

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

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

OPEN MINUTES REGULAR MEETING

November 19, 2015 NOON
Ola Babcock Miller Building
Room 310

CALL TO ORDER

Chair Albert calls the meeting to order at 12:13 pm.

Other members present: Jonathan Roos, John Walsh, Mary Rueter, Carole Tillotson

Staff present: Megan Tooker, Sharon Wright

APPROVAL OF MINUTES FROM LAST MEETING

Rueter moves to approve minutes as written, Tillotson second.

All ayes, motion carries

CONTESTED CASE HEARING

The Board has a contested case hearing scheduled for a complaint against DAS employee Lois Schmitz alleging she violated Iowa Code § 68B.3.

Tooker informs the Board that she and Schmitz's attorney, Tom Duff, reached a settlement agreement which is subject to the Board's approval. The proposed settlement agreement was provided to the Board before the meeting. Tooker says the statement of charges she filed against Schmitz identified 40 instances where BluePrint Homes, LLC, the business owned by Schmitz and her husband, sold goods or services in excess of \$2,000 to Woodward Home without a public bid. Tooker states the Board's position has been that section 68B.3 applies to government employees as well as their closely held businesses. Tooker states Schmitz's position is that she notified her previous supervisor at DAS that BluePrint Homes was doing business with state agencies and followed her supervisor's directions on how to avoid a conflict of interest. Schmitz denies having knowledge of section 68B.3 during the time in question and asserts that neither the section nor the Board's rules clearly state the restrictions apply to a government employee's closely held business.

Tooker suggests the Board should initiate rulemaking in the future which would clearly provide that section 68B.3 applies to the closely held businesses of government employees and officials. Also, Tooker notes that she intends to host more training seminars for executive branch employees and officials that would address the prohibitions in chapter 68B.

Albert asks whether Schmitz is conceding that 68B.3 applies to her business. Tooker says that she would not go that far, but Schmitz is agreeing to abide by 68B.3 with respect to the sales of goods and services by BluePrint Homes. Albert asks if she is filing reports now and Tooker says yes.

Albert asks about her distinction between conceding and agreeing to abide by the rules. Tooker states Schmitz's main argument is that she did not know about section 68B.3 and her supervisors did not make her aware of that section. Schmitz claims that had she known, she would have abided by it. Through her attorney, she also argues that it isn't clear whether section 68B.3 applies to closely held businesses.

Roos asks Tooker how she would respond to the argument that the statute doesn't apply to a closely held business. Tooker replies that the limitations in section 68B.3 aren't very meaningful if a government employee can circumvent them by filing a \$50 document with the Secretary of State to create an LLC. Tooker says that she thinks the degree of ownership might come in to question, say if a government employee only owns a small percentage of a business, but that in this instance the company is owned by Schmitz and her husband and the degree of ownership is not in question.

Roos is troubled by the fact that Schmitz does not admit to violating section 68B.3 in the proposed settlement agreement. He recalls the Peninsula Gaming settlement and believes they denied "willfully" violating the law but did admit the violation.

Tooker states that this settlement was modeled after the Peninsula Gaming settlement and in the earlier settlement the company admitted to the underlying facts while not admitting to any knowing or willful violation of the law and did not concede that they violated the law. The only other settlement the Board has accepted in recent years involved the Mosiman committee and in that case Mosiman did not concede the violation but voluntarily agreed to reimburse her committee. The Board dismissed the complaint as part of the agreement and made no determination as to whether the complaint was "legally sufficient."

Roos states his concern with the proposed settlement agreement is that it doesn't bring closure to the underlying question of whether she did or did not violate the law.

Tooker compares this settlement agreement to a typical settlement in a court case where the defendant does not admit wrongdoing but agrees to pay a financial settlement. Tooker says that she thinks the important thing is to update the Board's rules so that it's clear section 68B.3 applies to closely held businesses.

Roos asked how this proposed settlement stands up against the range of available penalties for these violations?

Tooker says chapter 68B allows the board to issue a penalty up to \$2,000 penalty per violation, so if the Board found she violated section 68B.3 forty times, then the Board

could order her to pay up to \$80,000. The Board has not had issued a penalty anywhere close to that amount.

Albert says that \$1,000 is certainly the high end of anything the Board has issued in the last 20 years.

