

**OPINION
68-211**

May 27, 1968 (OPINION)

Mr. J. H. Newton

Secretary

State Bar Board

RE: State Auditor - Examination of Books - State Bar Board

This is in reply to your letter of May 23, 1968, relative to the examination of the records of the State Bar Board. You state the following facts and questions:

"For the past two years the state auditor has been billing the State Bar Board for the cost of the examination of the records of the State Bar Board. The query arises as to whether or not this is a proper charge, and I would respectfully request your opinion thereon.

"The State Bar Board is an arm of the Supreme Court, the clerk of the Supreme Court being ex officio secretary-treasurer. At the present time the duties of the board are confined solely to the examination of applicants for admission to the bar by examination or admission on a reciprocal basis of attorneys from other states who seek admission without examination. The members of the Bar Board are appointed by the Supreme Court from a list submitted by the State Bar Association. The salaries of the members of the Bar Board, the secretary and clerical help is paid from a fund acquired as a portion of the attorneys' license fee or examination fees paid by applicants for examination. The expenses of the Supreme Court Grievance Commission, and attorney's fees and cost of disbarment proceedings are also paid from the State Bar Board fund.

"No charge has even been made for examining the records of the Clerk of the Supreme Court and none has ever been made to date for examination of the Bar Board records.

"It would appear to me that there is a distinction between the various professional and trade organizations who have no connection with a state department and that of the State Bar Board which has a close connection with the Supreme Court."

The State Bar Board was established by legislative act. Thus, Section 27-11-06 of the North Dakota Century Code provides for a State Bar Board to consist of three members appointed by the Supreme Court of this state. The qualifications for membership are set forth therein. Under the provisions of Section 27-11-14, payment of compensation and expenditures of the State Bar Board must be submitted to the Auditing Board of the state. Section 27-11-24(3)(5) of the North Dakota Century Code, as amended, provides:

"* * * Moneys in the state bar fund shall be used to pay:

* * *

3. The expenses incurred by the state bar board in conducting examinations of applicants for admission to the bar of this state and expenses of the state bar board or a grievance committee of the supreme court in investigating charges warranting the suspension or disbarment of members of the bar, or in prosecutions brought and conducted before the supreme court for the discipline of such members;

* * *

5. The necessary expenses of conducting and supplying the offices of the state bar board."

The state bar fund is, as you have noted, accumulated from fees received from applicants for admission to the practice of law and from fees received for annual license to practice law in North Dakota. See Sections 27-11-17 and 27-11-23 of the North Dakota Century Code, as amended. These fees are deposited directly to the state bar fund. They are not deposited with the state treasurer. No appropriation for the expenditure of these funds is made by the Legislature. They constitute a special fund which can be expended only as specified by statute.

In *Menz v. Coyle* 117 N.W.2d. 290 (N.D. 1962), the Supreme Court of North Dakota stated, with respect to the State Bar Board, at pages 295, 296 of the Reporter:

"State law also provides for a State Bar Board. Its powers and duties are fixed by law. Section 27-11-13, NDCC. The method of disbursement of its funds is specifically provided for in Section 27-11-24."

As we understand the rationale for the charge of fees by the state auditor, that office charges fees for the examination of books and records of agencies whose funds come from a special charge or fee and which are not deposited in the State Treasury but rather in a special fund. Auditing fees are not charged those agencies which are supported from the general fund of the state, on the theory that same would be nothing more than a paper transaction since the state auditor's office is also supported from the general fund of the state. In this regard we note Section 186 of the North Dakota Constitution, which requires all public moneys from whatever source derived to be paid over monthly to the state treasurer and to be paid out and disbursed only pursuant to appropriation by the Legislature. The section also provides in part:

"This constitutional amendment shall not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment shall not be construed to amend or

repeal existing laws or acts amendatory thereof concerning such fees and moneys."

While the Supreme Court held in the Menz case, supra, that the office of attorney at law is a public office (see page 296 of the reported case), nevertheless the Bar Board is financed in a manner similar to other professions which are charged by the state auditor for the examination of their books and records. We are in agreement with your conclusion that there is a distinction between the various professional and trade organizations which have no connections with a state department and that of the State Bar Board which has a close connection with the Supreme Court. However, for the purpose of the fee paid to the state auditor for the examination of the books and records, the distinction appears to be whether the agency is financed from the general fund of the state or by a special fund paid by license and examination fees. In this respect, there would appear to be no distinction between the State Bar Board and the other professional and trade agencies. Therefore, if the state auditor has the right to charge such other agencies a fee for the audit of their books and records, we believe the same fee may be charged the State Bar Board for such examination.

HELGI JOHANNESON

Attorney General