



505 Fifth Avenue, Suite 901  
Des Moines, IA 50309-2316  
[www.aclu-ia.org](http://www.aclu-ia.org)

August 21, 2014

Honorable Robert Gallagher  
Mayor of the City of Bettendorf  
1745 Queens Drive  
Bettendorf, Iowa 52722  
*Delivered by email to [bgallagher@bettendorf.org](mailto:bgallagher@bettendorf.org)*

Honorable Bettendorf City Councilpersons  
1609 State St.  
Bettendorf, IA 52722  
*Delivered by email to [fbaden@bettendorf.org](mailto:fbaden@bettendorf.org), [dmayne@bettendorf.org](mailto:dmayne@bettendorf.org), [dlamar@bettendorf.org](mailto:dlamar@bettendorf.org), [swebster@bettendorf.org](mailto:swebster@bettendorf.org), [gmohr@bettendorf.org](mailto:gmohr@bettendorf.org), [snaumann@bettendorf.org](mailto:snaumann@bettendorf.org), [gadamson@bettendorf.org](mailto:gadamson@bettendorf.org)*

Copy: Kristine Stone  
City Attorney  
*Delivered by email to [kstone@bettendorf.org](mailto:kstone@bettendorf.org)*

**Re: Municipal regulation of political signs (Bettendorf City Code Appx. B, §18.7 (029))**

Dear Mayor and Councilpersons:

In response to a private complaint, we have reviewed the enforcement of Bettendorf's municipal sign ordinance as it pertains to political signs and are writing to ask that you repeal or revise the ordinance and cease enforcement of the ordinance during the pendency of the rescission/revision process. In addition, we ask that you issue a public and formal announcement that you will not enforce your sign ordinance during the pendency of that process to avoid the chilling effect of the ordinance on the exercise of political speech.

In particular, we have been informed that as recently as this month, the City Administrator has contacted violators and asked them to remove political signs.

Bettendorf's sign ordinance governing political signs provides:

**029 Political signs. Political signs are permitted in all districts, subject to the following conditions:**

- 1. Location And Size. No such signs shall be placed on public property. Such signs may be located in a required yard in any district, except none shall be within 30 feet of a corner street lot line intersection. No such sign shall exceed 32 square feet in surface area nor 8 feet in horizontal length.**
- 2. Height. Such signs shall not exceed 5 feet in height.**
- 3. Time Limit. Such signs shall not be erected more than 45 days prior to the election to which they pertain. Such signs shall be removed or caused to be removed by the person or organization responsible for the erection or distribution of such signs, or by the owner of the property upon which they are located, or by such owner's agent no later than 7 days after the election to which such signs pertain unless a primary or special election sign continues to be pertinent to a general election to be held within 45 days after said primary or special election, in which case such signs may remain for a period not to exceed 7 days after such general election.**
- 4. Permit. No additional permits shall be required.**

**5. Penalty. Any person who violates these conditions will be given 48 hours from the time the violation is discovered and the offender notified to come into compliance herewith. Thereafter the offense may be prosecuted as a municipal infraction.**

Bettendorf City Code, Appendix B, Section 18.7 (029) (2013).

Thus, the ordinance provides what are referred to as “durational” limits for various types of signs based on their content, purpose, or message. Such content-based limitations have consistently been held unconstitutional. *See, e.g., Whitton v. City of Gladstone*, 54 F.3d 1400 (8th Cir. 1995)(establishing that principle as controlling law in this federal Circuit.). Your ordinance also regulates the size and location of signs based on their content as political in nature. That regulation is similarly impermissible under the same, strict scrutiny analysis. *See also Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728 (8th Cir. 2011)(finding that the city’s application of zoning code’s size and location restrictions to an organization’s outdoor political message sign/mural, which was painted on the side of its building, failed strict scrutiny analysis).

In 1997, after *Whitton v. City of Gladstone* was decided, the Ethics and Campaign Disclosure Board sought an advisory opinion from the Iowa Attorney General’s Office on whether Iowa’s similar statutory regulation of political signs was constitutional. The Attorney General determined that the statute was an impermissible infringement on constitutionally protected speech, and the state Ethics Board issued a formal announcement that it would no longer enforce the unconstitutional statute. The underlying statute has undergone a number of amendments, and the Board has updated its own Advisory Opinion accordingly since that time. The latest advisory opinion issued in 2007 from the Board is enclosed, along with the initial Opinion issued in 2000 by the Board, and the Opinion issued in 1997 by the Attorney General.

We ask that you initiate a rescission or revision of the unconstitutional ordinance, immediately cease enforcement of the ordinance, and issue a public and formal announcement that you will not enforce your sign ordinance during the pendency of that process to avoid the chilling effect of the ordinance on the exercise of political speech.

Please do not hesitate to contact me with questions. I am available by email at [rita.bettis@aclu-ia.org](mailto:rita.bettis@aclu-ia.org) and phone at 515-243-3988 ext. 15.

I hope to hear from you very soon. Thank you for your time and attention to this important matter.

