

# Advisory Opinion

IECDB AO 2000-22

August 17, 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 issue of the Board not enforcing the time limits on when yard signs may be erected. 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:

Iowa Code section 56.14(2)"a" in pertinent part states:

"Yard signs shall not be placed on any property which adjoins a city, county, or state roadway sooner than forty-five days preceding a primary or general election and shall be removed within seven days after the primary or general election in which the name of the particular candidate or ballot issue described on the yard sign appears on the ballot."

Based on the decision by the Eighth Circuit Court of Appeals in *Whitton v. City of Gladstone*, 54 F. 3d 1400 (8th Cir. 1995), the Board sought an advisory opinion from the Iowa Attorney General's Office on whether or not Iowa Code section 56.14(2)"a" was constitutional. The *Whitton* case involved a city ordinance in the State of Missouri that was not significantly different than the Iowa statute in question. On February 18, 1997, the Attorney General's Office determined that based on the *Whitton* decision, Iowa Code section 56.14(2)"a" did violate the "federal constitutional guarantee of free speech as interpreted by the Court."

Based on the decision and the opinion of the Attorney General's Office, the Board had administratively suspended enforcement of the statute. The Board now takes the opportunity to formally announce that based on the *Whitton* decision and the opinion of the Iowa Attorney General's Office it will not enforce the provisions of Iowa Code section 56.14(2)"a".

We do note that although the statute itself has not been ruled unconstitutional in court, the Board believes that suspension of enforcement of Iowa Code section 56.14(2)"a" is proper under 1984 Op. Att'y Gen. 66, 69 and Iowa Auto Dealers Ass'n v. Iowa State Appeal Bd., 420 N.W. 2d 460 (Iowa 1988), where in instances when a recent court decision affecting a statute "essentially similar to the Iowa statute, a state agency charged with enforcing the Iowa statute should proceed in accordance with that decision".

In closing, the Board has proposed legislation to the General Assembly to repeal Iowa Code section 56.14(2)"a", but that legislation has not yet passed.

**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