



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF GENERAL SERVICES
JANET E. PHIPPS, DIRECTOR

M E M O R A N D U M

RECEIVED
OCT 27 1995
LEGISLATIVE SERVICE
BUREAU

DATE: October 25, 1995
TO: Diane Bolander, Director
Legislative Service Bureau
FROM: Kristi Little, ^{KL}Superintendent
General Services Printing Division
RE: 1995 Election Laws Supplement and 1995 Iowa Acts

I have compiled costs for both the 1995 Supplement to the Election Laws of Iowa and the 1995 Iowa Acts. Based on postage and printing and with the total pages of this publications, I recommend an increase of 5% to the selling price for both publications.

Election Laws Supplement - \$21.00
Iowa Acts - \$63.50

Please advise if the Legislative Council agrees.

cc-LoAnne Dodge, LSB



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF GENERAL SERVICES
JANET E. PHIPPS, DIRECTOR

MEMORANDUM

DATE: November 21, 1995
TO: Diane Bolander, Director
Legislative Service Bureau
FROM: Kristi Little, Superintendent
General Services Printing Division
RE: 1995 Iowa Code Supplement

I have compiled costs for the 1995 Code Supplement. Based on costs submitted by the Code Editor, plus costs for postage and printing of this publication, I recommend a increase of 5% to \$36.75 for sale to the public. This will help to offset the cost of the free distribution to State Government of 3,526 copies.

Please advise if the Legislative Council agrees.

cc-LoAnne Dodge, LSB

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November 27, 1995

MEMORANDUM

TO: DIANE BOLENDER
FROM: MIKE KUEHN
RE: FRIENDS OF THE CAPITOL

A. Issues

You asked whether LSB employees may undertake the following activities regarding Friends of the Capitol (Friends), a private nonprofit corporation created by statute (Code section 18A.11), as part of the employees' regular duties:

1. Tour guides distributing a Friends brochure containing membership information and soliciting funds for Friends.
2. Tour guides selling a Capitol postcard collection created by Friends as a fundraising device for Friends.
3. LSB use of photographs donated by Friends for the Capitol brochure, which has been authorized by the Legislative Council.
4. Development of an audio/visual presentation or video on the Capitol by LSB with Friends assistance using materials donated by, or funding from, Friends, where either the audio/visual presentation or the video will be used by LSB, in addition to use by Friends.

Items 1 and 2 involve the use of LSB employees to provide a conduit for Friends materials. Item 3 involves the use by LSB of materials donated by Friends or funds

provided by Friends to create items which would be the property of LSB. Item 4 involves use of LSB employees and resources to create a presentation or video, with the assistance of Friends, which would be used by both LSB and Friends. This memorandum will discuss the legal issues regarding these activities and provide proposed guidelines for LSB employees involved in them.

B. Friends' Brochures and sale items and LSB Employees

Whether LSB employees may provide the assistance under items 1 and 2 to Friends is governed by the statutory provisions regarding employee conflicts of interest in section 68B.2A and the prohibition on the private use of public property in section 721.2 as well as the policies contained in the LSB Policies and Procedures Manual.

1. Statutory Provisions

Section 68B.2A reads, in relevant part, as follows:

68B.2A Conflicts of interest.

1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

a. The outside employment or activity 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. . .

b. The outside employment or activity 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. . .

Section 721.2 reads, in relevant part, as follows:

Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

5. Uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof.

2. Personnel Policy

Both the Personnel Guidelines for the Central Legislative Staff Agencies (CLSA) and the internal personnel policies of the Legislative Service Bureau place restrictions on the kinds of activities in which LSB employees may engage. The CLSA guidelines prohibit partisan political activity by employees and prohibit sales of goods or services to the general assembly or registered lobbyists with certain exceptions. These exceptions include where the prior consent of the director of the employee's agency is obtained, where the value of the goods or services is less than \$2000, or where the sale occurs pursuant to public notice and competitive bidding if the value of the goods or services is in excess of \$2000. LSB Policies and Procedures Guidelines For Staff (Guidelines) at 3-25.

