

ADVISORY OPINION
IECDB AO 2015-06

August 20, 2015

David Jamison, Executive Director
Iowa Finance Authority
2015 Grand Ave
Des Moines, Iowa 50312

Dear Director Jamison:

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 request for an opinion from the Board. We note at the outset that 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.

BACKGROUND FACTS:

We understand you request this opinion on behalf of the Iowa Finance Authority (hereafter "IFA"), a state agency.¹ You advise us that IFA is interested in holding a summit on affordable homeownership issues. IFA would like to invite Presidential candidates to attend the summit and provide their views on affordable homeownership as well as learn about programs administered by state housing finance agencies across the country.

You further advise us that the summit would not be for the purpose of any candidate expressly advocating for his or her campaign. There would also be no state funds used for any express advocacy purposes. Presidential candidates from both major political parties would be invited to attend.

You also propose that the summit would be paid for by sponsorships from organizations that would receive advertising rights. IFA intends to partner with a limited liability company (hereafter "LLC") that would solicit and accept sponsorship donations, and thus no IFA employee would be soliciting or receiving the donations. The LLC would receive a portion of these donations as its fee and would use the donations to pay for the expenses of holding the summit. Any unused funds would not go to IFA, but would be donated to a charitable organization that is not related to the workings of IFA.

¹ See generally Iowa Code ch. 16 (2015) (establishing the Iowa Finance Authority and describing its duties).

QUESTION:

Would IFA's proposed summit comply with the laws under the Board's jurisdiction?

OPINION:

Iowa Code section 68A.505 prohibits state, county and local governing bodies from "expend[ing] or permit[ting] expenditure of public moneys for political purposes." The parameters of that prohibition are based on how several terms in chapter 68A are defined. "Political purposes" means "the express advocacy of a candidate or ballot issue."² "Express advocacy" means "advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues" by using "explicit words that unambiguously indicate the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue."³ A "candidate" means "any individual who has taken affirmative action to seek nomination or election to a public office and shall include any judge standing for retention in a judicial election."⁴ "Public office" means "any state, county, city or school office filled by election."⁵ Thus, section 68A.505 prohibits the use of government moneys to expressly advocate in favor or against state, county and local candidates and ballot issues and does not extend to the express advocacy of federal candidates.⁶ Whether the omission of federal candidates was intentional by the legislature is not within our purview.

In the case of IFA's proposed summit, Iowa Code section 68A.505 would not be implicated because IFA intends to invite federal candidates. But even assuming for the sake of argument the statute extends to federal candidates, the proposed summit would not violate section 68A.505 because no state funds would be used for the summit and the candidates would not be engaging in express advocacy. Moreover, our administrative rules expressly allow the use of government resources to hold "a candidate debate or forum and the accompanying distribution of campaign materials on governmental property so long as at least two candidates seeking the same office are invited to attend the debate or forum."⁷ It appears the proposed summit could qualify as a candidate "forum" under this rule, which would allow both the use of

² *Id.* § 68A.102(19).

³ *Id.* § 68A.102(14)(b).

⁴ *Id.* § 68A.102(4).

⁵ *Id.* § 68A.102(20).

⁶ *See also* Iowa Admin. Code r. 351—5.2 (stating the Ethics Board interprets Iowa Code section 68A.505 to "not apply to property belonging to the federal government or to the use of the executive branch of state government, a county, city, public school, or other political subdivision by a federal campaign").

⁷ *Id.* r. 351—5.5(3).

government funds and the candidates to engage in express advocacy. For all these reasons, we are satisfied that the proposed summit would not violate Iowa Code section 68A.505.

We now turn to how IFA intends to pay for the proposed summit. Iowa Code section 8.7 requires all “gifts and bequests *received* by a department” to be reported to the Ethics Board. (Emphasis added.) Here, the LLC will solicit and receive the sponsorship donations and any remaining funds will be donated to a charitable organization. Since IFA will not be handling any of the sponsorship money, we do not believe the sponsorships would qualify as a gift received by the agency and hence no agency gift report under section 8.7 would be required. Moreover, eliminating IFA officials and employees from soliciting or receiving sponsorship donations provides an additional safeguard to avoid any appearance of impropriety because the sponsoring organizations may have some interest in IFA’s mission and responsibilities.

Finally, we do not believe the sponsorship donations would trigger Iowa’s gift law. Iowa Code section 68B.22 prohibits government employees and officials from receiving, directly or indirectly, any gift from a restricted donor unless one of the nineteen exceptions to the gift law applies. Although it is likely one or more of the sponsors may be a “restricted donor”⁸ to IFA employees and officials, the gift law would not apply because the sponsorship money will not be personally benefiting any IFA employee or official. Instead, the money will be used solely for the purpose of the summit and any remaining funds will be given to a charity.

CONCLUSION:

IFA’s proposed summit would not violate Iowa Code chapters 68A or 68B, Iowa Code section 8.7, or the administrative rules chapter 351 of the Iowa Administrative Code.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Jonathan Roos, Vice Chair
Saima Zafar
Carole Tillotson
John Walsh
Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

cc: W. Charles Smithson

⁸ Iowa Code § 68B.2(24) (defining a “restricted donor”).