

Advisory Opinion

IECDB AO 2016-03

April 21, 2016

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 the definition of “insurance company.” 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:

Is an insurance agency an “insurance company” for purposes of Iowa Code chapter 68A?

OPINION:

Iowa Code chapter 68A sets out Iowa’s campaign finance and disclosure laws. Two sections in that chapter place restrictions on insurance companies. First, 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.”ⁱ Second, section 68A.406 generally prohibits campaign signs placed on “[p]roperty owned, leased, or occupied by a prohibited contributor under section 68A.503” unless one of the applicable exceptions applies.ⁱⁱ “Insurance company” is not defined anywhere in chapter 68A. Thus, we consulted Iowa’s Insurance Commissioner for guidance on how the Iowa Insurance Division in the Commerce Department defines that term.

The Division defines an insurance company to mean “any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.”ⁱⁱⁱ “Person” is broadly construed to mean “any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.”^{iv} The Division does not have a definition for insurance agency. Instead, it defines and regulates an “insurance producer,” which is a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.”^v An insurance producer is commonly known as an insurance agent. There are two types of insurance agents: captive agents and independent agents. A captive agent sells insurance exclusively for one insurance company. An independent insurance agent sells insurance for a variety of insurance companies. In both contexts, the insurance agent or producer enters into an appointment agreement with the insurance company. The insurance agent or producer is appointed to sell insurance on behalf of the insurance company, which underwrites the insurance policy.

After consulting with the Insurance Commissioner, we are satisfied that an insurance agency, that is the business entity that an insurance producer or agent uses to sell insurance, is not an insurance company. Instead, the producer merely sells or attempts to sell insurance on behalf of an insurance company. Thus, we are of the opinion that an insurance agency that is not incorporated may make monetary and in-kind contributions to any committee, including a candidate committee.

We now turn to whether a campaign sign may be placed on property owned, leased or occupied by an insurance agency. Iowa Code section 68A.406 generally prohibits campaign signs placed on “[p]roperty owned, leased, or occupied by [an insurance company]” unless one of the applicable exceptions applies.^{vi} We find the answer depends on which type of agent owns the insurance agency. A captive agent’s agency

conspicuously advertises the insurance company it represents and has an exclusive agreement to sell insurance only from that particular insurance company. That agreement also typically dictates what furnishings, signage, business cards, brochures, stationary and the like is used by the agent. Thus, under those circumstances, we believe the insurance company is occupying the insurance agency to the extent that a campaign sign may not be placed on the insurance agency's property unless one of the applicable exceptions in section 68A.406 applies. In contrast, an independent insurance agent or producer has much more autonomy and control over his or her agency and represents multiple insurance companies. Because we do not believe any insurance company is occupying an independent insurance agency, we find that an unincorporated independent insurance agency may place a campaign sign on its property.

CONCLUSION:

An unincorporated insurance agency may make campaign contributions to PACs, parties and candidates. A captive insurance agency may not have a campaign sign on its property unless one of the applicable exceptions in section 68A.406 applies. An unincorporated independent insurance agency may place a campaign sign on its property. We hereby rescind IECDB Advisory Opinion 2005-19.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Jonathan Roos, Vice Chair
John Walsh
Saima Zafar
Carole Tillotson
Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

ⁱ Iowa Code § 68A.503(1) (emphasis added).

ⁱⁱ *Id.* § 68A.406(2)(a)(2). Campaign signs are allowed on property owned, leased or occupied by a prohibited contributor under any of the following circumstances: (1) the property is used for residential purposes; (2) the property is agricultural land owned by individuals or by a family farm operation defined in section 9H.1, subsections 9, 10 and 11; or the campaign sign advocates the passage or defeat of a ballot issue.

ⁱⁱⁱ *Id.* § 507.1(2)(b).

^{iv} *Id.* § 507.1(2)(f).

^v *Id.* § 522B.1(6).

^{vi} *Id.* § 68A.406(2)(a)(2).