

STATE ELECTION ADMINISTRATORS TRAINING

SESSION III

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ETHICS SIMULATION

By:

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I. OVERVIEW:

County auditors and their employees are subject to certain statutes in Iowa Code chapter 68B the “Government Ethics and Lobbying Public Officials Act.” You are also subject to the prohibition on the use of public resources for political purposes in Iowa Code section 68A.505 and the Board’s rules in 351—Chapter 5.

II. RELEVANT STATUTORY PROHIBITIONS:

The following sections of Chapter 68B impose statutory prohibitions on activities involving county governmental officials and employees:

1. Conflicts of interest in Iowa Code section 68B.2A.
2. Gifts accepted or received in Iowa Code section 68B.22.
3. Honoraria—banned in Iowa Code section 68B.23.

III. CONFLICTS OF INTEREST:

Iowa Code section 68B.2A prohibits county officials and employees from engaging in any outside employment or activity that is in conflict with the person’s official duties and responsibilities. The statute, in pertinent part, states:

“1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following....”

The statute then prohibits county officials and employees from engaging in the following when being involved in an outside employment or activity:

1. Using their time or resources of the county, including “evidences of office or employment” to give themselves or an immediate family member (spouse, dependent children) an advantage or pecuniary benefit not available to members of the public.

2. The receipt of compensation from anyone other than the county for performing an act that is part of the person's official county duties.

3. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement of the person.

Conduct under #1 or #2 requires the county official or employee to cease the outside employment or activity. If involved in #3, the person must cease the outside employment or activity or disclose the conflict and refrain from taking any "official action or performing any official duty" concerning the outside employment or activity.

IV. Gifts accepted or received:

Iowa Code section 68B.22 prohibits a public official, public employee, candidate, or that person's immediate family (spouse, dependent children) from soliciting or accepting a gift from a restricted donor. Iowa Code sections 68B.2(20) and 68B.2(22) define "public official" and "public employee" as including local governmental officials and employees.

Iowa Code section 68B.2(24) defines "restricted donor" as a person who is in any of the following categories:

- "a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.
- b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.
- c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.
- d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction."

Iowa Code section 68B.22, in pertinent part, states:

- “1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.
2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.”

It is important to remember that there are 18 exceptions to the gift law. The prevalent exception permits gifts of \$3.00 or less from a “restricted donor.” Thus, you can receive a gift valued at \$3.00. A widespread misperception is that only gifts valued at \$2.99 or less are permissible. The following are other common exceptions:

1. Campaign contributions.
2. Items received from anyone related within the fourth degree by kinship or marriage, an inheritance, and wedding, 25th and 50th anniversary gifts.
3. Items distributed free of charge to members of the general public.
4. Actual expenses in return for participating in a panel or speaking engagement.
5. Plaques/items of negligible resale value given as recognition for public service.

There are also exceptions for registration costs, informational items, and services related to a county official or employees job under specific circumstances. Nonmonetary gifts may also be received if they are donated within 30 days to a public body, the department of administrative services, or a bona fide educational or charitable organization.

It is also important to remember that the General Assembly did not intend for all gifts to be refused, but that the public’s trust should be protected. The legislature stated this balance in Iowa Code section 68B.21:

“It is the goal of the general assembly that public officials and public employees of the state be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons that have a substantial interest in the legislative, administrative, or political actions of the official or employee. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions that tend to undermine the public trust. It is therefore the intent of the general assembly that the provisions of this division be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety.”

When analyzing a gift law situation, the following steps should be taken:

1. Is the person giving the gift a restricted donor under section 68B.2(24)?
2. If not, then the gift may be accepted.
3. If the person is a “restricted donor” does one of the 18 exceptions apply?
4. If so, then the gift may be accepted. If not, the gift should not be accepted or it may be accepted (if nonmonetary) and then donated as discussed above.

Keep in mind that there might be reasons to not accept a gift even if it is permissible. Also, it is vital that you document the fact that an otherwise impermissible gift was received and then turned over to one of the entities permitted by statute.

Remember that the statute does not allow a restricted donor to give an item on behalf of a number of people and then divide the costs among the people giving the item. In another words, three people cannot give one \$9.00 item and divide the cost in thirds to be in compliance with the law.

