



# National Association of Bond Lawyers

## A Brief History

### THE FOUNDING OF NABL

In the early 1970s, the Practising Law Institute (PLI) was “the only game in town” when it came to discussing creative financing opportunities, new arbitrage legislation and other issues unique to the practice of bond law. Dissatisfied with the lack of bond lawyer input to PLI, Frederick O. Kiel, through the use of Chuck Carlson’s *Bond Case Briefs*, invited bond lawyers to participate in a workshop for bond lawyers, by bond lawyers. A workshop faculty was organized by Mr. Kiel, Mr. Carlson and Rita Carlson, and in September of 1976, the first Bond Attorneys’ Workshop (Workshop) was held and attended by 120 bond lawyers.

Upon conclusion of the first Workshop, the faculty met to elect a chairman for the 1977 Workshop. During this meeting, Bernie Friel suggested that they form an organization made up of bond lawyers, similar to the American Trial Lawyers Association. Therefore, at the 1977 Workshop, Dick Weill distributed a survey inquiring as to interest in forming an association of bond lawyers. When Mr. Friel received the survey, the results indicated great interest in a separate organization. He, then, conferred with both Mr. Weill and Ruth West, the elected chairman for the 1978 Workshop, to inquire as to when a meeting would be held to discuss the possible formation of a bond lawyers’ organization. Ms. West assigned Mr. Weill as chairman of a committee to look into the formation of a bond lawyers association.

Using the list of attendees from the 1977 Workshop and Mr. Weill’s survey results, Mr. Friel called a meeting for anyone interested on June 27, 1978. Between 20 to 30 bond lawyers attended the meeting and agreed that such an organization should be created, but did not agree as to its form. Some attendees thought that the organization should be affiliated with the American Bar Association, while others thought an independent organization should be created. In an effort to resolve this issue, two committees were formed: one, led by Tom Currier, to provide information and a recommendation as to affiliation with the American Bar Association, and the other, led by Mr. Kiel, to offer a proposal on forming an independent organization.

Each committee drafted and circulated a report on its findings. All those registered for the 1978 Workshop were invited to attend a meeting on September 20, 1978, to discuss the two organizational proposals. After a lively discussion, it was determined that formation of an independent organization was favored. Following such determination, three resolutions were passed: it was resolved to form an independent association of bond lawyers without American Bar Association affiliation; it was resolved that the initial membership of the association would consist of lawyer registrants or lawyer applicants for registration at the Fall 1978 Workshop who paid the requisite membership fee upon formation of the organization; and it was resolved that a committee consisting of Mr. Currier, Phil Dorweiler, Mr. Kiel, Jim Perkins, Donald Hodgman, Mr. Friel, and six others to be selected by those six, formulate a proposal for the creation of a bond lawyers association prior to January 1, 1979. On September 21, 1978, the committee selected Leo Beauclair, Ms. West, C. Willis Ritter, George Mack, Manly Mumford and Donald Howell to complete the group.

The 12 committee members met on September 22, 1978; officers were elected and duties assigned. Mr. Perkins agreed to draft a statement of purpose, which now, over 27 years later, reflects favorably both on the vision of the founders and on the commitment of their successors to achieve those goals: “The purpose of the Association shall be to promote the public good by: (1) Educating its members and others in the law relating to state and municipal obligations, (2) Providing a forum for the exchange of ideas as to law and practice in this field, (3) Improving the state of the art in this field, (4) Providing advice and comments at the federal, state and local levels with respect to legislation, regulations, rulings and other action, or proposals therefor, affecting state and municipal obligations, and (5) Providing advice and comments with regard to state and municipal obligations in proceedings before courts and administrative bodies through briefs and memoranda as a friend of the court or agency.”

On February 9, 1979, the National Association of Bond Lawyers was incorporated as an Illinois nonprofit corporation and the committee of 12 became its board of directors with Mr. Friel as President, Mr. Mumford as Vice-President, Mr. Kiel as Secretary and Ms. West as Treasurer.

During the next 27 years, NABL has made great strides in accomplishing the goals of educating its members, improving the standards of practice and providing meaningful commentary on pertinent legislation. A few of those contributions to the profession are summarized below.

## **EDUCATING ITS MEMBERS**

Education has been one of NABL’s top priorities from the beginning. In fact, NABL, as an organization, emerged from the initial effort to educate bond lawyers through the Workshop. Rejecting concerns about “educating the competition,” NABL’s more experienced lawyers have always been willing to teach those who are newer to the profession. NABL leaders have been particularly mindful that, due to the interconnectedness of the practice of bond law, an error by one counsel on a bond deal may result in punitive legislation that will hurt all bond lawyers. NABL has focused not only on educating its members, but has opened its Workshops to non-NABL members as well. Attendees regularly include staff members of the Securities and Exchange Commission (SEC), Internal Revenue Service (IRS) and the Department of the Treasury officials, and other regulators, as well as numerous non-lawyer municipal industry participants.

NABL’s efforts in regards to education have been successful in no small measure because of the adoption of a faculty rotation policy as well as maximum term limits for faculty members. This regular rotation of faculty members ensures the exchange of fresh ideas and information. In addition, the open format of the Workshop and other seminars encourages active dialogue among the participants and the panelists.

Though the Workshop has been the backbone of NABL’s educational efforts, NABL has offered a host of other educational opportunities. For instance, in response to the Tax Reform Act of 1986, a two-day “Tax Implementation Workshop” was held where practical documentation (covenants, certificates, model agreements, etc.) was distributed and presentations were made by federal legislative and regulatory leaders regarding their understanding of the intent of various provisions of the Act. Similarly, a special seminar was

conducted in response to the promulgation of Treasury/IRS rebate regulations. For several years, NABL focused special attention on tax matters at the annual Tax Seminar, and on legislative and regulatory matters at the Washington Seminar. More recently, those seminars have been replaced with the Tax and Securities Law Institute. Also, the annual Fundamentals Seminar has long served as an essential step in the training of younger members of the profession.

In addition to educating its members through seminars, NABL has published several practice guides and educational tools such as “The Fundamentals of Municipal Bond Law,” “Federal Securities Laws of Municipal Bonds Deskbook” and “Federal Taxation of Municipal Bonds Deskbook.” Virtually all active members of the bond profession consider these volumes to be essential references in their daily practice.

## **IMPROVING THE STANDARDS OF PRACTICE**

“Improving the state of the art in this field” was another key element that drove the formation of NABL. This lofty goal presented some significant challenges due to the array of opinions regarding what constituted improvement of the practice. NABL is a member-driven organization, and its members include sole practitioners as well as lawyers from megafirms; lawyers at boutique bond firms and lawyers at general practice firms; and lawyers from every state in the country. One of NABL’s finest achievements has been its success in keeping such a diverse group of lawyers productively engaged in healthy and constructive dialogue about issues of common concern.

An early and important step taken to improve the standards of the practice was the Model Opinion Project led by former NABL President Pope McIntire. He was troubled by the demands of some clients that bond counsel express opinions outside the scope of their expertise or outside the due diligence typically performed. It occurred to Mr. Pope that if NABL adopted a model opinion, bond lawyers would have industry support in responding to unreasonable demands. This successful project ultimately led to other tools to assist bond lawyers in their practice, such as the Model Engagement Letter. Another significant publication that addressed industry standards was the “Function and Professional Responsibilities of Bond Counsel,” which addressed issues such as the necessity that bond counsel identify a client, multiple representations, confidentiality, and conflicts of interests. NABL further addressed the standards of the practice by publishing reports on topics of interest, such as “The Question of Lawyer Competence and Professionalism” and “Lawyer Proliferation in Public Finance Transactions.” These brief but thorough pamphlets confronted a variety of NABL member concerns.

NABL also took significant steps to improve the public perception of the practice of bond law and bond lawyers. During the promulgation of multiple pieces of tax reform legislation through the early and mid-1980’s, bond lawyers received particularly unfavorable attention. One politician announced that bond lawyers were financing massage parlors and houses of ill repute while another lumped bond lawyers together with deadbeat dads. In February of 1985, NABL hired a public relations consultant to assist in addressing the overall image of bond lawyers and to educate the public on the historic role of bond counsel. Former NABL President Harold Judell made public speeches in support of bond lawyers and NABL, testified before or filed written testimony with Congressional Committees, and detailed for House and Senate members various instances in which misinformation was being circulated about bond financings.

