

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

MINUTES
TELEPHONIC MEETING
SEPTEMBER 26, 2012 3:30 PM
JESSIE PARKER BUILDING
510 EAST 12TH, Ste 1A
DES MOINES, IA

I. CALL TO ORDER

Meeting called to order by Albert at 3:32 pm.

Members present:

Albert, By telephone: Roos, Walsh, Rueter, Tillotson.

Not present: Zafar

Quorum ? Yes

Also present:

Matt Dumeroth and Jason Torchinsky (by telephone), counsel for Team Iowa PAC, Deb Henry, Jo Morrell, Clay Guthmiller, Marcy Cordero, Mike Farrell, Danielle Henfield, John Dutcher, Mary Brown, Jim Larew, Tiffany DeMasters

Staff: Megan Tooker, Director and Counsel, Sharon Wright, Administrative Staff

The meeting is being held telephonically because of impracticality of bringing members in from across the state.

II. REQUEST FOR MODIFICATION OF IECDDB AO 2012-06 BY TEAM IOWA PAC

Albert stated that he asked the director if a request has been made to the board allow Dumeroth & Torchinsky to present argument on behalf of Team Iowa PAC for the request to modify IECDDB Advisory Opinion 2012-06. Megan agrees this is the case. Dumeroth stated that he would prefer that Torchinsky present and Dumeroth would be available for any questions or clarification. Torchinsky stated that he would like 5 minutes or so to present. He stated that the advisory opinion states that a "partisan political committee organized to represent persons within the boundaries of a congressional district" must be expressly created by a political party is not supported anywhere in that statute. He argues that the interpretation is too narrow and has made a portion of the statute meaningless. He argued with the [, or] and said that if the legislature had not wanted to state that the second category was only to mean PACs expressly created by the political party, they would have done so. He further stated that nothing in the statute requires a committee to be set up by the political party. The legislature's silence to such a provision is significant. Albert stated that the statute has been in effect since 1997 and the Board has never allowed candidates committees to transfer funds to PACs. The silence of the legislature on this since 1997 is significant as well. Torchinsky argues that to his knowledge this is the first time this has been

requested by a committee. Megan stated that she thinks that where he falls down is that if the intent was to allow funds to something other than party created committees. Why in 15 years was there not a request to transfer funds to a PAC? Tooker stated that she confirmed with the party that the example put forth in the opinion was created by the Democratic Party. An example for the Republican Party was also sought but they have not created any such committees. Tooker then stated she would like to respond to Torchinsky's points. Tooker stated that she disagrees with the point that we added an additional requirement to the statute. The Board has simply defined partisan differently; not add an additional requirement. A PAC created by the party would be a central committee is not correct either. Central Committees are statutory creatures and not created by the parties. Any committee created by the party would not be considered a central committee, they are separate animals. Federal law doesn't require it and that's fine, the Board only states that to be able to receive candidate's funds the committee must be created by the party. That is consistent with federal law. Tooker then stated that Team Iowa is ignoring the second provision of "within the boundaries of a congressional district". Torchinsky stated that because the PAC was organized, created, and operates in Des Moines, it is "within the boundaries of a congressional district", the law doesn't speak to where it gets its funds or who they spend them on. Tooker argued that Team Iowa PAC is just a garden variety PAC and spends funds all over the state. Torchinsky said that there is a constitutional issue with regard to the fact that Iowa has no contribution limits and that limiting a transfer of funds was struck down in another state as unconstitutional. Albert stated that they would take this into consideration. Dumeroth stated that Torchinsky has made all of Team Iowa's PAC and he didn't need to add anything. Albert said that Ms. Tooker was the Board's legal counsel and would ask her to make sure that the Board is within the law. Albert further stated that he saw a glaring flaw in their second argument and that they were asking that the Board read out of the statute. Albert asked Tooker if the opinion were legal as it stands. Tooker stated that she believes it is, that she is comfortable with it and that it is long-standing policy. If the legislature doesn't speak directly then the agency must reasonably define. Albert asked if Team Iowa was based on a congressional district. Tooker stated that she did not believe they were. Albert said that disqualified them on that basis alone. Tillotson asked if the Board needed to make a motion if no action were to be taken. Albert stated that he believed a motion was needed either way.

Tillotson, Rueter second move to not modify the opinion.
Passes unanimously

III. ADJOURN TO CLOSED SESSION –

In accordance with the provisions of Iowa Code section 21.5(1) "g", the Board will move into closed session at 5:15 pm by roll call vote.

IV. RETURN TO OPEN SESSION-

Meeting returned to open session by roll call vote at 5:28 pm to entertain motions concerning matters discussed in closed session.

- A. Formal complaint against Jeff Mullen for State Senate – alleged violation of attribution statement requirement on sham newspaper.

Tooker summarized that the complaint started out as an attribution violation and the Board, on its' own action, ordered counsel to investigate if any corporate funds were involved in the newspaper. Tooker stated that she has determined no corporate contributions were used to create the material.

Walsh moves, Tillotson second, to dismiss complaint based on determination that no corporate contributions were used to create or distribute the material. Motion carries unanimously.

- B. Formal complaint against Residents for Richmond -- alleged coordination for an independent expenditure by a corporation.

Roos moves, Rueter second, to issue a Reprimand to Residents for Richmond and order candidates to reimburse for the material within 30 days. Motion carries unanimously.

- C. Formal complaint against Johnston Community School District board members and staff – alleged use of government resources for political purposes.

Albert asked how many pages of emails the Board has reviewed. Tooker stated that it was over 400. Albert asked if there was any violation of the use of governmental resources to expressly advocacy by the school board members, and Tooker stated that there was no use of government resources by the school board members. Tooker also noted there is an advisory opinion stating that receipt of express advocacy sent to government emails cannot be controlled. Albert asked if any of the Board saw any use of governmental resources in any of the emails. All members replied they did not see any use of governmental resources by school board members. Tooker stated that there appeared to be a few emails sent by school personnel that may have violated the statute or come close to violation that were uncovered during the review of the public request results provided by Dutcher.

Rueter moves, Tillotson second, to dismiss complaint against named school board members, and order Tooker to investigate other district staff (employees) that appear to have violated the statute. Motion carries unanimously

- D. Formal complaint against James Larew – alleged prohibited use of influence by former state employee

GPC filed the complaint as Larew is a previous member of the Governor's staff. Tooker stated that this situation is being litigated in district court and she recommends that we take no action until the court has ruled.

Tillotson moves, Roos second, to defer matter pending outcome of district court. Motion carries unanimously.

- E. Formal complaint against McCarthy for Sheriff committee – alleged campaign signs on government property

Complaint received regarding signs in the right of way. Committee has responded and reviewed all signs, moving all signs that arguably might have been in the right of way.

Walsh moves, Tillotson second, to dismiss, keeping with past practice that if signs are moved, we take no further action. Motion carries unanimously.

Tillotson asks if there has been an agreement on the Board meeting more frequently, perhaps the last Friday of each month? Tooker stated that nothing has been determined but she would keep everyone updated.

Roos asks if there was a date with regard to the Slockett case or if the Casino trial has an update. Tooker says that she thought the trial for the Casino would start next week and she would send an email once the dates were certain.

V. **ADJOURNMENT**

Motion made to adjourn by Tillotson, Roos second. Motion carries unanimously. The Board adjourns at 5:38 pm.

Respectfully submitted,



Sharon Wright,
Administrative Assistant