

Advisory Opinion

IECDB AO 2002-07

April 11, 2002

The Honorable Kim Reynolds Clarke
County Treasurer
PO Box 157
Osceola, Iowa 50213

Dear Treasurer Reynolds:

This opinion is in response to your letter of December 27, 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.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Clarke County Treasurer and on behalf of the Iowa State County Treasurers' Association. You advise us that you have received conflicting information regarding the necessity of your registering to lobby the executive branch as a local elected official. You reference Attorney General Opinion #97-6-4(L) as not requiring you to register, while the Board's staff notified you that an Executive Branch Lobbyist Registration Statement was necessary.

QUESTION:

Based on this factual statement, you ask the following questions:

1. Does a county treasurer lobbying on behalf of the Treasurers' Association need to register to lobby the executive branch if the legislative branch is the extent of the lobbying efforts?
2. If a county treasurer writes a letter to the Governor seeking support for a piece of legislation, does this activity require the county treasurer to register as an executive branch lobbyist?
3. Are local elected officials, while performing their duties and responsibilities of office, required to register as executive branch lobbyists?

We first note that our jurisdiction in interpreting the lobbying statutes is limited to activities before the executive branch. The Board also notes that you were requested by staff to file an Executive Branch Lobbyist Registration Statement based on your filing of an Executive Branch Lobbyist Report. Board staff assumed from your filing of the report

that you were engaged in lobbying activities before the executive branch and needed to register.

In answer to your first question, individuals do not need to register to lobby the executive branch if they are only going to engage in lobbying activities before the legislature. Turning to your second question, writing the Governor seeking support on a piece of legislation would constitute "lobbying". However, whether or not you were required to register depends upon the definition of "lobbyist" in Iowa Code section 68B.2(13).

Iowa Code section 68B.2(13)"a"(1) defines "lobbyist" as an individual who falls under any one of the following:

1. Receives compensation to engage in lobbying activities.
2. Is a designated representative of an organization that engages in lobbying.
3. Represents the position of a federal, state, or local governmental agency in which the person serves or is employed and is the designated representative of the agency.
4. Makes expenditures of more than \$1,000 in a calendar year on lobbying activities.

You would need to register as an executive branch lobbyist (subject to the discussion below) if you meet any one of the definitions of "lobbyist" and you lobby executive branch agencies. Iowa Code section 68B.2(13)"b" impacts both your second and third questions. Subparagraph (3) defines "lobbyist" to not include "federal, state, and local elected officials, while performing the duties and responsibilities of office." In addition, subparagraph (7) provides an exception for "an individual who is a member...of a...professional association...who either is not paid compensation or is not specifically designated" under subsection "a".

Thus, under this section you would not be required to register as an executive branch lobbyist for the Treasurer's Association or the county under either of the following:

1. You are performing your "duties and responsibilities of office" as an elected official.
2. You are a member of a professional association and you do not receive compensation to lobby, nor are you the designated representative of the association for lobbying purposes.

The Board assumes that your "duties and responsibilities of office" are set out by statute and do not include lobbying on behalf of the Treasurer's Association or the county. However, without additional factual information the Board cannot make that determination for you. We invite you to provide additional information concerning your "duties and responsibilities of office" in order for us to give you proper guidance.

We do believe that you are a member of a "professional association" by belonging to the Treasurer's Association. Therefore, if the Association does not pay you for lobbying or

does not designate you as its representative, you would not be required to register as a lobbyist when conducting lobbying activities on behalf of the Association.

The Board does interpret the term "designate" broadly in order to prevent individuals from avoiding public disclosure of lobbying activities by acting on "behalf" of an association but not being "formally designated". Also, please be aware that the exception for "professional association" does not apply to your lobbying on behalf of the county.

In closing, we note that Attorney General Opinion #97-6-4(L) addresses elected officials registering as lobbyists in the legislative branch and does not discuss executive branch lobbying.

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