

CHAPTER 5
USE OF PUBLIC RESOURCES FOR A POLITICAL PURPOSE

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

351—5.1(68A) Scope of chapter. Iowa Code section 68A.505 prohibits the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. For the purposes of this chapter, the board will construe the phrase “expenditure of public moneys for political purposes” broadly to include the use of public resources generally. This chapter outlines the permissible and impermissible uses of public resources for a political purpose pursuant to Iowa Code section 68A.505 and board interpretations of the statute.

This rule is intended to implement Iowa Code section 68A.505.

[Editorial change: IAC Supplement 4/8/09]

351—5.2(68A) Applicability. This chapter applies to the use of resources that belong to the executive branch of state government, a county, city, public school, or other political subdivision by state and local campaigns in Iowa. This chapter does not apply to property belonging to the federal government or to the use of the executive branch of state government, a county, city, public school, or other political subdivision by a federal campaign.

This rule is intended to implement Iowa Code section 68A.505.

[Editorial change: IAC Supplement 4/8/09]

351—5.3(68A) Definitions. For purposes of this chapter, the following definitions apply:

“*Ballot issue*” means a question that has been approved to be placed before the voters or is otherwise required by law to be placed before the voters. “Ballot issue” does not include the nomination or election of a candidate.

“*Campaign*” means the organized effort to expressly advocate the nomination, election, or defeat of a candidate for state or local office in Iowa. “Campaign” also means the organized effort to expressly advocate the passage or defeat of a ballot issue.

“*Candidate*” means any individual who has taken affirmative action to seek nomination or election to a state or local office in Iowa.

“*Expressly advocate*” means “express advocacy” as defined in Iowa Code section 68A.102(14) and 351—subrule 4.53(1). “Express advocacy” includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

“*Political purpose*” means to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

“*Public resources*” means the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.

“*Public school*” includes a school designated as a “charter school.”

This rule is intended to implement Iowa Code sections 68A.102 and 68A.505.

[Editorial change: IAC Supplement 4/8/09]

351—5.4(68A) Use of public resources for a political purpose prohibited.

5.4(1) General prohibition. Unless one of the exceptions in rule 351—5.5(68A) applies, the public officials and public employees of the executive branch of state government, a county, city, public school, or other political subdivision shall not permit public resources to be used to expressly advocate the nomination, election, or defeat of a candidate or to expressly advocate the passage or defeat of a ballot issue.

5.4(2) Specific prohibitions. For purposes of clarifying the general prohibition on the use of public resources for a political purpose, the board has identified situations in which the use of public resources for a political purpose is prohibited unless one of the exceptions in rule 351—5.5(68A) applies. The following specific conduct or actions are deemed to be the prohibited use of public resources for a political purpose:

- a. Using public resources to solicit or accept campaign contributions.
- b. Using public resources to solicit votes, engage in campaign work, or poll voters on their preferences for candidates or ballot issues. The prohibition on polling voters by using public resources does not apply to authorized research at a public university.
- c. Using a publicly owned motor vehicle to transport political materials, placing campaign signs on a publicly owned motor vehicle, or traveling to campaign-related events in a publicly owned motor vehicle.
- d. Using public resources to produce and distribute communications that expressly advocate for or against candidates or that expressly advocate for or against ballot issues.
- e. Placing campaign materials on public property including the placement of campaign signs in the public right-of-way.

5.4(3) *Transportation maps.* As provided in Iowa department of transportation rule 761—28.3(307), Iowa transportation maps are not to be sold or used for purposes of personal or professional gain. The paper version of the map is not to be altered for distribution in any way, including adding a name or address, by candidates running for political office. This prohibition does not apply to pictures of the governor and lieutenant governor and a personal message which may appear on the map.

This rule is intended to implement Iowa Code section 68A.505.

[Editorial change: IAC Supplement 4/8/09]

351—5.5(68A) Exceptions from prohibition on use of public resources for a political purpose.

5.5(1) *Expressing opinion by resolution.* Iowa Code section 68A.505 permits the state or a governing body of a county, city, public school, or other political subdivision to express an opinion on a ballot issue through the passage of a resolution or proclamation. It is also permissible for a member of a governing body of the state, county, city, public school, or other political subdivision to express the member's opinion on a ballot issue at a public meeting of the governing body.

5.5(2) *Public forum.* Any public resource that is open to a member of the general public to use for other purposes may be used for political purposes, including the distribution of political materials on windshields of vehicles that are parked in public parking lots.

5.5(3) *Candidate debate.* The executive branch of state government, a county, city, public school, or other political subdivision may permit the holding of a candidate debate or forum and the accompanying distribution of campaign materials on governmental property so long as at least two candidates seeking the same office are invited to attend the debate or forum.

5.5(4) *Reimbursement to governmental body.* A person may reimburse a governmental body for the use of a public resource for a political purpose so long as it can be demonstrated to the board that the use of the resource was also for a public purpose or furthered a public interest. The reimbursement shall be for the actual costs of the public resource or be for the same amount charged to a person using the public resource for any other purpose.

5.5(5) *Communications that do not expressly advocate.* Public resources may be used to produce and distribute communications that do not expressly advocate for or against a candidate or that do not expressly advocate for or against a ballot issue.

5.5(6) *Use of job title.* As there is no expenditure of taxpayer funds, job titles may be used for political purposes.

5.5(7) *Residence.* It is not deemed a violation of Iowa Code section 68A.505 for a public official or public employee to use for political purposes the portion of public property that is designated as the personal residence of the public official or public employee.

5.5(8) *Clothing or paraphernalia.* While performing official duties, a public official or public employee may wear clothes or wear political paraphernalia that expressly advocate for or against candidates or that expressly advocate for or against ballot issues. However, the administrative head of a state agency or of a department of a political subdivision may enact an internal policy that would prohibit the wearing of campaign materials on the public property of that agency or subdivision.

This rule is intended to implement Iowa Code section 68A.505.

[Editorial change: IAC Supplement 4/8/09]

351—5.6(68B) Board advice. Public officials, public employees, or other persons interested in using public funds for a political purpose may first seek advice or guidance from the board concerning the legality of the action or conduct.

5.6(1) *Advisory opinion.* A board advisory opinion applies a statute or rule to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 351—1.3(68B). As provided in Iowa Code section 68B.32A(12), a board opinion, if followed, constitutes a defense to a subsequent complaint concerning the same facts and circumstances.

5.6(2) *Declaratory order.* Persons may also seek board guidance concerning the application of a statute or rule to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

5.6(3) *Board review of a communication.* Any person interested in producing and distributing a communication using public resources may submit the communication prior to its distribution for a board determination of whether or not the communication contains express advocacy.

This rule is intended to implement Iowa Code section 68B.32A(12).

[Editorial change: IAC Supplement 4/8/09]

351—5.7(68B) Complaints. Any person may file a complaint or provide information to the board alleging a violation of Iowa Code section 68A.505 or the rules of this chapter by a public official or a public employee of the executive branch of state government or a political subdivision of state government. The procedure for filing a complaint or providing information to the board is set out in Iowa Code section 68B.32B and 351—Chapter 9.

This rule is intended to implement Iowa Code section 68B.32B.

[Editorial change: IAC Supplement 4/8/09]

351—5.8(68A) Holders of certain government positions prohibited from engaging in political activities. Several statutes outside of the board's jurisdiction prohibit the holders of certain government positions from being engaged in political activities. The board does not enforce these statutory prohibitions. However, to assist the regulated community and the public, the board will maintain on its website at ethics.iowa.gov a list of positions whose holders are prohibited from engaging in political activities.

This rule is intended to implement Iowa Code section 68A.505.

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