

Advisory Opinion

IECDB AO 2007-09

September 4, 2007

Kendra Caruth
tkcaruth@aol.com

Dear Ms. Caruth:

This opinion is in response to your email letter of August 15, 2007, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(1) and Board rule 351-1.2. We note at the outset that 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.

FACTUAL STATEMENT:

You request this opinion as a parent of a child who attends public school. You advise us that the school administration distributed a letter to staff and organizations such as the Parent Teacher Organization regarding Iowa Code section 68B.22 (gift law). The letter advised school employees to refuse gifts and asked them to remind parents to not give gifts and thus avoid placing school staff in an uncomfortable position. You question the application of the law to students of a school.

QUESTION:

Are K-12 students "restricted donors" to their teachers?

OPINION:

Administrators, staff, and teachers of a public school are "public officials" or "public employees" subject to Iowa Code section 68B.22.¹ Thus, school personnel and their immediate family members² are prohibited from "directly or indirectly" receiving or soliciting gifts from "restricted donors." A "restricted donor" cannot "make" or even "offer" a gift.

The gift law is different than bribery. The intent of the donor and the potential impact on the behavior of the recipient are irrelevant for the law to be violated. Rather, the issue is whether or not the person giving the gift is a "restricted donor."

Before addressing your question, it is important to remember that there are a number of situations when a gift may be accepted from a "restricted donor." It is permissible for an "otherwise prohibited nonmonetary gift" to be received so long as the recipient then donates the gift "within thirty days to a public body, the department of administrative services, or a bona fide educational or charitable organization."³ In addition, there are currently 18 exceptions to the gift law that permit a gift to be given by "restricted donors" and for the recipient of the gift to keep the gift.⁴

The most common exception is a gift of \$3.00 or less. So there may be several instances when a gift from a student to a teacher is not even at issue because the gift is \$3.00 or less or falls within one of the other exceptions. In these situations, the question of whether or not a student is a "restricted donor" is moot because the gift is permissible under the law. In addition, the teacher always has the option of donating the gift within 30 days to the school.

In answering your specific question whether a K-12 student is even a "restricted donor" to a teacher, the initial issue is how that term is defined. Iowa Code section 68B.2(24) defines "restricted donor" as meaning a "person who is in any of the following categories:"

- "a. Is or is seeking to be a party to anyone or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.
- b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.
- c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.
- d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction."

In applying these definitions to children attending public schools, it is doubtful that they are "seeking to be a party to anyone or more combination of sales, purchases, leases, or

contracts" with the school under paragraph "a." Paragraph "c" does not apply because a public school is not a "regulatory agency."⁵ It is also doubtful that a student is a "lobbyist or a client of a lobbyist" under paragraph "d."⁶

The issue is paragraph "b" concerning whether or not a student would be "directly and substantially affected financially by the performance or nonperformance" of a teacher's duties "in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region." While a teacher certainly impacts a student through the grading and discipline process, it is difficult to see how this would rise to the level of a student being "directly and substantially affected financially" as required by the statute.

For these reasons, we do not believe that in general a student in K-12 is a "restricted donor" to a public school teacher and therefore students can legally give gifts to their teachers. However, there may be some specific factual situations that would change this answer such as when a student may be directly impacted financially by giving a gift. In addition, there might be situations when a student is acting in the capacity as an agent for someone who would be a "restricted donor" to a teacher and the student is serving to "funnel" a gift. Remember, the gift law prohibits a public official or public employee from "directly OR indirectly" (emphasis added) receiving a gift from a "restricted donor."

By issuing this opinion the Board is not speaking to the merits of the policy announced by your school district and this opinion does not serve to overturn that policy. Rather, we are speaking to the application of legal aspects of the gift law to your very specific legal question. The General Assembly spoke to this when it passed Iowa Code section 68B.21 that states the following:

"It is the goal of the general assembly that public officials and public employees of the state be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons that have a substantial interest in the legislative, administrative, or political actions of the official or employee. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raise suspicions that tend to undermine the public trust. It is therefore the intent of the general assembly that the provisions of this division be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety."

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 sections 68B.2(22), (20), (15), and (14).

² Iowa Code section 68B.2(1) defines "immediate family member" as being the "spouse and dependent children."

³ See Iowa Code section 688.22(3).

⁴ See Iowa Code section 688.22(4), paragraphs "a" through "r."

⁵ See Iowa Code section 688.2(23) that defines "regulatory agency." A "regulatory agency" is one of the enumerated state agencies of the executive branch of state government only.

⁶ It is also questionable whether this part of the definition would even apply to schools since a "lobbyist" is involved with only government at the state level. An individual cannot become a "lobbyist" under the law due to his or her actions before a school district (see Iowa Code section 688.2(13)).