

Contact: Andrea Anania

ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE

Action Requested: Receive the annual report.

Executive Summary: State law prohibits the Regents institutions from competing with private enterprise except in certain situations. The Board's Policy Manual states that Regent 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.

Each institution has a committee to review potential situations that may compete with private enterprise. During the past year:

- ◆ SUI approved two proposals; a complaint was received on one of them (see page 3);
- ◆ ISU approved one proposal and addressed one complaint (see page 4);
- ◆ UNI is currently in the process of reviewing one proposal (see page 4); and
- ◆ ISD and IBSSS did not receive any proposals or complaints.

Background:

Iowa Code Chapter 23A prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation and authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the institutions under the control of the Board. Iowa Code §23A.2(2) and §23A.2(10)k list exemptions and are provided on the following page.

Iowa Administrative Code (IAC) §681-9.4 and Regents Policy Manual §7.08D specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions. IAC §681-9.4(8) details the formal appeal process for resolving complaints involving competition with private enterprise.

Each institution has established written policies regarding competition with private enterprise to ensure that:

- ◆ Activities provided by the institutions are consistent with Board policy;
- ◆ Processes are identified to handle inquiries about activities carried out by the institution; and
- ◆ There is a means for community businesses to interact with the institutions, including discussion of complaints.

Exemptions from Competition with Private Enterprise

**Iowa Code
§23A.2(2)**

The Board of Regents may, by rule, provide for exemption from the application of this chapter for any of the following:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals or Clinics.
- e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies.

**Iowa Code
§23A.2(10)k**

This chapter does not apply to any of the following on-campus activities of an institution or school under the control of the Board of Regents:

- (1) Residence halls.
- (2) Student transportation, exceptions noted in §23A.2(2)(c).
- (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
- (4) Sponsoring or providing facilities for cultural and athletic events.
- (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
- (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
- (7) Radio and television stations.
- (8) Services to patients and visitors at the University of Iowa Hospitals and Clinics, exceptions noted in §23A.2(2)(d).
- (9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.
- (10) Services to the public at the Iowa State University College of Veterinary Medicine.

UNIVERSITY OF IOWA

I TRAIN

A proposal was brought forward to implement “*I Train*”, the Medicine Prevention and Performance Enhancement Program (MPPEP) of UI Sports Medicine, in the new Institute for Orthopaedics, Sports Medicine and Rehabilitation. The program is focused on injury prevention and individual improvement in health and physical performance and is for the primary benefit of the campus community. SUI anticipates that 75% or more of clients served will be students and University employees and their families.

SUI reports that the program enhances the educational mission of the University by providing learning experiences for students in sports medicine, physical therapy, medicine, and nursing. Lastly, the program utilizes Cybex Humac Norm (CHN), a specialized testing method not currently offered in the area.

CHN is a computerized device for measuring the strength of extremities throughout a range of motion. MPPEP uses CHN to detect weakness in one extremity compared to another (left knee vs right knee, etc.) CHN can also be used to measure changes over the course of a rehabilitation or conditioning program to compare pre- and post-intervention strength.

Iowa Code §23A.2(2)(g) (see previous page) and Iowa Administrative Code §9.4(6)(g) (below) exempt fitness and recreation from the prohibition against competition with private enterprise:

- ♦ Iowa Administrative Code §681- 9.4(6)(g) – Exemptions. The state Board of Regents exempts the following activities from the prohibition against competition with private enterprise:
(g) Facilities, programs, and associated support services for fitness and recreation initiated and maintained primarily for the benefit of students, faculty, and staff.

After discussion and review of relevant statutes, policies, and administrative rules, the Committee recommended that the *I Train* proposal be approved by Vice President True on the condition that the program set a goal that 60% or more of all clients served be affiliated with the SUI campus community. Vice President True approved the proposal. The *I Train* program will submit an annual report to the Committee in the coming months.

RECREATIONAL SERVICES

Recreational Services brought forward a proposal to revise tennis court user fees for the Hawkeye Tennis & Recreation Complex (HTRC) to coincide with the opening of the Campus Recreation and Wellness Center (CRWC). The University has had indoor tennis courts on campus for public use since the 1970s.

A complaint was filed by North Dodge Athletic Club (NDAC) owner Steve Moss prior to the Committee having an opportunity to meet and discuss the proposal.

Iowa Code §23A.2(2)(g) and Iowa Administrative Code §681-9.4(6)(g) are also relevant to this proposal. Exemptions for fitness and recreation contain no reference to membership fees or costs for facility access. Based on the statutory and administrative guidance cited above and the information provided by Recreational Services, the Committee recommended that Vice President True approve revisions to the HTRC tennis courts user fees. Vice President True approved the proposal.

The Committee also recommended HTRC set a goal that use of the indoor tennis courts by individuals without a CRWC membership be no more than 20% of the total usage per year. Recreational Services will collect and forward this information to the Committee for review.

IOWA STATE UNIVERSITY

PROTEIN DIGESTIBILITY ANALYSIS

ISU's Food Science and Human Nutrition Department and its Nutrition and Wellness Research Center proposed to offer protein digestibility analyses on a fee-for-service basis to companies that develop proteins for use in human food.

The University reports that performing this service requires access to animal research facilities where proteins can be fed daily to groups of animals, body weights can be monitored, and digestibility analyses can be performed using a standardized testing protocol acceptable to the Food and Drug Administration. Further, while larger food industry firms likely have in-house facilities used strictly for their own purposes, some food industry companies do not have access to animal research facilities.

ISU contacted major laboratory animal supply houses and they were unable to identify private-sector companies providing unbiased assessments and digestibility analyses on a fee-for-service basis.

An important benefit to ISU for providing this service is the opportunity for students to perform the analyses and learn about the research process.

The Committee approved sales to external entities because this service is not readily available elsewhere and ISU has been unable to identify private sector competitors.

UNIVERSITY COMPOST FACILITY

ISU's self-supporting composting facility, which opened in 2008, has been composting several thousand tons of biomass each year as part of its sustainability initiatives. Nearly all of the compost has been used on campus for construction projects, landscaping, and research activities; compost has not been made available to the public.

A small amount of compost was sold to a private landscaping company in Ames during 2010. Shortly thereafter, ISU received a complaint of unfair competition from a private company that had previously supplied the Ames firm.

The University immediately discontinued sales from the composting facility.

UNIVERSITY OF NORTHERN IOWA

UNI reports that its review committee is in the process of reviewing a proposal from the Iowa Waste Reduction Center for the sale of two licensed paint products – VirtualPaint and LaserPaint.