

Va. State Bar opposes transfer of dues to budget

By LARRY O'DELL

RICHMOND, Va.

The Virginia State Bar says Gov. Bob McDonnell's proposed \$5 million raid on its cash reserves is an unprecedented, and perhaps illegal, tax on the state's lawyers.

The state bar is urging Virginia legislators to reject McDonnell's plan to transfer the money to the state's general fund to help balance the budget. Legislative money committees will announce their recommendations on this and other budget matters Sunday.

The Virginia State Bar is an agency created by the General Assembly in 1938 to regulate the practice of law in Virginia. It is funded by mandatory dues and fees paid by Virginia attorneys to maintain their law licenses and gets no taxpayer support.

According to the bar, Virginia law says the State Bar Fund can be used only for the agency's operations and activities and cannot be tapped by the governor to pay for other state budget priorities. The governor's office says, however, that shifting excess funds is allowed under the appropriations act.

"The governor's budget amendment simply reallocates some existing funding from the bar to other judicial-related priorities, such as court vacancies and indigent defense," McDonnell spokesman J. Tucker Martin said. "Some of these reallocations are to areas that the Virginia State Bar, and private bar associations, have sought increased funding for in past years."

Irving Blank, state bar president, said the proposed use of the money for other court purposes does not make the transfer more palatable, "especially when you consider the source of the money" -- dues paid by lawyers for administration of the bar.

"To take it for any other purpose would be a special tax on Virginia lawyers," Blank said.

The bar said in a recent presentation to a legislative subcommittee that McDonnell's proposal could prompt a legal challenge based on a 1990 U.S. Supreme Court ruling that prohibited the diversion of State Bar of California funds.

According to the American Bar Association, other states have attempted to raid specially earmarked judiciary funds and failed. For example, a Florida judge last year ruled that transferring court filing fees to that state's general revenue fund to build prisons was unconstitutional.

In another similar case, the Connecticut Bar Association persuaded the state's governor and other officials to reverse a decision to transfer \$2 million from a client protection fund financed by a fee on the state's lawyers.

The Virginia State Bar is not contemplating legal action if McDonnell's plan succeeds, spokeswoman Mary Yancey Spencer said. But that doesn't mean someone else couldn't sue.

Instead, the bar hopes legislators will agree that the plan would leave it unable to respond to a financial emergency by wiping out all of its savings.

"Unspent cash is the bar's only source of funding for unpredictable costs incurred by court-ordered receiverships of lawyers' practices, online legal research for members, employee benefits, leave balance payouts, unemployment compensation, attorney's fees, and litigation expenses," the bar said in its written presentation to lawmakers.

Sen. Roscoe Reynolds, D-Henry and a senior member of the Senate Finance subcommittee that is considering the proposal, said the dilemma for lawmakers is that if they don't go along with the governor's proposal they have to find the \$5 million elsewhere in the budget.

"People have difficulty visualizing that reality," Reynolds said.

Nevertheless, Reynolds -- himself a lawyer, as is McDonnell -- sounded sympathetic to the bar's position.

"I have heard from lawyers who are very upset, and I understand why they are upset," Reynolds said. "At the subcommittee, very good evidence as to why it's necessary to have this money on hand was put forth."

He said that if McDonnell succeeds, the Virginia State Bar could be forced to raise its dues -- \$275 for active members, \$125 for associate members -- which are lower than the dues charged by all but two of the nation's 33 mandatory state bars.

Reynolds said he also is concerned about establishing a precedent that governors can seize bar funds for other purposes.

Roseanne T. Lucianek, director of the ABA's Division for Bar Services, acknowledged that cash-strapped states are looking carefully at every option for raising revenue.

"The Connecticut situation last year, and now Virginia, always cause ripples of concern and heighten everyone's awareness of funding challenges," she said in an e-mail.

Lucia Anna "Pia" Trigiani, president of the Virginia Bar Association, said lawyers are not the only people who should be worried.

"There are lots of other professions that are regulated in the same way," she said. "Every agency in like circumstances should be concerned."

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