

## Advisory Opinion

IECDB AO 2004-03

April 22, 2004

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the applicability of the campaign laws to judges seeking retention. 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.

OPINION:

After reviewing the campaign laws in Iowa Code chapter 68A<sup>i</sup> to judges standing for retention, it is clear that the General Assembly intended for these laws to apply to judicial elections. As some provisions of the campaign laws have special application to judicial elections, the Board issues this opinion to avoid confusion concerning those laws.

For purposes of this opinion and in applying the campaign laws and Board rules, "judge standing for retention" means those persons listed as being required to file a declaration of candidacy in Iowa Code section 46.20. This includes "a judge of the supreme court, court of appeals, or district court including district associate judges, full-time associate juvenile judges, or full-time associate probate judges, or a clerk of the district court who is required to stand for retention under section 602.1216."

The initial issue is whether an election involving a judge seeking retention is a "ballot issue" or is the "nomination or election of a candidate to a public office." This distinction is important as financial institutions, insurance companies, and corporations are prohibited by Iowa Code section 68A.503 from making expenditures in connection with a candidate election but may do so in a ballot issue election.

Iowa Code section 68A.102(4) defines "candidate" to include "any individual who has taken affirmative action to seek nomination or election to a public office and shall also include any judge standing for retention in a judicial election." Therefore, the Board believes that a judicial election is an election involving the "nomination or election of a candidate" and is not a "ballot issue." Thus, the prohibition in Iowa Code section 68A.503 applies to judicial elections.

As judges standing for retention file their declarations of candidacy with the Secretary of State (State Commissioner of Elections) as opposed to with the County Auditors (County Commissioners of Elections), the Board will treat judges standing for retention as "state candidates."

Thus, any campaign committees formed to expressly advocate the nomination, election, or defeat of a judge standing for retention will be treated as a state committee and will file campaign disclosure reports on the dates required by state committees under Iowa Code section 68A.402 and rule 351—4.9.

Iowa Code section 68A.202(2) provides an exception from the prohibition on a political committee (PAC) being established to expressly advocate the nomination, election, or defeat of only one candidate for office. That section provides that a “political committee may be established to expressly advocate the passage or defeat of approval of a single judge standing for retention.” Therefore a political committee (PAC) may be established to advocate for or against a single judge standing for retention.

All other campaign laws and Board rules apply to a campaign for a judge standing for retention the same as any other campaign for statewide or legislative office.

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>i</sup> Effective July 1, 2003, the campaign laws were renumbered from Chapter 56 to Chapter 68A