

MEMORANDUM

To: Board of Regents
From: Board Office
Subject: Annual Report on Competition with Private Enterprise
Date: April 12, 2004

Recommended Action:

Receive the annual report.

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 rules 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:

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, if any, related to competition with private enterprise, during the past calendar year.

No Complaints
Received

No complaints were received during the past year at the Regent institutions.

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 Attachment A on page 8.

Iowa Administrative Code / Board Policy Iowa Administrative Code §681-9.4 and Regent Policy Manual §7.05E 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 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) details 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, which are regarded as "informal" communications. These are also included in the annual report to the Board.

Analysis:

The following information is presented by institution and includes a brief summary on the review committees, local community relationship efforts, and any complaints/communications received by the institutions.

University of Iowa

REVIEW COMMITTEE SUI reports that the Committee on Competition with Private Enterprise and Community Concerns meets periodically and, as needed, meets with the Vice President for Finance and Operations to address issues involving proposed activities, specific inquiries or complaints, and to consult with the local business community.

Members of the committee include representatives from the Provost's Office; the Office of University Relations; the Office of the Vice President for Finance and Operations; the Office of the Vice President for Students Services; the Office of the General Counsel; and one faculty member appointed by the Vice President for Finance and Operations in consultation with the Faculty Senate.

LOCAL COMMUNITY RELATIONSHIP SUI reports that it has an established policy to consult with business interests in the Iowa City community.

ACTIVITIES REVIEWED The University reports that it did not receive any comments or concerns from the private sector during the past year.

Update from 2003 - Hearing Aids In April 2003, the University reported that a review was being conducted on a proposal by the Department of Speech Pathology and Audiology, the Center for Disabilities and Development, and the Department of Otolaryngology to dispense hearing aids directly to patients. This has not been done in the past. The Vice President for Finance and University Services approved the proposal.

Iowa State University

REVIEW COMMITTEE ISU reports that all activities involving the sale of goods, services, or facility usage to the general public must be in accordance with University Review Committee policies.

Members of the committee include a representative from the President's Office, the Vice President for Business and Finance's Office, and the Business Affairs Office.

LOCAL COMMUNITY RELATIONSHIP ISU reports that it continues to maintain positive relationships with the Iowa business community. Representatives from the University:

- Meet periodically with groups such as the Ames Chamber of Commerce and the Ames Convention and Visitors Bureau regarding business relationships with the local community.
- Participate in the Greater Des Moines Partnership;
- Sit on the boards of various community groups; and
- Attend planned networking events.

ACTIVITIES REVIEWED The University reviewed two communications from the private sector during the past year, one on the Ultrasound Lab and one regarding course materials. The University also provided a brief summary on the potential for expanded services in the Memorial Union after its renovation and an update to the CyCash Program issue from last year.

Ultrasound Lab The Animal Science Department operates an Ultrasound Laboratory for educational purposes. Development of this technology, which is used in carcass trait genetic evaluations, was researched at ISU.

Two private companies have asked to use the facility for training purposes. The companies plan to provide ultrasound testing to the beef industry. The University allowed the use of the facilities at appropriate fees as part of its educational mission.

Course Materials The University provided copies of textbook adoption lists and course materials to a local copy and duplicating service that intends to sell textbooks and course packs. The company began selling textbooks and course materials in 2003.

Memorial Union The University plans to renovate the Iowa Memorial Union (See G.D. 13b). Construction is scheduled to begin in February 2005 and end in March 2007. The renovation will provide additional space for expanded student services such as financial institutions, coffee shops, vision or optical services and food providers. If such services are pursued, they would be made through competitive procedures.

Update from 2003 -
CyCash Program

The CyCash system was created to provide on-campus services and eliminate cash handling. The card allows students to transfer up to \$250 from their checking or savings account to an account associated with their ISUCard. Last year's report presented a concern from a local book store about the ISU CyCash card. ISU allowed the local book store to implement the program.

The ISUCard can be set up as a debit card and an ATM card. The card serves as a student identification card; provides access to several campus services, such as laundries, library copiers, vending, bus services, copy centers, etc.; and allows purchases at the University Book Store and university dining centers. It was developed primarily for students' convenience and to reduce the number of campus locations involved with cash handling.

Recent media coverage has reported that Ames campustown merchants are being hurt by competition on ISU's campus. The University does not believe it unfairly competes with the private sector by providing the CyCard program. The provision of housing and food is consistent with its mission to provide services that students expect.

Campustown merchants have asked about the possibility of the ISUCard being used off campus. The university reports that it would not be appropriate to compete with financial institutions that currently provide credit and debit systems. Extending financial services off campus would potentially subject the university to regulatory oversight and fees for operating as a financial institution.

University of Northern Iowa

REVIEW COMMITTEE

The review committee at UNI reviews all activities involving the sale of goods, services, or facility usage at the University. Members of the review committee at UNI include a representative or designee selected by the President and two representatives selected by the Vice President for Administration and Finance.

LOCAL COMMUNITY
RELATIONSHIP

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.

ACTIVITIES
REVIEWED

The University reports that it did not receive any comments or concerns from the private sector during the past year.

Iowa School for the Deaf

REVIEW COMMITTEE The review committee at ISD receives, reviews, and responds to inquiries involving the School's activities. Members of the committee include the Superintendent, the Director of Facilities, and the Director of Business Operations.

LOCAL COMMUNITY RELATIONSHIP ISD operations generally do not include activities that compete or have the potential to compete with private enterprise.

The School 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. In addition, the School opens the Multipurpose Center on campus to the public during certain hours for a fee to participants.

ACTIVITIES REVIEWED The School reports that it did not receive any comments or concerns from the private sector during the past year.


Iowa Braille and Sight Saving School

REVIEW COMMITTEE The review committee at IBSSS receives, reviews, and responds to inquiries involving the School's activities involving the sale of goods, services, or facility usage. Members of the committee include the Superintendent, the Director of Administrative Services, and may involve others depending on the issue.

LOCAL COMMUNITY RELATIONSHIP 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.

ACTIVITIES REVIEWED The School reports that it did not receive any comments or concerns from the private enterprise during the past year.


Andrea L. Anania

Approved: 
Gregory S. Nichols

**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, or to full, 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.