IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

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SECTION 4:

Contested Case Decisions

Decisions Involving Interpretations of Chapter 68B

Ethics Rules

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

IN THE MATTER OF: ELIZABETH CHRISTIANSEN In Her Official Capacity as the Administrator of the Land Quality And Waste Management Assistance Div of the Dept. of Natural Resources, RESPONDENT.	))))))))	Case No. 2001IECDB12 DIA No. 01IECDB001 **RULING ON MOTIONS FOR SUMMARY JUDGMENT**

PROCEDURAL BACKGROUND

On January 15, 2001, an anonymous complaint was filed with the Iowa Ethics and Campaign Disclosure Board (herein Board) alleging that Elizabeth Christiansen (herein Respondent) had accepted employment in violation of Iowa Code section 68.7B (2001).

The Board initiated an investigation of the matter and filed a Statement of Charges and Notice of Hearing on August 1, 2001. On August 8, 2001, the Respondent filed a Request for Assignment of Administrative Law Judge with the Board. The Board granted this request on August 19, 2001, and transmitted the matter to the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, for the assignment of an administrative law judge.

The matter was set for hearing on September 20, 2001. Both parties agreed to continue the matter. Eventually the parties agreed to stipulate to the underlying facts and to provide briefs in support of their respective Motions for Summary Judgment. The parties then were heard on oral arguments on December 14, 2001.

STIPULATED FACTS

In December of 1999 the Director of the Department of Natural Resources, Paul Johnson, requested advice from the Iowa Attorney General concerning whether Iowa Code section 68B.7 would prohibit a member of the Environmental Commission from accepting employment with the Department of Natural Resources. On December 27, 1999, the Attorney General's Office advised in writing that Iowa Code section 68B.7 prohibits employment only when compensation for the employment is dependent or contingent upon action by the agency with respect to a specific matter. Neither the Respondent, nor the Attorney General's office, requested an opinion letter from the Iowa Ethics and Campaign Disclosure Board on this point of law.

The Respondent was a member of the Environmental Protection Commission of the Iowa Department of Natural Resources until her resignation from that Commission on April 17, 2000. She began her employment as the Division Administrator of the Land Quality and Waste Management Division of the Department of Natural Resources on May 12, 2000.

CONCLUSIONS OF LAW

Iowa Code section 68B.7 (2001), reads in part:

> A person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall not, within a period of two years after the termination of such service accept employment with that commission, board, or agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in any case, proceedings, or application before the department with which the person so served wherein the person's compensation with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the general assembly.

The code then provides that "a person who knowingly and intentionally violates a provision of section 68B.2A through 68B.7, . . . is guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person's position or otherwise sanctioned." Iowa Code § 68B.25 (2001).

Additional penalties are found in Iowa Code section 68B.32D. Under this section the Board may do one or more of the following:

a. Issue an order requiring the violator to cease and desist from the violation found.
b. Issue an order requiring the violator to take any remedial action deemed appropriate by the board.
c. Issue an order requiring the violator to file any report, statement, or other information as required by this chapter, chapter 56, or rules adopted by the board.
d. Publicly reprimand the violator for violations of this chapter, chapter 56, or rules adopted by the board in writing and provide a copy of the reprimand to the violator's appointing authority.

e. Make a written recommendation to the violator's appointing authority that the violator be removed or suspended from office, and include in the recommendation the length of the suspension.

. . .

h. Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars for each violation of this chapter, chapter 56, or rules adopted by the board.

i. Refer the complaint and supporting information to the attorney general or appropriate county attorney with a recommendation for prosecution or enforcement of criminal penalties.

If statutory language is clear and unambiguous, a court applies a plain and rational meaning in light of the subject matter of the statute. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359 (Iowa 2000). However, if reasonable minds could disagree over the meaning of a word or phrase of a statute, the statute is ambiguous and the reviewing court must resort to the rules of statutory construction. Id.

