

**MEMORANDUM**

**To:** Board of Regents  
**From:** Board Office  
**Subject:** Annual Report on Competition with Private Enterprise  
**Date:** April 10, 2000

**Recommended Action:**

Receive the annual reports from the Regent institutions on competition with private enterprise.

**Executive Summary:**

Iowa Code Chapter 23A prohibits public entities from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation. Iowa Code §23A.2(2) provides educational exemptions and allows school district governing boards and the Board of Regents to adopt the exemptions by rule. Consistent with the statute, the Board has adopted a policy (Procedural Guide §7.30) providing 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 established written policies regarding competition with private enterprise. These policies ensure that: (1) Activities provided by the institutions are consistent with Board policy; (2) processes are identified to handle inquiries about activities carried out by the institution; and (3) there is a means for community businesses to interact with the institutions including discussion of complaints. Each Regent institution annually reports to the Board procedures, activities, and complaints related to competition with private enterprise. This reporting helps to improve understanding between the universities and their respective communities and assures effective stewardship of the institutions' resources as outlined in the Board's Strategic Plan (KRA 4.0.)

The Regent institutions received no formal complaints, as defined on page 3, during the past calendar year regarding unfair competition. The University of Iowa has received one complaint recently regarding its printing services.

**Background:**

Iowa Code Chapter 23A prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation. The same chapter authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the Regent institutions under the control of the Board. The exemptions detailed in Iowa Code §23A.2(2) and §23A.2(10)k are listed in Appendix A.

Iowa Administrative Code §681-9.4 and the Board of Regents Procedural Guide §7.30 specify the Board's rules and requirements regarding competition with private enterprise by Regent institutions. To fulfill their missions effectively, institutions under the control of the Board 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.

Each institution has established written policies which identify the process for review of proposed activities involving the sale of goods, provision of services, or usage of facilities to ensure that such activities are consistent with Board policy. The Regent institutions have established written procedures for receiving, reviewing, and responding to inquiries about activities carried out by the institution.

Each Regent institution provides a means for business interests in the institution's community to consult with and advise the institution on policies and procedures regarding the sale of goods or services that might compete with private enterprise. At the request of the institution, business interests make recommendations on particular activities.

The chief business officer at each institution may approve an activity that competes with private business only after a review demonstrates that one or more of the following conditions are met:

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

Iowa Administrative Code §681-9.4(8) and Board of Regents Procedural Guide §7.30H detail the appeal process for resolving complaints involving competition with private enterprise:

- If a private enterprise seeks to appeal an action or activity of a Regent institution, it shall attempt to resolve the issue at the institutional level. The form of appeal shall be a letter to the chief business officer.
- If dissatisfied with the institution's response, the private enterprise may notify the Executive Director in writing and request assistance.
- If the issue remains unresolved, the Executive Director may docket the matter for review by the Board. Board action constitutes final agency action.

The universities may receive comments or concerns that do not follow this process. These comments or concerns are regarded as "informal" complaints and are included in this annual report to the Board.

### ***University of Iowa***

The University of Iowa adopted its policy in 1989 to conform with state law and the Board's Procedural Guide. At that time, university administration conducted a complete review of activities to identify a broad range of activities intended to meet the needs of the university. In 1995, the policy was reviewed and revised to increase representation from both the University and the business community. This list of activities is reviewed annually. During the past year, there were no activities initiated that would fall under the prohibitions of this policy.

A variety of mechanisms are utilized by the university to receive input from the business community on its concerns.

- The University Committee on Community Concerns, consisting of University representatives from Finance and University Services, University Relations, and the Business Office, as well as members of the community meets as needed. During the past year, there were no complaints filed so the committee did not meet. Issues that have been discussed in prior years by the committee have included parking, safety issues, and impact of Coralville Mall on the downtown area, traffic, and environmental issues. The committee has also solicited comments from the Board of Directors of the Iowa City Area Chamber of Commerce on the matters discussed by the committee.
- The Vice President for University Relations serves as an *ex officio* member of the Chamber of Commerce Board of Directors and receives feedback from the business community during the Chamber meetings, events, and activities.

- The University President and Vice President of University Relations continued meeting with Chamber of Commerce leadership to provide an additional forum for discussion.
- The Vice President for Finance and University Services and the Vice President for Research serve on the Board of the Iowa City Area Development Group to provide another opportunity for dialogue with the community's business leaders.
- The Vice President for Finance and University Services and the University's Committee on Competition with Private Enterprise received no complaints regarding competition with private businesses in calendar year 1999.

The University of Iowa recently received a complaint concerning the printing of multiple copies of plans and specifications for construction projects by University Printing Services. Previously, this printing function had been outsourced.

### ***Iowa State University***

Iowa State University requires that all activities involving the sale of goods, services, or facility usage to the general public must be in accordance with an authorization and statement of purpose approved by a university review committee. The review committee is composed of three representatives, one from the President's office, one from the Vice-President for Business and Finance office, and one from the Business Affairs office.

