

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

IN THE MATTER OF:

KIM REYNOLDS FOR IOWA,
a candidate's committee

Case No. 2018 IECDB 22

Case No. 2018 IECDB 27

ORDER DISMISSING COMPLAINTS

On September 20, 2018, two related complaints came before the Iowa Ethics and Campaign Disclosure Board. For the reasons that follow, the Ethics Board hereby dismisses the complaints filed by Gary Dickey and a confidential person concerning in-kind contributions in the form of flights to the Kim Reynolds for Iowa committee.

BACKGROUND

The Kim Reynolds for Iowa committee has reported a total of nine in-kind contributions in the form of flights for the last two years. See Exhibit A. Gary Dickey and a confidential person¹ ("Jane Doe") filed two related complaints with the Board having to do with the committee's acceptance of in-kind contributions in the form of flights and whether those in-kind contributions were legal, properly disclosed and valued.

Jane Doe filed a complaint with several components. Ms. Doe questioned whether it is permissible for the campaign to solicit and accept in-kind contributions in the form of flights, whether the in-kind contributions were from the individuals listed on the committee's disclosure reports or the corporations or limited liability companies these individuals own. She further questioned whether the committee correctly estimated the value of the flights, whether the flights were for a campaign purpose and whether it was lawful for the Governor's adult children to travel on the December 30, 2017 flight.

Gary Dickey also filed a complaint concerning the flight Governor Reynolds took on December 30, 2017 with her husband and two adult children. Mr. Dickey's complaint alleged the committee underreported the fair market value of the flight.

ANALYSIS

¹ This person's identity is not being disclosed pursuant to Iowa Code section 22.7(18).

The Ethics Board must first determine whether the complaints are legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the Ethics Board.
- b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.
- c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Ethics Board determines a complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Ethics Board determines none of the allegations contained in the complaints are legally sufficient, the complaints shall be dismissed. *Id.*

The allegations in the complaints occurred in 2017 and 2018, which is within three years of the date of the complaint. The Board has jurisdiction over a candidate and committee that allegedly committed a violation of chapter 68A of the Iowa Code. *See id.* § 68B.32B(1). The Board also has jurisdiction over a person holding a state office in the executive branch of state government. *See id.* The only remaining question is whether either complaint alleges facts that would establish a violation of chapter 68A or chapter 68B.

These complaints address circumstances which perfectly demonstrate the intersection of Iowa's ethics laws in chapter 68B and Iowa's campaign finance laws in chapter 68A. The complaints question whether Governor Reynolds violated the gift law and whether her campaign committee properly accepted and reported these in-kind contributions.

Iowa's gift law is found at Iowa Code section 68B.22. It states a public official, public employee, or candidate or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor unless one of the nineteen exceptions to the gift law applies. Governor Reynolds is a public official as well as a candidate. *See id.* §§ 68A.102(4) (defining candidate) and 68B.2(22) (defining public official). Thus, the gift law applies to Governor Reynolds and her immediate family and restricts what gifts they may lawfully accept from Governor Reynolds' restricted donors. "Immediate family members" means the spouse and dependent children of a public official or public employee. *Id.* § 68B.2(11). Governor Reynolds does not have any dependent children so her spouse Kevin is her only

immediate family member. "Restricted donor" means 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.

Id. § 68B.2(24).

The first exception to the gift law allows a candidate to accept campaign contributions from a restricted donor. *Id.* § 68B.22(4)(a). In Iowa, we do not have campaign contribution limits. *See generally id.* ch. 68A. However, there are other contribution restrictions. Iowa Code section 68A.503 prohibits an insurance company, savings association, bank, credit union, or corporation from making a monetary or in-kind contribution to a candidate committee. These types of entities are commonly referred to as "prohibited contributors." Additionally, Iowa Code section 68A.504 prohibits a lobbyist or political committee from making or arranging a monetary or in-kind contribution "to the campaign of an elected state official, member of the general assembly or candidate for state office during any day of the regular legislative session and, in the case of the governor or gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills."

Iowa Code section 68A.402 requires candidate committees, PACs and parties to file periodic campaign disclosure reports. Section 68A.402A dictates what information shall be disclosed on those reports. That section requires a candidate's committee to disclose the name and mailing address of each person

who has made one or more contributions of money if the aggregate amount in a calendar year exceeds \$25. Section 68A.402A requires the committee to disclose in-kind contributions on a separate schedule. The committee is required to:

identify the nature of the [in-kind] contribution and provide its estimated fair market value. A committee receiving an in-kind contribution shall report the estimated fair market value of the in-kind contribution at the time it is provided to the committee.

