

CHAPTER 12
DECLARATORY ORDERS

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 9]
[Prior to 9/17/03, see 351—Ch 9]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

351—12.1(17A,68B) Petition for declaratory order.

12.1(1) *Who may file.* Any person may file a petition with the board for a declaratory order concerning the applicability of any statute, rule, policy, decision, or order within the primary jurisdiction of the board.

12.1(2) *Place of filing.* A petition for a declaratory order shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. A petition may also be filed by fax at (515)281-3701. A copy of the petition and any supporting documents shall be filed with any party of record to the declaratory order proceeding.

12.1(3) *Petition deemed filed.* A petition is deemed filed when it is received by the board. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

12.1(4) *Form of petition.* The petition shall be typewritten or legibly handwritten in ink and shall provide the following information:

- a. A statement that the document is a petition for a declaratory order.
- b. A clear and concise statement of all relevant facts on which the order is requested.
- c. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
- d. The questions petitioner wants answered, stated clearly and concisely.
- e. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- f. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- g. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided, are pending determination, or are under investigation by any governmental entity.
- h. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
- i. Any request by petitioner for a meeting provided for by rule 351—12.6(17A,68B).
- j. The name, mailing address, and telephone number of the petitioner and petitioner's representative if there is a representative.
- k. A statement indicating the person to whom communications concerning the petition should be directed.

12.1(5) *Signature.* The petition shall be dated and signed by the petitioner or the petitioner's representative.

351—12.2(17A,68B) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition. The board may request a brief from the petitioner or from any other person concerning the questions raised in the petition. A requested brief shall be filed within ten days of receipt of notice from the board.

351—12.3(17A,68B) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The board may also give notice to any other persons.

351—12.4(17A,68B) Intervention.

12.4(1) *Who may intervene.* Persons who qualify under any applicable provision of law and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

12.4(2) *Board discretion.* A person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene at the discretion of the board.

12.4(3) *Place of filing.* A petition for intervention shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The petition may also be filed by fax at (515)281-3701. The board shall provide the intervenor with a file-stamped copy of the petition for intervention if the intervenor provides an extra copy for this purpose. The intervenor shall also file a copy of the petition for intervention and any supporting documents with the person who filed the petition for a declaratory order.

12.4(4) *Form of petition.* The petition for intervention shall be typewritten or legibly handwritten in ink and shall provide the following information:

a. A statement that the document is a petition for intervention and a reference to the original petition for a declaratory order.

b. Facts supporting the intervenor's standing and qualifications for intervention.

c. The answers urged by the intervenor to the questions presented and a summary of the reasons urged in support of those answers.

d. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

e. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided, are pending determination, or are under investigation by any governmental entity.

f. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the proceeding.

g. Whether the intervenor consents to be bound by the determination of the matters presented in the proceeding.

h. The name, mailing address, and telephone number of the intervenor and the intervenor's representative if there is a representative.

i. A statement indicating the person to whom communications concerning the petition for intervention should be directed.

351—12.5(17A,68B) Inquiries. Inquiries concerning the status of a petition for a declaratory order may be made to the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319.

351—12.6(17A,68B) Board consideration. Upon request by petitioner in the petition for a declaratory order, the board shall schedule a brief and informal meeting between the petitioner, all intervenors, and the board's executive director or legal counsel to discuss the petition. The board may solicit comments from any person on the questions presented in the petition. Any person may submit comments to the board on the questions raised in the petition.

351—12.7(17A,68B) Action on petition.

12.7(1) *Time.* Within 30 days after the filing of the petition, or 5 days following a regular meeting of the board in which the petition has been received and discussed, whichever comes earlier, the board shall issue an order on the petition, set the matter for specified proceedings, agree to issue a declaratory order by a specified time, or decline to issue the order and state the reasons for doing so. If the board does not issue a declaratory order within 60 days after the receipt of a petition for a declaratory order, the petition is deemed denied. The parties may agree to extend the deadlines in this subrule.

12.7(2) *Date of issuance.* The board is deemed to have issued an order or to have refused to do so on the date the order or refusal is mailed or delivered to the parties of record.

351—12.8(17A,68B) Refusal to issue order.

12.8(1) *For good cause.* The board shall refuse to issue a declaratory order for good cause. Good cause includes, but is not limited to, the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case proceeding, or other agency or judicial proceeding that may resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

12.8(2) *Rationale.* A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition. Once the board declines to issue a declaratory order, or if the petition is deemed denied because an order was not entered within 60 days, a party to the proceeding may either seek judicial review or await further board action with respect to its petition.

12.8(3) *Amended filing.* Refusal to issue a declaratory order does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue an order.

351—12.9(17A,68B) Contents of declaratory order. In addition to the order itself, a declaratory order must contain the date of issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

351—12.10(17A,68B) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

351—12.11(17A,68B) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. The order is binding on the board, the petitioner, and any intervenors who consented to be bound. An order is applicable only in circumstances when the relevant facts and the laws, rules, policies, decisions, or orders involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition for a declaratory order. A declaratory order is in effect on the date of issuance.

351—12.12(17A,68B) Advisory opinion. In lieu of filing a petition for a declaratory order, any person subject to the board's jurisdiction may request an advisory opinion pursuant to rule 351—1.2(68B). However, as provided in 351—subrule 1.3(6), the board will refuse to issue a declaratory order to a person who has previously received a board opinion on the same question unless the petitioner demonstrates a significant change in circumstances from those in the board opinion.

These rules are intended to implement Iowa Code chapters 17A and 68B.

[Filed 12/6/88, Notice 6/1/88—published 12/28/88, effective 2/1/89]

[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]

[Filed emergency 6/16/94—published 7/6/94, effective 6/16/94]

[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]

[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]