

Contact: Aimee Claeys

**REQUEST FOR WAIVER OF
IOWA ADMINISTRATIVE CODE 681-9.4(6)(i)**

Action Requested: Approve Hawkeye Community College's request for a waiver of Iowa Administrative Code 681-9.4(6)(i), as further described in this docket memorandum, with such waiver set to expire no later than July 31, 2022.

Executive Summary: Iowa Code Chapter 23A prohibits competition with private enterprise by a state agency unless specifically authorized by statute, rule, ordinance, or regulation. Iowa Code section 23A.2(2)(i) permits the Board of Regents to exempt from prohibitions on competition with private enterprise, the "sale of books, records, tapes, software, educational equipment and supplies." By administrative rule, the Board exempted "sales of books, records, tapes, software, educational equipment and supplies *offered primarily to students, faculty, and staff of the institutions...*" IAC 681-9.4(6)(i) (emphasis added).

Hawkeye Community College (Hawkeye), an Iowa school corporation, is party to a lease agreement with University Book and Supply (UBS) permitting UBS to operate and provide bookstore services to students on the Hawkeye campus. The term of the lease agreement is from August 1, 2017 through July 31, 2020, with two one-year options to renew.

The University of Northern Iowa (UNI) separately requests Board of Regents approval to acquire substantially all of the assets of UBS¹, including those associated with the operation of Hawkeye Bookstore. Hawkeye requests a waiver of that portion of Iowa Administrative Code 681-9.4(6)(i) limiting the exemption to the sale of covered materials primarily to students, faculty, and staff of the institution. The waiver request is included as Attachment A. The waiver is necessary to permit UNI to continue operation of Hawkeye Bookstore under the provisions of the current lease without interruption. UNI is supportive of this waiver request.

Background: Iowa Code section 17A.9A permits any person to petition for a waiver or variance from an administrative rule provided the governing agency has adopted procedures permitting waivers or variances. An agency may grant a waiver or variance if it has jurisdiction over the rule and the waiver or variance is consistent with applicable statute or other provisions of law. ICA § 17A.9A.1 (2017). A waiver or variance should not be permanent, unless it is shown that a temporary waiver or variance is impracticable. ICA § 17A.9A.3.

An agency may grant a variance from an administrative rule upon a finding of the following: (a) application of the rule would pose an undue hardship; (b) the waiver is not prejudicial to the substantial legal rights of any person; (c) the administrative rule provision is not mandated by statute or other law; and (d) equal protection of health, safety, and welfare will be afforded by the waiver or variance. ICA § 17A.9A.2. Additionally, Board waiver procedures consider the adverse effect on the public interest, existence of exceptional circumstances, and unnecessary and reasonable cost in the absence of a waiver. IAC 681-19.18.

Consideration of Waiver Factors

The Board of Regents has jurisdiction over the cited rule, and the proposed waiver is not in conflict with governing statute. Iowa Code permits the Board to exempt from competition with private

¹ See Property and Facilities Committee Item 6.

enterprise the sale of “books, records, tapes, software, educational equipment and supplies,” but does not require these materials to be offered primarily to students, faculty, and staff of a Regent institution. See ICA § 23A.2(2)(i).

The Board has not been presented with evidence that granting the waiver will prejudice the substantial legal rights of any person or that the equal protection of public health, safety or welfare will be impaired. There are exceptional circumstances justifying the waiver request. University Book and Supply desires to sell substantially all of the assets related to its operations to UNI, including those of Hawkeye Bookstore. In the absence of a waiver, UNI would be forced to either abandon the proposed acquisition of the Hawkeye Bookstore assets, or cease operation of the bookstore following consummation of the acquisition. Interruption of the bookstore operations could pose an undue hardship to Hawkeye Community College and the students it serves, and cause unnecessary and unreasonable costs to be incurred. The potential for interruption or abandonment of bookstore services on the Hawkeye campus is clearly not in the public interest.

Waiver or Variance Requested

Hawkeye requests a waiver or variance from the cited administrative rule to the extent necessary to permit UNI to continue operations of Hawkeye Bookstore on the community college campus. In order to permit continued operations on the Hawkeye campus, Board authorization to waive that portion of administrative rule 681-9.4(6)(i) restricting the sale of materials “primarily to students, faculty, and staff of the institution” is requested. This waiver will be limited to the operation of a bookstore on the Hawkeye Community College campus by the University of Northern Iowa during the term of the existing bookstore lease and any presently contemplated renewal terms. This waiver or variance will expire upon the earlier of July 31, 2022 or the termination of the Hawkeye Bookstore lease.

APPLICATION FOR VARIANCE

TO: Iowa Board of Regents
FROM: Hawkeye Community College

Hawkeye Community College, an Iowa school corporation ("Hawkeye"), applies for a waiver from the Board of Regents pursuant to IAC 681-19.18(17A) to allow its institution, the University of Northern Iowa, to provide book store services for Hawkeye's students on Hawkeye's premises at 1501 East Orange Road, Waterloo, Iowa 50701. Hawkeye has been advised that the University of Northern Iowa is in the process of acquiring the business of University Book & Supply Company, Inc., which currently provides said book store services for Hawkeye students under the terms and provisions of a certain Lease Agreement dated May 1, 2017, a copy of which is attached hereto. It is Hawkeye's understanding that, were the University of Northern Iowa to operate and provide such services on its own campus, that operation would be exempt from the restrictions provided in IAC 681-94(23A). However, because the University of Northern Iowa will be providing these services on a location other than its own premises, this waiver apparently is necessary according to the regulations of the Iowa Board of Regents. It is Hawkeye's understanding that the University of Northern Iowa may not apply for such a waiver to the Iowa Board of Regents. Therefore, Hawkeye is making this application to obtain such a waiver for the University of Northern Iowa for the above purposes.

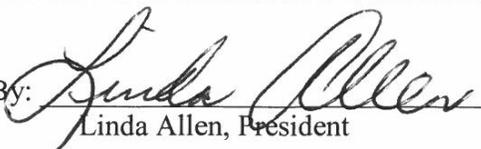
To Hawkeye's knowledge and understanding, the requested waiver will not harm other persons and will not adversely affect the public interest. There are exceptional circumstances as set forth above which justify an exception to the general rule to the extent that the University of Northern Iowa is unable to comply with the particular rule without undue hardship for the University and Hawkeye in the performance of said Lease Agreement. Compliance with the cited rule would be unnecessary and unreasonably costly to the relationship between the University and the College and upon the students of the College and would serve no public benefit.

The name, address and telephone number of the College are set forth below. Hawkeye's representative for purposes of this application is Steven A. Weidner, Swisher & Cohrt, P.L.C., 528 West 4th Street, P.O. Box 1200, Waterloo, Iowa 50704-1200; (319) 232-6555.

The College is not aware of any cases similar to this one wherein an application for waiver was requested from the Board of Regents. The undersigned and Mr. Weidner possess all relevant information regarding this matter and would be happy to provide the Board and its counsel with any additional information needed for a positive decision in this matter.

Very truly yours,

HAWKEYE COMMUNITY COLLEGE

By: 
Linda Allen, President