

Advisory Opinion
IECDB AO 2016-06

September 1, 2016

Lee A. Wilkinson, Director
Operations & Finance Division
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Dear Mr. Wilkinson,

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. We issue this opinion regarding the definition of “dependent children.” 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.

FACTUAL STATEMENT:

You advise us that the Iowa Department of Transportation (DOT) employs Jeff De Vries as a District 1 Materials Engineer. As part of his job duties, Mr. De Vries works with and has direct involvement with city, county and resident engineering staff, as well as road construction contractors and producers.

Mr. De Vries’ nineteen-year-old son recently applied for and was chosen to receive a scholarship offered by the Asphalt Paving Association of Iowa (APAI). You advise us that APAI’s members include construction contractors, suppliers, associates, and consulting engineers engaged in design, production, and construction of asphalt pavements. The APAI scholarship committee is also comprised of members within this same subset of businesses.

The DOT recognizes APAI is a “restricted donor” for purposes of Iowa Code chapter 68B. The agency is seeking an advisory opinion on whether Mr. De Vries’ nineteen-year-old son is a “dependent child[.]” and therefore subject to the restrictions found in Iowa’s gift law.

QUESTION:

Does Iowa’s gift law apply to the son of a public employee where the son is nineteen years old and attends college?

OPINION:

Iowa Code section 68B.22 is commonly known as Iowa's gift law. It prohibits a public official, public employee, or candidate or that person's immediate family member from "directly or indirectly, accept[ing] or receiv[ing] any gift or series of gifts from a restricted donor" unless one of nineteen exceptions to the gift law applies.ⁱ An "immediate family member" means "the spouse and dependent children of a public official or public employee."ⁱⁱ A gift is "a rendering of anything of value in return for which legal consideration of equal or greater value is not given or received."ⁱⁱⁱ A "restricted donor" is a person who is in any of the following categories:

- a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.
- b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.
- c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.
- d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.^{iv}

We have previously determined a scholarship is a gift because the recipient does not provide anything of value in return for the grant-in-aid.^v In your letter, you stipulate that APAI is Mr. De Vries' restricted donor. We will assume without deciding that APAI is Mr. De Vries' restricted donor.

You ask us to determine whether Mr. De Vries' nineteen-year-old son is an immediate family member to Mr. De Vries. If he is, Mr. De Vries' son cannot accept the scholarship unless one of the exceptions found in the gift law applies.

Iowa Code 68B.2 defines "immediate family members" to mean "the spouse and dependent children of a public official or public employee."^{vi} Chapter 68B does not define the term "dependent children." However, that term is used in the Iowa Tax Code, which adopts the definition found in the Internal Revenue Code.^{vii} The Internal Revenue Code defines a "dependent" to mean "a qualifying child," which is further defined as an individual:

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- a. who is a child of the taxpayer or a descendant of such a child, or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative;
- b. who has the same principal place of abode as the taxpayer for more than one-half of such taxable year;
- c. who has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or is a student who has not attained the age of 24 as of the close of such calendar year;
- d. who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins; and
- e. who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under 26 U.S.C. section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.^{viii}

We hereby adopt this definition of dependent child for purposes of Chapter 68B. Therefore, a public employee's "immediate family members" means his or her spouse and any child who the public employee claims as a dependent on his or her tax return.

If Mr. De Vries claims his nineteen-year-old son as a dependent on his tax return, then the gift law applies and would prohibit a restricted donor from giving his son a scholarship unless one of the exceptions to the gift law applies. The only possible exception would be the "general public" exception, which allows a public employee and immediate family members to accept "anything available or distributed free of charge to members of the general public without regard to the official status of the recipient."^{ix} We have previously opined that a public employee's dependent child may accept a scholarship from a restricted donor provided the scholarship is available to the general public.^x

CONCLUSION:

If a child is claimed as a dependent on the public employee's tax return, then the child is an "immediate family member" and the gift law applies to a gift offered to the public employee's child by a restricted donor. The gift law would prohibit such a gift unless one of the exceptions found in the gift law applies. We encourage anyone with questions about the gift law to contact the Board's office at (515) 281-4028.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Jonathan Roos, Vice Chair
John Walsh
Carole Tillotson

Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

ⁱ Iowa Code §68B.22.

ⁱⁱ *Id.* §68B.2(11).

ⁱⁱⁱ *Id.* § 68B.2(9).

^{iv} *Id.* § 68B.2(24).

^v *See* IECDB AO 2015-08.

^{vi} Iowa Code § 68B.2(11).

^{vii} *Id.* § 422.12(1)(a).

^{viii} 26 U.S.C. § 152.

^{ix} Iowa Code § 68B.22(4)(e).

^x IECDB AO 2015-08.