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OPINION NO. 2026-03

BOARDS & COMMISSIONS; FIRST AMENDMENT ACTIVITIES; FUNDS; GOVERNOR; LEGAL OPINIONS; LEGISLATURE; LOBBYING; PUBLIC BODIES; REGULATIONS: Title 54 agencies must ensure that any mandatory fees or dues imposed on members are used for activities germane to their regulatory purposes. While Title 54 agencies may thus hire or contract with lobbyists, they may only do so for activities germane to those agencies' purposes. In addition, the Governor cannot direct Title 54 agencies to lobby for initiatives or policies that are not germane to the executive agency's purpose.

Kristopher Sanchez
Director
Department of Business and Industry
2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada 89102

Dear Director Sanchez,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding the ability of Title 54 agencies, which regulate the professional competence of their members, to hire or contract with lobbyists. You have also inquired regarding the impact of prior published opinions of this office, including the most recent 1991 Opinion of the Office of Attorney General, No. 91-5, on that issue. This letter addresses those questions.

QUESTION

Whether Title 54 agencies, which regulate the professional competence of their members and are (at least in part) funded by their membership fees, may hire or contract with lobbyists?

SHORT ANSWER

Given that Title 54 agencies are in part funded by mandatory membership fees, the lobbying activities by such agencies must be specifically germane to the goals of regulating the professional competence of their members (*e.g.*, discipline and continuing education). Any other forms of lobbying using such funds, such as ideological or political lobbying, would be prohibited by the First Amendment. For this reason, a Title 54 agency also should not lobby for the agency's continued existence or for the specific structure of its governance, which also may not be consistent with the political preferences of some of its constituent members.

ANALYSIS

The United States Supreme Court has held that, while states may require attorneys to join an integrated bar and pay mandatory dues as a condition of practicing law, the use of those dues is subject to First Amendment limitations. *See Keller v. State Bar of California*, 496 U.S. 1 (1990); *see also Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 455 (1984) (recognizing that "[t]he First Amendment does limit the uses to which the union can put funds obtained from dissenting employees").

In *Keller*, a forced group speech case, the Supreme Court made clear that mandatory dues may only fund activities germane to the state bar's interest in regulating the legal profession and improving the quality of legal services. 496 U.S. at 14. Similarly, in other forced group speech contexts, the Court has reviewed the challenged expenditures to determine whether the specific action is germane to the challenged association's purpose. *See, e.g.*, *Ellis*, 466 U.S. at 448-55 (reviewing challenged union activities to determine whether those expenditures are "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues").

Pursuant to this Supreme Court precedent and cases following that precedent, mandatory dues may be used to fund expenditures germane to an association's constitutionally relevant purpose. *See, e.g.*, *Kingstad v. State*

Bar of Wis., 622 F.3d 708, 714-16 (7th Cir. 2010) (collecting cases). While "[t]he political or ideological nature of the speech factors into" that analysis, the "key" question is whether the challenged expenditure is germane to the association's purpose. *Id.* at 716; *see also Ellis*, 466 U.S. at 448-55 (determining whether challenged expenditures were germane to a union's purpose without focusing on whether the challenged expenditures were political or ideological). As a corollary principle, activities of a political or ideological nature that are not germane to these goals cannot be funded with mandatory dues, as this would infringe upon dissenting members' First Amendment rights. *See Keller*, 496 U.S. at 14; *Ellis*, 466 U.S. at 448.

The principles established in *Keller*, *Ellis*, and their progeny are directly relevant to Title 54 agencies in Nevada, as they are typically financed by membership fees, at least in substantial part. Title 54 agencies are enumerated in NRS 232.8415. These boards have been placed under the purview of the Department of Business and Industry by operation of NRS Chapter 232. *See* NRS 232.8415(2); *see also* NRS 232.8413.

Title 54 agencies must ensure that any mandatory fees or dues imposed on members are used for activities germane to their regulatory purposes. While Title 54 agencies may thus hire or contract with lobbyists, they may only do so for activities germane to those agencies' purposes. For example, lobbying activities related to licensing, enforcement of professional standards, or public education about the profession would likely be permissible. *See Keller*, 496 U.S. at 16 ("[P]etitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with discipling members of the Bar or proposing ethical codes for the profession.").

On the other hand, using any portion of mandatory dues to lobby for political or ideological initiatives that are not necessary to or reasonably incurred for the boards' regulatory functions would violate dues-paying members' First Amendment rights. *See id.* (recognizing, in the context of a state bar association, that "[c]ompulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative"). As recognized by the Supreme Court in *Keller*, transparency and accountability in the use of mandatory dues is of crucial importance.

These limitations are consistent with AGO 91-5.[1] There, relying on the Nevada Lobbying Disclosure Act[2] and various persuasive authority, this

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[1] AGO 91-5 reversed AGO 90-17. *See* AGO 91-5 at n.2.

office concluded that "[t]he authority [for executive agencies] to lobby the Legislature can reasonably be found in both the express and implied provisions of the Nevada statutes." AGO 91-5 at 3. The restructuring of the Title 54 boards under the Department of Business and Industry does not obviate AGO 91-5's analysis, nor has there been an intervening change in the law that affects this office's prior analysis.

AGO 91-5, however, did not address whether the Executive Branch may limit the authority of executive agencies to retain lobbyists or otherwise control the lobbying of executive agencies. Generally, "[t]he supreme executive power" lies with the Governor. Nev. Const. art. 5, § 1. But that power does not allow the Governor to "disregard acts of the Legislature," as the Governor "has a constitutional duty to see that the laws enacted by the legislature are faithfully executed." *State of Nev. Emps. Ass'n, Inc. v. Daines*, 108 Nev. 15, 20-21, 824 P.2d 276, 279 (1992).

Thus, if the Legislature, through statute, gives an executive agency the express authority to hire lobbyists or to otherwise engage in lobbying, the Governor could not curtail that authority through issuing a general executive policy. If, however, the executive agency lacks explicit statutory authority to hire a lobbyist or engage in lobbying, then the Governor may issue formal executive policies that curtail the implicit authority to engage lobbyists or otherwise limit or direct the executive agency's lobbying activities. Regardless, as explained above, the Governor, at minimum, cannot direct Title 54 agencies to lobby for initiatives or policies that are not germane to that executive agency's purpose.

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[2] Since AGO 91-5 was issued, the act was recodified as NRS 218H.010 through NRS 218H.960.

CONCLUSION

Title 54 agencies may lobby for actions germane to the agency's constitutionally relevant purpose. However, if the Title 54 agency lacks explicit statutory permission to engage lobbyists or otherwise lobby directly, the Governor may issue formal executive orders that curtail the agency's implicit authority to lobby. Regardless, the Governor cannot direct Title 54 agencies to lobby for issues or initiatives that are not germane to that agency's purpose.

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By: _____
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