

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.

The institutions reported that no complaints related to competition were received from the private sector during the past year.

Each institution has a committee that meets periodically to review potential situations that may compete with private enterprise. During the past year:

- ◆ University of Iowa's committee reviewed and approved three proposals (see page 3);
- ◆ Iowa State University's committee reviewed and approved six proposals (see pages 4 – 5); and
- ◆ University of Northern Iowa, Iowa School for the Deaf, and Iowa Braille and Sight Saving School committees did not receive any proposals to review.

**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 Regent 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**

**BOWLING LANES**

Students have requested bowling lanes on campus. A proposal was brought forward to install bowling lanes for the primary benefit of the campus community, mainly students. The two potential locations include: (1) the Field House in space currently occupied by the swimming pool; and (2) the Iowa Memorial Union (IMU) Ground Floor.

The Iowa Code and the Iowa Administrative Code exempt fitness and recreation from the prohibition against competition with private enterprise:

- ♦ Iowa Code 23A.2(2)(g) – 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: (g) sponsoring or providing facilities for fitness and recreation.
- ♦ Iowa Administrative Code 9.4(6) – Exemptions. The state board of regents exempts the following activities from the prohibition against competition with private enterprise: (g) Facilities, programs, and associated support services for fitness and recreation initiated and maintained primarily for the benefit of students, faculty, and staff.

After discussion and review of relevant statutes, policies, and administrative rules, the Committee recommended that the proposal be approved by Vice President True.

**CAMPUS RECREATION WELLNESS CENTER (CRWC)**

The CRWC, which is currently under construction, is intended for the benefit of the campus community – mainly students and employees. A proposal brought forward addressed the CRWC and its membership fee structure. SUI anticipates that the majority of memberships will be students. Other campus recreation and exercise facilities currently exist that are available for students, employees, and the community.

Iowa Code 23A.2(2)(g) and Iowa Administrative Code 9.4(6) is also relevant to this proposal. Exemptions for fitness and recreation contain no reference to membership fees or costs for facility access.

After discussion and review of relevant statutes, policies, and administrative rules, the Committee recommended that: (1) the proposed CRWC membership fee structure be approved by Vice President True; and (2) Recreational Services should set a goal to issue less than 1,000 community memberships in any fiscal year. If community membership exceeds that threshold during the first 12 months, the membership structure should be revisited.

**IOWA FLYERS**

In September of 2009, the Committee received a request with respect to the Iowa Flyers, a competitive swim club formed by the Division of Recreational Services. In November of 2009, SUI received a written complaint from the Iowa City Eels Swim Club (ICESC).

Following consultation with the Iowa Attorney General's Office, SUI's General Counsel's Office advised the Committee that, because ICESC, a non-profit corporation, did not meet the statutory definition of a private enterprise, Chapter 23A (Noncompetition by Government) did not apply; the complaint was outside the purview of the Committee.

**UNIVERSITY OF IOWA (*continued*)**

**FOLLOW-UP FROM THE 2007 APPROVAL OF THE DEPARTMENT OF OPHTHALMOLOGY AND VISUAL SCIENCES (DOVS) ESTABLISHMENT OF AN OPTICAL SHOP AT UIHC**

The optical shop was subject to services being limited to UI Healthcare patients and University of Iowa employees and their dependents, and that the Department set a goal that 5% or less of all filled prescriptions are those written by ophthalmologists, optometrists, or opticians not affiliated with the University.

DOVS was to provide this information to the Committee following at least 12 months of service by the optical shop. Information provided in June of 2009 documented that: (1) 4.95% of all prescriptions processed by the optical shop were written by outside providers; and (2) 1-2% of services provided at the optical shop were to individuals who were not UI Healthcare patients or University employees and their dependents.

**IOWA STATE UNIVERSITY**

**DOUBLE HAPLOID FACILITY (DHF)**

ISU's DHF: (1) provides undergraduate and graduate students with training and education on corn plant breeding technology; and (2) helps researchers more efficiently develop experimental populations for genetic imaging studies.

A licensing agreement with a German university permits ISU's use of a more efficient and predictable double haploid inducing process, which has enhanced demand for DHF services from several universities and private companies.

The Committee approved sales to external entities because services using this technology are not currently available anywhere else in the United States.

**DIVERSITY TRAINING**

ISU's Equal Opportunity and Diversity (EOD) office has offered cultural diversity and sensitivity training for several years.

The United States Department of Agriculture (USDA) contacted EOD and asked if it would be willing to provide training in Ames for approximately 300 USDA employees.

Prior to considering this request, ISU asked whether the USDA had previously acquired services from the private sector in Iowa. The USDA said no, but that there had been contacts made in other states.

ISU reports that the University has had similar requests from the City of Ames Community Schools, the Ames Police Department, and a few non-profit entities.

The Committee concluded that ISU's cultural diversity and sensitivity training is already tailored to governmental entities and would not take existing business from the private sector, and approved the sale of training to governmental and non-profit entities for a fee.

**GENOMICS TECHNOLOGIES FACILITY**

ISU's Plant Sciences Institute has a Genomics Technologies Facility (GTF) that provides expertise and equipment to conduct biological research at the genomic level, including high throughput gene expression analyses, Sequenom genotyping arrays, and laser capture microdissection. These services are used primarily by ISU's research community.

A private sector entity approached GTF to supply Sequenom genotyping services for their organization.

The Committee approved sales to external entities because there are no other known private companies or universities that offer Sequenom testing in the state of Iowa. The potential added volume would have lowered the cost of each test for University researchers.

**AGRICULTURAL WASTE MANAGEMENT LABORATORY (AWML)**

AWML promotes the development and implementation of environmentally sustainable, economically feasible, and socially acceptable manure management systems. Biochemical Methane Potential assays (BMP's) provide a significant benefit to researchers in understanding substrate degradability in anaerobic digestive systems.

ISU reports that providing these services to external entities increases students' educational activities and expands the University's knowledge base.

The Committee approved sales to external entities because there are no other known private sector suppliers.

**CAFETERIA SERVICES**

ISU's Campus Dining Services Department (ISU Dining) received a request to bid on cafeteria services for the USDA in Ames. Private sector firms were capable of providing these services.

The Committee concluded that the request could be considered if the USDA was not able to find an acceptable private sector supplier. The USDA found and contracted with a supplier; no further action occurred.

**COPY SERVICES**

ISU's Printing and Copy Services Department received a request to provide copy services from the Story County Sheriff's Department. They had been using a private company before it went out of business.

The Committee approved the request since the volume was small and the service would be provided for another local governmental entity as a convenience.