

## Advisory Opinion

IECDB AO 2003-15

September 11, 2003

Paul Coates  
Director, Office of State and Local Government Programs  
Iowa State University Political Science Department  
506 Ross Hall  
Ames, Iowa 50011-1204

Dear Director Coates:

This opinion is in response to your letter of August 27, 2003, requesting 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 68A and 68B and rules in Iowa Administrative Code chapter 351.

### FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Director of the Office of State and Local Government Programs at Iowa State University. You advise us that you provide administrative direction to the Iowa State Election Administrators Training (SEAT) program. An essential part of the program is the use of instructors from state and local government that are involved in elections. You generally reimburse the instructors for expenses and pay them a fee for speaking.

You further advise us that a question has been raised concerning the propriety of providing a speaking fee to governmental personnel. There is some confusion as to whether or not their participation as an instructor is beyond their official governmental duties.

### QUESTION:

Is it permissible for the Iowa State Election Administrators Training program to pay public officials and public employees speaking fees as instructors?

### OPINION:

The Board first notes that our Executive Director/Legal Counsel is a member of the SEAT Board and has been a program instructor on campaign finance and governmental ethics issues. We also note that these activities are part of his official duties and that he has not received any

reimbursement or speaking fees from SEAT. As these activities for SEAT are part of his official duties, he is not engaged in an outside employment or activity that would create a conflict of interest in his researching this issue or preparing a draft opinion on behalf of the Board.

The Board's jurisdiction over this issue is limited to officials and employees of the executive branch and officials and employees of political subdivisions of government. This opinion does not apply to officials and employees of the legislative or judicial branches of state government.

In answering your question, Iowa Code section 68B.2A prohibits state and local governmental officials and employees from engaging "in any outside employment or activity which is in conflict with the person's official duties and responsibilities." Iowa Code section 68B.2A(1)"b" provides the following specific conflict:

"The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state."

The Board cannot make a general pronouncement concerning whether or not lecturing at a SEAT program by a governmental official or employee is an "act that the person would be required or expected to perform as part of the person's regular duties." <sup>1</sup> Rather, the head of the individual's governmental employer should make that decision. This decision must be made in light of the fact that the SEAT presenters are chosen based on their governmental expertise and we find it difficult to believe that it would not be part of the "regular duties" of such individuals to give these types of speeches and presentations.

If it is part of the individual's governmental duties to provide the types of speeches and presentations that are made at a SEAT program, then the individual could not personally accept the speaking fee. The speaking fee could be turned over to the individual's governmental employer to cover the amount of governmental time or resources expended.

If it is not part of the individual's official governmental duties to provide these types of speeches and presentations, then the individual could personally receive payment from SEAT. However, the individual would have to take vacation time or otherwise not be "on the clock."

At this time SEAT does not appear to be a "restricted donor" to any public official or employee that might be an instructor at a program. <sup>2</sup> Therefore, neither the \$3.00 gift law in Iowa Code section 68B.22, nor the prohibition in Iowa Code section 68B.23 on a public official or public employee accepting an honorarium would apply.

If for some reason in the future SEAT does become a “restricted donor,” Iowa Code section 68B.22(4)“g” would permit SEAT to provide actual expenses for “food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting....” Iowa Code section 68B.23(2)“b” provides the same exception to the prohibition on the receipt of honoraria.

In closing, we encourage public officials and public employees to seek Board guidance when contemplating accepting a speaking fee, reimbursement, or other honoraria.

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

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<sup>1</sup> The Board could provide guidance to a specific official or employee if the individual sought the Board’s opinion and the individual provided all pertinent information.

<sup>2</sup> See Iowa Code section 68B.2(24) for the definition of “restricted donor.”