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NEWS RELEASE

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FOR RELEASE

June 3, 2021

Auditor of State Rob Sand today released a report on a special investigation of the “Step Up, Stop the Spread” media campaign announced by Governor Kim Reynolds on November 19, 2020. The campaign was designed to raise public awareness in order to slow the spread of the Coronavirus (SARS-CoV-2), or COVID-19.

Governor Reynolds spent over \$500,000 of CARES Act funds for the campaign. Of that, \$152,585 was for paid advertisements on TV, radio and the internet that included her image, voice, and title. That violates Iowa Code Section 68A.405A, Iowa’s law prohibiting self-promotion with public moneys, which Governor Reynolds signed in 2018. Another \$17,000 was spent producing the videos, which may or may not violate the statute.

Sand also reported Polk County spent approximately \$207,000 for marketing and advertising related to COVID-19, including videos in which members of the Board of Supervisors appeared. However, because Iowa Code Section 68A.405A is applicable only to statewide elected officials and members of the general assembly, the County officials did not violate the Iowa Code.

The report includes information on the content of the campaign, the cost of the campaign, Iowa Code Section 68A.405A, advisory opinions from the Iowa Ethics and Campaign Disclosure Board, and the penalties for violating Iowa Code Section 68A.405. The report also includes a recommendation the Legislature consider expanding the Iowa Code restriction to include elected officials of all governmental subdivisions, such as cities, counties, and school districts.

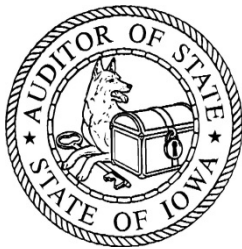
Copies of the report have been filed with the Polk County Attorney’s Office, the Iowa Division of Criminal Investigation, the Iowa Ethics and Campaign Disclosure Board, and the Iowa Attorney General’s Office. A copy of the report is available for review on the Auditor of State’s web site at <https://auditor.iowa.gov/reports/audit-reports/>.

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**REPORT ON A SPECIAL INVESTIGATION OF THE
“STEP UP, STOP THE SPREAD” MEDIA CAMPAIGN
INVOLVING THE GOVERNOR’S OFFICE
AND THE
IOWA DEPARTMENT OF PUBLIC HEALTH**

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To the Governor, Members of the General Assembly, Local Government
Officials and the Iowa Ethics and Campaign Disclosure Board:

In conjunction with our review of CARES Act funds received by the State, including the Epidemiology and Laboratory Capacity Enhancing Detection program, and in accordance with Chapter 11 of the Code of Iowa, we have prepared a report on our analysis, findings and recommendations following the "Step Up, Stop the Spread" media campaign and a similar campaign featuring county elected officials.

In performing this investigation, the facts show that the Governor violated Iowa Code Section 68A.405A, which prohibits the use of public moneys for self-promotion.

In the case of the "Step Up, Stop the Spread" media campaign, moneys from the Coronavirus Aid, Relief, and Economic Security (CARES) Act were used to fund ads that appeared on websites, in newspapers and on television and radio stations across Iowa. Public moneys were used to pay for online and televised ads containing the Governor's voice, image, and name.

The expenditure of public funds on a paid advertisement containing the name, image or likeness of the statewide elected official controlling those funds constitutes noncompliance with Iowa Code Section 68A.405A. Pursuant to Iowa Code Section 11.53, we are filing a copy of this report with the Polk County Attorney and the Iowa Ethics and Campaign Disclosure Board.

The Auditor of State recommends that the law be followed by all statewide elected officials and members of the General Assembly, and further recommends that the legislature expand the law to apply to elected officials of all governmental subdivisions, such as cities, counties and school districts, as well.

The procedures described above do not constitute an audit of financial statements conducted in accordance with U.S. generally accepted auditing standards. Had we performed additional procedures, other matters might have come to our attention which would have been reported to you.

A handwritten signature in black ink, appearing to read "Rob Sand".

Rob Sand
Auditor of State

Report on a Special Investigation of the
“Step Up, Stop the Spread” Media Campaign
Involving the Governor’s Office and the
Iowa Department of Public Health

Investigative Summary

Background Information

On November 19, 2020, Governor Kim Reynolds announced the creation and distribution of the “Step Up, Stop the Spread” media campaign to combat the spread of the novel Coronavirus (SARS-CoV-2). During a news conference, Governor Reynolds described a “partnership” with the Iowa Broadcaster’s Association (IBA) and the Iowa Newspaper Association (INA) to distribute the campaign. “We were able to leverage special programs and pricing to deliver PSAs through Iowa’s local newspapers, radio stations and television channels,” said Governor Reynolds.

