

Advisory Opinion

IECDB AO 2008-01

February 11, 2008

James H. Smith
1700 Fairway Drive
Indianola, Iowa 50125

Dear Mr. Smith:

This opinion is in response to your letter of January 2, 2008, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) 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 advise us that you are currently the Deputy Director and Chief Financial Officer of the Iowa Finance Authority (IFA). IFA administers a variety of programs, several of which you are involved with as part of your state duties. These programs often involve an entity involving an application to IFA for funding. You are considering terminating state employment and accepting a position as a Special Partner in a private law firm. You would be receiving a salary, but would not be sharing in the profits and losses of the firm as an equity partner for at least two years.

QUESTIONS:

Based on this factual statement you ask us the following questions:

1. What impact would the state code of ethics have on the law firm that hired you?
2. Does that fact that your future employer currently provides legal services to IFA for many programs alleviate or diminish state code of ethics issues?
3. Would you be prohibited from drafting, reviewing, or commenting on statutory provisions or administrative rules affecting IFA?
4. Does work on bond programs issued by IFA constitute a “case, proceeding, or application?”

5. Are you prohibited from working, for two years, on new transactions and bonds issued through a continuous program?

OPINION:

In answer to your first two questions, the post-state employment restrictions apply only to you and not the law firm that hires you. Thus, while you are restricted from engaging in certain activities, the law firm that hires you would not be prohibited from doing so. The fact that your future employer currently provides legal services to IFA does not alleviate or diminish the post-state employment restrictions in the state code of ethics as applied to you.

Turning to your third question, Iowa Code section 68B.5A restricts state officials and employees from engaging in certain lobbying activities. The first three numbered paragraphs place restrictions on state officials and employees lobbying while they are employed by the state. Numbered paragraphs four through six place restrictions for two years on former state officials and employees lobbying. ¹

As you are the “deputy executive or administrative head of an agency of state government” ² you fall under the restrictions set out in Iowa Code section 68B.5A(1), and for purposes of your opinion request, Iowa Code section 68B.5A(4). That section prohibits you from becoming a “lobbyist”, as defined in Iowa Code section 68B.2(13)“a” and Board rule 351—8.2, “within two years after the termination” of state service. ³

Iowa Code section 68B.7 also places restrictions on state officials and employees for two years after leaving state government. That section, in pertinent part, prohibits you for two years after leaving state employment from receiving any compensation “in relation to any case, proceeding, or application” in which you were “directly concerned and personally participated” during state employment.

It is our opinion that the process for seeking a bond from IFA as part of an IFA administered program is an “application” that triggers the statute. Therefore, you could not receive compensation for two years after leaving state employment related to any bond application that you were “directly concerned and personally participated” in during your employment with IFA.

In response to your final question, the fact that the program is on-going is not the trigger for the statute to apply. Rather, it would be each underlying individual application as part of the broader IFA program. The language of the statute does not seek to prohibit former state officials and employees from being involved in “programs,” but in a “case, proceeding, or application.” Thus, you could work on a subsequent application for bond funding from an IFA program so long as the application was not one that you were “directly concerned and personally participated” in during state employment.

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 Note that the Board’s jurisdiction in interpreting the lobbying laws in Chapter 68B are limited to the executive branch of state government only. Questions concerning your ability to lobby the legislative branch would need to be referred to the House and Senate Ethics Committees.

² See Iowa Code section 68B.2(2) that defines “agency of state government” to include an “authority.”

³ There are a number of exceptions from the definition of “lobbyist” as set out in Iowa Code section 68B.2(13)“b” and Board rule 351—8.3. For example, you would be permitted to “give testimony or provide information at public hearings of state agencies” or provide “information or assistance at the request of public officials or employees.” In addition, there is an exception for “submitting data, views, or arguments” as part of the agency rulemaking process set out in Iowa Code section 17A.4.