

ADVISORY OPINION

IECDB AO 2015-08

August 20, 2015

The Honorable Todd Prichard
State Representative
P.O. Box 773
Charles City, IA 50616

Dear Representative Prichard:

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure 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.

FACTUAL STATEMENT:

We understand you request this opinion on behalf of a constituent from your district. You advise the Board that the Iowa State County Treasurers' Association provides four annual scholarships for children and grandchildren of county treasurers and their employees. You further advise the Board that these scholarships are funded by two vendors that do business with or are seeking to do business with county treasurers across Iowa. The donations by the vendors are placed in the Iowa State Association of Counties' Scholarship Foundation account. The recipients of these scholarships are selected by a committee of county treasurers based on criteria including academic achievement, demonstrated leadership and writing skills. The vendors are not involved with the selection process. You ask us to opine whether these scholarships comply with Iowa's gift law.

QUESTION:

Is it permissible for a student who is the child or grandchild of a county treasurer or treasurer employee to accept a scholarship from vendors who do business or seek to do business with county treasurers?

OPINION:

Iowa Code section 68B.22 is commonly known as Iowa's gift law. It prohibits government officials, government employees and their immediate family

members 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.¹ 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.”² A “restricted donor” for county employees and officials is defined as a person or entity that either:

“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. [or]

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.”³

The gift law does not place any limitations on a gift from a non-restricted donor. However, it directs government employees and officials to be “extremely cautious and circumspect about accepting a gratuity or favor, especially from persons having a substantial interest in the legislative, administrative, or political actions of the official or employee.”⁴ The gift law is intended to prohibit gifts that “create unacceptable conflicts of interest or the appearances of impropriety.”⁵

It is undisputed that a scholarship is a gift because the recipient does not provide anything of value in return for the grant-in-aid. The more difficult issue in this case is determining the donor of the gift. We believe the vendors that fund the scholarships are the donors. While the money provided by the vendors is first deposited in a third party's bank account (the Iowa State Association of Counties' scholarship foundation), and the recipients are selected by a committee instead of the vendors, we do not believe these factors change the ultimate source of that money. We are mindful that the gift law restricts gifts that come “directly or *indirectly*” from a restricted donor.⁶ We find these scholarships to be indirect gifts from the vendors that fund them. These vendors are restricted donors because they are either doing business or seeking to do business with county treasurers across Iowa and are financially impacted by whether a treasurer chooses to contract for their services.⁷ Thus, county treasurers, treasurer employees and their “immediate family members”⁸

¹ Iowa Code §68B.22(1) (2015).

² *Id.* § 68B.2(9).

³ *Id.* § 68B.2(24)(a)-(b).

⁴ *Id.* § 68B.21.

⁵ *Id.*

⁶ *Id.* § 68B.22(1) (emphasis added).

⁷ *See id.* §68B.2(24)(a)- (b).

⁸ *Id.* § 68B.2(11).

may not accept these scholarships unless an exception to the gift law applies. “Immediate family members are defined as “the spouse and dependent children” of a government official or employee.⁹ None of the exceptions in the gift law allows government employees or officials or their immediate family members to accept a scholarship from a restricted donor when the scholarship is not available to the general public. We note the effect of our decision would not be different if we had found the Iowa State Treasurers’ Association or the Iowa State Association of Counties is the donor of the scholarships because both of these entities are restricted donors due to the fact the counties pay dues to those organizations.

The Board suggests several options for continuing the Iowa State County Treasurers’ Association’s scholarship program which are consistent the gift law and its exceptions. One option would be to limit the eligible recipients to family members that do not meet the definition of immediate family members, such grandchildren and nieces and nephews. Another option would be to open the scholarships to any Iowa student because the gift law allows a gift from a restricted donor as long as it is “available or distributed free of charge to members of the general public without regard to the official status of the recipient.”¹⁰ Finally, it would be permissible to continue to limit the eligible recipients of the Association’s scholarship program to the children and grandchildren of county treasurers and their employees if the program was solely funded by one or more non-restricted donors.

CONCLUSION:

We find the Iowa State County Treasurers’ Association’s scholarship program violates Iowa’s gift law because it is funded by restricted donors, the eligible recipients include immediate family members of treasurers and their employees, and the scholarship program is not available to the general public.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Johnathan Roos, Vice Chair

Saima Zafar

Carole Tillotson

John Walsh

Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

⁹ *Id.*

¹⁰ *Id.* § 68B.22(4)(e).