The November 19, 2020 news release from the Governor’s Office notes the campaign will cost approximately \$440,000. Invoices obtained from the Iowa Department of Public Health (IDPH) show the actual cost of the campaign was \$511,789. The Governor’s introductory public statements about the program did not mention any social media advertising. The difference between the announced and actual costs is very nearly the same as the total spent on social media advertising in total (a difference of \$2,204).

The campaign was fully funded through the Coronavirus Aid, Relief and Economic Security (CARES) Act. Specifically, funds from the Epidemiology and Laboratory Capacity (ELC) Enhancing Detection supplement, were used to pay for the media campaign. In its 2020 guidance on the use of ELC funds, the CDC notes that “resources provided via this award mechanism should support necessary expenses to implement and oversee expanded testing capacity for COVID-19, including the ability to process, manage, analyze, use, and report the increased data.”

We asked IDPH for confirmation of approval from federal authorities to use the ELC Enhancing Detection funds to pay for the campaign, as it was not a clearly acceptable use. IDPH provided two emails, one dated February 22, 2021 and one dated February 23, 2021 showing that after creating the campaign and spending the funds, they sought and received confirmation that it would not run afoul of federal law.

However, the request for approval was submitted approximately three months after the Governor’s announcement of the campaign and approximately five weeks after our initial request for invoices associated with the campaign. When we inquired about why approval was not sought until after the money was spent, IDPH stated in an email: “When we planned the campaign, we knew the deliverables would be an allowable expense under one or more of several federal allocations, and that we had ample funding available to cover the costs of the campaign. Our seeking approval from the CDC was to ensure that these expenditures were allowable under the ELC grant. It is always our intention to make the best use of the variety of federal funding sources received by the department.”

According to the November 19, 2020 news release from the Governor’s Office, the spots were available to more than 200 IBA member stations and continued to be available through mid-March. The State also worked with more than 250 newspapers and online and specialty publications. Those ads began running in early November and continued through the end of 2020.

Analysis

We downloaded and reviewed the one-minute video provided for airing.

The one-minute video begins with Governor Reynolds speaking on camera while her name and title are also displayed. Halfway through the one-minute spot, she appears on camera again, with her

name displayed. It ends with the Governor speaking on camera a third time with her name displayed. She appears in the video for a total of 10 seconds.

Several other Iowans appeared in the video, but no current elected officials other than the Governor.

The cost breakdown of the campaign is as follows in **Table 1**.

Vendor	Total Payments
Iowa Newspaper Association (INA)	\$ 342,204
The Iowa Broadcasters Associations (IBA)	100,000
ZLRIgnition	69,585
Total	<u>\$ 511,789</u>

Newspaper Ads

The INA and IDPH amended an existing contract on December 21, 2020 to include the COVID-19 campaign. INA distributed print advertisements for the campaign to 252 newspapers, several online websites and specialty publications. INA paid these online and print publications \$342,204 for placement of the advertisements, which did not contain the likeness, name, or voice of any elected officials. A copy of the newspaper advertisement is included as **Exhibit A**. Because the newspaper ads did not contain the voice, image, or name of the statewide elected official in charge of the funds spent (the Governor), they did not violate the law prohibiting self-promotion with public moneys.

TV and Radio Ads

IBA and the Sponsor (IDPH) entered into a contract agreement on November 20, 2020. The contract states: “The Sponsor will pay the Association \$100,000 (\$10,000 for production; \$90,000 media buy) for its services for distributing the announcements for radio and TV. The Association will invoice the Sponsor upon receipt of signed contract. Payment to be made before end of flight with a minimum 3:1 return on investment.”

JoAnna Reynolds, a representative of a management organization that oversees IBA, stated in an email on April 1, 2021 that IBA “spliced the recording into one message as directed by the Governor’s Office. We also stripped the audio from the TV spot for the radio spot. We only used the Governor speaking for the radio [spot]... we did not use the other people.”

Digital/Internet Ads

ZLRIgnition and IDPH amended a previously established contract on December 21, 2020 to include the COVID-19 campaign. The contract amendment detailing the proposed work and services provided by ZLRIgnition are as follows in **Table 2**.

Deliverable Description	Fixed Cost
Video Development – 2 videos	\$ 7,000
Connected TV	16,100
Programmatic Video	12,100
YouTube	18,000
Social Listening Video	10,600
Facebook/Instagram	5,885
Total Program Budget	<u>\$ 69,585</u>

According to the ZLRIgnition President, the agency charged \$7,000 for the time to create a 15-second and 30-second spot. This included review of video and transcripts to write four script options, various meetings, and correspondence with the client to discuss selected scripts and changes, as well as actual time to edit the videos.

