

## Advisory Opinion

IECDB AO 2014-01

October 2, 2014

W. Charles Smithson  
2801 EP True Parkway, Unit 202  
West Des Moines, IA 50265

Mr. Smithson:

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 June 18, 2014 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 request this advisory opinion on behalf of Chad Airhart, who is the Dallas County Recorder. Mr. Airhart is running for re-election this year. He is also a member of Goldfinch Media, LLC. Goldfinch Media, LLC utilizes the fictitious name "My Town Magazines" to transact business. The purpose of "My Town Magazines" is to provide information to Dallas County residents and to promote businesses. Your further advise "My Town Magazines" will not be engaged in any of the following:

1. Covering government affairs of Dallas County;
2. Discussing elections or campaigns in Dallas County; and
3. Expressly advocating the election or defeat of Mr. Airhart as a clearly identified candidate for public office.

No resources of the Dallas County Recorder's office will be utilized to publish or otherwise conduct work on Goldfinch Media, LLC or "My Town Magazines." Mr. Airhart will be listed as the Publisher and will be writing a column with his picture.

In his capacity as Dallas County Recorder, Mr. Airhart would not be responsible for any oversight of this private-sector business, nor is it part of his official county duties to publish this type of magazine.

### QUESTION:

Are there any limitations in Iowa Code chapter 68A or Iowa Code chapter 68B that would impact Mr. Airhart's ability to engage in this private-sector employment?

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 . . . ." The Board interprets "the phrase 'expenditure of public moneys for political purposes' broadly to include the use of public resources generally." Iowa Admin. Code r. 351—5.1. "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." *Id.* r. 351—5.3. Section 68A.505 is not triggered by the factual scenario provided because no county resources will be utilized to publish or otherwise conduct work on "My Town Magazines."

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:

1. The outside employment or activity involves the use of the political subdivision's resources.
2. The outside employment or activity involves the promise or acceptance of consideration for the performance of any act the person would be required or expected to perform as part of the person's regular duties or during the hours which the person performs service or work for the political subdivision.
3. 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.

The first category would not apply as long as Mr. Airhart does not use county resources to benefit Goldfinch Media, LLC or "My Town Magazines." The second category would not apply as long as Mr. Airhart does not conduct work for Goldfinch Media, LLC or "My Town Magazines" during the hours which he performs service or work for Dallas County. The third category would not apply as long as Mr. Airhart publicly discloses the existence of the conflict and refrains from taking any official action or performing any official duty with respect to Goldfinch Media, LLC or "My Town Magazines" in the unlikely event Goldfinch Media, LLC or "My Town Magazines" becomes subject to Mr. Airhart's official control, inspection, review, audit or enforcement authority in his capacity as Dallas County Recorder. See Iowa Code 68B.2A(2)(b).

In summary, we do not believe there are any limitations in Iowa Code chapter 68A or chapter 68B that would impact Mr. Airhart's ability to engage in an outside employment or activity with Goldfinch Media, LLC or "My Town Magazines" under the terms you have described.

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