

Advisory Opinion

IECDB AO 2000-08

May 18, 2000

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11), the Iowa Ethics and Campaign Disclosure Board takes the opportunity to issue its opinion on the enforcement of rule 351 IAC 13.5 that provides for the automatic suspension of individuals who lobby executive branch agencies without being registered. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 56 and 68B and rules in Iowa Administrative Code chapter 351. Whether some other statutory system, common law theory or agency rule applies to this issue is not covered by this opinion.

OPINION:

Rule 351 IAC 13.5 states:

"Penalties for failure to register. A person who lobbies an executive branch state agency without registering in advance shall be suspended from any future lobbying activities for a period of time to be determined by the board, but not less than 30 days. The board may also impose a civil penalty not to exceed \$1,000."

The Board first notes that all individuals that lobby executive branch agencies are required to register with the Board prior to engaging in such conduct pursuant to Iowa Code section 68B.36.

Pursuant to Iowa Code section 68B.32A(8), the Board has been given the statutory authority to "establish and impose penalties, and recommendations for punishment...for the failure to comply with the requirements" of the laws under its jurisdiction. This section of law authorizes the Board to adopt rules that impose sanctions for violations and the Board disposes of a number of "routine" violations through its "administrative resolution" process outlined in rules 351 IAC 1.4(1) through 1.4(4). The Board also has the statutory authority to hold a contested case and impose penalties if it determines that a violation occurred (Iowa Code section 68B.32C and Iowa Code section 68B.32D).

Turning to the issue of enforcing rule 351 IAC 13.5, the Board believes the penalty set out in that rule is not supported by the "administrative resolution" remedies set out in rule 1.4(2). We are also concerned that unlike the other "administrative resolution" remedies, rule 13.5 does not seem to be subject to an appeal process. Finally, the rule seems to be in conflict with Iowa Code section 68B.32D(1)"g" that states the Board "may" suspend an executive branch lobbyist, while the rule states the individual "shall" be suspended. Therefore, for all of these reasons, the Board will no longer enforce rule 351 IAC 13.5 and will initiate rulemaking to rescind the rule.

In closing, we do note that lobbying executive branch agencies prior to registering is a violation that is subject to the possible "administrative resolution" remedies in rule 351 IAC 1.4(2) such as a Letter of Reprimand. If, in the Board's discretion, it believes the violation should not be handled "administratively", then it may set any such allegation for a contested case hearing and impose penalties after the hearing if the violation is proven.

BY DIRECTION AND VOTE OF THE BOARD

Bernard McKinley, Board Chair
1st Vice-Chair Geraldine Leinen
2nd Vice-Chair James Albert
Gwen Boeke
Mark McCormick
Phyllis Peters

Submitted by: W. Charles Smithson, Board Legal Counsel