The internal LSB guidelines authorize outside employment for compensation only if it does not interfere with the employee's LSB-related job performance and if the outside employment cannot be viewed as an extension of LSB activities. Employees are also prohibited from using state resources for any purpose related to the outside employment. Guidelines, at 4-4.

3. Analysis

In determining whether assistance to Friends by LSB employees will be prohibited by the statutory or policy provisions, several issues must be addressed. First, is the activity outside the employment relationship with the state and does it conflict with the employee's official duties and responsibilities? Second, does the outside activity involve the use of state time or state facilities or materials and, if so, is the use incidental to the public use? Third, does the outside activity confer any advantage on the employee or the employee's family which is not available to others? Fourth, is the activity one that the employee is required or expected to perform as a part of the employee's LSB duties?

4. Friends Brochures and Postcards, Distribution and Sale

a. Outside Activity, Conflicts

Regarding the distribution of Friends brochures and sales of Friends postcards by tour guides, the materials do represent an interest outside of state government, that of Friends of the Capitol. However, the tour guides or other LSB employees will not be employed by Friends and will receive no additional compensation for selling the materials or providing other incidental assistance, which is the common test of whether an activity is outside employment. Therefore, although the interest of Friends in selling or distributing the materials is an outside interest, the activity of selling or distributing the Friends materials should not be considered an outside activity for the purposes of section 68B.2A since the benefits of the sale or distribution of the materials will not accrue to the tour guides or other LSB employees personally.

Also, there is no inherent conflict between items one and two and the official duties of the tour guides, given that they distribute a range of materials regarding the Capitol already and will soon begin selling the Capitol brochure authorized by the Legislative Council. Also, in the context of section 68B.2A, the Iowa Ethics and Campaign Disclosure Board considers "outside employment" to mean something other than directly related to the state. 93 Formal Adv. Op. 3, at 4. The board also notes that to be prohibited, the outside activity must be in conflict with the employee's official duties and responsibilities. Op. 3, at 4. Important to the board's determination of whether a conflict exists is whether the state entity which employs the person has consented to the activity. Op. 3, at 5.

b. Use of State Resources

The second prong of the 68B.2A test, however, implicates section 721.2, subsection 5, and the CLSA and LSB personnel policies. The distribution and sale of Friends materials or creation of presentations or videos would involve the use of state facilities and would occur on state time.

Although this issue has not been reviewed by the Iowa Supreme Court in the context of either section 68B.2A or section 721.2(5), the Attorney General has interpreted section 721.2(5) to permit private use of public property only if the private use is incidental to a public purpose. Op. Atty. Gen. (Johnson), May 13, 1983. This opinion also suggested that agency heads promulgate written rules establishing guidelines for mixed private and public use of public property.

With regard to activities one and two, the distribution or sale of Friends materials by the tour guides does not appear to be an outside activity. The tour guides and other LSB employees are not employees of Friends and will receive no benefit from the distribution or sale of Friends materials which does not accrue to the citizens of the state generally. Also, the activities do not inherently conflict and may be further kept separate through the development of guidelines for the tour guides and other LSB employees to follow regarding the distribution or sale of Friends materials.

In addition, the private nature of the activities may properly be viewed as incidental to the tour guides' and other LSB employees' official duties. The tour guides will be performing their duties, including the sale of the Capitol brochure, whether or not materials from Friends may be bought or picked up at the same time.

A reading of the CLSA guidelines indicates that the guidelines are aimed at the situation where an employee is selling something to members of the general assembly or the lobby for personal gain, a situation which does not exist in the case of activities one and two.

However, the LSB guidelines are more restrictive, given that they require LSB employees to devote their entire attention to their LSB duties and prohibit outside activities which may be viewed as an extension of an employee's LSB duties. Again, to the extent that activities one and two are not outside employment and can be seen as part of or complementing the tour guides' and other LSB employees' official duties, the LSB guidelines may not be prohibitory. Any remaining restriction could, however, be overcome by the Director of LSB through the promulgation of an exception to the LSB guideline requiring the devotion of one's entire attention to Bureau-related activities. The new exception to the guideline would address the relevant elements of the statutory and policy provisions and provide guidelines for the activities.

