

# Advisory Opinion

IECDB AO 2000-34

October 19, 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 when the "paid for by" attribution statement is not required on campaign materials that "expressly advocate". 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 and rule 351 IAC 4.70 require a "paid for by" statement to be placed on all "published material" that "expressly advocates" (see Iowa Code section 56.2(14)"b" and rule 351 IAC 4.100(1)"a") on candidate and ballot issue elections. The statute provides an exception for the following:

"(1)"c" This subsection shall not be construed to require the inclusion on published material of information which discloses the identity or address of any individual who is acting independently and using the individual's own modest resources to publish or distribute the material."

The issue has now become what materials are exempted under this subsection. Based on the decision by the United States Supreme Court in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) that stated that an individual acting independently and spending his or her own modest resources was exempt from attribution disclaimers, the Board reaches the following interpretations concerning this subsection:

1. Since the *McIntyre* decision dealt with a ballot issue, the Board will only apply this subsection to ballot issues and not to candidate elections.
2. The subsection applies only to "individuals". Therefore, any combination of two or more individuals or any "person" other than an "individual", that produces "published material" will not fall under the exception. In addition, the individual must use his or her "own modest resources" and cannot receive reimbursements or other payments from any other individual or person for purposes of producing the "published material".

3. The Board interprets the phrase "modest resources" to be an amount of \$500.00 or less in the aggregate to "expressly advocate" for or against a particular ballot issue. This amount is based on the \$500.00 reporting threshold as set out by statute to determine when a candidate or political group must form a "committee" (see Iowa Code sections 56.2(5) and 56.2(18)). Once the individual exceeded \$500.00 in the aggregate to "expressly advocate" for or against a particular ballot issue, the individual would be required to include a "paid for by" disclaimer on that material and all subsequent "published materials" that "expressly advocate" for or against that particular ballot issue.

Therefore, any individual expending in the aggregate \$500.00 or less of his or her own money to "expressly advocate" the passage or defeat of a particular ballot issue is not required to place a "paid for by" disclaimer on the material. Under all other scenarios, a "paid for by" attribution statement must be placed on "published materials" that "expressly advocate".

In closing, the Board suggests that all individuals and groups review the "paid for by" requirements in Iowa Code section 56.14 and rules 351 IAC 4.70 through 4.75.

**BY DIRECTION AND VOTE OF THE BOARD**

Bernard McKinley, Board Chair

1st Vice-Chair Geraldine Leinen

2nd Vice-Chair James Albert

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Mark McCormick

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-Submitted by: W. Charles Smithson, Board Legal Counsel