V. HONORARIUM—BANNED:

County officials and employees are prohibited from accepting an honorarium from a restricted donor. This prohibition is similar to the prohibition under the conflicts of interest section on being paid by someone other than the county for doing official duties and the analysis is similar to the gift law.

Iowa Code section 68B.2(10) defines “honorarium” as meaning “anything of value that is accepted or given as consideration for an appearance, speech, or article.” The definition of “restricted donor” is found in Iowa Code section 68B.2(24) and is set out in the gift law section of this document.

The exceptions permit receipt of actual expenses for a speaking engagement and the option of donating a nonmonetary gift to the same entities that gifts may be donated to under the gift law. Also, payments for services rendered that are not related to the person’s status as a governmental official are permitted.

VI. PENALTIES:

Iowa Code section 68B.25 provides that “a person who knowingly and intentionally” violates an ethics provision is “guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person’s position or otherwise sanctioned.” Pursuant to Iowa Code section 68B.26 complaints concerning violations of the ethics laws by local officials and employees are to be filed with “the county attorney in the county where the accused resides.” If a complaint is filed with the Ethics Board concerning the actions of a county official or employee under Chapter 68B, the complaint is referred to the appropriate county attorney.

VII. BOARD’S ROLE IN LOCAL ETHICS ISSUES:

As was mentioned under the penalties section, complaints concerning the ethical conduct of county officials and employees are filed with the appropriate county attorney. This can lead to confusion because the Board does handle complaints concerning potential campaign finance violations by county officials and employees (including the prohibition on the use of public funds for political purposes). Also, the Board handles

complaints, conducts investigations, holds hearings, and imposes sanctions for violations of the ethics laws by executive branch officials, employees, and candidates for statewide office.

Iowa Code section 68B.32A(11) does permit local government personnel to request advisory opinions from the Board concerning the application of the ethics laws. The statute also provides that “Advice contained in formal board opinions shall, if followed, constitute a defense to a complaint.”

VIII. USE OF PUBLIC RESOURCES FOR POLITICAL PURPOSES:

Iowa Code section 68A.505 and the Board’s rules in 351—Chapter 5 prohibit the use of public resources for a political purpose. This means that governmental resources cannot be used to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

“Express advocacy” means the use of words, terms, or symbols that exhort someone to vote in a particular manner or can have no other meaning than to urge the outcome of an election.

Iowa Code section 68A.505 states:

“The state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.”

This law has created some controversy over the years. Prior to 2001, the law was applied broadly and most activities involving governmental property were prohibited.

However, over the past few years a more balanced approach has been taken.

The Board receives a lot of complaints concerning the misuse of public resources for a political purpose especially involving ballot issue elections.

The following are some of the major items to remember about the law:

1. As it is a campaign finance law, the Board receives complaints, conducts investigations, and imposes penalties for violations by local government officials and employees. In addition, violations are also a serious misdemeanor.

2. If a communication does not contain express advocacy in that it does not tell people how to vote, then the communication can be produced and distributed using government resources. People often submit drafts to the Board prior to distribution to make sure that the communications do not advocate a position.

3. If a governmental resource is made available to all members of the public for a purpose then it may also be made available to political groups. For example, if any group can use a room in the county courthouse then a political group could use the room as well.

4. Governmental bodies are permitted to adopt resolutions to state an opinion, including advocating the passage, on a ballot issue.

5. The Board's rules permit government officials and employees to use their job titles.

6. Board rules permit government personnel to wear buttons or other items on their personal clothing that advocate for campaigns. However, governmental departments may adopt a policy prohibiting such activities.

7. The campaign laws do not apply to a ballot issue until the issue is required by law or has been approved to be placed on the ballot. If someone is campaigning on an issue before it becomes a “ballot issue,” the campaign laws do not apply. The same is not true for candidates as someone seeking a nomination triggers the campaign laws.

IX. GETTING HELP:

1. The Board’s Web site at www.iowa.gov/ethics contains a great deal of information. In addition, this link contains information specifically for local governmental ethics: www.state.ia.us/ethics/ethics/locaethics.htm/

2. Always feel free to contact the Board by phone, e-mail, or in writing.