

INFORMAL OPINION NO. 111

The Ethics Committee has been asked to give an opinion regarding the propriety of donating legal services to a school organization to be auctioned off, with the monies going directly to the school organization. It was proposed to give four hours of legal services valued at \$400.00 to be used in a variety of areas, for example, wills, criminal law, corporate law, etc.

In 1972, the ABA issued its Informal Opinion No. 1250 finding that the donation of services, even for the benefit of a charity, to be auctioned off to the highest bidder would be undignified and constitute activity which was considered unethical under the sections of the then existing Code. Subsequently, in Bates v. Arizona State Bar, 433 U.S. 350 (1977), advertising was opened up significantly and the basic test became whether or not the advertising was false or misleading. The Bates decision dealt basically with the advertising of price for legal services but did set forth several permissible limitations on advertising, including time, place and manner of advertising.

Subsequent to the Bates decision, both the ABA Model Code of Professional Responsibility and the Idaho version were amended. Under DR 2-103 of the Idaho Code of Professional Responsibility:

"A. A lawyer shall not seek by direct mail or other form of personal contact and shall not recommend employment as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer, or assist another person in so doing, . . ."

The only exceptions provided under this disciplinary rule are (1) lawyer referral services or (2) other qualified legal assistance organizations. The school organization in the present situation would not qualify under either exception.

Additionally, DR 2-103(C) provides that a lawyer shall not compensate or "give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client." It is believed that the donation of the monies, through the auction process, to the school organization would be the giving of value. The mere auctioning of the services would result in a securing of employment by the attorney since once an individual successfully bid for the services, the attorney would be obligated to undertake the services donated. Such conduct also may run afoul of DR 3-102 which prohibits the division of legal fees with a non-lawyer.

The donation of legal services as proposed in the instant situation would preclude the attorney from exercising his independent professional judgment as to the merits of matters brought to him by the purchaser of the services prior to undertaking representation. Further, in the exercise of that independent professional judgment subsequent to the purchase of the services, the attorney may determine that the individual has no basis for legal action leaving the individual to feel that he has purchased a "pig in the poke."


One cannot rule out the potential for conflicts of interest which might arise depending upon the existing clientele of the attorney and the possible relationships between that clientele and the purchaser at auction.

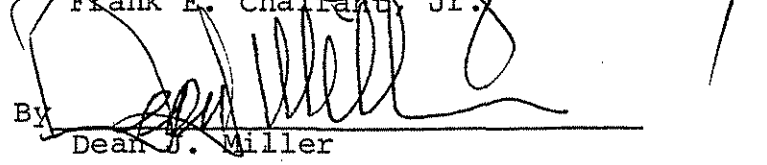
It is the opinion of the Committee that the donation of legal services to a school organization to be auctioned off with the monies retained by the organization, would be an ethical violation.

DATED This 31st day of July, 1982.

ETHICS COMMITTEE OF THE  
IDAHO STATE BAR

By   
Alfred E. Hagan, Chairman

By   
Frank E. Chalfant, Jr.

By   
Dean J. Miller