Tooker states that the last large penalty was around \$300 or \$500 for a state employee who accepted an honorarium that she couldn't receive and hid it from her department.

Albert says a \$500 penalty was assessed for a grade school principal who sent political flyers home in backpacks of children.

Albert says that in the settlement agreement the Board is not taking a position that the statute doesn't apply here. And if the Board doesn't feel that the statute is clear and the Board doesn't feel she violated it, then the Board shouldn't settle it. Albert says that he has no question that the statute is clear and he has no question whether it applies to Schmitz and her business. The question becomes whether they want to have a contested case hearing or whether they want to settle it. \$1,000 is a significant settlement. That's why he asked the question whether she is acknowledging now that this statute applies to her and is she now willing to abide by it by filing the appropriate disclosures.

Tooker states that Schmitz is willing to comply with the statute, but as Schmitz and her attorney are not present, she is hesitant to say that Schmitz concedes it applies to her. As part of her position she says that there are no advisory opinions by the Board as to whether the law applies to a closely held business in which a state employee has a partial ownership, and no case law or regulations and no record of another state employee being sanctioned for it.

Tillotson says the need for some rulemaking is clear, but Schmitz also says she didn't know about the section and the Board doesn't know how that conversation with her supervisor came about.

Tooker says to Albert's point, she believes that the statute is clear enough, but it doesn't hurt to make it perfectly clear. Tooker says this all could have been avoided if Schmitz or her supervisor had called the Board's staff for advice before BluePrint Homes started selling to state agencies. But that didn't happen.

Albert says he thinks the Board is losing focus. The statute prohibits a state employee, among others, from selling any goods or services to any state agency. He says that to him, that is not unclear. The conversation about how to enhance everyone's understanding is good, but there is no question that this statute is clear enough as it stands and that she has violated it. That was the Board's opinion twice before when it looked at the complaint and found it legally sufficient. That's why they set it down for hearing. His opinion is that the statute is very clear and any state employee reading it should understand what is prohibited and that in this case it applied to Schmitz. So the

conversation that they are having about administrative rules and everything else is a separate question. The question is does the Board want to accept the terms in the settlement or have a contested case and hear evidence on this?

Walsh says Schmitz states that she did not intend to violate the Code, and they can take her word for that. But what bothers him is that it's not clear whether BluePrint Homes sold goods and services at an inflated price. \$1,000 is a significant penalty, unless BluePrint Homes unjustly profited from these contracts.

Walsh asks whether the settlement agreement would prevent the state from recouping ill-gotten gains in the event the state determines the pricing was inflated. Tooker says no.

Walsh asks if there is anyone at the state to look at this. Tooker says DAS investigated and so did the state auditor. Tooker believes Woodward Homes would be in the best position to analyze the work done and determine whether it is fair. The Board and its staff does not have the expertise to review construction work and costs. Tooker states the Board has the authority to order remedial action, but it has never been applied to this type of violation. She thinks it would be more of a breach of contract claim by Woodward Home.

Albert says that he thinks that the question now is whether \$1,000 is enough here given the amount involved? Albert says that he is not hearing consensus from the Board yet on agreeing to settle this case. The question is would it be prudent to hold this over and set it for hearing and for all to get a sense of what she did know, what she didn't know, and any other information the Board needs to make a determination.

Tillotson says that she is having trouble with conflicting statements where the Auditor says Schmitz did not comply with section 68B.3 and Schmitz's statement that she does not admit to a violation of the section. Tillotson says that she thinks the Board ought to rely on the auditor's finding. Tooker says that it is the Board's statute and that ultimately the determination of whether she violated it or not is with the Board.

Tillotson says that she believes that the statute was violated and that the settlement should reflect that.

Roos agrees and says that he thinks the Board should move forward with the hearing.

Roos asks didn't the Auditor make a finding that the statute was violated? Tooker says yes, but that was in part because she advised DAS she believed Schmitz violated the statute and the auditor concurred.

Roos says that he thinks it's pretty straight forward.

Albert says let's set this down for a hearing.

Tillotson says that she is comfortable with the settlement agreement if the sentence where Schmitz affirmatively denies violating the law is removed.

Albert says that he thinks the way to do this is to reject the settlement and reschedule the hearing at a time to be determined and that they could provide another settlement prior to that time.

Tooker says that it would benefit her and Schmitz's attorney if they knew what the problem in the settlement was, the \$1,000 or the lack of admission?