We obtained copies of each video and confirmed they contain the Governor's image, title and voice.

According to the ZLRIgnition President, the remaining \$62,585 was used to plan and purchase media time and space and to distribute the message across the state. The video ads were placed on a variety of platforms. The cost of the placements and audience response, are broken down and the results are provided below:

- Connected TV: \$21,985
 - Received 483,541 Impressions
 - 96.9% Completion Rate (The viewer watched the entire video)
- Social Listening Video: \$10,600
 - Received 470,854 Impressions
 - Click Through Rate of 1.28% (6,015 clicks)
- Programmatic Video: \$30,000
 - Received 1.7 Million Impressions
 - Click Through Rate of .12% (2,117 clicks)

ZLRIgnition also secured free airtime and space valued at \$64,826. The breakout and value are provided below:

- Connected TV: \$61,903
- Social Listening Video: \$1,639
- Programmatic Video: \$1,284

At the Governor's request, the Iowa Department of Cultural Affairs also provided resources for the COVID-19 campaign. According to an employee, the Department provided a videographer who taped five of the six speakers. The videos were taped at the State Capitol, the State Historical Building, Terrace Hill, a Test Iowa location in Des Moines, and a private home in Iowa City.

As a result, these additional unquantified State resources were utilized for the videography that created the video spot.

Law Against Self-Promotion with Public Moneys

Iowa Code Section 68A.405A, signed into law by Governor Reynolds on June 1, 2018 states: "A statewide elected official shall not permit the expenditure of public moneys under the control of the statewide elected official . . . , for the purpose of any paid advertisement or promotion bearing the written name, likeness, or voice of the statewide elected official . . . distributed through any of the following means:

- (1) A paid direct mass mailing.
- (2) A paid radio advertisement or promotion.
- (3) A paid newspaper advertisement or promotion.
- (4) A paid television advertisement or promotion.
- (5) A paid internet advertisement or promotion.
- (6) A paid exhibit display at the Iowa state fair or a fairground or grounds as defined in section 174.1.

The prohibition does not apply to "bona fide ministerial or ceremonial records or ordinary, common, and frequent constituent correspondence containing the name of the statewide elected official."

The statute further provides that a person who “willfully violates” the statute “shall be subject to a civil penalty of an amount up to the amount of moneys... used to fund the communication,” which “shall be paid by the [statewide elected official’s] candidate’s committee.” A violator may also be subject to additional criminal or civil penalties available under section 68A.701 or established by the board pursuant to section 68B.32A. Section 68A.701 states, “Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor.”

It is reasonable to believe Governor Reynolds was aware of the law, not only because she signed it on June 1, 2018, but because she was questioned about the use of promotional materials containing her image and title at the Iowa State Fair in August 2018. While other statewide elected officials replaced materials containing their image and title, the Governor defended her own use of materials containing her image and title, stating she purchased them with public moneys prior to the date she signed the law. The Governor also stated she received approval from The Iowa Ethics and Campaign Disclosure Board to use the State Fair materials because she purchased them prior to signing the law. An Advisory Opinion issued by The Iowa Ethics and Campaign Disclosure Board on July 13, 2018 states: “A statute is presumed to be prospective in its operations unless expressly made retrospective.”... For items that were previously purchased, there is no expenditure to be prohibited on or after July 1, 2018.

The Iowa Ethics and Campaign Disclosure Board Advisory Opinion also noted:

“Section 68A.405A also prohibits “paid” radio, newspaper, or television “advertisement or promotion” bearing “the written name, likeness or voice of the statewide elected official.” We believe these terms are much more self-evident than “paid direct mass mailing.” For a radio, newspaper, or television advertisement to be “paid,” the statewide elected official must expend or permit the expenditure of public moneys, directly or indirectly, to a media company for the broadcast or publication of an advertisement or promotion. The prohibition does not apply to earned or non-paid radio, newspaper or television coverage such as news stories, interviews or public service announcements.”

As a result of this guidance, AOS does not consider the value of the “non-paid” PSAs to be violations of the statute. AOS considers to be a violation only the \$152,585 portion of the funds that paid for media buys at the direction of the Governor’s Office.

Use of Local Funds by Local Officials

Several Polk County Supervisors appeared in at least 20 COVID-19 videos, which aired from March 2020 to December 2020. The cost of the COVID-19 marketing and advertising from January 1, 2020 to January 11, 2021 totaled \$207,589.35. We are unaware of any other governmental subdivision in which elected officials featured their name, image, or likeness in ads paid with public moneys.

