

MEMORANDUM

To: Board of Regents
From: Board Office
Subject: Annual Report on Competition with Private Enterprise
Date: April 8, 2002

Recommended Actions:

Receive the annual report on the Regent institutions competition with private enterprise.

Executive Summary:

State law precludes the Regent institutions from competing with private enterprise, except in certain situations. To be in compliance with the law, the Board has adopted a policy 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.

Regent Institution Policies	Each institution has established written policies regarding competition with private enterprise. These policies ensure that: <ol style="list-style-type: none"> 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.
Report Purpose	The purpose of this report is to inform the Board of institutional activities, including any formal complaints related to competition with private enterprise, during the past calendar year.
No Complaints Received	There were no complaints received during the past calendar year at the Regent institutions.

Strategic Plan:

The procedures established at each institution help 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.)

Background:

Iowa Code 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 / Board Policy Iowa Administrative Code §681-9.4 and the Regent Policy Manual §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.

Regent Institution Policies 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.

The Regent institutions have committees that meet as necessary to review potential situations that may compete with private enterprise. 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 that 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 that 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 Policy Manual §7.30H detail the formal 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.

Analysis:

The following information is presented by institution and includes changes in institutional policies, activities that occurred during the year as a result of the policy, and notification of any complaints received by an institution.

University of Iowa

The University reviewed and revised its policy as of February 2002. The new policy has three components to assist in compliance with the Iowa Code and Regents Policy Manual. It establishes:

1. A mechanism for reviewing proposed activities involving the sale of goods, provision of services, or usage of facilities to ensure that the University of Iowa's activities are consistent with Board of Regents policies;
2. A procedure for receiving, reviewing, and responding to inquiries about activities carried out by the University; and
3. A mechanism for periodic consultation with business interests in the Iowa City community.

During the past 12 months, there have been no activities initiated that would fall under the provisions of this policy.

The University has received no complaints.

**Iowa State
University**

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

**Insect Zoo and
Butterfly House**

A request was received from the Department of Entomology seeking approval to sell surplus insect stock raised in the department's Insect Zoo and Butterfly House. The surplus stock represents species normally not found in local pet stores. Members of the committee reviewed the request and determined this activity was incidental to its educational and outreach functions and should be approved to help maintain the University program. The majority of the sales are anticipated to be to other public and non-profit organizations such as schools and science centers.

**Computer Referral
Contract**

Two manufacturers, that supply computers to the University through campus reseller agreements, have expressed interest in establishing referral programs to provide discounts to K-12 schools in Iowa, including their staff and families. Individuals would be able to utilize the University's referral program and receive discount pricing similar to prices competitively awarded by a multi-state contracting group.

Since it would be offered to K-12 staff and their families, it has the potential to compete with local computer retailers. The University concluded that this would need to be reviewed by the committee.

Neither company has submitted a final proposal in writing for committee review at this time.

**Financial Institution
in the Memorial
Union**

The Memorial Union is considering preparing an RFP to select a bank or other financial institution to be located in the Memorial Union, after receiving student requests for additional on-campus banking services.

While the Memorial Union is an independent separately incorporated entity, not legally subject to Iowa Code Chapter 23A, it is perceived, by many, to be part of the university. In addition, the university helps support the Memorial Union by minimizing its utilities costs. The Memorial Union is also supported, in part, by student fees. For these reasons, the University believes the Memorial Union should comply with the intent of the law.

As a result, the University expressed concerns with the appearance of competition with private enterprise. The Board policy states that one condition to be met is that the activity is needed to provide an integral good or service which is not reasonably available in the community. There are several financial institutions in the area and ATM machines on campus.

The Memorial Union is currently soliciting input from local financial institutions to determine whether there is concern from a competition perspective. The Memorial Union is also conducting a study of how best to use space in the building.

**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.

**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. ISD consults 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: 
Gregory S. Nichols

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.