

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

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BOARD MEMBERS:
James Albert, Chair
Phyllis Peters
Janet Carl
Gerald Sullivan
Betsy Roe
John Walsh

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD MINUTES JUNE 23, 2004 OPEN SESSION

HELD AT: Historical Building, Tone Board Room, Des Moines, Iowa

BOARD MEMBERS PRESENT: Jim Albert, Phyllis Peters, Jerry Sullivan, Janet Carl, John Walsh

STAFF PRESENT: W. Charles Smithson, Sharon Wright, Sandy Reier

1. CALL TO ORDER - The meeting was called to order by Chair Albert at 12:07 p.m.

Chair Albert welcomed new Board member John Walsh and stated the other new member is Betsy Roe. She is out of the country but will be at the next meeting.

ELECTION OF VICE CHAIR – It was moved by Sullivan that Peters be elected vice chair. Sullivan moved that nominations cease. Peters was elected vice chair in unanimous vote.

It was announced that ITE has finished the electronic filing project with the completion of the business object reports.

It was reported that the Board led the state in looking at and scrutinizing all rules. The Board had the fifth highest number of rulemakings in 2003.

2. APPROVAL OF MINUTES FROM FEBRUARY 5, 2004 MEETING – It was moved by Carl and seconded by Peters that the minutes of the February 5, 2004 meeting be approved as written. Motion carried.

3. ADJOURNMENT TO EXECUTIVE SESSION – At 12:20 p.m. it was moved by Peters and seconded by Carl that in accordance with the provisions of Iowa Code section 21.5, subsection 1, paragraphs (c), (f) and (h), the Board go into executive session. Albert, Peters, Carl, Sullivan and Walsh voted yes in roll call vote. Motion passed unanimously.

The meeting returned to Open Session at 2:50 p.m.

The meeting recessed at 2:50 p.m. and reconvened at 3:00 p.m.

4. ACTION FROM EXECUTIVE SESSION – It was moved by Peters and seconded by Sullivan that the written record of executive session action be made a part of the open record. Motion carried unanimously.

The following executive session action was taken.

Gary Kendell (Warren) – It was moved by Peters and seconded by Sullivan that the investigation concerning the alleged failure to report certain campaign transactions be closed with a finding of no probable cause to believe that a violation of Board statute or rule occurred and that the part of the complaint not under the Board's jurisdiction be referred to the Attorney General's office. Motion carried unanimously.

David Zahn (Linn) – It was moved by Peters and seconded by Walsh that the investigation concerning the misuse of public resources for a political purpose be closed with a finding of no probable cause to believe that a violation of Board statute or rule occurred. Motion carried unanimously.

Gordon Yarrington – It was moved by Sullivan and seconded by Carl that a Letter of Reprimand be issued for the misuse of public resources for a political purpose. Motion carried unanimously.

Citizens for Preservation of Racing – It was moved by Sullivan and seconded by Peters that the investigation be closed with a finding of no probable cause to believe that a violation of Board statute or rule occurred and that the PAC be directed to manually review the bookkeeper's report to ensure anyone giving over \$25 in a calendar year is reported by name and address. Motion carried unanimously.

Marilyn Dopheide (Carroll) – It was moved by Carl and seconded by Sullivan that a Letter of Reprimand be sent for the use of county resources for a political purpose. Motion carried unanimously.

Dallas Center Police Department/Dan Brickner – It was moved by Carl and seconded by Sullivan that a correction ad be required, that an educational letter be sent to the police chief and city council regarding the appearance of impropriety and that the committee be notified of the reporting requirements for refreshments that exceed \$50. Motion carried unanimously.

Judicial Brochure – It was moved by Peters and seconded by Carl that the investigation be closed with an informational letter to the group explaining that the campaign laws apply to elections involving a judge standing for retention. Motion carried unanimously.

Donald Zeller (Linn) – It was moved by Walsh and seconded by Peters that the Board decline to investigate the allegation of misuse of public funds for a political purpose. Motion carried unanimously.

Committee to Elect Jeff Smith Sheriff (Montgomery) – It was moved by Peters and seconded by Walsh that the allegation of failure to report campaign transactions be investigated. Motion carried unanimously.

Committee to Elect Joni Ernst County Auditor (Montgomery) – It was moved by Sullivan and seconded by Carl that the allegation of failure to report campaign transactions and the possibility that corporate contributions were received be investigated. Motion carried unanimously.

Clay County Community School Bond Vote – It was moved by Walsh and seconded by Sullivan that the Board decline to investigate an alleged potential conflict of interest and that Counsel be directed to provide a recommendation as to the need for an advisory opinion or an advisory opinion at the next meeting. Motion carried unanimously.