Finding

CARES Act dollars are “public moneys” because they were not only held by the State and spent by the State, but because they also were appropriated by the federal government. In guidance issued on July 13, 2018, the IECDB stated that funds in question were “public moneys” because, in part “while we appreciate these programs are not appropriated money by the legislature, the Treasurer is holding the funds in trust to be expended as directed by the donors or owners.” That CARES Act dollars are public moneys is clearer yet, as they were in fact appropriated money by the federal legislature. This law does not limit itself to state, or federal, or local moneys, but instead covers “all public moneys.”

The CARES Act money used to air the ad was under the Governor’s discretion exclusively and was not directed by other entities such as the Legislature. In guidance issued on July 13, 2018, the IECDB held even though third-party vendors operated plans dealing with public funds, they were

still "under the control" of the statewide elected official because the third-party program managers are "performing duties on behalf" of the elected official. As a result, these funds in this case would still be "under the control" of the Governor for the same reason: when other public employees or third parties are acting with the funds, they are doing so on the Governor's behalf. As a result, these funds were under the Governor's control.

Because the print advertisement did not contain the likeness, voice, or name of the Governor, it did not violate Iowa Code Section 68A.405A.

A total of \$152,585 of CARES Act monies were spent to purchase time and placement of the video on websites and radio and television stations statewide, as shown in **Table 3**.

Vendor	Total Payments
The Iowa Broadcasters Associations (IBA)	\$ 90,000
ZLRIgnition	62,5855
Total	<u>\$ 152,585</u>

A "willful" violation is defined in the Iowa Code Section 68A.701. It defines "willfully" as a voluntary and intentional violation of a known legal duty. The Governor would have known this legal duty to avoid self-promotion with public moneys because she signed this law herself and because she was questioned about it in 2018 after she spent public moneys on State Fair booth materials containing her name and likeness.

In addition, in guidance issued on July 13, 2018, the IECDB stated in determining willfulness it would "carefully consider what steps the [elected official's] office took to educate its staff and outside vendors regarding Iowa Code Section 68A.405A and whether the [elected official] had any knowledge or involvement in the communication that violated the statute." Under these issues, the violation appears to be voluntary and intentional because the Governor herself publicly announced and described the ad campaign, sat down to film her portions of it, and chose to read multiple lines so that at three times during the video spots, all three identifying characteristics that the law prohibits (name, likeness, and voice) were present. In addition, ZLRIgnition reported that the editing of the spots was directed by the Governor's Office.

Another \$17,000 that was spent may or may not have been in violation of the statute. That is the total paid to third parties in public moneys that were used to produce the ads, but not actually paid for airing ads: the \$7,000 charged by ZLRIgnition to create the spots, and the \$10,000 paid to the IBA for "production." It could also include the value of time spent by Iowa Department of Cultural Affairs employees to film the spots, were the value of that time to be quantified. Because these funds were spent for the purpose of [a] paid advertisement or promotion," at the very least "indirectly" as the guidance notes, their spending can be said to violate the statute.

To violate the statute also requires the paid advertisement or promotion be "distributed" through any of six means, which occurred in this case. However, funds spent to create videos that are not paid to be distributed may not violate the statute. Thus, distribution costs of PSAs are not included in the \$152,585 of paid advertising summarized in Table 3. In addition, if "purpose" is defined more narrowly to include only the actual payment for distribution, then the production costs would not violate the statute.

In regard to local use in Polk County, Iowa Code Section 68A.405A applies only to *statewide* elected officials and members of the General Assembly. Therefore, the Supervisors are not in violation of the law as currently written and not subject to penalty.

Recommendation

All elected officials holding a statewide office should avoid self-promotion with public moneys as required by Iowa Code Section 68A.405A.

The legislature should expand the law to prohibit any current elected official or candidate from appearing in ads paid for with public moneys, whether or not that individual is in control of the funds or not. If that is not done, unscrupulous elected officials could agree to feature each other in ads paid for with public funds under their control. It should also be expanded beyond covering only statewide officials and legislators to also cover all regional and local elected officials who are currently not prohibited from doing this with funds under their control.

The Iowa Ethics and Campaign Disclosure Board (Board) should review this matter in accordance with its obligations under Iowa Code Section 68A.405A.

Exhibit

Report on a Special Investigation of the
“Step Up, Stop the Spread” Media Campaign
Involving the Governor’s Office and the
Iowa Department of Public Health

Copy of Newspaper Advertisement

Together, we can get life back to normal



Take extra precautions if you're at risk for serious illness due to age or other health conditions.

Step up. Stop the spread.



Stay informed: coronavirus.iowa.gov
Get tested: testiowa.com

Report on a Special Investigation of the
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Staff

This special investigation was performed by:

Sonya Heitshusen, Executive Officer



Annette K. Campbell, CPA
Deputy Auditor of State