

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 one proposal and addressed one complaint (see page 3);
- ◆ ISU reviewed and approved four proposals (see page 4-5);
- ◆ UNI approved two proposals (see page 5); 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**

DEPARTMENT OF GEOGRAPHY

State law requires that each school district review voting district boundaries following each federal census. For any requisite changes, school boards must adopt a resolution amending existing boundaries. To determine whether a change is required necessitates the use of geographic data modeling.

SUI's Department of Geography entered into an agreement with the Northwest Area Education Agencies (AEAs) on behalf of all Iowa AEAs to provide this service. The service had previously been provided by the Iowa Legislative Service Agency (LSA). However, LSA notified the Iowa Department of Education last year that they would no longer provide this service.

Under state law, school districts and AEAs have been established and designated as "school corporations" and, under Iowa Code §23A.1, are included within the definition of "political subdivision". Thus, Chapter 23A (Noncompetition by Government) is not applicable to these services as the University is not providing the computer modeling services "to the public". The services meet this exemption as they are provided to enhance the educational and research missions of the University by providing an educational opportunity for applied learning for graduate and undergraduate students.

A formal complaint was filed on behalf of Mapping Strategies, LLC. The Committee met to review and discuss the complaint and issued an advisory conclusion to the Senior Vice President and Treasurer. The Committee recommended that the Department of Geography be allowed to continue to provide these services to the AEAs.

Subsequently, Mapping Strategies, LLC, filed a request to have this matter docketed before the Board of Regents pursuant to IAC 681-9.4(8)(d). Mapping Strategies, LLC, was provided written notice by the Executive Director on February 3, 2012, that the University's disposition of the complaint was considered final agency action.

DIVISION OF PERFORMING ARTS

The committee reviewed a proposal from the Division of Performing Arts (DPA) for a Pre-College Piano Conservatory (PCPC) program. The program would create an environment for beginning students to learn piano while simultaneously providing teacher training for graduate students.

The PCPC program constitutes an integral part of the University's education and public service functions. It also enhances and supports the instructional function of DPA to help meet the needs of students, including first-hand experience and an opportunity to put theory into practice with what they are learning.

The Committee recommended that the program be approved.

## **IOWA STATE UNIVERSITY**

### Publications and Educational Materials

ISU's committee reviewed a request from its Center for Agricultural Law and Taxation to sell publications, bulletins, charts and legal/taxation briefs to the public. All materials were educational in nature and were created by university faculty and staff.

The committee approved the sale of these materials because: (1) distribution of these items to the public is consistent with the educational mission of the Center; and (2) there are no private sector competitors that produce these items.

### University Compost Facility

As part of its sustainability initiative, ISU's self-supporting University Compost Facility (UCF) has been composting several thousand tons of biomass each year. Nearly all has been used on campus for construction projects, landscaping, and research activities.

In its calendar year 2010 report, ISU reported that it had received a complaint from a local business who was concerned that ISU was selling compost to a private landscaping firm. ISU responded and discontinued sales to external entities.

In 2011, external sales were revisited and discussions were held with the company that originally expressed concern. The sales were incidental to the total volume produced by UCF and were not intended to compete with the local business. They were intended to: (1) serve as relief when compost volumes were large; and (2) serve customers who specifically requested small amounts of the compost that ISU produced. Once the local business understood, it no longer objected to these sales.

Subsequently, the committee approved sales to external entities. In total, these sales represent approximately 1.1% of the compost that UCF generates, with the remainder being used for ISU campus needs.

### Biotech Genome Informatics Facility

ISU's Biotech Genome Informatics Facility (BGIF) primarily provides and sells services to ISU departments and researchers conducting university research.

In 2011, BGIF requested approval to provide and sell a range of advanced DNA analysis and testing services to external customers, including investigators in academia, industry, and government.

Two other entities in the United States provide similar types of services. One is a private, nonprofit facility located in Texas and the other is a private business owned by a group of ISU faculty and researchers. Each of these entities has areas in which it specializes. No one company provides all the services offered by BGIF.

Through a competitive bid process, the university also contracted to obtain DNA analysis services from the private sector, when appropriate.

The committee approved external sales by BGIF because: (1) private entities cannot provide all of the services offered by BGIF; and (2) these services are not reasonably available in the community or Iowa.

Center for Sustainable Environmental Technologies

In 2011, ISU reviewed a request from its Center for Sustainable Environmental Technologies (CSET) to provide and sell certain testing services, both internally to ISU departments and externally to other industry researchers.

The types of services offered are primarily tests that do not have American Society for Testing and Materials standards or published alternative methodologies. For example, there are no commercial laboratories that routinely analyze bio-oil in the way that ISU performs these tests, as CSET has developed a suite of specialized tests for this purpose.

The committee approved the sale of testing services by CSET because: (1) these tests are not available in the private sector; and (2) this testing was deemed an important contribution to furthering biorenewables research.

**UNIVERSITY OF NORTHERN IOWA**

IOWA WASTE REDUCTION CENTER

- ▶ In June 2011, UNI's committee reviewed a request from the Iowa Waste Reduction Center to sell two licensed paint products – VirtualPaint and LaserPaint. Both items are primarily sold to United States government agencies.

The committee approved the sale on the basis that the products are not readily available elsewhere. If competitors are identified or the market grows, both will be re-evaluated to ensure that the sale of these items remains in compliance with Iowa law.

- ▶ In August, 2011, UNI's committee reviewed a request from the Iowa Waste Reduction Center to create on-line and/or classroom-based courses to provide environmental regulatory compliance training and training certification.

The committee approved the request because the training falls under the exemption provided in Iowa Administrative Code §681-9.4(1)(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.”