those dues is found in section 216.345, Florida Statutes. That provision lists a "state department" as a potential *payor* of dues, and uses the term "professional or other organization" to identify a permissible *payee*. "Professional or other organization" far more aptly than "department" captures the nature of the Conference.

In sum, since the Conference is not a "department" for purposes of section 11.062(1), Florida Statutes, that provision's restrictions on the payment of funds for lobbying purposes does not apply. Moreover, while section 216.345(1), Florida Statutes, authorizes state entities in certain circumstances to pay membership dues in a "professional or other organization," that provision does not place restrictions on the lobbying activities of dues-receiving entities. Accordingly, neither section 11.062(1) nor section 216.345(1) prohibits the Conference (a non-profit corporation and tax-exempt organization) from using funds received from private parties (including voluntary contributions from individual judges) for the purpose of contracting with a general counsel and authorizing its general counsel to register and lobby on behalf of the Conference.

Sincerely,

Pam Bondi

Attorney General

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