

Advisory Opinion

IECDB AO 2005-21

December 1, 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 ability of lobbyists and PACs to make contributions during legislative session when a contested primary election exists. 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 prohibition on lobbyists and PACs making contributions during legislative session applies during a contested primary election.

Iowa Code section 68A.504(1) states:

“1. A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills. Except as set out in subsection 2, an elected state official, member of the general assembly, or candidate for state office shall not accept a contribution as prohibited in this subsection.”

Under this section, lobbyists and political committees (PACs) are prohibited from making contributions to any of the following during legislative session:

1. Elected state officials (Governor, Attorney General, Secretary of State, Secretary of Agriculture, State Auditor, and State Treasurer).
2. Elected members of the General Assembly (State Senate and House of Representatives).
3. Candidates for state office (candidates for any of the offices mentioned above in #1 and #2).
4. For purposes of the Governor and gubernatorial candidates, the prohibition extends for an additional 30 days following the adjournment of the legislative session.

In reviewing the statutory language, it is clear that the legislature intended for the prohibition to apply during the specific timeframes regardless of whether or not there was a contested primary election. The statute does not draw a distinction between a contested and non-contested primary. Thus, the prohibition applies even if two or more candidates are seeking the same office during a primary election.

The Board notes that Iowa Code section 68A.504(2) and Board rule 351—8.15(2) set out certain exceptions from this prohibition. In addition, IECDB Advisory Opinions 2001-01, 2002-09, and 2004-7 discuss situations when the statutory prohibition would not apply. However, none of these exceptions encompass contributions given during a contested primary election.¹

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 The exceptions are for such things as contributions to a federal campaign account, special elections held during session, contributions to a lobbyist's own campaign, contributions during a special session, and out-of-state lobbyists being able to contribute.