

Contact: Andrea Anania

**ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE**

**Action Requested:** Receive the annual report.

**Executive Summary:** State laws prohibit government entities from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation. The Iowa Administrative Code and Board 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, Iowa State University approved three proposals and the University of Northern Iowa approved one proposal (See pages 3-4.)

The University of Iowa, Iowa School for the Deaf, and the Iowa Braille and Sight Saving School did not receive any formal complaints, nor did they receive any proposals for consideration.

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**Background:**

Iowa Code Chapter 23A (Noncompetition by Government) 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) lists exemptions and §23A.2(10)k lists items for which the chapter does not apply. Both lists may be found on page 2.

Iowa Administrative Code (IAC) §681-9.4 and Board Policy Manual §2.2(8)(D) specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions.

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 state Board of Regents or a school corporation 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 the following on-campus activities of an institution or school under the control of the state Board of Regents or a school corporation:

- (1) Residence halls.
  - (2) Student transportation, except as specifically listed 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, except as specifically listed 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.
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**Analysis:**

**IOWA STATE UNIVERSITY**

**DESIGN ON MAIN**

ISU's College of Design maintains a community art gallery at 203 Main Street in Ames. This gallery serves College of Design students, faculty, and staff as well as local and national artists.

The College made a request to use this space for small (less than 75 people), short-term (no more than one day), non-university-related functions at times when the space is not in use for traditional gallery functions or if the artist has agreed to allow a gathering with artwork present. Event space would be available to "Friends of the College of Design" (i.e., faculty, staff, alumni, and donors.)

The Competition with the Private Sector Review Committee (Committee) reviewed this opportunity and concluded the activities would be carried out for the primary benefit of the campus community and would be incidental to the education, research, service, or extension missions of the University. Additionally, events hosted in the venue could be important to maintaining the quality of the College's educational activities.

The Committee approved the request subject to conditions.

**PSR AND GP INVENTORY ADMINISTRATION**

ISU's Research Institute for Studies in Education (RISE) in the School of Education was formed in 1974 to conduct comprehensive, integrated research and evaluation studies that enhance PK-20 education locally, nationally, and globally.

ISU has been granted exclusive rights to and houses the Personal and Social Responsibility Inventory and Global Perspective Inventory. RISE wishes to provide other entities access to these assessment tools by administering the assessments on the other entities' behalf.

The Committee reviewed this request and concluded the activities are an integral part of the institution's educational, research, and public service activities and functions. Additionally, while some external businesses provide services in a related area, it was determined that these assessments measure aspects different from other research and assessment tools.

The Committee approved the request.

**SMALL ANGLE X-RAY SCATTERING (SAXS) INSTRUMENT SERVICES**

ISU's Department of Chemical and Biological Engineering (CBE) acquired a Small Angle X-Ray Scattering (SAXS) instrument that determines the characterization (particle size distributions, domain spaces, crystallinity, order-disorder transitions, etc.) of different materials, ranging from liquid suspensions to polymers and even some metals.

CBE wished to sell services to users outside the department in accordance with the National Science Foundation's grant requirement to charge for SAXS's use in order to pay for the yearly maintenance of the equipment. Customers send the samples to CBE and CBE staff run the experiments; external customers are not allowed to run experiments themselves.

The Committee reviewed the request and determined the only other SAXS instruments are owned by national laboratories. Additionally, the services were determined to be an integral part of ISU's educational, research, public service, and campus support functions, and these SAXS services are not reasonably available in the community.

The Committee approved the request.

**UNIVERSITY OF NORTHERN IOWA**

CENTER FOR ENERGY AND ENVIRONMENTAL EDUCATION

The UNI Center for Energy and Environmental Education is providing educational programs to businesses and residences in collaboration with a solar installation business and storm water management.

Educational programs fall under the exemption stated in Iowa Administrative Code §681-9.4(6)(a) "Goods and services that are directly and reasonably related to the mission of the institution including activities such as (1) conferences, institutes, outreach programs, specialized centers and other efforts and programs which provide continuing education."

The Committee approved the request.