Id. § 68A.402A(1)(d). The in-kind contributor is required to “notify the committee of the estimated fair market value of the in-kind contribution at the time the in-kind contribution is provided to the committee.” *Id.* A committee is also required to disclose on its campaign disclosure reports information about expenditures, loans, unpaid debt, consultants and campaign property. *Id.* § 68A.402A(1).

With this legal framework in mind, we turn to the complaints at hand. As stated above, Iowa Code chapter 68A allows a candidate’s committee to accept in-kind contributions. The gift law, which is found in Iowa Code section 68B.22, allows a candidate and the candidate’s campaign committee to accept monetary and in-kind contributions from restricted donors. For our purposes, we need not determine whether any of the in-kind contributors listed in exhibit A are Governor Reynolds’ restricted donors.

Our administrative rule 351—4.53(2) defines “in-kind contribution” to mean:

the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee.

Iowa Code section 68A.503 prohibits monetary and in-kind contributions from corporations and other prohibited contributors. We have an administrative rule 351—4.47 which sets out permitted activity between a committee and a corporation provided that the prohibited contributor is reimbursed for the fair market value of the good or service provided to the committee. The preamble of the rule states:

The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 351-4.44 (68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

The rule then sets out how to reimburse a corporation for the use, purchase or rental of corporate assets. Subrule 4 of rule 351-4.47 specifically pertains to the use of corporate airplanes and other means of transportation. It states:

4.47(4) *Use of airplanes and other means of transportation.*

a. Air travel. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

- (1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).
- (2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

While the rule expressly allows a candidate, candidate's agent or person traveling on behalf of a candidate to reimburse a corporate entity for the use of a corporate airplane, we never intended for this rule to prohibit a candidate's committee or permissible contributor to similarly reimburse a corporation for the fair market value of the use of an airplane. For example, in 2010 we were asked to issue an advisory opinion concerning campaign functions held on corporate campuses. See IECDB AO 2010-08. In the opinion we stated:

If an event did become a “campaign function” because there was fundraising or “express advocacy” communications, then it would be necessary for someone who was not a prohibited contributor to reimburse [the corporation] for the fair market value cost of the event and the transaction would need to be properly disclosed on campaign finance reports.

IECDB AO 2010-08.

Consistent with this advisory opinion, we believe it is lawful for a permissible contributor to reimburse a corporate entity for the use of a corporate plane that is then reported by the candidate’s committee as an in-kind contribution from the individual or PAC that made the reimbursement. The reimbursement must be for the fair market value of the air travel.

In determining what is fair market value for air travel, we direct committees to our administrative rule 351–4.47(4). Additionally, the Internal Revenue Service has fairly detailed guidance on how to value employer-provided flights for income tax purposes. See 26 CFR 1.61-21. Under IRS Regulation section 1.61-21, if an employee takes a flight on an employer-provided aircraft and that employee’s flight is primarily personal in nature, the employee must reimburse the employer for the fair market value of the flight as determined by section 1.61-21 or the fair market value of the flight is taxable income to the employee. We believe the fair market value of a campaign expenditure or in-kind contribution for a flight can also be based on section 1.61-21.

In reviewing the committee’s disclosure of in-kind flights, we see nothing that would indicate the committee violated any of the laws that we just explained. All of the flights are from individuals who are permissible contributors, regardless of whether they are also restricted donors under the gift law. Ms. Doe provided evidence in her complaint that at least some of these flights were on planes owned by the contributors’ corporations or LLCs and not the contributors themselves. However, as we explained above, the in-kind contributor should be reported as the person who paid for the flight, not the corporate owner of the plane. Nothing in chapter 68A or our administrative rules require a committee to obtain proof of payment before accepting an in-kind contribution of any kind. Moreover, we believe it is reasonable to presume that in the case of a corporate-owned plane, the individual providing the plane to the committee is complying with federal tax law and reimbursing the corporation for the fair market value of the flight.

It is not always easy to value an in-kind contribution, including a flight. However, the valuations of the flights in this case appear to be consistent with the Board's rule 351—4.47(4) and IRS Regulation section 1.61-21. Mr. Dickey alleges the committee should have valued the cost of the trip to Memphis on December 30, 2017 using one or more quotes he obtained to pay for a chartered Gulfstream G200 from Des Moines to Memphis and back. However, because Memphis is served by regularly scheduled commercial service from Des Moines, our rule 351—4.47 allows the contributor, Mr. North, to estimate the fair market value of the trip using coach class airfare. The Reynolds' adult children did not participate in campaign activities while in Memphis so the estimated costs of their seats do not need to be reported by the committee. The gift law does not prohibit Governor Reynolds' non-immediate family members from accepting gifts from anyone, including the Governor's restricted donors.