Respectfully,



Rita Bettis  
Legal Director  
ACLU of Iowa Foundation

Enclosures:

Iowa Ethics and Campaign Disclosure Board Advisory Opinion (August 17, 2000)  
Iowa Ethics and Campaign Disclosure Board Advisory Opinion (June 28, 2007)  
Bruce Kempes, Asst. A.G., 1997 WL 154728 (Iowa A.G. Feb. 18, 1997)

# Advisory Opinion

IECDB AO 2000-22

August 17, 2000

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11), the Iowa Ethics and Campaign Disclosure Board takes the opportunity to issue its opinion on the issue of the Board not enforcing the time limits on when yard signs may be erected. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 56 and 68B and rules in Iowa Administrative Code chapter 351. Whether some other statutory system, common law theory or agency rule applies to this issue is not covered by this opinion.

OPINION:

Iowa Code section 56.14(2)"a" in pertinent part states:

"Yard signs shall not be placed on any property which adjoins a city, county, or state roadway sooner than forty-five days preceding a primary or general election and shall be removed within seven days after the primary or general election in which the name of the particular candidate or ballot issue described on the yard sign appears on the ballot."

Based on the decision by the Eighth Circuit Court of Appeals in *Whitton v. City of Gladstone*, 54 F. 3d 1400 (8th Cir. 1995), the Board sought an advisory opinion from the Iowa Attorney General's Office on whether or not Iowa Code section 56.14(2)"a" was constitutional. The *Whitton* case involved a city ordinance in the State of Missouri that was not significantly different than the Iowa statute in question. On February 18, 1997, the Attorney General's Office determined that based on the *Whitton* decision, Iowa Code section 56.14(2)"a" did violate the "federal constitutional guarantee of free speech as interpreted by the Court."

Based on the decision and the opinion of the Attorney General's Office, the Board had administratively suspended enforcement of the statute. The Board now takes the opportunity to formally announce that based on the *Whitton* decision and the opinion of the Iowa Attorney General's Office it will not enforce the provisions of Iowa Code section 56.14(2)"a".

We do note that although the statute itself has not been ruled unconstitutional in court, the Board believes that suspension of enforcement of Iowa Code section 56.14(2)"a" is proper under 1984 Op. Att'y Gen. 66, 69 and Iowa Auto Dealers Ass'n v. Iowa State Appeal Bd., 420 N.W. 2d 460 (Iowa 1988), where in instances when a recent court decision affecting a statute "essentially similar to the Iowa statute, a state agency charged with enforcing the Iowa statute should proceed in accordance with that decision".

In closing, the Board has proposed legislation to the General Assembly to repeal Iowa Code section 56.14(2)"a", but that legislation has not yet passed.

**BY DIRECTION AND VOTE OF THE BOARD**

Bernard McKinley, Board Chair

1st Vice-Chair Geraldine Leinen

2nd Vice-Chair James Albert

Gwen Boeke

Mark McCormick

Phyllis Peters

-Submitted by: W. Charles Smithson, Board Legal Counsel

# Advisory Opinion

IECDB AO 2007-07

June 28, 2007

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the permitted and prohibited placement of campaign signs. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B and rules in Iowa Administrative Code chapter 351.

OPINION:

In IECDB Advisory Opinion 2005-07, the Board issued an opinion on the permitted and prohibited placement of campaign signs. Subsequently, Iowa Code section 68A.406 was amended by 2007 Iowa Acts, Senate File 39, section 7. The Board issues this updated opinion concerning the placement of campaign signs.

## **A. Campaign signs for candidates:**

Permitted locations with the permission of the property owner:

1. Residential property.
2. Agricultural land belonging to a family farm operation as defined in Iowa Code section 9H.1.
3. Property leased for residential purposes including, but not limited to, apartments, condominiums, and houses.
4. Vacant lots owned by a private individual.
5. Property belonging to any business, association, or organization that is not a corporation, financial institution, or insurance company.

6. Property leased by a candidate, campaign committee, or an organization established to advocate the nomination, election or defeat of a candidate from any type of entity when the property is used as campaign headquarters or a campaign office and the placement of the sign is limited to the space that is actually leased.

7. On property owned by the state, county, city, or other political subdivision if the property is made open and available to any person from the public to lawfully place any type of sign.

Prohibited locations for candidate campaign signs:

1. On any property without the permission of the property owner.
2. Any property owned by the state or the governing body of a county, city, or other political subdivision of the state including all property considered the public right-of-way unless the property is made open and available to any individual or group from the public to lawfully place any type of sign.
3. Property belonging to a corporation, financial institution, or insurance company except when leased as campaign headquarters or a campaign office and the placement of the sign is limited to the space that is actually leased.

**B. Campaign signs for ballot issues:**

Permitted locations with the permission of the property owner:

1. Property belonging to any individual, corporation, financial institution, insurance company, business, association, organization, or other person.

Prohibited locations for ballot issue campaign signs:

1. On any property without the permission of the property owner.
2. Any property owned by the state or the governing body of a county, city, or other political subdivision of the state including all property considered the public right-of-way unless the property is made open and available to any individual or group from the public to lawfully place

any type of sign.

