



6<sup>th</sup> of June 2019

## **Re: NEC Revisits Resolution at Request of Legal Counsel**

Fellow SOBANS,

It is always unfortunate when some of our members spread information about a National Executive Committee (NEC) decision without putting it in context or with all the details as to how the decision was arrived at. Such moves only help to create unnecessary misunderstanding amongst members especially when such stories go out while deliberations about the said issue at hand are still ongoing. Hence motives of such leaks before leadership can share it with members is clearly not in the best interest of the organization.

Maitre Ernest Tate, a distinguished attorney who has been practicing law for over 30 years, reached out to outgoing President Itoe, raising serious concerns about the actions of NEC and the General Assembly (GA) with respect to the legal opinion they took time to do for SOBA America Pro bono after reviewing all documents submitted by all parties concerned. It should be noted that Maître Tate did all of SOBA America's incorporation documents and has handled all legal issues for us since our creation and is therefore the legal expert on all things SOBA America. Hence Maitre Tate was invited to attend a preplanned NEC call to shed light on his concerns.

### **Legal Recommendation**

In his hour-long presentation, Maitre Tate detailed the potential legal jeopardy SOBA America was in given the vote of the General Assembly. He blamed NEC for seeking a legal opinion on something which could affect SOBA America and using the recommendation like something which did not matter much and was up to the GA. He made it clear that as this was a legal opinion, the only other opinion NEC could consider in its decision is another legal opinion, and not that of a layperson.

### **Criminal Indictment**

He made it clear those recommendations were meant to protect SOBA America and its executives from a potential criminal indictment and not just recommendations for us to decide if we liked them or not. Members of NEC and the General Assembly had not been privy to the potential criminal probe and suits these actions could generate. He made it clear members of NEC could face criminal charges as individuals alongside the Association for their actions or failures to act in this case. The charges could be generated by the lady in question or by any other investigation linked to this one for the next 6 years due to the 6-year Statute of Limitations. The law makes no distinction on if just one officer did the said action. It puts the entire association and individual officers at risk of criminal charges. More so, his legal opinion is there is more than enough

evidence for probable cause to start an investigation into identity theft, fraud, racketeering and other federal crimes. He expressed disappointment at why NEC ignored legal advice meant to protect SOBA America and our officers and presented it to the GA as if it did not have serious consequences. A retainer for such a case against just SOBA America is a minimum of \$25,000.00. Why would we take all this risk? He blamed NEC for failing to paint the true picture of the risk SOBA America was facing and for failing to refund the money within 24 hours as he requested President Itoe do 48 hours before the convention.

### **Criminal Ratification**

The decision of the GA at the Convention further documented SOBA America's role as a willful participant in a crime and in ratification of the crime per our General Assembly resolution. The decision by the GA to deny refunding money and offering an apology after knowing what the lady wrote denying giving permission for the usage of her card or information in a transaction with SOBA America, offers clear evidence of SOBA America's full participation in identity theft, fraud and racketeering. Our GA minutes he said, is all what is necessary to expose us to serious charges if followed up. It is not the smoking gun but the gun and clear fingerprints prosecutors can dream of in such cases. He further emphasized the failure of NEC to make the GA realize it was a legal opinion and not a simple recommendation per opinion may have misled the GA in how to evaluate their write-up. His emphasis on our failure to differentiate between legal matters, emotional matters or matters which could go either way is the source of this failure. He called on us not to risk losing or putting SOBA America in legal jeopardy just for \$1,500. The cost if this leads us into trouble or if even a SOBA America member sues us based on the GA's decision will cost us lots of money, bad press and long lasting wounds.