Ms. Doe also questioned whether Governor and Mr. Reynolds actually engaged in campaign activities while in Memphis to watch Iowa State University compete in the Liberty Bowl game. Iowa Code section 68A.302(1) allows a candidate's committee to use campaign funds "only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services." If a good or service may be purchased using campaign funds, then it is permissible for a candidate's committee to accept the same in the form of an in-kind contribution provided the contribution is from a permissible contributor. The committee stated Governor and Mr. Reynolds met with campaign donors in Memphis who were presumably also in town for the bowl game. It is not unusual or illegal for an elected official to intersperse campaign activities with official duties or even personal time provided the state does not pay for campaign activities and the candidate's committee does not pay for personal expenses. See Iowa code §§ 68A.302(1) (prohibiting the expenditure of campaign funds for "personal expenses or personal benefit"); 68A.505 (prohibiting the expenditure of public moneys for political purposes); see also AO-IECDB 2011-06 (approving a plan for Governor Branstad's campaign committee to regularly reimburse the state for any additional mileage that's driven by a state vehicle for campaign functions). The Governor and her husband could not have attended the campaign meeting in Memphis without some sort of travel. Thus, it was permissible for the committee to either pay for the Reynolds' transportation to Memphis or accept transportation as an in-kind contribution. The fact the Governor also attended the bowl game while in Memphis (presumably as a private citizen) does not

negate this otherwise permissible in-kind contribution. The cost of the bowl tickets were personal expenses that were paid for by the Reynolds family.²

In addition to the Memphis flight, Ms. Doe questioned whether the flight Governor Reynolds took to Rhode Island on April 17, 2018 was for campaign purposes. The committee stated the purpose of the trip was for Governor Reynolds to attend fundraisers for her committee in Rhode Island and New York. The New York leg of the trip was cancelled due to weather. Governor Reynolds met with at least one campaign contributor during her brief trip to Rhode Island. We do not typically require campaigns to justify the necessity of a campaign trip, function or event and see no reason to do so here. We are satisfied the campaign's explanation for these trips are sufficient to determine the flights associated therewith qualify as legitimate campaign purposes consistent with section 68A.302.

Conclusion

We find the flights in question to be legitimate in-kind campaign contributions and allowable under Iowa's gift law. The committee accepted these flights from permissible contributors for permissible campaign purposes. Iowa law requires an in-kind contributor to provide the fair market value of the contribution to the committee, which shall be reported by the committee on its campaign disclosure report. The committee reported the in-kind flights. The complainants have provided no evidence the estimated values of the flights are unreasonable. A committee is not obligated to obtain proof of payment from an in-kind contributor. Thus, we find the complaints are not legally sufficient because neither complaint alleges facts that the committee, Governor Reynolds or Mr. Reynolds violated a provision of the law within the Board's jurisdiction.

By direction of the Ethics Board



James Albert, Chair
John Walsh, Vice Chair
Carole Tillotson
Jonathan Roos
Mary Rueter
Elaine Olson

² Iowa State University confirmed Governor and Mr. Reynolds personally paid for their bowl game tickets.

EXHIBIT A

Date	Contributor	Description	Estimated FMV
5/26/2017	Kirke, Gerald West Des Moines, IA 50266	Travel / Flight	\$11,435.00
7/29/2017	Barker, David Iowa City, IA 52240	Travel / Flight	\$5,815.30
10/25/2017	North, David & Penny Bellevue, IA 52031	Travel / Flight	\$2,650.00
12/30/2017	North, David Bellevue, IA 52031	Travel / Flight	\$2,880.00
4/11/2018	Weiner, Gerald North Sioux City, SD 57049	Travel / Flight	\$5,030.00
4/12/2018	Barker, David Iowa City, IA 52240	Travel / Flight	\$7,183.52
4/17/2018	Rastetter, Bruce Alden, IA 50006	Travel / Flight	\$6,122.78
4/28/2018	Golding, Cindy & Joe Cedar Rapids, IA 52411	Travel / Flight	\$2,031.00
7/11/2018	Kemna, Kenneth Spirit Lake, IA 51360	Travel / Flight	\$2,000.00