

ALA Job Banks - Legal Opinion

The Association of Legal Administrators' (ALA) legal counsel on August 19, 1992, reaffirmed the November 7, 1978 opinion titled "Guide for Operation of Placement Services by Chapters of Association of Legal Administrators." The opinion states:

"Although the operation of a placement service by a trade association to assist its members to find new employment is an activity related to the association's tax exempt activities, this activity must be carefully monitored. Two potential problems are:

- adverse tax consequences which may result from engaging in this type of activity, and
- regulatory control at the state level.

"Tax Exemption. Trade associations are generally exempt from the federal income tax and most state income taxes. This exemption, however, is limited to income earned by the trade association as the result of the conduct of its tax exempt activities. A trade association is tax exempt with respect to activities for the common interest of its members, but not to regular business activities of a kind ordinarily carried on for profit. Exempt activities must be directed to the improvement of business conditions of one or more lines of business, as distinguished from the performance of particular services for individual members.

"ALA's activities, upon which its tax exemption is based, are those designed to further the members' abilities as legal administrators and to otherwise serve as a forum for the discussion of problems and developments in the industry. The operation of an employment placement service is more like the operation of a business, which is ordinarily carried on for profit. Treasury Department regulations note that an organization whose purpose is to engage in a regular business of kind ordinarily carried on for profit is not a business exempt from tax even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining. Therefore, the critical considerations are to ensure that these activities are of only minor significance in relation to the other activities of this Association and to eliminate any profit which would otherwise be recognized from the operation of such activity.

"State Regulations. Many states have regulations related to the operation of employment agencies. If the placement activities of ALA or its chapters become a significant part of its activities, it is more likely that ALA would be subject to state regulation. Avoiding such regulation is the second reason for minimizing and carefully controlling and monitoring any placement activities.

"Guidelines. To minimize the possibility of either losing tax exempt status or becoming subject to state regulation, the following guidelines should be followed:

- "Placement activities of the chapters should be held to a minimum. The chapters should act merely as clearing houses for résumés of administrators seeking positions.
- "Placement services should be limited to the placement of legal administrators; clerical employees should not be covered by the program.
- "No opinions should be expressed by any chapter officers, employees or members as to the qualifications of any member seeking a position. The program should simply bring together administrators seeking positions and prospective employers.
- "Particular care should be taken to avoid any discrimination with regard to placement activities. Résumés of all qualified administrators should be forwarded to inquiring employers regardless of any discriminatory restrictions imposed by those employers.
- "The placement activities should not be operated for a profit. A small charge, such as \$100, might be made to cover administrative cost.
- "Advertising of the placement service should be held to a minimum. Any advertisement should be limited to a short, concise statement indicating that the chapter provides placement services to its membership and that employers may contact the chapter to obtain résumés of administrators seeking new positions.

"These guidelines concern only the most basic restrictions to assure that ALA and its chapters' tax exempt status are not jeopardized or that they become subject to state regulation. Each chapter, within the boundaries of these guidelines, must establish and be responsible for operating rules and procedures for any placement service they wish to initiate."