

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

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**STUDENT ADVISORY
MEMORANDUM NO. 8**

May 24, 1991

To: College Presidents

From: Vice Chancellor Robert E. Diaz 

Re: Use of Student Activity Fees for Legal Services

I have been asked to render an opinion as to whether student activity fees or auxiliary enterprise allocations or expenditures may be used for student legal services; and if so, under what circumstances.

Subdivision "a" of Board of Trustees Bylaw Section 16.11 delegates to the college president the authority to disapprove any student activity fee or auxiliary enterprise allocation or expenditure which in "his or her opinion contravenes the laws of the city, state, or nation or any bylaw or policy of the university or any policy, regulation, or order of the college." Subdivision "b" of Bylaw Section 16.11 further authorizes the college president to suspend and send back for further review to the college association, any student activity fee allocation or expenditure which in his or her opinion is not within the expenditure categories defined in Bylaw Section 16.2. Under subdivision "b", if after further review the college association recommends approval, the college president still makes the final decision on whether to approve or disapprove. Under both Subdivisions "a" and "b", the college president is required to consult with the General Counsel and Vice Chancellor for Legal Affairs when he or she disapproves an expenditure.

Under the State Education Law, the Board of Trustees has two obligations as to expenditures of student activity fees. Subdivision 6 of Section 6206 requires that all fees collected by the University be administered by the Board for "collegiate or university purposes in connection with the units under its control." Subdivision 7 of Section 6206 provides that where the Board imposes and collects mandatory student activity fees, it must receive and expend them as "trustees", which results in a fiduciary obligation on the Board with respect to these fees.

In order to qualify for funding from student activity fees, a student government activity must meet the requirements of Board Bylaw Section 16.4. Board Bylaw Section 16.4 defines a student government activity as "any activity operated by and for the students enrolled at any unit of the university." This section also provides that the activity must be for the direct benefit of students enrolled at the college and that participation in the activity and the benefits thereof must be available to all students enrolled in the college.

Applying the above cited State law and CUNY bylaw provisions, use of student activity fees for the purchase of a prepaid legal services plan would be a permissible activity. Such an allocation of funds must be judged by the same standards as other allocations, including the requirement that the activity is for the direct benefit of students enrolled at the college and that legal services are available to all students. To be approved for payment, there must be a written contract for legal services, which has been reviewed by the appropriate bodies and the college president. The approval and execution of the contract must occur prior to the rendition of services and the contract must specify the legal services to be provided and the terms of the plan, including the hourly rate and the maximum total fees which will be paid under the contract.

Applying the principals set forth above, the use of student activities fees or auxiliary enterprise funds for legal services for a specific individual or group of individuals would not be a permissible activity. In the absence of a student legal services plan offering services to all students, the CUNY Bylaw provision mandating that funded activities be available to all students is not met. Accordingly, a college may not approve the allocation of money to pay the legal fees of individual students.

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