Don Kirkendall (Wapello) – It was moved by Sullivan and seconded by Walsh that Counsel be directed to investigate the allegation of the use of public resources for a political purpose. Motion carried unanimously.

K. Kae Meyer (Plymouth) – It was moved by Sullivan and seconded by Carl that Counsel be directed to investigate whether public resources were used for a political purpose. Motion carried unanimously.

Don Brantz (Mills) – It was moved by Carl and seconded by Sullivan that Counsel be directed to investigate whether political materials contained an attribution statement, whether there was campaigning using courthouse resources and whether the \$750 threshold for reporting was exceeded. Motion carried unanimously.

Cherokee County Sheriff and Chief Deputy (Cherokee) – It was moved by Peters and seconded by Walsh that a letter be sent to the candidate stating complaints were made about door-to-door campaigning in uniform, that we are not investigating this case but that the Board is conducting legal research concerning the use of uniforms while campaigning. Motion carried unanimously.

Jerry Dunbar (Washington) – It was moved by Walsh and seconded by Peters that Counsel be directed to investigate whether the candidate campaigned in school and if a corporation posted signs for his candidacy. Motion carried unanimously.

Montgomery County Readuit – It was moved by Carl and seconded by Peters that the Board decline to investigate material provided as it does not contain express advocacy. Carl, Peters, Walsh and Albert voted yes. Sullivan voted no. Motion carried.

Worth County Development Authority – It was moved by Walsh and seconded by Peters that Counsel be directed to investigate whether the Worth County Development Authority is registered to lobby the executive branch. Motion carried unanimously.

North Iowa Bank Festival – It was moved by Sullivan and seconded by Peters that the Board investigate the parade policy regarding fees charged and whether incumbents were campaigning. Motion carried unanimously.

Western Dubuque Web Site – It was moved by Carl and seconded by Sullivan that a Letter of Reprimand be issued to the school for the use of public resources for a political purpose. Motion carried unanimously. The candidate's reports will be checked to see if the Web site was disclosed as an in-kind contribution.

Adel School District – It was moved by Carl and seconded by Walsh to investigate the alleged use of school resources for a political purpose. Motion carried unanimously.

Joni Ernst (Montgomery) – It was moved by Walsh and seconded by Carl to decline to investigate allegations as there is no violation of any law or rules under the Board's jurisdiction; to refer the Iowa Code section 29C.16 issue to the Montgomery County Attorney or the State Ombudsman; and to locate places in the Iowa Code that prohibit people from becoming candidates or that prohibit people from being involved in partisan activities and get those cites in the Board's rules. Motion carried unanimously.

Alden School District – It was moved by Carl and seconded by Sullivan that Counsel be directed to investigate whether school employees were engaged in campaign activities on school time. Motion carried unanimously.

Anne Pedersen (Lee) – It was moved by Carl and seconded by Sullivan to investigate the distribution of political stickers and fundraising discussions on county time in a county office and decline to investigate or conduct further investigation into the use of city hall for a reelection announcement, but direct the drafting of an advisory opinion. Also decline to investigate discussion concerning a list of caucus attendees at the courthouse; the photo with a candidate filing nomination papers; and an employee writing down information about where to get a yard sign. Carl, Sullivan, Walsh and Albert voted yes. Peters recused. Motion carried.

Indian Hills Community College Investigation – It was moved by Sullivan and seconded by Peters that a subpoena be issued for investigative documents of the Ottumwa Police Department. Motion carried unanimously.

Request to Sell Services to a Lobbyist – It was moved by Sullivan and seconded by Walsh to deny employee Sharon Wright's request to sell services to lobbyists. Motion carried unanimously.

FY-05 Budget – The FY-05 budget will be provided to Board members.

5. ADMINISTRATIVE ACTION

A. Diane Sawyers (Madison) – It was moved by Sullivan and seconded by Peters that a Letter of Reprimand be issued for failing to file a report, that penalties be placed in the offset program, that the committee be administratively closed, and that the candidate be admonished that if she runs in the future the Board will expect full compliance with the campaign laws. Motion carried unanimously.

B. Christopher Jorgensen (Benton) – It was moved by Sullivan and seconded by Walsh that this matter be deferred. Motion carried unanimously.

C. Democratic Women of Buchanan County – It was moved by Peters and seconded by Sullivan that the order for a contested case be rescinded, that an adjusting entry of \$28.50 be approved, and that a Letter of Reprimand be issued for failing to file the bank statement and failing to respond to the Board's request for the bank statement and amended filings. Motion carried unanimously.

