

Advisory Opinion

IECDB AO 2019-04

May 16, 2019

McKinley Bailey
Building Families
120 1st Avenue NW, Suite #14
Clarion, IA 50525

Dear Mr. Bailey,

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on whether it is permissible for Early Childhood Iowa Area Boards to use state funds to pay membership fees to an association that expends a portion of its budget to lobby the general assembly of Iowa. 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.

Background

You request this opinion in your capacity as the executive director of Building Families, which is the Early Childhood Iowa Area Board for Hamilton, Humboldt and Wright counties.

Iowa Code chapter 256I sets out the Early Childhood Iowa Initiative. Under Iowa Code section 256I.3, the Early Childhood Iowa State Board is created under the authority of the Department of Management. That Board's duties and responsibilities are set out in section 256I.4 and include the authority to adopt rules pursuant to Iowa Code chapter 17A "for the designation, governance, and oversight of area boards and the administration of [chapter 256I]." *See* Iowa Code § 256I.4(9).

Iowa Code section 256I.6 creates the Early Childhood Iowa Area Boards, which are meant to "enable local citizens to lead collaborative efforts involving early care, education, health, and human services on behalf of the children, families, and other citizens residing in the area." *See* Iowa Code § 256I.6(1). The creation of an area board and the establishment of its boundaries are subject to the approval of the state board. *See* Iowa Code § 256I.6(3). An area board is

considered a unit of local government for purposes of chapter 670 (relating to tort liability). Iowa Code § 256I.7(4). An area board's duties are set out in section 256I.8 and include "administer[ing] early childhood Iowa grant moneys available from the state . . . and other "federal, state, local, and private moneys made available to the area board."

Question Presented

Do Iowa Code chapters 68A, 6B, section 8.7 or the Ethics Board's administrative rules prohibit an Early Childhood Iowa Area Board from using public moneys to pay membership dues to an organization which expends a portion of its budget to lobby the general assembly of Iowa?

Analysis

The only provision of the law within the Ethics Board's jurisdiction that is at all relevant to your question is Iowa Code section 68B.8. That section states "[a] state agency of the executive branch of state government shall not employ a person through the use of its public funds whose position with the agency is primarily representing the agency relative to the passage, defeat, approval, or modification of legislation that is being considered by the general assembly." The definition of a lobbyist includes an individual who:

"[r]epresents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official."

Iowa Code § 68B.2(13)(a). Thus, Iowa Code section 68B.8 prohibits a state agency from hiring an employee whose primary purpose is acting as a lobbyist before the Iowa general assembly.

Iowa Code section 68B.2(2) defines a "state agency" to include a "department, division, board, commission, bureau, authority, or office of the executive or legislative branch of state government." Chapter 7E of the Code of Iowa sets out the executive branch organization structure and responsibilities. Section 7E.4 provides definitions and terminology for executive branch organization. The following definitions in section 7E.4 are relevant:

2. *a. "Board"* means a policymaking or rulemaking body that has the power to hear contested cases.
3. *"Commission"* means a policymaking body that has rulemaking powers.

6. “*Department*” means a principal administrative agency within the executive branch of state government, but does not include independent agencies.

7. “*Division*”, “*bureau*”, “*section*”, and “*unit*” mean the subunits of a department, whether specifically created by law or created by the head of the department for the more economic and efficient administration and operation of the programs assigned to the department.

After reviewing section 7E.4, I am of the opinion that an area board does not qualify as a state agency. A state agency means a “department, division, board, commission, bureau, authority, or office of the executive or legislative branch of state government.” Iowa Code § 68B.2(2). In this case, the department is the Department of Management because it is a principal administrative agency within the executive branch of state government and thus a state agency. See generally Iowa Code chapter 8. The Early Childhood Iowa State Board is a “division” of the Department of Management. Alternatively, because the state board is a policy making body with rulemaking authority, it also qualifies as a “commission” despite its name. Thus, regardless of whether we consider the state board a “division” of the Department of Management or a “commission”, it is also a state agency under chapter 68B. Nevertheless, an *area* board is not a board or commission because it does not have rulemaking authority or the power to hear contested cases. While the state board is a division of the Department of Management, each individual area board is a “unit of local government.” See Iowa Code § 256I.7(4).

Section 68B.8 prohibits a state agency from hiring an employee whose primary purpose is acting as a lobbyist before the Iowa general assembly. This section does not prohibit an Early Childhood Iowa Area Board from paying membership fees to an association that expends a portion of its budget to lobby the general assembly for two reasons: 1) an area board is not a state agency; and 2) Building Families does not wish to employ a lobbyist—rather it desires to pay membership dues to an association that expends a portion of its money to lobby the general assembly.

Conclusion

Nothing in Iowa Code chapters 68A, 6B, section 8.7 or the Ethics Board’s administrative rules prohibit an Early Childhood Iowa Area Board from using public moneys to pay membership dues to an organization which expends a portion of its budget to lobby the general assembly of Iowa.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

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Submitted by Megan Tooker, Board Legal Counsel