

Advisory Opinion

IECDB AO 2002-04

February 1, 2002

N. Brian Gentry General Counsel
Office of the Governor 1st Floor,
State Capitol
Des Moines, Iowa 50319

Dear Mr. Gentry:

This opinion is in response to your letter of January 25, 2002, 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.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the General Counsel for the Governor's Office. You advise us that on May 1, 2001, Mr. Tom Gronstal began service on the State Banking Board as a board member. On November 14, 2001, Governor Vilsack appointed Mr. Gronstal to serve as the Superintendent of Banking, subject to senate confirmation. Mr. Gronstal resigned from the State Banking Board on December 28, 2001.

QUESTION:

Does Iowa Code section 68B.7 prohibit Mr. Gronstal from being appointed by the Governor to be the Superintendent of Banking within two years of serving on the State Banking Board?

OPINION:

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

"A person who has served...on a commission or board of a regulatory agency...shall not, within a period of two years after the termination of such service accept employment with that commission, board, or agency...."

The Board first notes that the State Banking Board is considered to be a division of the Department of Commerce under Iowa Code sections 546.2(3) and 546.3. Iowa Code section 68B.2(23) identifies the Department of Commerce as a "regulatory agency". Therefore, the State Banking Board is a "board of a regulatory agency" and falls under Iowa Code section 68B.7.

The division of banking is headed by the Superintendent of Banking who is appointed by the Governor as provided in Iowa Code section 524.201. The Governor has the sole authority to employ the Superintendent of Banking through his appointment power. Neither the State Banking Board, nor the Department of Commerce, has the statutory authority to employ Mr. Gronstal as the State Banking Superintendent. Thus, Mr. Gronstal is not accepting "employment with" the State Banking Board or the Department of Commerce, but is rather accepting appointment to an office of the State of Iowa. Therefore, Iowa Code section 68B.7 does not prohibit this appointment.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
1st Vice-Chair Geraldine Leinen
2nd Vice-Chair Gwen Boeke
Mark McCormick
Bernie McKinley
Phyllis Peters

Submitted by: W. Charles Smithson, Board Legal Counsel