

681—9.4(23A) Policy on competition with private enterprise.

9.4(1) Policy statement. A primary responsibility of the board of regents is to oversee institutions whose missions include the creation and dissemination of knowledge. These missions encompass teaching, research, and services. To fulfill their missions effectively, institutions under the control of the state board of regents occasionally provide goods and services which enhance, promote, or support the instructional, research, public service, and other functions to meet the needs of students, faculty, staff, patients, visitors, and members of the public participating in institutional events.

It is the policy of the board of regents that the institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension or service mission of the institutions.

All activities involving the sale of goods, services, or facility usage shall be in accordance with an authorization and statement of purpose approved by the chief business officer at each institution. This approval will be given only after review which demonstrates that one or more of the following conditions are met:

a. The activity is deemed to be an integral part of the institution's educational, research, public service and campus support functions, and other educational and support activities.

b. The activity is needed to provide an integral good or service which is not reasonably available in the community; or the activity is needed to provide an integral good or service at time, price, location, or terms which are not reasonably available in the community.

c. The activity is carried out for the primary benefit of the campus community and is incidental to the education, research, service, or extension missions of the university.

d. The activity is carried out due to the importance of maintaining the quality of the institution.

9.4(2) Definitions.

"Institutions under the control of the state board of regents" means the State University of Iowa, the University of Northern Iowa, Iowa State University of science and technology, Iowa School for the Deaf, and Iowa Braille and Sight Saving School.

"Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

9.4(3) Policy in writing. Each institution under the control of the state board of regents shall have in writing:

a. A mechanism for reviewing proposed activities involving the sale of goods, provision of services, or usage of facilities to ensure that activities are consistent with board of regents policies; and

b. A procedure for receiving, reviewing, and responding to inquiries about activities carried out by the institution.

9.4(4) Prohibition. State board of regents institutions shall not engage in activities provided by private enterprise except as provided below.

9.4(5) Exceptions provided by statute. This prohibition does not apply to the on-campus activities of an institution under the control of the state board of regents as provided in Iowa Code section 23A.2(10) "k"(1) to (10).

9.4(6) Exemptions. The state board of regents exempts the following activities from the prohibition against competition with private enterprise.

a. Goods and services that are directly and reasonably related to the mission of the institution including (activities such as):

(1) Conferences, institutes, outreach programs, specialized centers and other efforts and programs which provide continuing education;

(2) Child day care services and health services provided to members of the university community;

(3) Educational media, publication, distribution, and audiovisual centers and services;

(4) Family and guest housing;

(5) Laundry, custodial, maintenance, and similar services.

b. Goods and services offered to only students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost, including (activities such as):

- (1) Gift shops which offer a limited and specialized array of goods;
- (2) Specialized instruction in the visual or performing arts;
- (3) Dormitory-based shops which serve students and offer a limited range of goods.

c. The acquisition, maintenance, and use of institutional aircraft and a vehicle fleet maintained for the purpose of transportation for educational and related purposes, including field trips.

d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals and Clinics when:

- (1) The equipment is needed to initiate or effectuate a treatment regimen (i.e., implants); or
- (2) The equipment is essential to a rehabilitation program (i.e., crutches, prostheses); or
- (3) The equipment is of a specialized nature and is not reasonably available elsewhere (i.e., customized or adaptive equipment for the handicapped); or
- (4) A short-term supply of equipment is provided to avoid disruption in a treatment regimen when a patient is discharged.

e. Goods or services which are not otherwise available in the quantity or quality required by the institution, including (activities such as) specialized course materials, equipment, supplies, software, and publications.

f. Telecommunications systems utilized for communications within the institution's community of interest and broadcast and narrowcast communication systems, including microwave, fiber-optic and satellite communications.

g. Facilities, programs, and associated support services for fitness and recreation initiated and maintained primarily for the benefit of students, faculty, and staff.

h. Food services and sales located on campus and initiated and maintained primarily for the benefit of students, faculty, staff, and guests of the institution.

i. Sales of books, records, tapes, software, educational equipment and supplies offered primarily to students, faculty, and staff of the institution; sales of personal computers and associated hardware pursuant to institutional policy and limited to students, faculty, and staff.

9.4(7) *Provision for consultation with community and related business interests.* Each institution under the control of the state board of regents shall establish a mechanism for consultation with business interests in its community or area. This will involve the chief financial officer of the institution, and representatives of the institution, and will include the following:

- a.* Advising the institution on policies and procedures regarding the sale of goods or services which might compete with private enterprise.
- b.* Making recommendations, at the request of the institution, on particular activities.
- c.* Other duties as may be requested by the institution.

9.4(8) *Appeal process.* An appeal process is essential for resolving complaints involving competition with private enterprise.

a. A private enterprise which seeks to appeal an action or activity of an institution under the control of the state board of regents shall attempt to resolve the issue at the institutional level. The form of appeal to the institution shall be a letter to the chief business officer.

b. If the private enterprise is dissatisfied with the institution's response, the private enterprise may notify the executive director of the state board of regents and request assistance. This request shall be in writing and shall describe the action or activity which is being appealed.

c. The executive director may then take action to assist the private enterprise and the institution in resolving the issue.

d. If the issue remains unresolved, the executive director, at the request of the private enterprise, may docket the matter for review by the board of regents. If the matter is docketed, the executive director will prepare a recommendation for the board of regents to consider. A copy of the recommendation with notice of the time, date, and place of the meeting for which the matter has been docketed shall be transmitted to the private enterprise and the institutions prior to the meeting.

e. Board of regents action shall constitute a final agency action.
This rule is intended to implement Iowa Code chapter 23A.