

Advisory Opinion

IECDB AO 2002-15

May 23, 2002

Pamela Jordan
2504 Keokuk Ave
Spirit Lake, Iowa 51360

Dear Ms. Jordan:

This opinion is in response to your letters of May 16 and May 17, 2002, in which you request an opinion from the Iowa Ethics and Campaign Disclosure Board. 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.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as a candidate for Dickinson County Supervisor and as a self-employed grant writer. You are concerned about any future conflicts.

QUESTIONS:

Based on this factual information, and assuming that you are elected as county supervisor, you ask us the following questions:

1. Would you be prohibited from doing grant writing work for a county-funded entity?
2. Would you be prohibited from doing grant writing work for a school district?
3. Would you be prohibited from doing grant writing work for a non-profit organization applying for state funds or for federal funds through state block grants?
4. Would you be prohibited from doing grant writing work for a non-profit organization applying to private or public foundations for funding?

OPINON:

Iowa Code section 68B.2A states:

"1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an

unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

a. The outside employment or activity involves the use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. This paragraph does not apply to off-duty peace officers who provide private duty security or fire fighters or emergency medical care providers certified under chapter 147A who provide private duty fire safety or emergency medical services while carrying their badge or wearing their official uniform, provided that the person has secured the prior approval of the agency or political subdivision in which the person is regularly employed to engage in the activity. For purposes of this subsection, a person is not "similarly situated" merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.

b. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.

c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment.

2. If the outside employment or activity is employment or activity described in subsection 1, paragraph "a" or "b", the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in subsection 1, paragraph "c", or constitutes any other unacceptable conflict of interest, unless otherwise provided by law, the person shall take one of the following courses of action:

a. Cease the outside employment or activity.

b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, "official action" or "official duty" includes, but is not limited to, participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity.

3. Unless otherwise specifically provided the requirements of this section shall be in addition to, and shall not supersede, any other rights or remedies provided by law."

In general response to all four of your questions, you would be prohibited from using any county resources or other "evidence of office" in your outside employment (subsection (1)"a"). Also, you could not receive compensation, other than your salary as a supervisor, to perform "any act" that you would be required to perform as a county supervisor (subsection (1)"b"). Under subsection (1)"c", if an entity that you were employed by appeared before the Board of Supervisors, you would be required to disclose the conflict and abstaining from "taking affirmative action" to influence a vote or decision (subsection (2)"b").

Therefore, so long as you follow the procedural safeguards set out in this opinion, you would not be prohibited from accepting employment in any of the situations you raise.

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