5. Guidelines for LSB Personnel

The following are suggested guidelines for the tour guides and other LSB employees in carrying out activities one and two:

- a. Distribution or sale of materials provided by Friends of the Capitol shall only be incidental to the official duties of the tour guides and other LSB employees.
- b. Moneys from the sale of Friends of the Capitol materials shall be kept and accounted for separately from moneys from the sale of LSB materials.
- c. LSB employees shall not receive compensation or any other thing of value from Friends of the Capitol for selling or distributing Friends of the Capitol materials or creating an audio/visual presentation or video which may also be used by Friends.

C. Friends Donations, In-kind and Funding, for LSB Informational Projects

1. Analysis

Activities three and four involve the acceptance by LSB of photographs or funding from Friends for use in the creation of the Capitol brochure authorized by the Legislative Council and the creation of an audio/visual slide presentation and a video relating to the Capitol utilizing, at least in part, funding provided by Friends. The major issue here is whether the LSB can accept in-kind services or funding from Friends to develop presentation materials on the Capitol which would be the property of the LSB. Section 565.3 provides that the state may accept gifts of real or personal property and apply them to any specified purpose that is within the scope and authority of the state. Property may be accepted subject to certain conditions and terms which are lawful and which could be accepted on behalf of the state as a contract. Op.Atty.Gen., 1922, p. 58.

Thus, LSB could accept photographs from Friends for use in the Capitol brochure subject to terms agreed upon by LSB and Friends. For example, the brochure could attribute the source of the photographs to Friends or the photographs could be used on the condition that the originals be maintained by LSB. If the conditions Friends seeks to place on the use of the photographs are unacceptable, LSB can simply refuse to accept the photographs.

Regarding the use of Friends money or other assistance in the development of audio/visual and video presentations on the Capitol, one issue which must be settled is whether the presentations are really state presentations or if they are in actuality being developed for Friends with state resources. If the benefit to the state is small or incidental, the presentations are problematic under the Attorney General's interpretation of section 721.2(5). If the converse is true, and the primary benefit is to the state, an audio/visual or video presentation created by LSB with assistance from Friends is little different from LSB use of photographs from Friends in the Capitol brochure. LSB and Friends could set by contract the extent and manner of assistance provided by Friends and any consideration therefore. However, because Friends is a private, nonprofit charitable organization, persons or businesses which could provide in-kind services might want to provide the in-kind services to Friends rather than to LSB in order to deduct the reasonable value of those services from their federal income tax liability.

2. Guidelines for LSB Acceptance of Assistance from Friends

The following are suggested guidelines for LSB employees in the use of materials or funding received from Friends:

- a. All conditions and terms of receipt by LSB of materials or funding from Friends for the LSB production of printed, audio, or visual materials should be reduced to writing and acknowledged by both Friends and LSB. Agreements with respect to attributions by LSB to Friends of the receipt of such materials or funding should be part of this writing and should be acknowledged.
- b. LSB shall only accept such materials and funding for LSB production of printed, audio, or visual materials if the primary benefit of the production will be to the LSB and the State and not to Friends. An incidental benefit to Friends through the LSB's acceptance and use of such materials and funding from Friends is not prohibited.
- c. An agreement between Friends and LSB to both use the LSB produced materials should include a stipulation that LSB will not use any portion of such materials which directly solicits funds for Friends.

D. Legislative Council Approval of LSB Activities Regarding Friends

As a general matter, the Legislative Council, as the public policymaking body with supervisory authority over the LSB, in order to resolve any issues regarding joint activities by LSB and Friends, should approve LSB involvement with Friends before the relationship, contractual or otherwise, commences. This approval need not be related to any specific project or projects but may be a general affirmation of LSB's authority to enter into a business relationship with Friends. Responsibility for determining the specific terms of any relationship would be left to the Director of the LSB.

