

## Advisory Opinion

IECDB AO 2001-04

April 5, 2001

The Honorable Mike Wolf  
Clinton County Attorney  
PO Box 2957  
612 North Second Street  
Clinton, Iowa 52733-2957

Dear Mr. Wolf:

This opinion is in response to your letter of March 20, 2001, 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 Clinton County Attorney. You advise us that you desire to produce and distribute letters on county letterhead that are prepared by county employees and mailed at county expense. The specific types of letters that you are inquiring about concern such items as enclosing congratulatory or commendation letters, letters welcoming newcomers and letters enclosing newspaper clippings noting specific accomplishments of local citizens. In addition, you would like to produce an annual newsletter providing educational information on the services provided by your office. Finally, you advise us that no letter or newsletter would contain any political information and would not reference election or campaign matters.

### QUESTION:

Is it permissible for an elected county officer to expend public resources to produce and distribute literature that does not reference election or campaign matters?

### OPINION:

Iowa Code section 56.12A prohibits the "expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue". Iowa Code section 56.2(19) defines "political purposes" as the "express advocacy of a candidate or ballot issue". Iowa Code section 56.2(14)"b" and rule 351 IAC 4.100(1)"a" define "express advocacy" as the use of terms such as "vote for", "elect" or "support".

When reviewing a piece of literature to determine if it contains "express advocacy", the Board looks for words that are "exhortations on how to vote". If the literature does not contain such words or phrases, then it is not considered "express advocacy". We do note the portions of the definition found in Iowa Code section 56.2(14)"c" and rule 351 IAC 4.100(1)"b" have been ruled unconstitutional and unenforceable.

Thus, so long as your communications do not contain terms of "express advocacy" as defined in Iowa Code section 56.2(14)"b" and rule 351 IAC 4.100(1)"a", then Iowa Code section 56.12A would not prohibit you from producing and distributing the materials at county expense.

In closing, the Board wants to remind you this opinion is limited to the question of whether or not your production and distribution of such communications is permitted under the campaign finance laws. Whether or not some other law or rule prohibits the use of governmental resources for such a purpose is not covered by this opinion.

**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