

Advisory Opinion

IECDB AO 2013-01

August 8, 2013

Ms. Joni L. Keith
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105 East Third Street
Ottumwa, IA 52501

Ms. Keith:

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 December 28, 2012 letter requesting an opinion on the application of Iowa Code section 68A.505 to the city's new park shelter reservation policy. 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 alleging a violation of chapter 68A, chapter 68B, section 8.7, or rules of the Board that is based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise the Board that you are the City Attorney for Ottumwa, Iowa and request this opinion on behalf of the City. For the past several years, the Southern Iowa Labor Council has reserved the City's large Jimmy Jones Park Shelter for an annual four-day Labor Day event. All activities, including bands, a rodeo, meals and other entertainment, are completely non-political, with the exception of a political forum held on Sunday of Labor Day weekend. The City has provided assistance setting up barricades and fencing and has also provided security for the entire event. This annual event is open to the public and well attended.

In December 2012, the City adopted a new shelter reservation policy that provides for a permanent reservation to the Southern Iowa Labor Council for a four-day event every Labor Day weekend. The purpose of the new policy is to ensure the Labor Council can hold its event and to thwart the possibility that anyone else would reserve the Shelter for that time period. Previously, the City had a first come, first serve reservation policy. The City has granted to the Ottumwa American Legion and the VFW a permanent reservation and free usage of the Jimmy Jones Shelter for their annual Memorial Day event. That event is solely non-political in nature.

The pertinent portion of the revised policy states:

The Southern Iowa Labor Council is allowed a permanent reservation for the Jimmy Jones Shelter for their Labor Day Event. This reservation is valid only if

a continuous, yearly Labor Day Event is held at the Jimmy Jones Shelter. Any lapse in usage will void the permanent reservation. All costs for the shelter rental, deposits, clean up and all other associated costs are required to be paid by the Southern Iowa Labor Council. All groups using the Jimmy Jones Shelter must provide proof of insurance and a complete park usage request form.

Finally, you advise the Board that the political forum that is part of this annual event is limited to Democratic candidates and leaders.

QUESTION:

Is it a violation of Iowa Code section 68A.505 for a city to grant a permanent reservation for a park shelter to a group holding an event that is in part political in nature?

OPINION:

Iowa Code section 68A.505 provides that “the state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes” “Political purpose” means “to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.” Iowa Admin. Code r. 351—5.3. The Board interprets “the phrase ‘expenditure of public moneys for political purposes’ broadly to include the use of public resources generally.” *Id.* r. 351—5.1. “Public resources” means “the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.” *Id.* r. 351—5.3. The Board’s rules provide lists of specific prohibitions and specific exceptions (i.e. permissible uses) for the purpose of clarifying the general prohibition on the use of public resources for political purposes. *See id.* r. 351—5.4, 5.5. Unless one of the exceptions in rule 351—5.5 applies, public officials and public employees “shall not permit public resources to be used to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.” *Id.* r. 5.4(1).

For purposes of this opinion, we presume that the political forum portion of the Labor Day event includes express advocacy. We find the following exception from the prohibition on the use of public resources for political purposes applies to the Labor Day event in question:

Reimbursement to governmental body. A person may reimburse a governmental body for the use of a public resource for a political purpose so long as it can be demonstrated to the board that the use of the resource was also for a public purpose or furthered a public interest. The reimbursement shall be for the actual costs of the public resource or be for the same amount charged to a person using the public resource for any other purpose.

Id. r. 5.5(4). We believe the use of the City's Jimmy Jones Shelter by the Labor Council furthers a public interest. The Labor Day event is well-attended by the public, not just union members, and the majority of the event's activities are non-political in nature. Moreover, the reservation policy in question explicitly requires the Labor Council to pay the City for all costs associated with the use of Jimmy Jones Shelter for this event. We express no opinion on the constitutionality of the reservation policy.

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