## **PROVIDING MEANINGFUL COMMENTARY ON PERTINENT LEGISLATION**

Though providing comment on legislation and regulations pertinent to the practice of bond law was included among NABL's initial statement of purposes, it was not until the onslaught of federal tax reforms in the 1980's that NABL truly began to concern itself with the passage of laws and regulations that were relevant to the practice. After much consideration it was decided that, instead of lobbying in the traditional sense, NABL would undertake to make legislators aware of the organization's ability to support them by providing objective advice and technical expertise. NABL's credibility in this arena today was largely established through the energy, effort and skillfulness of Amy Dunbar, NABL's first Director of Governmental Affairs. Through her leadership and the hard work of many NABL members, NABL was able to establish a respected voice in Washington. Listed below are a few examples of NABL's involvement over the years in the creation of, commentary on and enforcement of bond-related legislation.

- In regard to the Tax Reform Act of 1986, various NABL members registered as unpaid lobbyists and successfully assisted public interest groups in resisting useless duplication of restrictions and needless complexity in the Act.
- During the late 1980s, NABL members served an important role on the Anthony Commission on public finance. The Commission's purpose was to educate Congress on the importance of ensuring that state and local governments had access to tax exempt financing without undue restrictions and burdens.
- In 1988, in response to the promulgation of punitive legislation with retroactive effective dates, NABL adopted and published policy statements condemning the use of this legislative device to deal with perceived abuses.
- In 1989, NABL adopted and released to the government and to the press a significant policy statement noting that the recent changes in Federal tax law had dramatized the need for regulatory guidance that was either missing altogether or that was produced only after lengthy delays. This policy statement urged Congress to appropriate sufficient funds to enable the Treasury and IRS to enforce existing federal law and to issue understandable regulations on a timely basis.
- In the early 1990s, NABL submitted thorough and well-reasoned comment letters on numerous proposed tax regulations addressing such matters as arbitrage accounting, the spenddown exceptions from arbitrage rebate, and transferred proceeds, as well as on such securities law initiatives as the continuing disclosure policies.
- In 1993, NABL addressed the SEC's enhanced interest in the municipal bond market and increased responsibilities regarding secondary disclosure by issuing, along with a group of industry representatives, the Joint Statement on Improvements in Municipal Securities Market Disclosure.
- NABL's General Tax Committee commented on proposed regulations regarding the definition of private activity bonds in 1995.

- In 2000, NABL submitted two comment letters on the SEC's interpretative release on electronic disclosure, and the General Tax Committee submitted comments on proposed GIC broker fee regulations.

## **THE NEXT TWENTY-SEVEN YEARS**

While NABL has moved from infancy through adolescence into full maturity as an organization, the Association remains as vibrant as ever in its pursuit of the statement of purpose on which it was founded. The education of NABL members has never been more critical, as increasingly complex financing strategies, rapid developments in federal tax and securities laws, and increasing demands from trade and service organizations representing all segments of the municipal finance industry, require NABL's attention and response. The result is constant evaluation of existing programs as well as aggressive developments in providing new offerings. Recent years have seen NABL make great strides in the educational arena, as NABL web postings assure prompt and broad distribution of current developments, and NABL-sponsored teleconferences allow immediate and interactive discussions regarding topics of particular interest. NABL continues to explore webcasting and other technology that will allow broad-based and easily accessible reports and discussion regarding matters of significance to its members.

NABL has also found that its standards of practice are living and dynamic, and must be regularly reviewed and updated to reflect the events that impact our practice. As a result, the Model Opinion Project has been extensively reviewed and updated three times; "The Function and Professional Responsibilities of Bond Counsel" is currently being rewritten; and other foundational materials of our organization have either been synthesized with others or appropriately modified.

Finally, NABL has become a respected voice in the municipal finance industry in addressing legislative and regulatory matters impacting the industry. The regular interchange of NABL members between private practice and public service has allowed a mutual appreciation of the concerns of each. Also, by initiating regular dialogue with industry colleagues such as The Bond Market Association (TBMA), the Government Finance Officers' Association (GFOA), and others, NABL has enhanced its ability to respond to or, in certain instances, initiate legislative and regulatory responses to matters of common concern.

If past is prologue, NABL's agenda of action each year, like our daily lives, will be regularly interrupted by the unexpected. NABL remains committed to serving its members by offering timely and thoughtful input in all matters of interest to our profession, and by channeling necessary and useful information back to its members to assist them in making sound legal judgments. Our effectiveness in fulfilling this mission represents our role in assuring a healthy and stable public finance market.