

Advisory Opinion

IECDB AO 2000-31

September 21, 2000

Steven J. Pick
City of Remsen Clerk/Treasurer
205 Fulton Street
Remsen, Iowa 51050

Dear Mr. Pick:

This opinion is in response to your letter of September 13, 2000, in which you request an opinion from the Iowa Ethics and Campaign Disclosure Board. 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.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Clerk/Treasurer for the City of Remsen. You advise us that Remsen permits the local Jaycees/Community Action Committee to have a sign in a public right-of-way and the sign is then rented to anyone wishing to advertise things such as sales events, auctions, birthdays and political advertisements.

QUESTION:

Is it permissible for the city to allow a sign on public property to be rented to political candidates when any member of the public may also rent the sign to advertise?

OPINION:

Iowa Code section 56.12A 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."

The Board first notes that we have consistently held the statute prohibits the placement of campaign signs on the public right-of-way.

The Board has also consistently provided an exception to the prohibition on the "use of public resources for a political purpose" when the public body has a written policy that would allow any member of the public to use the governmental property for the same purposes. For example, if a county had a written policy that would allow individuals and groups to hold meetings in the county courthouse, then candidates or political committees would also be allowed to hold political meetings at the courthouse. The rationale for this interpretation has been that to deny a candidate or political committee access to public property available to other individuals and organizations would impermissibly "limit the freedom of speech" of the candidate or committee.

Turning to your question, if Remsen were to promulgate a written policy that allowed the Jaycees/Community Action Committee to have a sign on the public right-of-way, and that said sign is available to any individual or group to rent, then political candidates and committees could rent the sign. It would be necessary for the candidate or political committee to pay the full rental amount charged to any other individual or group.

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