

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.

Each institution has a committee to review potential situations that may compete with private enterprise.

During the past year, no complaints were received by any of the Regent institutions. The University of Iowa reviewed two proposals, Iowa State reviewed four proposals, and the University of Northern Iowa reviewed two proposals (See pages 3 - 5.)

The Iowa School for the Deaf and the Iowa Braille and Sight Saving School did not receive any proposals or inquiries.

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) 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 Regent 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:

UNIVERSITY OF IOWA

SPORT AND RECREATION MANAGEMENT PROGRAM

The Sport and Recreation Management Program (Program) submitted a proposal for use of the former AIB Recreation and Event Facility. The proposal recommended that the Facility be staffed by both students and non-students and be made available for student and community use and for rental at fair market value by the general public.

The Facility would provide an opportunity, under faculty supervision, for students located in Iowa City and at the Des Moines campus to experience day-to-day practical experience for facility management courses for course credit.

IAC §9.4(6) exempts certain activities from the prohibition against competition with private enterprise, including “facilities, programs, and associated support services for fitness and recreation initiated and maintained primarily for the benefit of students, faculty and staff.”

After review of the proposal, the Committee on Competition with Private Enterprise and Community Concerns (Committee) recommended to the Senior Vice President (SVP) that the Program: (1) move forward with planning/implementation of the educational opportunities for students; and (2) gather additional information on comparable local facility membership fees and use of the Facility by students and provide that information to the Committee at a later date. The SVP concurred with the Committee’s recommendations.

COLLEGE OF PUBLIC HEALTH

The College of Public Health submitted a proposal to establish a Health Services Research and Policy Consulting Center (“Center”) to provide services to SUI researchers and departments as well as to outside local and national stakeholders in the healthcare industry such as healthcare provider groups, insurance providers, employers, public health departments, pharmaceutical companies, and others.

Services, to be provided electronically, would include data collection, data analysis, conceptual analysis, policy evaluation, economic evaluation, literature review, and other related tasks.

After review of the proposal, the Committee recommended to the SVP approval of the proposal, concluding the proposed Center would constitute an integral part of the University’s educational, research, and public service functions (IAC §9.4(1)), including oversight of graduate students and the provision of analytical and research activity experiences. The Center would also contribute to and expand the departmental capacity to fulfill its missions and activities toward training, building/support of faculty, and service to the broader healthcare community. The SVP concurred with the Committee’s recommendation.

IOWA STATE UNIVERSITY

BIOTECHNOLOGY FACILITIES

An inquiry was made to the Competition with the Private Sector Review Committee (Committee) whether the Office of Biotechnology's DNA Facility could advertise its services to the general public via social media.

An historical review of services offered by all the Biotechnology facilities indicated documented approval of three of the facilities: (1) Chemical Instrumentation Facility; (2) Genome Informatics Facility; and (3) Macromolecular X-ray Crystallography Facility.

Biotech facilities not previously documented included: (1) Flow Cytometry Facility; (2) High Resolution Microscopy Facility; (3) Hybridoma Facility; (4) Materials Analysis and Research Laboratory; (5) Plant Transformation Facility; (6) Protein Facility; and (7) WM Keck Metabolomics Research Laboratory. These facilities support core services for biotechnology research by faculty, students, government, and industry scientists. No private enterprises provide these services.

The Committee: (1) concluded services of the latter-named facilities do not compete with the private sector and may continue to be provided; and (2) approved advertising on social media.

The Office of Biotechnology's DNA Facility performs Sanger sequencing, next-gen sequencing, and related services for ISU researchers and a very few external researchers. The Committee approved the sale of DNA sequencing services in 1998. The request for the DNA Facility to advertise their services on social media was now reviewed as many changes have occurred in the industry.

The Committee concluded that since two other DNA sequencing facilities exist in Iowa, the DNA Facility would not be allowed to advertise to external customers (IAC §9.4(1)). However, the facility was approved to continue to perform a minimal amount of services to external clients since some of the specialized services are not available within the local community.

HERITAGE LIVESTOCK TOUR

The College of Agriculture and Life Sciences (CALs) developed a heritage livestock tour to England for the general public. The trip is designed to acquaint potential scholarship donors with the educational activities available to CALs students. The trip is unique as it mirrors a CALs study abroad program utilizing existing relationships with the farm owners in England.

The Committee reviewed and approved the tour. The Committee concluded that, although travel agencies can arrange travel, there are no travel agencies with the contacts necessary to establish this specific tour (IAC §9.4(1)).

MECHANICAL AND WEAR TESTING OF MATERIALS

The Department of Mechanical Engineering provides specialized testing services relevant to bio-based polymers and bio-derived materials. These services are very specialized and use two specialized instruments: a dynamic mechanical analyzer and a multi-axis tribometer.

The Committee reviewed these services and concluded they were not available in the community or nationally on a fee-for-service basis (IAC §9.4(1)). The rates were reviewed and sale of the services, expected to be small, were approved.

TEXTILE TESTING

The Department of Apparel, Events, and Hospitality Management developed a research program in functional textiles and protective clothing. The program enables students and faculty to measure physical properties and conduct performance analysis of textiles and protective clothing through hazards simulations.

Offering these testing services to high-performance fabric and apparel manufacturers creates potential research opportunities. The testing equipment is specialized so only a few universities and state-owned labs can conduct these tests.

The Committee reviewed the sales opportunity. It concluded the services offered are an integral part of the institution's research activities and are not reasonably available in the private sector (IAC §9.4(1)). The only restriction placed on the activity is to use a contract template that contains special indemnification language and a disclaimer of warranty.

UNIVERSITY OF NORTHERN IOWA

TALLGRASS PRAIRIE CENTER

UNI's review committee approved two requests from the Tallgrass Prairie Center (TPC) to: (1) provide customized prairie seed mixes to landowners for prairie plantings; and (2) sell three books and a seed manual authored by TPC staff. Funding for the seed mixes will primarily come from grant dollars and the sale of the books is limited to TPC visitors and conference attendees.

The sale of these goods and services falls under the exemption provided in IAC §681-9.4(6) – “Goods and services that are directly and reasonably related to the mission of the institution including activities such as conferences, institutes, outreach programs, specialized centers and other efforts and programs which provide continuing education.”

CENTER FOR EDUCATIONAL TRANSFORMATION

UNI's review committee approved a request from the Center for Educational Transformation to provide consulting work to school districts, Area Educational Agencies, the Iowa Department of Education, and not-for-profits on educational programs including up-front discussion, program evaluation, and professional development.

These services fall under the exemption provided in IAC §681-9.4(6) – “Goods and services that are directly and reasonably related to the mission of the institution including activities such as conferences, institutes, outreach programs, specialized centers and other efforts and programs which provide continuing education.”
