

## Advisory Opinion

IECDB AO 2004-08

June 23, 2004

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on a lobbyist who is also a candidate for state office making contributions to own campaign during the legislative session. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B and rules in Iowa Administrative Code chapter 351.

OPINION:

The issue has been raised concerning whether a member of the board of directors of a nonprofit racing corporation or association is subject to the conflict of interest law in Iowa Code section 68B.2A by virtue of serving on the board.

Iowa Code section 68B.2A prohibits any "person who serves or is employed by the state or a political subdivision of the state" from engaging in "any outside employment or activity which is in conflict with the person's official duties and responsibilities."

Iowa Code section 68B.2(1) defines "agency" as meaning:

"a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any department, division, board, commission, bureau, or office of a political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum."

Iowa Code section 68B.2(2) defines "agency of state government" or "state agency" as meaning:

"a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum."

In reviewing these definitions, it is clear that the legislature has not included nonprofit racing corporations or associations in the definitions of those entities that are subject to the ethics laws. Therefore, the conflict of interest law in Iowa Code section 68B.2A would not apply to a member of the board of directors of a nonprofit racing corporation or association when making decisions affecting the corporation or association.

In closing, the Board notes that this opinion applies solely to the issue of the application of the state conflict of interest law in Iowa Code section 68B.2A on a board member of a nonprofit racing corporation or association making decisions affecting the corporation or association. The Board cannot speak to whether or not some other statutory section not under the Board's jurisdiction governs the conduct of individuals serving on a board of directors of a nonprofit racing corporation or association.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Phyllis Peters, Vice Chair  
Janet Carl  
Gerald Sullivan  
Betsy Roe  
John Walsh

Submitted by: W. Charles Smithson, Board Legal Counsel