9534RR

Memorandum

To: Administration Committee, Legislative Council
From: Ed Cook, LSB
Date: 11/27/1995
Subject: Reformatting the Iowa Court Rules - Project update

During the last few months, the Legislative Service Bureau has been meeting with the Rules Committee of the Iowa Supreme Court to assist the Court in considering changes to the organization and numbering of the Iowa Court Rules. At present, neither the Rules Committee nor the full Supreme Court have made a final decision agreeing to adopt any particular proposal. However, the Rules Committee appears quite supportive of the goal of reorganizing and renumbering the rules into a more user-friendly and computer-friendly format.

This process began when LSB agreed to place the court rules on CD-ROM along with selected portions of the Iowa Administrative Code. Because of the current format of the court rules, converting them to computer disc took significantly longer and caused many more problems than did converting the administrative rules and the Iowa Code to a disc. As a result, LSB contacted the Supreme Court to offer our assistance in considering changes to the format of the rules to make them more computer accessible. Since the Supreme Court also had concerns over the current organization of the rules, it was decided that an attempt would be made to try and develop a new format for the rules. Since discussions began, LSB has provided the Rules Committee with various proposals for reformatting the court rules based on suggestions from both LSB and the Rules Committee of the Supreme Court. In addition, several members of the bar were invited to a Rules Committee meeting where they commented favorably on the proposals to reformat the court rules. Currently, the Rules Committee has asked LSB for more examples of how the reformatted rules might look.

If the project is given the go-ahead by the Supreme Court, the project would probably be completed in six to eighteen months and would entail republishing the Iowa Court Rules at an additional cost to the LSB. The Administrative Code Editor has delayed a planned republication of the Iowa Court Rules while she awaits a decision by the Supreme Court.

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JULIE E. LIVERS
LEGISLATIVE INFORMATION OFFICE DIRECTOR

TO: DIANE BOLENDER
FROM: DOUG ADKISSON
RE: SUMMARY OF COPYRIGHT LAW APPLIED TO STATUTES AND RULES

The federal Copyright Act of 1976 protects "original works of authorship" which are fixed in any "tangible medium of expression", including in a print or computer readable format. Copyright provides the owner of a work of an expression the exclusive right to copy and distribute the expression. However, it is well settled that federal copyright law does not apply to statutory language.¹ This understanding also applies to rule language in administrative rules.² This is because "[t]he citizens are the authors of the law...regardless of who actually drafts its provisions."³

Implied in the concept of copyright is the idea that some form of originality must be present. Originality requires that the work possess at least some minimal degree of creativity. This precludes protection for trivial elements, even though the elements could assume a large importance in the use of the work. In Feist Publications Inc. v. Rural Telephone Service Company,⁴ the United States Supreme Court held that a telephone directory was not subject to copyright protection because the compilation, coordination, and arrangement was not sufficiently creative. Arguably, the Iowa Code and the Iowa Administrative Code constitute original works, but only to the extent of an original contribution. Elements such as section numbering, spelling and internal reference corrections, and heading numbering appear to involve mechanical rather than creative exercises. Parts such as listing the disposition of Acts, the table of contents, or title or chapter analyses represent a more difficult question, but might be comparable to a telephone directory. Other parts such as editorial notes, legal histories, indices, and heading names might deserve some protection.

The Copyright Act expressly protects computer programming. Computer programming coding which may be embedded as part of legal provisions and which are used to store and access them do appear to involve creativity and to satisfy the originality requirement. It is therefore likely that computer programming which has been developed by the state to store or access its statutes or rules is subject to protection under the federal Copyright Act. The Legislative Service Bureau is preparing a legislative proposal to protect computer programming developed by governmental bodies from unauthorized use.

¹ Howell v. Miller, 91 F.129 (6th Cir 1898)

² See Building Official & Code Administrators International Inc. v. Code Technology, Inc. 628 F.2d 730 (First Cir. 1980).

³ Id.

⁴ 111 S.Ct. 1282 (1991).