

Advisory Opinion

IECDB AO 2005-10

August 15, 2005

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 the applicability of the campaign laws to recounts and efforts to contest elections. The Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

The issue has been raised concerning whether the campaign laws in Iowa Code chapter 68A apply to recount provisions or contesting the result of an election. For example, would a group that raised or spent in excess of \$750 to contest an election be required to form a campaign committee and file campaign finance reports?

Based on the express language of Iowa Code chapter 68A, it is clear that the purpose of the campaign laws is to govern the conduct of persons involved in efforts to persuade voters to nominate, elect, or defeat candidates or to pass or defeat ballot issues. Challenging the outcome of an election through a recount or by contesting an election involves a legal process that is separate and distinct from the process of appealing to the voters.

Therefore, we believe that the campaign laws do not apply to the recount provisions or contesting an election except as set out in this opinion.

In situations when a group raises or spends money to engage in such efforts and does not use an already existing campaign account, the campaign laws would not apply. Thus, there would be no requirement to form a campaign committee or publicly disclose the transactions. In addition, the prohibitions on the source of funding for these transactions would not apply.¹

However, if these transactions involve an already existing campaign account then they would have to be disclosed on the committee's campaign finance reports the same as all other transactions involving the campaign account.² In addition, the prohibitions on the source of funding would also apply if these transactions were conducted through an existing campaign account.

In closing, the Board notes that the “gift law” in Iowa Code section 68B.22 could apply when a candidate chooses to fund a recount or contests an election and does not use the candidate’s existing campaign account. Under that law, candidates for state or local office cannot receive gifts from any person who is a “restricted donor.”³ While the law exempts the receipt of “campaign contributions,”⁴ donations to a separate fund that were not subject to the campaign laws could trigger Iowa Code section 68B.22 and such candidates should seek further guidance.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code chapter 68A, Subchapter V that sets out various campaign contribution prohibitions.

² See rule 351–4.2(1)“aa” in which the Board specifically permits the use of candidate campaign funds for “expenses incurred with respect to an election recount as provided in Iowa Code section 50.48.”

³ See Iowa Code section 68B.2(24) for the definition of “restricted donor.”

⁴ See Iowa Code section 68B.22(4)“a.”