

## Advisory Opinion

IECDB AO 2013-01

August 8, 2013

The Honorable Steven L. Berner  
Mayor of Tiffin  
140 West 3rd Street  
Tiffin, Iowa 52340

Mayor Berner:

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion in response to your March 27, 2013 letter requesting an opinion on a potential conflict of interest. We note at the outset the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

### FACTUAL STATEMENT:

You advise the Board that you are the Mayor of Tiffin, Iowa as well as the manager of the Solon State Bank branch in Tiffin. You further advise the Board that the City's general account and money market account are with the Solon State Bank. You inform the Board that your income from the Bank is not in any way affected by the City's relationship with the Bank.

### QUESTION:

Is it permissible for a city to maintain its bank accounts with a bank that also employs the city's mayor?

### OPINION:

Iowa Code section 68B.2A prohibits any person who serves a political subdivision of the state from engaging in an outside employment or activity that is in conflict with the person's official duties and responsibilities. The statute describes situations in which an unacceptable conflict could exist. Two of those situations could apply to your question:

1. The outside employment or activity involves the use of the political subdivision's resources.

2. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person during the performance of official political subdivision duties.

As long as you do not use the City's resources to further your employment with the Solon State Bank, the first situation would not apply. As long as you publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty with respect to the City's decision on which bank to use, the second situation would not apply. See Iowa Code 68B.2A(2)(b).

You advise the Board that as Mayor you do not vote on the City's choice of bank and you have assigned a council person to chair the City's finance committee. You further advise the Board that the choice of bank will solely be the responsibility of the chairperson of the finance committee and the City Clerk. As long as you publicly disclose your employment with Solon State Bank, we are of the opinion that your current course of action constitutes sufficient remedial action to alleviate the potential conflict of interest. See also IECDB AO 2003-10 ("The removal of the chief operating officer from oversight of the banking contract and banking services . . . would constitute sufficient remedial measure to alleviate the potential conflict of interest . . .").

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

John Walsh, Vice Chair

Saima Zafar

Carole Tillotson

Jonathan Roos

Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel