

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

MEGAN TOOKER
Executive Director
& Legal Counsel

510 East 12th, Suite 1A
Des Moines, Iowa 50319
Telephone 515-281-4028
Fax Line 515-281-4073
www.iowa.gov/ethics

BOARD MEMBERS:
James Albert, Chair
John Walsh, Vice Chair
Saima Zafar
Carole Tillotson
Jonathan Roos
Mary Rueter

TENTATIVE MINUTES
REGULAR MEETING
JANUARY 28, 2016
JESSIE PARKER BUILDING
510 EAST 12TH, Ste 1A
DES MOINES, IA

I. CALL TO ORDER

Chair Albert calls the meeting to order at: 12:06 pm
Members present: Jim Albert, Jonathan Roos, John Walsh, Saima Zafar,
Carole Tillotson, Mary Rueter
Staff present: Megan Tooker, Sharon Wright

II. APPROVAL OF MINUTES

Walsh moves to approve minutes of last meeting as written, Rueter
second.
All ayes, motion carries unanimously

III. CONTESTED CASE HEARING RE: TOM SLOCKETT

Albert commences contested case hearing for 2012-IECDB-05, against
Tom Slockett alleging he used government resources for political
purposes. Randall Wilson of the ACLU represents Slockett and Megan
Tooker represents the Board.

Wilson and Tooker agree to waive opening and closing statements. Each
has 10 minutes for presentation.

Albert is presiding but all Board members are hearing the case and
deciding the outcome. At the close of the attorneys' presentations, the
Board will deliberate in closed session pursuant to section 21.5(f) of the
Code of Iowa.

Tooker summarizes the parties' stipulation of facts.

Tooker reads aloud Iowa Code section 68A.505 and the introduction of
chapter 5 of the Board's administrative rules that states "the board will
construe the phrase 'expenditure of public moneys for political purposes'
broadly to include the use of public resources generally."

Tooker says Slockett was making campaign-related calls in a non-public area of the county building and none of the exceptions to the general prohibition on the use of public resources for political purposes applies.

Tooker states that if Mr. Slockett had closed his office door, no one, including the Ethics Board, would have known about these calls. The Board has a duty to maintain the integrity of public offices and maintaining the public's confidence in public offices is a worthy goal.

(Roos leaves the room and a brief recess occurs for 2 minutes)

Tooker states that Mr. Slockett thinks elected officials should be treated differently since they have no set or minimum hours. She argues that doesn't matter. He should have stepped out of the building to make the calls, particularly since his office is the County Auditor's office and they conduct absentee ballot voting and is the place where people register to vote. Besides, his calls were very disruptive to the employees in the office who had to overhear these calls.

Albert says doesn't this go beyond disruption and isn't the public harm that a public office is being used for partisan purposes. Tooker states she agrees.

Albert asks if making phone calls to campaign workers is engaging in campaign activity. Tooker agrees.

Albert asks wouldn't it have been permissible to make the calls from a public area of the building. Tooker says yes.

Wilson begins his presentation. Wilson states Mr. Slockett acknowledges engaging in campaign activity. The real issue is not whether or not he engaged in this activity, but whether or not he can be disciplined by the statute or rule. Wilson states that the Board has to give this serious consideration. The interpretation of the statute is critical. The statute applies to a "governing body" which is not defined but is commonly known as "a group of people" and does not apply to one person. He also argues the Board should pay careful attention to the sentence in the statute that says it shall not be construed to limit the freedom of speech of public officials and employees.

Wilson states that Slockett has not gone beyond the norm, as an opponent would also be able to use his place of employment in the same manner.

Wilson then states that not only is a public official not a “governing body” but there was no “expenditure” of public resources. Wilson asks when is someone expending something? To expend something is to “use up” and Wilson states he doesn’t believe there was any actual expenditure of “monies” which is defined as a currency or medium of exchange or something given for trade or commerce. Wilson states he believes that the statute was misapplied here.

Albert says isn’t the purpose of a contested case hearing to decide whether or not the statute and rule were violated.

