

Advisory Opinion

IECDB AO 2002-11

April 11, 2002

Ashley Super
Purchasing Agent III
Iowa Department of General Services
Hoover State Office Building - Level A
Des Moines, Iowa 50319-0105

Dear Ms. Super:

This opinion is in response to your letter of February 12, 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 a Purchasing Agent III for the Iowa Department of General Services. You advise us that your agency has not permitted vendors to sell items to state employees at the discounted rate offered to state agencies. However, Attorney General Opinion 93-7-7 was recently brought to your attention in which the Attorney General's Office opined that the gift law was not violated if the discounted price was of equal or greater value than the product and the offer was made to a "particular segment of the public."

QUESTION:

Is it permissible for the Iowa Department of General Services to amend state contracts to specifically provide that the vendor will broadly offer its products to all state employees at the same rate that it offers to the State?

OPINION:

The Board's jurisdiction in interpreting the provisions of Iowa Code chapter 68B is limited to executive branch officials and employees, candidates for statewide office, local governmental officials and employees, and the immediate family members of all the foregoing.

Iowa Code section 68B.22 prohibits the receipt of gifts, with numerous exceptions, from a "restricted donor" (see Iowa Code section 68B.2(24) for definition). So the issue you raise really becomes a question of whether state employees may purchase a discounted

item from a "restricted donor" if the price is the same as that offered to all other state employees.

The legislative intent behind the gift law, as outlined in Iowa Code section 68B.21, is that the "provisions of this division be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety." Here, the discount is being offered to all state employees regardless of the official status or duties of the employees. Thus, the acceptance of the discount is not creating "unacceptable conflicts of interest or appearances of impropriety" that would require Iowa Code section 68B.22 to be interpreted to prevent the situation you describe.

In reaching the determination that the gift law should not be interpreted to prohibit this situation, the Board does so without speaking to the merits of Attorney General Opinion 93-7-7.

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