

Advisory Opinion

IECDB AO 2001-16

October 18, 2001

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 an issue becomes a "ballot issue" for purposes of the campaign finance laws. 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 in IECDB Advisory Opinion 2000-11, the Board discussed when an issue became a "ballot issue" for purposes of the prohibition on public funds for a political purpose. The Board takes this opportunity to discuss when an issue becomes a "ballot issue" for purposes of the campaign finance laws as a whole.

Iowa Code section 56.2(1) defines "ballot issue" as the following:

"Ballot issue' means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections."

An issue does not become a "ballot issue" until it has been approved or is required by law to be on the ballot. Until then, any activities concerning the issue are considered to be "preballot" activities. This would include petition drives, advertisements, or mailings encouraging the issue to be placed on the ballot. A "preballot" activity is not subject to the campaign finance laws in Chapter 56.

Thus, these "preballot" activities would not require the registering of a committee, the filing of disclosure reports, the placement of a "paid for by" attribution statement, or any other compliance with the campaign laws. The source of funding for these activities is not subject to public disclosure. Once an issue is approved or is required by law to be placed on the ballot, then the campaign finance laws would apply to all subsequent activities.

Anyone raising money to pay the costs of activities to get an issue on the ballot should be aware of Board rule 351 IAC 4.38(2). That rule in pertinent part states:

"Financial activity not directly related to a ballot issue, such as efforts to encourage or discourage signatures on a petition to place an issue on the ballot, is not normally reportable under Iowa Code chapter 56. However, if a committee formed to engage in election advocacy on the ballot issue has use of the carryover funds of that preballot issue activity, the carryover balance shall be reflected on the first report...with a brief description of the activity which occurred prior to the issue's being certified for placement on the ballot....the description shall state whether or not any of the financial activity during the three calendar years preceding the report included the receipt of one or more contributions totaling more than \$500 from any one source. If so, the committee shall attach an addendum to the schedule which contains the name(s) and address(es) of that (those) contributor(s), and the date(s) and amount(s) of that (those) contribution(s)."

In applying this language, if any funds from a "preballot" activity were made available to a subsequent political committee, the committee would disclose the fact that it received these funds from a "preballot" activity. In addition, the name and address of any person contributing in excess of \$500 to the "preballot" activity for three years prior to the filing of the report would need to be disclosed.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

1st Vice-Chair Geraldine Leinen

2nd Vice-Chair Gwen Boeke

Mark McCormick

Bernie McKinley

Phyllis Peters

Submitted by: W. Charles Smithson, Board Legal Counsel