Albert asks whether Mr. Slockett is arguing that the rule is in excess of the statute. He says judicial review is for the court to determine those issues as well as the constitutionality of the rules and statute.

Wilson says that there was no actual use of monies, and not depletion.

Tillotson asks if there was anything that prevented the county attorneys from contacting the Board. Wilson said no.

Roos asks about the email exchange between Mr. Slockett and the county attorney. The email instructed him to refrain from doing things that would use consumables.

Tillotson asks about list of “consumables”

Roos asks what does “governing body” refer to at the state level. Wilson says a body or unit of government with power to spend public monies.

Wilson argues that 68A.505 does not cover Mr. Slockett’s actions.

Roos questions whether Wilson is correct that private sector employers would allow employees to engage in political activities while at work.

Roos asks whether Wilson knows if the administrative rules review committee voiced any concerns about the Board’s rules at the time they were promulgated. Wilson said he didn’t know.

Walsh expresses concern with Wilson's interpretation that mere "use" of a public resource is not prohibited by the statute.

With no further questions Albert asks for a motion to adjourn to closed session. Zafar moves to adjourn to closed session, Roos second. All ayes by roll call.

The Board adjourns to closed session at 12:57 pm.

The Board returns to open session at 1:10 pm

Tillotson makes a motion that Slockett's actions did in fact violate Iowa Code section 68A.505 and the Board's rule 5.4. Zafar seconds.

Tillotson states that she personally believes that Slockett simply asked the question "Can I use my cell phone?" And that neither of the County Attorneys pursued the matter further by contacting the Board.

Albert says that Roos' comment about the rules review committee not flagging it or thinking that we had exceeded our authority was a valid point. The public, legislature and public officials have always known through the years and have understood that we prohibit the use of a public office for a campaign headquarters.

Rueter says that there was also the use of other employee's time hearing the telephone calls and transferring them.

Albert says that he thought Mr. Slockett's interpretation of the statute was too limited.

Vote is all ayes, motion carries unanimously.

Albert asks Tooker to draft a brief order and have Wilson review for form.

IV. Staff-initiated complaint against Michelle Wilson re: alleged use of government resources for political purposes

Ms. Wilson is the school social worker for the Marion school district. She is also the "silver cord" coordinator. She was contacted by a candidate and asked whether any of the silver cord kids could hand out campaign

flyers. Ms. Wilson contacted the students and their parents and then gave the flyers to the children with maps instructing them where to distribute the flyers.

Tooker states she believes Ms. Wilson's actions amounted to a misuse of public resources for political purposes. She had a relationship with these children by way of her position in the school and would not have had the students' contact information if she weren't in this position. She handed out campaign flyers on school property.

Albert says they also were awarded silver cord hours for working on the campaign.

Tooker states that if the students had simply been told they could work on the campaign of their choice for silver cord hours, she thinks that would probably be acceptable under the law.

Tooker states that the facts do not appear to be in dispute and recommends administratively resolving the case similar to past cases involving teachers and express advocacy.

Albert says that the question before the Board is whether to accept an administrative resolution or set the matter down for a contested case, or find that this is not a violation of rules.

Rueter moves to accept Tooker's recommendation and issue a Reprimand and to discuss further penalty, Roos second.

Albert asks if anyone sees any facts that show additional actions.

Tooker states that Ms. Wilson was very responsive to her inquiries and very apologetic.

Rueter says she believes that this was just a mistake, done in error and will not be repeated again.

Albert says that the use of political resources to advance a campaign has happened before and the Board has issued Reprimands. He says in many situations a civil penalty is also ordered.

Albert says in most cases there is no intent to violate the law. He doesn't see anything different here.

Rueter amends her motion to issue a Reprimand and issue a civil penalty of \$100.

Zafar states that she believes that a lot of education is needed because even a county elected official wasn't aware of the restrictions in section 68A.505 and the board's rules.

Ms. Wilson's attorney suggests that Ms. Wilson be allowed to repay the school rather than pay a fine. She is concerned about any negative repercussions with her social worker license.

