

## Advisory Opinion

IECDB AO 2013-04

October 31, 2013

Paula S. Dierenfeld  
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700 Walnut, Suite 1600  
Des Moines, IA 50309-3899

Dear Ms. Dierenfeld:

This opinion is in response to your request for 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 chapter 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 us that your law firm represents Jeffrey R. Boeyink. Mr. Boeyink served as Governor Terry Branstad's Chief of Staff from January 14, 2011 until September 5, 2013. Since departing the Governor's office, Mr. Boeyink has obtained private sector employment in the area of government affairs and relations. On behalf of Mr. Boeyink, you pose three questions which we answer below.

### OPINION:

The Board first notes that its jurisdiction to interpret the provisions of Iowa Code chapter 68B applies only to the executive branch of state government and to political

subdivisions. See Iowa Code § 68B.32A(12). As such, this opinion does not apply to the legislative or judicial branch.

**1. May Mr. Boeyink lobby the Governor's office upon his departure as the Governor's Chief of Staff?**

Iowa Code section 68B.5A places restrictions on state officials and employees from accepting certain positions in the private sector for two years after leaving state government. The level of restriction depends on what position the state official or employee held as part of state government. We are of the opinion that the Governor's Chief of Staff is "a full-time employee of an office of a statewide elected official whose position involves substantial exercise of administrative discretion or the expenditure of public funds." See *id.* § 68B.5A(5). Section 68B.5A prohibits a person in such a position from "within two years after termination of employment, becom[ing] a lobbyist before the agency in which the person was employed." The definition of "agency" includes "the office of the governor." *Id.* § 68B.2(1). Thus, Mr. Boeyink is prohibited from lobbying the Governor's office within two years of the termination of his employment as the Governor's Chief of Staff.

The proscription in section 68B.5A is limited to "lobbyist" activities. A lobbyist is defined as "an individual who, by acting directly, does any of the following:

- (1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.
- (2) Is a designated representative of an organization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.
- (3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official.

- (4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.”

*Id.* § 68B.2(13)(a). In your memorandum in support of Mr. Boeyink’s position on the questions posed in your request for an advisory opinion, you advocate that Iowa law permits the following communications by Mr. Boeyink:

Directly communicate with the Governor’s office about a particular piece of legislation, administrative rule, or executive order, as long as he does not communicate with the Governor’s office in a manner that “encourage” a particular course of action. A practical example of this type of scenario would be Mr. Boyeink setting up a meeting between a lobbyist colleague and a member of the Governor’s office staff via telephone call, while refraining from making any persuasive statements regarding a particular bill, rule, or order that may be the subject of the meeting.

Directly encourage that a specific course of action be taken by the Governor’s office with respect to a particular governmental matter that is not a piece of legislation, an administrative rule, or an executive order. A practical example of this type of scenario would be Mr. Boeyink directly contacting the Governor’s office to encourage that a certain individual be considered for an appointment to a particular government commission or board.

We agree these types of communications would not be considered “lobbying” and thus would be outside the scope of section 68B.5A.

**2. May Mr. Boeyink lobby state agencies, officials, and employees of the executive branch upon his departure as the Governor’s Chief of Staff?**

Iowa Code section 68B.5A also prohibits “a full-time employee of an office of a statewide elected official whose position involves substantial exercise of administrative discretion or the expenditure of public funds” from “within two years after termination of employment, becom[ing] a lobbyist . . . before state agencies or officials or employees with whom the person had substantial and regular contact as part of the person's former duties.” Thus, Mr. Boeyink is prohibited from lobbying state agencies or officials or employees with

whom he had substantial and regular contact as part of his Chief of Staff duties within two years of the termination of his employment as the Governor's Chief of Staff.

In your memorandum, you provide a list of communications that you believe would be permissible by Mr. Boeyink:

Directly communicate with a state agency, official, or employee with whom he had substantial and regular contact as the Governor's Chief of Staff about a particular piece of legislation, administrative rule, or executive order, as long as he does not communicate with such state agencies, officials, or employees in a manner that "encourages" a particular course of action. A practical example of this type of scenario would be Mr. Boeyink setting up a meeting between a lobbyist colleague and a state agency, official, or employee with whom he had substantial and regular contact as the Governor's Chief of Staff via a telephone call, while refraining from making any persuasive statements regarding a particular bill, rule, or order that may be the subject of that meeting.

Directly encourage a specific course of action be taken by a state agency, official, or employee with whom he had substantial and regular contact as the Governor's Chief of Staff with respect to a particular governmental matter that is not a piece of legislation, an administrative rule, or an executive order. A practical example of this type of scenario would be Mr. Boeyink advocating on behalf of a private sector client while assisting that client in responding to a request for proposal ("RFP") from a state government agency with whom he previously had substantial and regular contact as the Governor's Chief of Staff.

Directly lobby any state agency, official, or employee with whom he had only intermittent, brief, occasional, or insubstantial contact as the Governor's Chief of Staff.

Directly lobby any state agency, official, or employee with whom he had substantial contact, regular contact, or both substantial and regular contact in the Governor's Office, but where such contact arose out of circumstances other than his former duties as the Governor's Chief of Staff. A practical example of this type of scenario would be Mr. Boeyink lobbying a particular government official with whom he had substantial and regular contact as part of his duties as a member of a non-profit board of directors, as opposed to his duties as the Governor's Chief of Staff.

We agree these types of communications would be outside the scope of section 68B.5A and thus permissible.

**3. What specific restrictions will be placed on Mr. Boeyink under Iowa Code section 68B.7(1) following his departure as the Governor's Chief of Staff?**

Iowa Code section 68B.7 prohibits state officials and employees from “within a period of two years after the termination of such service or employment receiv[ing] compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and personally participated during the period of service or employment.” Thus, Mr. Boeyink is prohibited from receiving compensation for rendering services on behalf of another in relation to any case, proceeding or application within respect to which he was directly concerned and personally participated within two years of the termination of his employment as the Governor’s Chief of Staff.

In your memorandum, you provide a list of activities you believe would be permissible by Mr. Boeyink:

Representing clients who have matters before the state government that do not involve a case, proceeding, or application.

Representing clients who have cases, proceedings, or applications before the state government where he did not have previous involvement in those cases, proceedings, or applications.

Representing clients who have cases, proceedings, or applications before the state government that he was involved in during his time in the Governor's Office, but whose representation he confines to matters separate and apart from those particular cases, proceedings, or applications that he was involved in.

Representing clients who have cases, proceedings, or applications before the state government - whether they be cases, proceedings, or applications that he had previous involvement in or not - but from whom he accepts no financial compensation in return for his services.

We agree these types of activities are outside the scope of Iowa Code section 68B.7 and are therefore permissible so long as they do not violate section 68B.5A.

In summary, Mr. Boeyink shall not act as a lobbyist before the Governor’s office or before any state agency, official, or employee with whom he had substantial and regular contact as the Governor’s Chief of Staff within two years of the termination of his employment as the Governor’s Chief of Staff. Mr. Boeyink shall not receive compensation for services rendered on behalf of another in relation to any case, proceeding, or application with respect to which he was directly concerned and personally participated during his tenure as the Governor’s Chief of Staff within two years of the termination of his employment as Chief of Staff. We encourage Mr. Boeyink to seek further guidance from the Board if a particular

circumstance arises in which he is uncertain whether Iowa Code section 68B.5A or 68B.7 applies.

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

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