

**MEMORANDUM**

**To:** Board of Regents  
**From:** Board Office  
**Subject:** Annual Report on Competition with Private Enterprise  
**Date:** April 9, 2001

**Recommended Actions:**

1. Receive the annual reports from the Regent institutions on competition with private enterprise.
2. Plan to review the issue regarding sales tax on textbooks at a Board meeting later this year.

**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 (Regent Procedural Guide §7.30) 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.)

There was one complaint received during the past calendar year at the Regent institutions. The University of Iowa received a complaint regarding a change in its process for printing blueprints. The University responded to the complaint by having both a third party review and a committee review of the matter. These reviews concluded that (1) the University had a legitimate business purpose and reasonable approach in changing its blueprinting process, and (2) the change did not inappropriately compete with private business. In February 2001, the Board Office responded to a legislator who requested further review and information on this complaint. No further communications have been received.

There continues to be an ongoing issue with respect to the Regent University bookstores charging sales tax on textbooks. Iowa Code §422.45(3) does not require university-operated bookstores to collect sales tax if net proceeds are expended for educational purposes. Historically, the Board has supported the charging of sales tax by the University bookstores. Other colleges, universities, and community colleges within the state of Iowa that operate bookstores do not collect sales tax on educational materials. However, privately owned bookstores in Iowa must collect sales tax on textbooks.

Iowa State University students have established a web site that allows students to download an Iowa Department of Revenue and Finance sales tax refund form. This web site was provided as a mechanism for students to seek sales tax reimbursement. More than 2,000 forms have been downloaded.

The Department of Revenue and Finance has expressed concerns with the potential number of refunds expected to be requested. Since sales tax on textbooks represents an increased cost to students, the Board Office recommends that the Board review the sales tax issue.

The Board Office, with the assistance of the universities, will collect information relative to this sales tax issue. Students and privately owned bookstores that have previously expressed concern regarding this issue will be notified of this future discussion.

**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 Regent 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.

The Regent institutions have established written procedures for receiving, reviewing, and responding to inquiries about activities carried out by the institution that could be considered competition with private enterprise.

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 institutions, 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 Regent 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***

In February 2000, the University received a complaint from a local Iowa City business, regarding changes in the University process for printing multiple copies of plans and specifications for construction projects by University Printing Services. Previously, the University used private businesses for such services.

The University decided, effective July 1, 1999, to engage its University Printing Services as the exclusive provider for the distribution, and archiving of project documents (blueprints) for University Design and Construction Services.

The justification for the change includes improvements and efficiencies relating to cost, quality, and environmental concerns including:

1. Greater efficiencies related to electronic transfer of plan documents from outside architects;
2. Electronic transmission and corresponding capacity for revision of plans among institutional clients within the University;
3. Controlled printing of actual sets of plans needed rather than costly overprinting due to uncertainties in estimating demand;
4. Elimination of costs such as mark-ups paid to firms overseeing the preparation and printing of plans and specifications and costs for shipping plans and specifications;
5. Efficient distribution of plans to bidders and contractors; and
6. Development of an electronic comprehensive archiving program for past and future plan documents.

When the University received the complaint, it conducted a review of the matter, which included:

1. A third party review;
2. A review and report by the University's Competition with Private Enterprise Committee, which involved both oral and written input; and
3. A review by the Vice President for Finance and University Services.

These reviews concluded that the University had a legitimate business purpose and a reasonable approach for changing its design and construction planning and printing process. Since this approach was designed to provide services to the University and not the public, the University believes it meets the spirit and intent of the Iowa law. The University has communicated this information to the owner of the local printing company.

In February 2001, the Board Office received a legislative request for information regarding this matter. The information was provided to the legislator. No further communications have been received.

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

While the University did not receive any complaints during the past year, members of the committee reviewed the following activities:

#### **Internet Service Provider**

A request was received from an ISU Research Park tenant asking the University to serve as the personal Internet service provider for its employees. After discussion, it was determined that this would not be appropriate since the University would be in competition with local Internet service providers.

#### **Iowa State Center**

The existing contract, which provides outsourced concessions and facility management services for the Iowa State Center, expires June 30, 2001. The committee discussed the option of using University employees for these services. This option did not provide sufficient savings to offset the potential impact of losing industry representation with promoters and their ability to bring events to the Iowa State Center.

#### **Sales Tax on Text Books**

Historically, the Board has supported the universities' charging of sales tax on textbooks at the two university-operated bookstores located at the University of Iowa and Iowa State University. Iowa Code §422.45(3) does not require university-operated bookstores to collect sales tax if net proceeds are expended for educational purposes. During the past year, student government leaders, aware of this Code section, contacted the University Book Store requesting the collection of sales tax on textbooks be discontinued. Other colleges, universities, and community colleges with university-operated bookstores in the state of Iowa do not collect sales tax on educational materials. Privately operated bookstores are required to charge sales tax on textbooks.

ISU students have pursued this issue as a way to reduce costs. As a result, the students have created a web site where an Iowa Department of Revenue and Finance sales tax refund form can be downloaded. This Government of the Student Body web site was provided as a mechanism for students to seek reimbursement for sales tax paid on textbooks. More than 2,000 forms have been downloaded.

The Department of Revenue and Finance has expressed concerns with the number of refunds that may have to be processed with limited staff. Since sales tax on textbooks represents an increased cost to students, the Board Office is recommending that this sales tax issue be further reviewed by the Board.

Internet vs. Bookstores

In last year's report, ISU indicated that private out-of-state on-line Internet bookstores, which do not pay sales tax, were marketing high volume and profitable textbooks on a selective basis. There have been significant changes in this marketplace. The University reports that one of the larger online booksellers has discontinued operations and a second has filed for Chapter 11 bankruptcy. A third bookseller is no longer requesting the list of textbooks from the University.

**University of Northern Iowa**

The University maintains regular communication with the Cedar Falls Chamber of Commerce and has asked to be informed of any concerns or problems that involve the University. The University has received no complaints from the private sector during the past year and the review committee did not convene for any discussions of potential issues.

**Iowa School for the Deaf**

ISD operations currently do not include activities that compete or have the potential to compete with private enterprise. The School does rent 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 review committee receives, reviews, and responds to inquiries involving the School's activities. There have not been any complaints regarding competition with private enterprise during the past year.

**Iowa Braille and Sight Saving School**

IBSSS operations generally do not include activities that compete or have the potential to compete with private enterprise. The School does rent unoccupied or underutilized property on its campus to entities (such as local businesses and community groups) whose activities benefit the campus community.

The review committee receives, reviews, and responds to inquiries involving the School's activities. IBSSS did not receive any complaints regarding competition with private enterprise during the past year.

  
Deb A. Hendrickson

Approved:   
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.