This internal review committee and other university staff meet periodically with community business groups including the Ames Chamber of Commerce, Ames Convention and Visitors Bureau, and Ames Economic Development Commission regarding business relationships with the local community. University staff continues to be active in the Quality Ames Forums, attended by many local business owners in the community, to focus on expanding minority and targeted small businesses to provide goods and services to the university.

ISU is active in the Greater Des Moines Chamber of Commerce regarding business relationships. University representatives are also members of the boards of various community business groups.

The committee, during this past year, reviewed the following activities:

#### **Chemical Instrumentation Facility**

A request was received from an ISU professor to use the Chemical Instrumentation Facility in a consulting project for an external entity. The request was approved since there was no facility of this type located within a 70-mile radius of Ames.

### Midwest Plan Service

The committee was asked to review the sales of comprehensive handbooks by Midwest Plan Service (MWPS). MWPS is a cooperative regional activity of the twelve land-grant universities of the North Central United States and is headquartered at ISU. The mission of MWPS is to facilitate programs of the participating universities through preparation and distribution of educational materials based on coordinated recommendations of the research and extension units of the institutions. MWPS has an agreement with the participating universities to sell its publications at the approximate cost of final production plus postage and handling. The committee approved the continuation of current practices.

### Test & Evaluation Services

Test & Evaluation Services group received a request from a consulting firm in Des Moines to scan a survey. ISU's internal review committee approved this request after reviewing the scope of the project and the rates charged. The committee also confirmed that there were no local service bureaus providing this service.

### Internet vs. Bookstores

Private out-of-state on-line bookstores, which do not pay sales tax, continue to market high volume and profit textbooks on a selective basis. The university-operated bookstore is required to stock all needed educational materials, making it increasingly difficult to serve students effectively.

Iowa Code §422.45(3) does not require university-operated bookstores to collect sales tax if net proceeds are expended for educational purposes. The state's private colleges, universities, and community colleges with university-operated bookstores do not collect sales tax on educational materials sold on campus. Students continue to question why they are charged sales tax when other universities do not require their students to pay the tax.

Because of relationships with private sector bookstores and the concern about unfair competition, ISU has historically charged sales tax on bookstore sales, including textbooks. ISU has encouraged the privately owned bookstores to seek legislation that would enable them to not charge the 6% sales tax on textbooks. The University is continuing to review this area of concern.

### ***University of Northern Iowa***

UNI has established a review committee composed of a Presidential designee and two representatives selected by the Vice President for Administration and Finance that reviews existing or proposed campus activities to determine compliance with state statutes and administrative rules. The committee recommends to the Vice President for Administration and Finance approval, changes, abandonment, or consolidation of existing or proposed activities.

The committee periodically meets with representatives from the local community and/or private sector to discuss policy or specific problems related to university activities.

The university maintains regular communication with the Cedar Falls Chamber of Commerce and has requested to be informed of any concerns or problems involving the university.

The University review committee received no complaints from the private sector during the past year.

### ***Iowa School for the Deaf***

ISD has established a review committee to review activities for consistency with Board policy. The committee is designated to receive, review, and respond to inquiries about ISD activities.

ISD rents unoccupied or underutilized property on its campus to entities (such as local businesses and community groups) whose activities benefit the campus community.

ISD engages in leasing activities with faculty, staff, deaf-related entities, education and cooperative extension services, as well as a day-care facility. Consultation is undertaken with the local private business sector to ensure lease rates are comparable to the local market.

The Director of Facilities, Director of Business Operations, and Superintendent receive, review, and respond to inquiries involving the School's activities. There have not been any complaints regarding competition with private enterprise during the past twelve months.

***Iowa Braille and Sight Saving School***

The Director of Administrative Services and/or Superintendent analyzes and reviews all activities involving the sale of goods, services, or facility usage to ensure consistency with Board policies.

IBSSS rents unoccupied or underutilized property on its campus to entities (such as local businesses and community groups) whose activities benefit the campus community. The Director of Administrative Services and/or Superintendent receives, reviews, and responds to inquiries involving the School's activities.

IBSSS did not receive any private business sector complaints during the past twelve months regarding competition with private enterprise.

\_\_\_\_\_ Approved: \_\_\_\_\_

Deb A. Hendrickson

Frank J. Stork

**APPENDIX A**  
**Board of Regents Exemptions**  
**From Noncompetition 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 the following activities:

- Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- 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.
- Use of vehicles owned by the institution or school for charter trips offered to the public, full or part-time, or temporary students.
- Durable medical equipment or devices sold or leased for use off premises of an institution, school, or university of Iowa hospitals or clinics.
- Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- Telecommunications other than radio or television stations.
- Sponsoring or providing facilities for fitness and recreation.
- Food service and sales.
- Sale of books, records, tapes, software, educational equipment, and supplies.

**Iowa Code §23.A2(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:

- Residence halls.
- Student transportation, except as specifically listed in subsection 2, paragraph "c".
- Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
- Sponsoring or providing facilities for cultural and athletic events.
- 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.
- Souvenirs and programs relating to events sponsored by or at the institution or school.
- Radio and television stations.
- Services to patients and visitors at the University of Iowa Hospitals and Clinics, except as specifically listed in subsection 2, paragraph "d".
- Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.
- Services to the public at the Iowa State University College of Veterinary Medicine.