Consensus is that it is the lack of admission.

Tooker says that if they want to settle, then they could make a motion to accept only if the lack of admission is removed.

Tillotson says that she is okay with that.

Albert says that there is no clean way to do this other than reject the settlement and set for hearing and then if Schmitz's attorney and Tooker want to settle they can submit changes.

Albert says that the question is, shall the motion be to reject this and reschedule a hearing at a future date, and opens the opportunity to submit another settlement.

Rueter moves to reject the proposed settlement, Roos second.

All ayes, motion carries.

ADVISORY OPINION REQUEST BY IOWA DEMOCRATIC PARTY

Tooker summarizes the request: The Iowa Democratic Party is thinking of starting a planned giving program similar to charities that would encourage contributors to include the party in their estate planning. The FEC through a series of advisory opinions has authorized testamentary contributions. The Iowa Democratic Party is seeking an opinion on whether testamentary contributions are permissible in Iowa and whether there are any circumstances that would cause the contributor to have reporting obligations separate and apart from the party. Tooker states that she does not see anything in Iowa law that would prevent a testamentary contribution provided the decedent was eligible to give campaign contributions during his or her life. Under federal law, there are contribution limits that complicate how much a party may receive annually from a testamentary contribution. Iowa doesn't have contribution limits so a testamentary contribution may be received all at once under state law. Tooker summarizes her proposed advisory opinion: It authorizes testamentary contributions by will, trust or beneficiary designation on an asset. It requires the creation of a PAC or the filing of a DR-OTC Form for contributions in excess of \$1,000 from a trust or estate but not for contributions by beneficiary designation on an asset.

Shayla McCormally, an attorney representing the Iowa Democratic Party, agrees with the advisory opinion except that she asks that an estate not be required to form a PAC or file a DR-OTC form. She reasons that unlike a trust, an estate may only be funded by the assets of one individual and the probate file for the estate ensures complete transparency. Tooker states that she doesn't have a strong opinion on whether an estate should form a PAC and has no problem with McCormally's proposed change.

Tillotson makes a motion to approve opinion with the modification that an estate be treated as an individual and not be required to form a PAC or file a DR-OTC form, Roos second.

All ayes, motion carries.

ADJOURN TO CLOSED SESSION

In accordance with the provisions of Iowa Code 21.5(1) "g", Rueter makes a motion to adjourn to closed session to discuss three formal complaints, Tillotson second. All ayes by roll call. The Board moves into closed session at 1:14pm to discuss:

1. Complaint against Jeff McGinnis alleging the use of government resources for political purposes
2. Complaint against DeWayne Hopkins alleging the use of government resources for political purposes and the failure to include an attribution statement
3. Complaint against Skip Moore alleging the use of government resources for political purposes

RETURN TO OPEN SESSION-

The Board returns to open session at 1:36 pm

JEFF MCGINNIS COMPLAINT

Albert states the Board found the email McGinnis sent using the school district's email system did not contain express advocacy and therefore didn't violate Iowa Code section 68A.505.

Tillotson moves to dismiss, Rueter second.

All ayes, motion carries.

DEWAYNE HOPKINS COMPLAINT

Albert states the complaint alleged two attribution violations. First, there was a message posted on a Facebook page. The consensus was that the page was not established for the purpose of express advocacy and therefore, consistent with a 2013 advisory opinion, no attribution statement was required on the message. Second, Mr.

Hopkins placed an ad supporting his candidacy in the newspaper and it did not include an attribution statement. Newspaper ads are required to have an attribution statement. Mr. Hopkins remedied that violation by placing a correction notice in the same newspaper consistent with the Board's rules.

Walsh makes a motion to dismiss the complaint, Roos second.
All ayes, motion carries.

SKIP MOORE COMPLAINT

Albert says the Board in closed session believed an investigation was appropriate to determine the facts.

Roos makes a motion to accept the complaint as legally sufficient and order an investigation. Walsh seconds. All ayes, motion carries.

DISCUSSION OF UPCOMING LEGISLATIVE SESSION

Tooker provides the Board with three bills to consider proposing.

First, the Board discusses the bill that would amend section 68A.505 to make clear the prohibitions in that section apply to government officials and the use of government resources for political purposes.