Albert says the sub-rule allowing reimbursement for the use of a public resource for political purpose has never been used in the manner suggested.

Tillotson seconds the motion on the floor.

All ayes, motion carries unanimously.

V. REQUEST FOR ADMINISTRATIVE LAW JUDGE BY LOIS SCHMITZ

Albert says he is concerned about the costs of an administrative law judge and questions whether one is necessary in this case.

Roos says he is also concerned about the costs but also believes this is the type of case the Board should hear here. He points to one of the factors in the Board's rules that would weigh against appointing an ALJ: "The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented."

Roos moves to reject the request for an administrative law judge based on Iowa Administrative Code rule 351—11.8(3) paragraphs "c" & "e."
Zafar seconds.

All ayes, unanimously passes

VI. ADVISORY OPINION RE: CITY COUNCIL MEMBER EMPLOYED BY THE SAME CITY

Tooker states the Board has an advisory opinion from 2008 that states there is nothing in chapter 68B that would prohibit a city employee from also serving on the city council. Recently, a librarian in Carter Lake was elected to the city council. The League of Cities and Carter Lake's city attorney both believe Iowa Code section 372.13(8) prohibits serving simultaneously in both capacities. The librarian has a private attorney who interprets the section differently. Tooker suggests adopting an advisory opinion reaffirming the 2008 decision but noting the potential applicability of section 372.13(8). That way the public would be alerted to that section and could seek further clarification from their city attorney.

Zafar first, Roos second
All ayes, motion carries

VII. RULEMAKING – ADOPT AND FILE ARC2240C

Tooker states that the rule amendments are changes necessary to conform to statutory amendments. Those amendments raised the threshold to create a committee from \$750 to \$1000 and increased the allowable anonymous contribution limit from \$10 to \$25.

Walsh makes a motion to approve, Rueter second.
All ayes, motion passes unanimously

VIII. REQUEST FOR ADJUSTMENT – WARD FOR SENATE COMMITTEE

Tooker states this is the committee of the late Senator Pat Ward. Her husband and chair have worked with the Board's auditor to reconcile the account and have come as close as they can. There is an outstanding discrepancy of \$239.91. Tooker requests Board approval to allow for an adjustment to allow the committee to get to a zero balance and close.

Zafar makes a motion to approve adjustment, Roos second.
All ayes, motion carries unanimously

IX. REQUESTS FOR WAIVER OF CIVIL PENALTIES (RULE 351 IAC 4.60)

- STATE COMMITTEES (Rule 351 IAC 4.59(3))
 1. Kooiker for Representative (3 reports, total of \$800)
Tooker recommends reducing the total penalty to \$100

- COUNTY LOCAL COMMITTEES (Rule 351 IAC 4.59(2))
 1. Kuzela 4 Council (Linn) 10-29-15 report-\$20
Tooker's recommends waiver.

 2. Agne for Supervisor (Cedar) 1-19-16 report-\$20
Tooker's recommendation is denial.

 3. Youngblood for Council Bluffs (Pottawattamie) 10-1-15
report-\$20
Tooker's recommendation is waive the penalty.

Rueter moves to accept Tooker's recommendations, Walsh seconds. All ayes, motion carries unanimously.

X. ELECTION OF OFFICERS

Motion by Zafar, Roos second, to retain Jim Albert as Chair.
Motion by Zafar to nominate Tillotson for Vice Chair
Albert notes that historically the Chair and Vice Chair were always from different parties.
Zafar amends her Motion to nominate Roos for Vice Chair, Rueter second

All ayes, motion carries

XI. COLA FOR DIRECTOR

Director Tooker has not requested a cost of living adjustment for over 2 years.

Albert states that since the Board merged the positions of Director and of Legal Counsel, we are really getting 2 positions for one salary.

Zafar makes a motion to raise Director's salary to the maximum of \$97,460. Walsh second.

All ayes, motion carries unanimously

XII. ADJOURNMENT

Motion to adjourn by Walsh, Zafar second
The Board adjourns at 2:10 pm

Respectfully submitted,