

PRESIDENT'S COLUMN*

The opportunity to serve the National Association of Bond Lawyers as its President is indeed an honor and a privilege. I wish to express my gratitude to Dean Pope, Joe Johnson and Ted Hester, the immediate past presidents whom I had the pleasure of serving under on the Board of Directors and whose examples I hope to be able to follow.

I would like to point out certain ironies that I have noted regarding my becoming President of NABL that relate to the history of the organization of NABL. By reading several of the Oral Histories that have been published in *The Quarterly Newsletter*, I have learned that NABL's beginnings in 1979 stemmed from a desire to provide both educational programs as alternatives to the PLI seminars as well as an additional vehicle for the organized professional activities of the ABA. Furthermore, back in the 70's the New York law firms were the establishment bond counsel firms and most of NABL's early membership and leaders were non-New Yorkers.

So here I am, heading up NABL as the Association enters its second decade: a New York "establishment" lawyer, an alumni of the PLI faculty, an active ABA member and a tax lawyer.

Is my election to office a symbol of what this organization has become? I don't think so. I believe I am merely an example of the diversity of our membership. We are nearly 2800 strong, and it would indeed be very hard to describe the typical member. It is clear, however, that the changes in the law and the practice of bond counseling have resulted in our being different from who we were 10 or 12 years ago.

This diversity of our membership can be seen by considering the NABL presidents immediately past and future. Take Ted Hester — the maven of Washington who in recent years has devoted much of his career to lobbying on matters relating to public finance law. Ted's skills were rare among our number when NABL began in the late 70's. Our president-elect, Ric Weber, on the other hand, may appear at first glance to be a traditional bond lawyer who carefully and dutifully attends to the drafting of resolutions and documents that support his bond opinion. However, I have discov-

ered the real Ric Weber — a renaissance man of public finance whose knowledge of tax law is surpassed only by his mastery of the intricacies of the fast-developing practice and procedures of securities laws.

So where do I fit in? If I am so much the antithesis of the historic NABL member, one might ask, how did I become your President? The enormity of this honor has, in fact, caused me to ask the same question. I would like to answer by recounting my mastery of the nuances of Section 103 law. Although I'm not willing to discount altogether my professional capabilities, the answer is really quite clear and simple; and it's a topic I would like to focus attention on during the coming year, that is, service to profession and volunteerism.

There are many reasons why I and why you might actively participate in an organization such as NABL. Some of these are selfish — such as the potential for ego-building through self promotion and the opportunity for business development. No doubt, these were elements underlying my service to NABL. But making a difference takes more. My epiphany, if you will, was the realization that I truly enjoy what I do for a living. I enjoy the law and, in particular, the specialized and esoteric area of law in which I practice. I also like working with my fellow public finance professionals.

So' the bottom line is that "Bond Law has been very very good to me," and in return I have tried to give something back, hoping that I have contributed to the improvement of our practice in the process. This, in the end, is what Service to Profession is all about. And that is what this Association needs from each of you. We cannot take without giving; and along the way, there will also be rewards to be reaped that will help satisfy the selfish aspects of human nature.

My call for an increase in volunteerism and service to profession from the members of NABL stems from a concern and an observation that perhaps the most active participants in NABL activities are becoming inbred. I find that when some work must be done for the Association, the names of the same individual lawyers and law firms keep coming up. The leadership has learned who can be relied upon to pitch in and get a job

*Remarks delivered by Richard Chirls at the Association's annual meeting on October 1, 1990.

done for the benefit of the organization. Naturally, we turn to these people or firms. And lo and behold, these dedicated servants of our profession come through in the crunch once again.

I feel strongly that the circle of NABL workers must be expanded in order to strengthen the Association and better serve our members and the profession. However, there is a limit to what the NABL leadership can do. It is up to each member to realize that service to our profession is proper and necessary and to then take the affirmative step of volunteering. It is my intention to actively promote the concept of volunteerism and service to profession among our membership.

Undoubtedly, the Association will continue to work hard at efforts to improve the law as it affects public finance. As a tax lawyer, it will be natural for me to focus my attention on continuing efforts to obtain tax simplification legislation, workable Treasury regulations, and reasonable rulings by the Internal Revenue Service. During the past year, great strides were taken to identify essential areas for tax simplification. Now we must work hard to see that these suggestions are implemented. We will continue to assist the Treasury so that guidance through regulations is forthcoming more rapidly than in the past. Finally, there is a substantial list of recent IRS private letter rulings that can most generously be described as "flaky" and perhaps more appropriately as incorrect and misguided. We will do what we can to correct these wrongs that have befallen us.