When employing statutory construction, the polestar is the intent of the legislature. Shinrone Farms, Inc. v. Gosch, 319 N.W.2d 298 (Iowa 1982). The guide in looking for legislative intent is what the legislature actually said, rather than what it should or could have said. State v. Hatter, 414 N.W.2d 333, 337 (Iowa 1987). Courts may not, under the guise of construction, enlarge or otherwise change the terms of the statute. State v. Byers, 456 N.W.2d 917, 919 (Iowa 1990). A statute should be construed so that effect will be given to all of its provisions, and no part is superfluous or void. State v. Harrison, 325 N.W.2d 770, 772 (Iowa App. 1982).

The undersigned finds that Iowa Code section 68B.7 is not clear and unambiguous. If any statute requires the tools of statutory interpretation, it is this 118-word sentence. The Legislature appeared not to have been striving for clear or concise language when drafting this statute.

The only legislative history that would glean the Iowa Legislature's intent in analyzing Iowa Code section 68B.7 is the explanation attached to the 1989 amendment to this statute. This explanation states:

> Section 23 restricts the future employment for two years of persons who have served on a board, or as a deputy of a regulatory agency, with the same board, commission, or agency in the same manner that current law restricts nonemployment contractual relations. [House File 779, 73rd G.A., 1st Sess. (1989).]

From this explanation it becomes clear that the Legislature saw this code section as previously addressing only contract employees, hired for a specific purpose or action. Individuals who had served on boards or commission were prohibited from accepting employment as a contract, or non-full time employee, with the agencies with which they had served.

The Legislature added the prohibition of individuals who had served on commissions or boards from becoming full-time employees for a period of two years after they stopped serving on the board or commission. The explanation restricts "future employment for two years of persons who have served on a board . . . with the same board . . . in the same manner that current law restricts nonemployment contractual relations." At that time Iowa Code section 68B.7 prohibited nonemployment contractual relations for two years, and with the amendment now full time employment was also to be prohibited.

This interpretation is consistent with the usage of the word "or" separating the two different types of employment (full time v. contract employees). The use of "or" was intended to be disjunctive by the Legislature to differentiate between two different types of employment.

The public policy behind this statute appears to be the Legislature's attempt to prevent a "revolving door" wherein a person can serve on a commission and use that as a springboard to either part-time employment on a contractual basis or as a full-time employee. Whether this is a sound policy is not within the realm of this hearing or this decision. The Legislature has promulgated this statute and it must be applied as written.

Thus, the Respondent was prohibited from accepting employment with the Iowa Department of Natural Resources for two years after serving on the Environmental Protection Commission.

When determining the sanction to be imposed for the Respondent's violation of the statute the advice provided by the Attorney General's Office must be taken into account. Prior to the Respondent's leaving her position as a Commissioner on the

Environmental Protection Commission of the Iowa Department of Natural Resources the Director of the Department of Natural Resources, Paul Johnson, wrote a letter to the Iowa Attorney General's Office requesting an opinion letter concerning the appropriateness of the a Commissioner accepting employment with the agency. The Iowa Attorney General's Office provided an opinion letter indicating that this employment would not violate Iowa Code section 68B.7.

The Respondent acted in conformity with this advice. Because she was acting with this advice, which the undersigned has found to be incorrect, the sanction to be imposed shall be minimized.

The undersigned finds that the severe sanctions outlined in Iowa Code section 68B.25 are not appropriate. The Respondent did not violated Iowa Code section 68B.7 knowingly and intentionally in light of the Attorney General's opinion letter.

Iowa Code section 68B.25 is not the only code section that deals with sanctions for violating Iowa Code section 68B.7. Iowa Code section 68B.32D outlines civil penalties that may be imposed for violations of Iowa Code chapter 68B.

In light of the mitigating circumstances in the Respondent's case, mainly the fact that she was acting in conformity with an opinion letter from the Iowa Attorney General's Office, the undersigned finds that the least severe civil sanction shall be imposed. The Respondent shall be publicly reprimanded and this decision shall be forwarded to her appointing authority pursuant to Iowa Code section 68B.32D(1)d.

DECISION

The Board's Motion for Summary Judgment is hereby GRANTED and the Respondent's Motion for Summary Judgment is hereby DENIED. The Respondent is found to have violated Iowa Code section 68B.7 and she is hereby publicly reprimanded.

DATED THIS 9th DAY OF JANUARY 2002.

JOHN M PRIESTER
ADMINISTRATIVE LAW JUDGE