Roos says he feels that it is important and a good thing to do. Tooker says yes, the Board talks a lot about that statute more than any other and like many of statutes within the Board's jurisdiction there is room for improvement with respect to clarity. Rueter says she thinks it's important for the Board to educate government officials and employees about the statute in order to reduce violations. Tooker agrees.

Tooker says the second bill regarding the reporting of gifts was proposed by the Board in 2013. It passed the senate and died in the house. Tooker says the bill would require a government employee or official to report a permissible gift from a restricted donor that is worth more than \$100. If passed, the bill would publicize these gifts and open them to scrutiny. 31 other states have reporting requirements with gifts. Tillotson says that the \$100 amount for reporting gifts seems de minimis. She argues the bill would just add an administrative burden to people who are already overtaxed with paperwork. Tooker asks Tillotson if she thinks the threshold should be higher and Tillotson says yes. Tillotson says the point is to reveal egregious gifts.

Roos asks whether this bill was originally in response to the complaint against the Department of Education Director Jason Glass. Tooker says yes.

Walsh says Tillotson has a good point that the more egregious gifts may get buried with the more innocuous gifts. Tillotson says she thinks the threshold should be more like \$1000. She says the point is to find excesses. Walsh agrees and says he was thinking \$500 but would support \$1000. Albert likes \$1000 and Tooker states that she is not opposed to that. Roos agrees.

The third bill would raise the \$3 exception in the gift law to \$10. Tillotson asks whether this increase would make a big difference and suggests \$25 is more appropriate. Walsh agrees.

Roos says he has a differing opinion. It is all about perception. The legislature clearly had some specific intent with this law and the legislature wanted it low. Tillotson asks how many years ago? Tooker replies the gift law passed in 1992. Roos says \$3 in 1992 is worth \$5 today.

Walsh says \$3 won't even buy a drink at Starbucks.

Tooker says a typical scenario is that a company is having a non-public event and invites state and local government officials and employees. The company wants to provide refreshments and is limited to \$3 per person.

Tillotson says that she supports a \$25 limit and thinks that's common sense and would eliminate a lot of questions asked to staff.

Tooker says that she has mentioned this issue to Senator Gronstal and Governor Branstad and both were somewhat receptive but think any increase should be modest. Tillotson asks what is a modest amount and Tooker replied that \$10 would be a lift.

Tillotson asks Roos if he is against the increase to \$10. He says he thinks the Board shouldn't take a stance and let the legislature decide.

Tillotson and Walsh both think it's appropriate for the Board to make a suggestion. Walsh says that he understands Roos's position. Roos says he would be interested in public comment before the Board makes a proposal to the legislature. Tooker says there isn't time for public comment before agency bills are due to Legislative Services. Tillotson doesn't believe public comment is necessary because the legislature will receive public input when the bill is considered.

Walsh makes a motion to adopt the bill proposing the \$3 gift law exception be raised to \$10, Tillotson second.

Walsh, Rueter, Tillotson vote aye.

Roos opposed.

Motion carries.

Albert asks if there is consensus on the first two bills discussed. 68A.505, and the reporting of gifts over \$1000, and if there is a motion with regard to those.

Tillotson moves to adopt the bill amending 68A.505 and the bill requiring the reporting of gifts over \$1,000, Walsh second.

All ayes, motion carries.

NOTICE OF INTENDED ACTION TO AMEND CHAPTER 4 OF THE BOARD'S ADMINISTRATIVE RULES

Tookers says these rule changes are necessitated by statutory changes. One amends the Board's rules to require all campaign finance reports and statements to be filed electronically. The other one simplifies independent expenditure reporting so that the only report that is required is the 48 hour report and no statement of dissolution. The proposed rule change also eliminates the reference to an independent expenditure "committee" because the statutory change makes clear that individuals and entities making independent expenditures are not committees.

Roos moves to advance rules, Walsh second.
All ayes, motion carries

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

Tooker recommends denying requests by both county local committees:

Meg Youngblood for Council Bluffs (10/1/2015 report, \$20)

Agne for Supervisor (10/29/2015 report, \$20)

Tillotson moves to accept director's recommendation, Rueter second.
All ayes, motion carries

ADJOURNMENT

Walsh moves to adjourn, Roos second.

The Board adjourns at 1:59 pm

Respectfully Submitted,

A handwritten signature in black ink that reads "S. Wright". The signature is written in a cursive, flowing style.

Sharon Wright, Board Secretary