Less of a natural fit for me will be dealing with the area where I expect the "action" to be in the coming year, that is, the rapidly developing area of securities law as it affects public finance transactions. In this area, I am thankful for the perseverance of Paul Maco, Stan Keller, Jack Gardner, Fred Rosenfeld and Ric Weber, among others. As articles in *The Bond Buyer* and *The Wall Street Journal* will attest, NABL has taken a leadership role in the development of disclosure rules. These efforts will continue.

Back on the tax front, I intend to confront something other than the substantive provisions of Code Sections 141 through 150. That is, I believe that we must play a role in improving the administration of the tax law as it affects our transactions. As any tax lawyer will agree, there is much room for improvement in many respects. Two

particular concerns have caught my attention, one of which is more readily addressed than the other.

The first deals with the difficulty in obtaining rulings from the Internal Revenue Service. Simply stated, the process is a mess. Back in 1978, Congress attempted to assist us by providing that if an issuer doesn't obtain a satisfactory ruling from the Service within 6 months, the issuer may sue the IRS in Tax Court in a declaratory judgment procedure. This process held great promise for issuers. In fact, three municipalities have used the procedure and all three have realized victories over the IRS. However, the Service has unfairly and improperly managed to block issuers from utilizing the declaratory judgment process by creating procedural roadblocks. This is contrary to congressional intent and needs to be fixed. I believe that we can do something to make the declaratory judgment procedure more useful and thereby force the Service to be more responsive in providing guidance on a timely basis. That, after all, was Congress' goal all along.

The trickier issue is what (if anything) to do about the status of current law, which provides that upon a violation of any Code requirement of Sections 141 through 150 bondholders must pay taxes on interest received on their municipal bonds. Some people would say that there is no problem with the current law situation. After all, they argue, how often has anyone really been hurt by this allegedly unfair law?

I am not, however, part of that group. Nor are the staff of the Joint Committee on Taxation, who, in their recent report on tax simplification, called for the development of an alternative system of penalties for violations of tax law provisions relating to municipal bonds. Congressman Donnelly has stated his concern about the lack of enforcement of Code requirements under the current system of penalizing bondholders. Congressman Anthony is interested in this problem as well. The General Accounting Office has begun work on a report on this topic which is scheduled for publication next summer. Furthermore, the penalty on bondholders is contradictory to the previously stated policy of NABL, which encourages the vigorous enforcement of tax law requirements where violations are found to exist.

Thus, whether we as bond lawyers like or dislike the current tax penalty system may not matter. In fact, I believe that changes will take place

whether we want them to or not. Therefore, the question becomes whether this Association should take the position of waiting for some legislative proposal to be made and then responding or of taking a leadership role in developing an appropriate alternative penalty system.

Although my instincts tell me that we are likely to be more satisfied with the results if we lead the way, upon reflection, I believe that the answer may not be so obvious. Accordingly, I will ask our relevant Committees to undertake the study of this issue carefully but promptly.

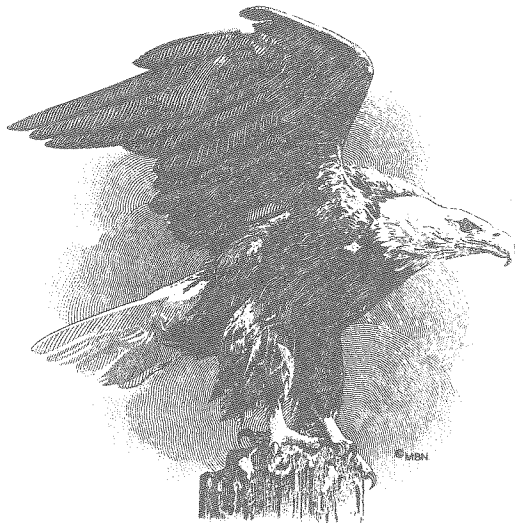
Regardless of how or when the process for reforming the tax penalty rules moves forward, it is essential that an adequate airing of all considerations be provided through formal congressional hearings. In the past several years, the pressures

of the legislative timetable have eliminated the opportunity for public debate of proposed tax legislation. Tax bills are conceived, introduced, negotiated, and enacted in a matter of hours, often almost entirely behind closed doors. This process is unacceptable. Any change in the tax penalty rules is too important and likely to be too controversial to fall prey to the last-minute crunch of business and not receive a full public airing. NABL must do its part to promote such debate.

I thank you for allowing me this full and public airing, and for bestowing this honor upon me. I thank you in advance for joining me in volunteering to serve NABL during this coming year and for many years beyond.

RICHARD CHIRLS

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