### **Presentation to the GA**

It is clear NEC members did not fully understand how they had to present this information to the GA. They did not present it as a legal opinion instructing the GA of the consequences of our failure to comply, they did not make it clear how legally exposed SOBA America was, they did not let officers (NEC) members know they could individually face criminal charges for their failures to act to protect SOBA America and its members, nor did the GA even know that passing a resolution not to return the money was admitting to being a willful participant in an identity theft, fraud and racketeering charges which could destroy all what we have built and possibly have officers face jail time. Please note that as a matter of law, the board of a corporation, in our case NEC, has a fiduciary duty and obligation to protect the organization regardless of what the shareholders (in this case the GA) decide. That is what the law states. The law allows the board to overturn any shareholder decision that puts the corporation in legal jeopardy. A vote, showing that the board (NEC) was acting to correct an action that puts the corporation (SOBA America) in criminal jeopardy was needed as a critical time-sensitive first step.

### **Questions to Consider**

Fellow members, now you have the facts as to why the NEC approved the legal counsel's advice to return \$1500.00 and apologize rather than expose ourselves to the unknown which can cost us and individual officers potential jail time. The decision before NEC members was clear. This action only affects SOBA America and NEC members, and does not in any way vindicate or remove any responsibility from the member who allegedly performed the initial act. Now to all those who beg to differ, here are some questions for you:

1. Do we put SOBA America first and protect it from major criminal exposure, or do we say nothing and take a risk hoping nothing will happen?
2. Do we protect elected officers locally and nationally or leave them hanging out to dry with a 6-year statute of limitations window for identity-related crimes? We acted to protect our

own and SOBA America given the GA was not well briefed on the legal implications and how to interpret the opinion and further incriminate herself with a vote which could be used against SOBA America. The transcript of the legal opinion or audio will be made available.

3. Are you willing to risk our 501(c)3 status, our brand, and our association, in fact everything we are over \$1500?
4. How would you have voted if you knew your neck was on the line for something you did not do just because you are volunteering to serve SOBA America? Would you keep the money or give it back to avoid putting SOBA America or yourself in legal trouble?

Some will say, why not wait for the GA to review this and vote again. Fair question. But what happens if we run into trouble before this decision gets to the GA. The GA can always revisit a decision and it is clear the GA did not have all the facts at the time it made the decision nor did it know what the potential consequences of its vote were. In light of new developments brought to NEC, NEC had to act to protect SOBA America before we get into trouble or get the GA to get the new picture. So while NEC understood this was a legal issue and did not have much of a choice, NEC had to go on record with a resolution protecting our interest. \$1500 is not worth our reputation, image or worth making us face potential criminal charges.

### **Who is Maître Tate?**

Maître Tate is a top-rated lawyer in Atlanta with a history of exceptional performances at different levels. We should not underestimate his legal advice because he is one of us or did this for us pro bono. This would have cost us at least \$5,000.00 just to get this opinion on what to do in the best interest of Soba America. He also clearly stated that if the facts in his possession were ever presented to a grand jury, they would come back with an indictment of SOBA America and its officers. When we don't trust our own professionals and their expertise, who do we expect to trust? Elections have come and gone and no one in particular benefits from this legal advice except Soba America. So why do some feel this is a plot by NEC to rule over the General Assembly? It should be noted that all newly elected executive members voted to support this move. So it was the voice of the people not just chapter presidents who were elected and other NEC Members. Soba America like any other corporation and its officers are subject to respecting local, state and federal laws. In the eyes of the law, we are no different from any other corporations and must put the law above all our actions. We are held to the same legal standards like all corporations.

### **Conclusion**

In conclusion, given this incident was brought to light very close to the convention and needed prompt attention, the NEC in an abundance of caution given the potential impact on the elections thought it wise to take it to the General Assembly given that they did not fully grasp the legal implications. It all happened so fast. The NEC accepts some responsibility in how this situation was handled. On behalf of the NLT and NEC, please accept our sincere apology. We meant no harm but failed to realize the delicate line between the law and the powers of the General Assembly. On this NEC call, all members of the newly elected NLT which just had the mandate of the people supported this resolution. Hence the voice of the people was heard through their elected executive acting in their place in a time of need as it should be.

Now you have the facts and I hope this clears the air.

Sobanly,

Mbei Enoh, Outgoing S.G, SOBA America