

11—8.9(17A) Refusal to issue order.

8.9(1) The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for 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 department of administrative services to issue an order.
- c.* The department of administrative services 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, or other agency or judicial proceeding, that may definitively 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 an agency 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, intervened separately, or filed a similar petition and whose position on the question presented may fairly be presumed to be adverse to that of petitioner.
- j.* The petitioner requests the department of administrative services to determine whether a statute is unconstitutional on its face or whether any of the other conditions under Iowa Code section 17A.19 have been met.
- k.* The department will not issue declaratory orders on the following:
 - (1) Actuarial assumptions used or proposed to be used by the department;
 - (2) The impact of proposed legislation;
 - (3) Issues which require the disclosure of confidential information; or
 - (4) Items listed in 11—7.1(8A,17A).

8.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

8.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

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