

## Advisory Opinion

IECDB AO 2000-43

November 16, 2000

Thomas Frolick  
156F University Village  
Ames, Iowa 50010

Dear Mr. Frolick:

This opinion is in response to your letter of November 7, 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 former Plan Administrator of the Iowa Department of Personnel's (IDOP) Deferred Compensation Program. As part of your state duties, you worked with sixty insurance companies with which state employees had investment plan funds. You further advise us that you resigned your position in November of 1999, but did not leave state service until June 30, 2000.

Prior to your leaving state employment, IDOP issued a Request for Proposals (RFP) for new investment providers to begin on January 2001. You did not draft the RFP, but you did review early drafts of the document and attended preliminary meetings where it was discussed. However, you did not write, contribute to or review the final draft.

Sixty days after your departure from state government, ten companies submitted competitive bids. On October 24, 2000, IDOP announced four successful bidders with Aetna being one of them. IDOP's proposed contract with Aetna included a clause that would prohibit those who participated in the evaluation and scoring process from working for the successful bidders. You state that your potential employment would not violate that prohibition.

After the successful bidders were announced, you were offered a position with Aetna and would be responsible for marketing and client relationships for all of Aetna's public sector and non-profit retirement business in Iowa. As such, you would manage the relationship between Aetna and IDOP and would be involved in the marketing of deferred compensation to state employees. You are concerned about the impact of the conflict of interest laws in Chapter 68B to your proposed employment with Aetna.

**QUESTION:**

Do the provisions of Iowa Code section 68B.7 prohibit you from accepting employment with Aetna for two years following termination of state employment?

**OPINION:**

Iowa Code section 68B.7 in pertinent part states:

"A person who has served as...state employee of a state agency...shall not within a period of two years after the termination of such service or employment appear before the agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and personally participated during the period of service or employment."

In applying this language to your question, we do not believe that merely reviewing early drafts of an RFP rises to the level of "directly concerned and personally participated" in an "application" as contemplated by the statute. Therefore, nothing in Iowa Code section 68B.7 would prohibit you from accepting employment with Aetna and appearing before IDOP within two years of termination of state employment.

**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