

## Advisory Opinion

IECDB AO 2015-07

August 20, 2015

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion regarding which employees a restricted donor may solicit for contributions to the prohibited contributor's political committee. 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.

QUESTION:

Which employees may a prohibited contributor solicit for contributions to the prohibited contributor's political committee?

OPINION:

Iowa Code section 68A.503 prohibits "an insurance company, savings and loan association, bank, credit union, or corporation" from making "a monetary or in-kind contribution to a candidate or committee except for a ballot issue committee." Iowa Code § 68A.503(1). We refer to these entities as "prohibited contributors." *See, e.g. id.* § 68A.406(1)(d)-(e). However, a prohibited contributor is permitted to sponsor a political committee (hereafter "PAC") and use its resources "for the purposes of soliciting its stockholders, administrative officers, professional employees, and members for contributions" to the PAC and "for financing the administration" of the PAC sponsored by the prohibited contributor. *Id.* § 68A.503(3). The prohibited contributor's "employees to whom the foregoing does not extend may voluntarily contribute to such a [PAC] but shall not be solicited for contributions." *Id.*

There has been some confusion as to which employees a restricted donor may solicit for PAC contributions. In 2010, we said only employees who are "stockholders", voting "members" or "management" could be solicited. IECDB AO 2000-20. We equated "administrative officers" with management. *Id.* At the time of our opinion, the term "professional employee" was not in the statute.

In 2010, Iowa's General Assembly enacted 2010 Iowa Acts, Senate File 2354 which added "professional employee" to the individuals who may be solicited by a prohibited contributor for PAC contributions. We presume the legislature meant to extend the

types of employees who may be solicited with this amendment. *See Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004) (stating “[w]hen an amendment to a statute adds or deletes words, a change in the law will be presumed unless the remaining language amounts to the same thing”).

Neither Iowa Code chapter 68A nor chapter 68B defines “professional employee.” However, that very term is defined in chapter 20 of the Iowa Code to mean any of the following:

a. Any employee engaged in work:

- (1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
- (2) Involving the consistent exercise of discretion and judgment in its performance;
- (3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who:

- (1) Has completed the courses of specialized intellectual instruction and study described in paragraph "a", subparagraph 4, of this subsection, and
- (2) Is performing related work under the supervision of a professional person to qualify the employee to become a professional employee as defined in paragraph "a" of this subsection.”

Iowa Code § 20.3(8). We will use this definition for purposes of determining which “professional employees” may be solicited by their prohibited contributor employers.

Therefore, in addition to employees who are stockholders, voting members or management, a prohibited contributor may solicit employees who meet the definition

of “professional employee” found in Iowa Code section 20.3 subsection 8 when seeking contributions for the political committee sponsored by that entity. When in doubt, we encourage prohibited contributors to seek guidance from the Board and its staff when determining whether or not an employee may be solicited.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

John Roos, Vice Chair

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Submitted by Megan Tooker, Board Legal Counsel