

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

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April 29, 2010

Andrew Schachtner
Via Email

Re: Ethics Board Decision on Richard Leopold

Dear Mr. Schachtner:

After reviewing your complaint materials, in looking at the specific language of the state conflict of interest law in Iowa Code section 68B.2A, and the information provided orally to the Board by the Board's staff, it was determined that an impermissible conflict of interest did not exist and closed the investigation with a finding of no probable cause that a violation occurred.

Iowa Code section 68B.2A(1) provides that an "outside employment or activity" might constitute a conflict of interest. Clearly, belonging to Ducks Unlimited was an "outside activity" that might trigger Richard Leopold having a conflict of interest. However, under the language of that section the Board does not believe the statute was triggered:

"Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any of the following conduct:

- a. Outside employment or an activity that involves the use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. This paragraph does not apply to off-duty peace officers who provide private duty security or fire fighters or emergency medical care providers certified under chapter 147A who provide private duty fire safety or emergency medical services while carrying their badge or wearing their official uniform, provided that the person has secured the prior approval of the agency or political subdivision in which the person is regularly employed to engage in the activity. For purposes of this subsection, a person is not "similarly situated" merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.
- b. Outside employment or an activity that involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.
- c. Outside employment or an activity that is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment."

Under section "a" Richard Leopold was not given a personal "advantage or pecuniary" benefit by belonging to Ducks Unlimited. Certainly nothing that gave him such an advantage greater than "similarly situated members or classes of members of the general public." He was a member of

Ducks Unlimited but was not an officer. He did not receive any compensation from the organization. Money that was part of the Lizard Lake project was put back into the project and not retained by Richard Leopold personally.

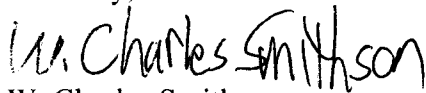
Section "b" does not apply because Richard Leopold was not receiving any compensation for being a part of Ducks Unlimited.

Section "c" was the closest call in the Board's view. However, Ducks Unlimited was not falling within any of the categories of "control, inspection, review, audit, or enforcement authority" by Richard Leopold. Rather, it was a partnership on a joint venture project. Richard Leopold was not engaging in an "inspection, review, audit, or enforcement authority" concerning the conduct of Ducks Unlimited (such as a contested case proceeding to determine if Ducks Unlimited had violated a law under the purview of Department of Natural Resources).

For these reasons, the Ethics and Campaign Disclosure Board made the determination on April 29, 2010, that an impermissible conflict of interest did not exist under Iowa Code section 68B.2A. While you did not receive the response you no doubt were hoping for, the Board does thank you for bringing this matter to our attention and for your concern. In addition, the Board notes that its response is based solely on the language of Iowa Code section 68B.2A. If there is another conflict of interest provision not under the Board's jurisdiction or a common law conflict of interest, such a determination is not actionable by the Board.

Absent additional factual information, the Board considers this matter closed.

Sincerely,



W. Charles Smithson

Director and Counsel for the Board