D. Kevin Miskell, Citizens for Miskell – It was moved by Sullivan and seconded by Walsh that a Letter of Reprimand be issued for failing to file the January 19, 2004 report, that civil penalties owed be placed in the offset program, that the committee be administratively dissolved, and that the candidate be admonished that if he runs in the future the Board will expect full compliance with the law. Motion carried unanimously.

E. Hearings – It was moved by Carl and seconded by Walsh that hearings be set for the following. Motion carried unanimously.

1. Brad Nordstrom – Sullivan will be presiding officer.
2. Hispanics – Albert will be presiding officer.
3. Union County Republican Central Committee – Albert will be presiding officer.

The following have now filed reports and no action was taken:

Cedar County Democratic Central Committee
Clinton County Republican Central Committee
Howard County Republican Central Committee
Warren County Democratic Central Committee

6. FOIA REQUEST

A. Barbara Schwarz Open Records Appeal – It was moved by Sullivan and seconded by Peters to dismiss the complaint because the response to numerous inquiries have been completely and respectfully answered by the Executive Director and no further action should be taken. Motion carried unanimously.

7. PROPOSED ADVISORY OPINION

A. Permitted and Prohibited Placement of Campaign Signs/Opinion 2004-01 Rescinded – It was moved by Sullivan and seconded by Walsh that this advisory opinion be approved. Motion carried unanimously. The opinion will be distributed by email to county auditors.

B. Candidates Speaking at City Council Meeting Televised on Local Cable Channel – It was moved by Sullivan and seconded by Peters to approve the opinion after including in the footnote that the Federal Communications Commission may also have regulations on equal access. Motion carried unanimously.

C. Lobbyist as a Candidate Making Contributions to Own Campaign during Session – It was moved by Peters and seconded by Walsh to approve the opinion after changing the last sentence on page 1 to read, "In addition, it would be unfair for the lobbyist-candidate to be prohibited from donating to his or her own campaign during session while an opponent for the same office could do so," and changing the first sentence on page 2 to read, "For these reasons, the Board believes that Iowa Code section 68A.504 as amended by 2004 Iowa Acts, HF 2318, section 8, does not prohibit a lobbyist from making contributions to his or her own campaign for state office at any time, including during the regular legislative session." Motion carried unanimously.

D. Nonprofit Racing Corporations/Associations not Subject to Conflict of Interest Law – It was moved by Walsh and seconded by Carl to approve the opinion as written. Motion carried unanimously.

An agenda item at the next Board meeting will be discussion of the closing "By Direction and Vote of the Board" on Board action notifications and advisory opinions.

E. Executive Branch Lobbyist Client Reporting/Opinion 2003-08 Rescinded – It was moved by Carl and seconded by Peters to approve the opinion as written. Motion carried unanimously.

F. When an Individual Becomes a "Candidate"/Opinion 2000-37 Rescinded – It was moved by Carl and seconded by Walsh to approve the opinion after amending the second sentence in the second paragraph to read, "This revised opinion reflects changes in the law, clarifies portions of the previous opinion, and addresses a new issue". Motion carried unanimously.

G. Application of Executive Branch Lobbying Laws on JEL – It was moved by Peters and seconded by Sullivan to approve the opinion as written. Motion carried unanimously.

8. POLICY DECISIONS FOR THE BOARD TO MAKE

A. Summer Board Meeting Calendar – The next meeting will be a telephonic conference call on August 25, 2004 at 4:00 p.m.

B. Communicating by Email – It was reported that communications involving Board business sent by email are a public record and must be made available for public inspection for the proper retention period. Communications between the staff and Board or Board members do not trigger the open meetings law so long as the discussions are not simultaneous or nearly simultaneous but are still public records.

C. State Party Building Fund – It was moved by Sullivan and seconded by Walsh to request an advisory opinion from the Federal Election Commission on the current status of the federal law as it pertains to state party building funds and the ability of a state to regulate said funds. Motion carried unanimously.

D. Express Advocacy-New Federal Laws – It was moved by Carl and seconded by Walsh that this matter be deferred. Motion carried unanimously.

E. Late Reporting – Delinquency statistics were received for information. It was requested that this information be provided to the Board at the end of each year.

F. Deferral of Amendment to Board Code of Ethics – It was moved by Sullivan and seconded by Carl that this matter be deferred until all Board members are present. Motion carried unanimously.

9. BOARD RULES

A. Rules Update – This report was received for information.

B. Proposed Rules for Adoption – It was moved by Sullivan and seconded by Peters that the following four proposed rules be adopted. Motion carried unanimously.

