

# Advisory Opinion

IECDB AO 2000-39

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 when executive branch employees are "lobbyists" and not part of a "collaborative project" with another agency. 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:

We first note that our jurisdiction in interpreting the lobbying laws is limited to activities before executive branch agencies.

Iowa Code section 68B.2(13)"a" in pertinent part states:

"Lobbyist' means an individual who, by acting directly, does any of the following:  
(3) Represents the position of a federal, state, or local governmental agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official."

Iowa Code section 68B.2(13)"b" in pertinent part states:

"Lobbyist' does not mean:

(6) Agency officials and employees while they are engaged in activities...with another agency with which the official's or employee's agency is involved in a collaborative project."

The argument has been raised to the Board that since state agencies are all part of the executive branch, that any executive branch employee "encouraging" action on legislation or rules by another executive branch agency is part of a "collaborative project". As such, the employee would not be required to register and file reports as an executive branch lobbyist under Iowa Code section 68B.36 and 68B.37.

It is our opinion that the statute does not create a presumption that activities by executive branch employees in dealing with other agencies are "collaborative projects". If an agency employee "encourages" the Governor, or members of the Governor's Office, in order to get a piece of legislation signed, the employee is a "lobbyist" under Iowa Code section 68B.2(13) "a"(3). If it were truly a "collaborative project" there would not be a need for the employee to "encourage" anyone to get the legislation signed.

In situations where an agency employee contacts another agency and "encourages" action to initiate rulemaking, to amend current rules or to amend rules during the rulemaking process, the employee is a "lobbyist" under the law. In a situation where two or more agencies are working together to draft rules, then it is a "collaborative project" and it would not be necessary for any of the employees to register as "lobbyists".

The analysis would be the same for any legislative recommendations made by an agency. If other agencies were "encouraging" action by the agency to propose legislation or make amendments to proposed agency legislation, the employees need to register as "lobbyists". If two or more agencies were working together on proposed legislation, the employees would not be required to register as "lobbyists".

Due to the fact that there are sanctions involved in engaging in lobbying activities prior to being registered, we suggest that in situations where an executive branch employee is uncertain of whether he or she is engaging in "lobbying", the employee contact the Board for guidance.

**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