

NLADA MEMORANDUM ON LSC GRANTEES, MEMBERSHIP DUES, AND PARTICIPATION IN GROUPS/ASSOCIATIONS¹

QUESTION PRESENTED: Can LSC grantees be dues paying members in groups that require dues and/or engage in restricted activities.

BRIEF ANSWER: YES! But dues must be paid with **NON-LSC FUNDS**. If grantees go beyond paying dues and are active participants in a group, they will need to use discretion to ensure that:

1. No program resources are used related to any restricted activity; AND
2. The program is not identified with any restricted activity

RELEVANT SOURCES:

FY 1996, Pub. L. 104-134, 110 Stat. 1321 (1996) § 505.

45 C.F.R. 1610, § 1610.5;

45 C.F.R. 1612, § 1612.5;

45 C.F.R. 1630 §% 1630.2, 1630.7;

45 C.F.R. 1630.7;

62 FED REG 76, 19400 (April 21, 1997);

ANALYSIS:

I. Membership Dues Generally

The first limitation on LSC grantees in regard to membership dues came in 1996, when, through LSC appropriations, Congress added a number of restrictions on LSC programs. Some of these restrictions limited only what grantees could do with LSC funds while others limited any funds used by an LSC grantee. The restriction on membership, located in § 505 of the appropriations, limited only LSC funds. It reads as follows:

None of the funds appropriated in this Act to the Legal Services Corporation or provided by the Corporation to any entity or person may be used to pay membership dues to any private or nonprofit organization.²

The text makes clear that this applies only to “funds appropriated in this Act” and funds “provided by the Corporation” or, put more simply, LSC funds. If anyone were, for whatever reasons, still worried that this restriction could reach beyond LSC funds, § 1630.7 settles the debate even more explicitly. Implementing the §505 restriction, §1630.7(a) states:

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² [FY 1996, Pub. L. 104-134, 110 Stat. 1321 \(1996\) § 505.](#)

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of the recipient or an individual.³

Then, §1630.7(b) adds:

Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.⁴

Provided that a grantee uses non-LSC funds, there is no restriction which would bar them from paying membership dues to an organization.

II. Membership in Groups Engaging Restricted Activity

What about groups who engage in LSC restricted activity? Can LSC grantees pay membership dues to such organizations? Yes. The general restriction on dues already requires that non-LSC funds must be used, and § 1610.5 makes clear that “Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to [the restrictions as defined in Part 1610].”⁵ Grantees are free to send non-LSC funds to other organizations as they please.

Some difficult questions may arise when a grantee goes beyond simply paying dues and is actively participating in a group which engages in restricted activity. Such engagement is not prohibited, and in some instances, LSC funds can be used for the engagement. If the engagement is specifically related to restricted activity, however, staff at LSC grantees may have to take leave to participate so as not to use program time or resources. Additionally, grantees should be careful not to identify their program with restricted activity.

These rules are most clarified by examining LSC’s rule regarding participation and membership in bar associations, located at § 1612.5. The section, titled, “Permissible activities using any funds,” explains in subsection (c)(5) that:

Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is not identified with activities of bar associations that are devoted to activities prohibited by this part.⁶

Here, LSC is discussing bar association activity only, but it’s important to note that 1612.5 was specifically written with the idea that these items were examples and not the only types of allowable activity. In the preamble, LSC wrote that 1612.5, “is not intended to be exhaustive. Rather, it seeks to clarify those instances likely to raise close questions.”⁷ Thus, participating in bar associations, membership groups which participate in both permissible and restricted activity, is an appropriate analog for other such groups.

³ [45 C.F.R. 1630, §1630.7\(a\).](#)

⁴ [45 C.F.R. 1630, §1630.7\(a\).](#)

⁵ [45 C.F.R. 1630, §1610.5\(c\).](#)

⁶ [45 C.F.R. 1612.5\(c\)\(5\).](#)

⁷ [62 FED REG 76, 19400, 19401.](#)

Given that, the question is what precautions must an LSC grantee take in order to ensure that “recipient resources are not used to support and the recipient is not identified” with restricted activity. Again, the preamble is instructive. Although LSC notes that a “bright line” is impossible, it offers useful guidance for some common scenarios. LSC writes:

Permissible participation may include attending meetings and serving on committees of a bar association or serving as an officer or in other leadership roles in a bar association. The Corporation recognizes that there will be some situations where bar association activities will require the attorneys employed by a recipient to decline participation or to participate on the attorney’s own time as, for example, when a bar association activity is devoted to a prohibited activity, such as participating in a meeting whose principal purpose is to determine and communicate the bar’s position on pending or proposed legislation or regulations. Recipient attorneys must either decline to participate or participate solely on their own time. On the other hand, recipient attorneys could use recipient resources to attend and participate in a bar association meeting that was not focused on prohibited legislative or regulatory activity and where any discussion of prohibited activity was incidental to the decisions and actions taken at the meeting. Because it is not possible to craft a bright line between permissible and impermissible bar association activities, attorneys employed by recipients will have to exercise careful judgment when they are participating in bar association activities that may involve prohibited activities.⁸

Programs who are concerned that they might be close to the line on this issue, can reach out to NLADA’s counsel for civil legal services at C.buerger@nlada.org for case specific guidance.

CONCLUSION:

LSC grantees are permitted to use non-LSC funds to pay membership dues to organizations. This is true regardless of whether or not the group engages in LSC restricted activity, such as lobbying. Being a member of a group does not, however, exempt grantees from the restrictions. If participating in group activities, grantee staff must refrain from participating, on grantee time, in activities where the principal purpose involves, for example, a lobbying effort. Staff can only participate in such events if they take appropriate time off so that they are participating only in their personal capacity.

⁸ [62 FED REG 76, 19400, 19402.](#)