

Advisory Opinion

IECDB AO 2000-30

September 21, 2000

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11), the Iowa Ethics and Campaign Disclosure Board takes the opportunity to issue its opinion on the issue of executive branch lobbyists no longer being permitted to file exemptions from semi-annual reports. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 56 and 68B and rules in Iowa Administrative Code chapter 351. Whether some other statutory system, common law theory or agency rule applies to this issue is not covered by this opinion.

OPINION:

We first note that our jurisdiction in interpreting the lobbying laws is limited to activities before executive branch agencies.

Prior to July 1, 2000, Iowa Code section 68B.38(1) in pertinent part stated:

"...no later than January 31 and July 31 of each year, unless no payments are made, a lobbyist" client shall file with the general assembly or board a report that contains information on all salaries, fees, and retainers paid by the lobbyist" client to the lobbyist for lobbying purposed during the preceding six calendar months."

Based on the phrase "unless no payments are made", the Board permitted executive branch lobbyists' clients to file an exemption in situations where the client did not make any payments to a lobbyist. The exemption permitted the client to avoid filing the two reports required by the statute. In addition, in situations where a client did not file a report, the Board would not consider it a violation of the statute so long as no payments were made to a lobbyist. However, if the client had not filed an exemption and then did not file a report, it was necessary for the Board to initiate a compliance measure to determine whether the client had not made any payments or if the client was simply failing to file the report.

Therefore, based on a Board recommendation, the 78th General Assembly passed HF 2431 that took effect on July 1, 2000, and deleted the phrase "unless no payments are made". Based on the new language of the statute that requires a lobbyist's client to file a report on the due date whether or not payments were made to the lobbyist, the Board will no longer allow executive branch clients to file exemptions from the requirements of the statute. The Board will also initiate the rulemaking process to amend rule 351 IAC 13.10 to strike the reference to the ability of a client to seek an exemption.

In closing, the Board notes that nothing in the statutory amendment or in this opinion impacts the ability of an executive branch lobbyist to claim an exemption as set out in Iowa Code section 68B.37(3) and rule 351 IAC 13.10. However, all executive branch lobbyists should be reminded that an exemption will only be granted from the filing of reports under that particular statute if the lobbyist "is not paid compensation". Thus, any executive branch lobbyist who receives compensation to lobby will be prohibited from claiming the exemption.

BY DIRECTION AND VOTE OF THE BOARD

Bernard McKinley, Board Chair

1st Vice-Chair Geraldine Leinen

2nd Vice-Chair James Albert

Gwen Boeke

Mark McCormick

Phyllis Peters

-Submitted by: W. Charles Smithson, Board Legal Counsel