1. Makes the Board a regulatory agency; consent to sell is a public record
2. Uses of campaign funds; sharing information by candidates' committees is not a candidate-to-candidate in-kind contribution
3. Corrects a statutory cite
4. Lists types of committees required to file a statement of organization

5. Political use of public resources – It was moved by Peters and seconded by Walsh that reimbursement be changed to reimburse on Page 2, that 5.5(7) be deleted and the rules be renumbered. Motion carried unanimously.

C. Proposed Rules for Notice of Intended Action – It was moved by Sullivan and seconded by Walsh that the following proposed rules be approved for Notice of Intended Action. Motion carried unanimously.

1. To update the rule to request an advisory opinion to reflect legislative changes
2. To update the rule on the filing of personal financial disclosure statements to reflect legislative changes
3. To move and renumber rules on penalties for late filed campaign disclosure reports
4. Executive branch ethics – A public hearing will be set on or before July 21 and after the publication date.

10. REQUESTS FOR WAIVER OF CIVIL PENALTIES

A. Campaign Committees (Rule 351 IAC 10.3)
Statewide Committees

1. Republican Women of Madison County – It was moved by Peters that the civil penalty be upheld. This motion was withdrawn. It was moved by Peters and seconded by Sullivan that the civil penalty assessed be reduced to \$50. Motion carried unanimously.

It was moved by Sullivan and seconded by Peters to reduce the following four civil penalties to the amounts shown. Motion carried unanimously.

2. Operating Engineers Local 234 Political Fund – \$25
3. Krause for the Upper House – \$25
4. Horbach for State Representative – \$50
5. Teig for Representative Committee – \$50

County/Local Committees – It was moved by Sullivan and seconded by Walsh that the following actions be taken. Motion carried unanimously.

1. Yes For Our Kids (Washington) – Uphold civil penalty.
2. Citizens for Excellence in Government (Clinton) – Waive civil penalty.
3. Slockett for Auditor (Johnson) – Waive civil penalty.
4. Gamez for Auditor (Howard) – Uphold civil penalty.
5. Johnson County Republican Central Committee – Waive civil penalty.

Lobbyist/Clients (Rule 351 IAC 8.12) – It was moved by Sullivan and seconded by Peters that the following actions be taken. Motion carried unanimously.

1. Patrick Hendricks – Uphold civil penalty.
2. James W. Sullivan – Uphold civil penalty.
3. Marshall Douglas – Uphold civil penalty.
4. Troy Stremming – Waive civil penalty and issue letter of admonishment.

11. VIOLATIONS

A. Attribution Statement Violations (Iowa Code section 68A.405) – Correction advertisement information was received from the following:

Valerie Wiegmann
Jim Ross (Grundy)
Committee to Elect Zoutte
Robert D. Ites
Alden Parents for Responsible Leadership ((Wayne Oler)
Tom Neenan (Linn)
Linda Weston

Rep. Steven Lukan – It was moved by Sullivan and seconded by Peters that a letter of admonishment be issued. Motion carried unanimously.

B. Late-Filed Statement of Organization (Iowa Code section 68A.201) – Letters of admonishment will be sent to the following for late-filed Statements of Organization in accordance with policy:

Krause for the Upper House
Committee to Elect Bill Agan
Citizens for Steve Huff
Wayne County Democratic Central Committee
Citizens for Forsyth for Sheriff (Benton)
Wetherell for County Supervisor (Cherokee)
Committee to Elect Roger Bryant (Lee)
Ellen Gaffney for Supervisor (Buchanan)
Clarke County Democratic Central Committee
Appanoose County Republican Central Committee

C. Late-Filed Lobbyist Registration Statement (Iowa Code section 68B.36) – Letters of admonishment will be sent to the following for late-filed lobbyist registration statements in accordance with policy:

Lorraine May
Mara Sovey
Ardis Glace
Liz Williams-Chaffin

12. ELECTRONIC FILING UPDATE – This report was received for information.
13. BOARD QUESTIONS OF STAFF – The following reports were received for information:
 - A. Legal Counsel's Ministerial Report
 - B. Executive Director's Ministerial Report
14. ITEMS OF BOARD INTEREST NOT NEEDING ACTION – Director reported the office will be moving the end of July to the East Wing of the Jessie M. Parker Building at 510 East 12th Street, Suite 1A, Des Moines. It was suggested that the Board tour the new offices after the next meeting.

The Board commended Chairman Albert for being voted professor of the year for a 7th time and Executive Director Smithson for his election law course and annual award from the moot court board for volunteer work.

The meeting adjourned at 4:21 pm

Respectfully submitted,

Sandra Reier
Secretary