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IPIB AO 2015-06

August 20, 2015

SUBJECT: Use of Public Records as Evidence of Violation/Application of Iowa Code chapter 35C

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your letter of August 3, 2015, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You raise the issue of the use of a public record as evidence of a violation of law. You also raise the issue of whether or not Iowa Code chapter 35C (Veterans Preference) applies to every applicant for governmental appointment and employment.

QUESTIONS:

1. Does a public record itself constitute evidence for the prosecution and conviction if statutory violations are confirmed in the public record?
2. Does the hiring process outlined in Iowa Code chapter 35C apply to every applicant for governmental appointment and employment?

OPINION:

We first note that IPIB has no statutory jurisdiction or authority over criminal prosecutions. The Board does have authority to take certain actions or impose civil penalties, but we are not a criminal law enforcement agency. As such, we cannot speak to the use of public records as evidence in criminal proceedings.

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitzl

The Board has the statutory authority to administer Iowa Code chapters 21, 22, and 23. While the Board does, on occasion, apply statutory provisions outside of Iowa Code chapters 21, 22, and 23 for purposes of determining whether or not a record is a “public record” or a “confidential record”, your question does not raise that type of legal issue. In addition, the Board has no authority to issue advisory opinions over the application of Iowa Code chapter 35C.

In closing, the Board notes that we are not speaking to whether the materials you included with your opinion request are true or false or otherwise have any relevancy in any criminal or civil proceeding. This opinion was issued to address your specific legal questions and not to rule on any submitted documents.

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Kathleen Richardson, Vice Chair
Robert Andeweg
Anthony Gaughan
Jo Martin
Andrew McKean
Gary Mohr
William Monroe
Peggy Weitzl

Submitted by: W. Charles Smithson, IPIB Director