

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 10, 1977

Honorable William Garsoe
House of Representatives
State House
Augusta, Maine

Re: L.D. 844, Attorney Grievance Board.

Dear Representative Garsoe:

This responds to your request for an opinion as to whether L.D. 844, if enacted, would constitute an unconstitutional usurpation of judicial power by the Legislature. In examining L.D. 844, we see no such constitutional problem.

Currently, attorneys are the only major profession over which the Legislature, through statutory enactments, does not exercise substantial regulatory control. The Legislature may exercise its authority to regulate lawyers just as it regulates any other profession. We are aware of no case which holds that lawyers are a special class exempt from legislative regulation simply because they are also subject to court supervision. Further, it should be noted that the actions of the proposed Attorney Grievance Board would, in making recommendations, simply be advisory to the Supreme Judicial Court and would be transmitted to the court both directly and through initiatives of the Attorney General. No final determination would be made regarding an attorney's right to practice except after review by the Supreme Judicial Court. Right now the legislatively authorized Board of Bar Examiners, 4 M.R.S.A. § 801, et seq., performs a similar advisory function with regard to admissions to the Bar. Presumably the same constitutional argument would apply to them as would apply to a disciplinary board.

Further, it should be noted that Maine law presently specifies the manner for processing attorney grievances. Thus, 4 M.R.S.A. § 851 specifies procedures for presentation

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of informations against attorneys to the court. This provision is legislative regulation in the same manner as proposed in L.D. 844. The only difference is that the current § 851 specifies the private bar association and the Attorney General as the regulatory authority without specifying any procedures to follow, while L.D. 844 specifies the statutorily controlled Attorney Grievance Board and sets procedures to assure due process is protected.

The brief research we have done on this matter indicates that presently Maine and at least 17 other states regulate attorney conduct by statutory provisions. Further, 8 other states regulate attorneys by a combination of statute and court rule. This indicates the broad precedent for control of attorneys by the Legislature. Further, we would emphasize again, we are aware of no case which explicitly states that the Legislature may not regulate attorneys because regulation of attorneys is the exclusive prerogative of the court.

There is one Maine case In Re Feingold, 296 A.2d 492 (Me., 1972), which indicates that the court has broad authority over attorneys, but it should be noted that that case was decided in the context of an issue over admission of attorneys to the Bar, an area where the Maine Legislature has exercised regulatory power without serious question. In Re Feingold did not hold the statutory scheme for admission of lawyers unconstitutional, and in fact can be considered to have recognized and accepted the authority of the statutory Board of Bar Examiners to recommend applicants for admission to the court in the same way as the proposed Attorney Grievance Board would recommend persons for discipline by the court.

Thus, we do not believe that L.D. 844 would represent an unconstitutional usurpation of judicial powers.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

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