### **C. Campaign signs on Election Day:**

Except on private property, campaign signs for candidates or ballot issues may not be placed on the following on Election Day:

1. Premises of any polling place.
2. Within 300 feet of an outside door affording access to any room where the polls are held or to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.
3. On any motor vehicle, trailer, semitrailer, or any attachment to the preceding, if the vehicle, trailer, or semitrailer is parked on public property within 300 feet of a polling place and the sign is more than 90 square inches in size.

### **D. Absentee/Satellite voting sites:**

Except on private property, campaign signs for candidates or ballot issues may not be placed on the following:

1. Within 300 feet of an absentee voting site during the hours when absentee ballots are available in the office of the county commissioner of elections as provided in Iowa Code section 53.10.
2. Within 300 feet of a satellite voting station during the hours when satellite voting is available at the satellite voting station as provided in Iowa Code section 53.11.
3. On any motor vehicle, trailer, semitrailer, or any attachment to the preceding, if the vehicle, trailer, or semitrailer is parked on public property within 300 feet of an absentee voting site during the hours when absentee ballots are available in the office of the county commissioner of elections and the sign is more than 90 square inches in size.
4. On any motor vehicle, trailer, semitrailer, or any attachment to the preceding, if the vehicle,

trailer, or semitrailer is parked on public property within 300 feet of a satellite voting station during the hours when satellite voting is available and the sign is more than 90 square inches in size.

This opinion applies solely to campaign signs for state and local campaigns as the Board does not have jurisdiction over federal candidates.

IECDB Advisory Opinion 2005-07 is hereby modified.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel



1997 WL 154728 (Iowa A.G.)

Office of the Attorney General

State of Iowa

Opinion No. 97-2-3

February 18, 1997

**\*1 CONSTITUTIONAL LAW; ELECTIONS:** Durational limitations on political signs. U.S. amend. XIV; Iowa Code § 56.14(2)(a) (1997). Iowa Code section 56.14(2)(a) (1997), which imposes time limitations upon the placement of political signs on property, violates the federal constitutional guarantee of free speech as interpreted by the Court in Whitton v. City of Gladstone, 54 F.3d 1400 (8th Cir. 1995). (Kempkes to Williams, Executive Director, Iowa Campaign and Ethics Disclosure Board, 2-18-97)

Ms. Kay Williams  
Executive Director  
Iowa Ethics and Campaign Disclosure Board  
LOCAL

Dear Ms. Williams:

In light of a decision by the Eighth Circuit Court of Appeals, you have requested an opinion on the constitutionality of a state law prohibiting the placement of political signs on property adjoining a public roadway no sooner than forty-five days before an election and requiring their removal no later than seven days after an election. The Court in Whitton v. City of Gladstone, 54 F.3d 1400, 1403-09 (8th Cir. 1995), held that a city ordinance prohibiting the placement of political signs on property no sooner than thirty days before an election and requiring their removal no later than seven days after the election violated the First Amendment to the United States Constitution.

The Iowa Ethics and Campaign Disclosure Board has noted the “relatively close” similarity between the city ordinance examined in Whitton v. City of Gladstone and the state law, Iowa Code section 56.14(2)(a) (1997). It has, therefore, suspended administrative enforcement of section 56.14(2)(a) until receipt of this opinion. We agree that Whitton v. City of Gladstone leads to the conclusion that section 56.14(2)(a) offends the federal constitutional guarantee of free speech to the extent it limits the time political signs may be placed on property adjoining a public roadway.

I.

Chapter 56 governs political campaigns. Section 56.14(2)(a) limits the period of time that “yard signs” may be placed on property adjoining public roadways. It provides in part:

Yard signs shall not be placed on any property which adjoins a city, county, or state roadway sooner than forty-five days preceding a primary or general election and shall be removed within seven days after the primary or general election, in which the name of the particular candidate or ballot issue described on the yard sign appears on the ballot.

See generally Iowa Code § 4.1(30)(a) (word “shall” in statutes normally imposes a duty). The Iowa Ethics and Campaign Disclosure Board, charged with administering chapter 56, has promulgated a rule construing “yard signs” to mean “political signs” having certain dimensions. 351 IAC 4.5(5). See generally Iowa Code § 4.1(38) (words and phrases in statutes shall be construed according to context), § 4.6(6) (statutory construction may take into account administrative construction of statute).

II.

\*2 In Whitton v. City of Gladstone, the Court of Appeals for this circuit considered a city ordinance prohibiting the placement on property of political signs no sooner than thirty days before an election and requiring their removal no later than seven days after the election. See 54 F.3d at 1402 n. 2. The city argued that these durational limitations did not regulate free speech on the basis of its content and that they did not unreasonably restrict free speech in view of the city's strong interests in maintaining its appearance and promoting traffic safety. Id. at 1403.

The Court noted that signs pose distinct problems for city regulation, because, among other things, they may obstruct views or distract motorists. Id. at 1402-03. The Court added, however, that the First Amendment protects signs as a form of free speech and "has its fullest and most urgent application to speech uttered during a campaign for political office." Id. at 1402-03.

The Court determined that the ordinance directed toward political signs amounted to a "content-based restriction," because "it makes impermissible distinctions based solely on the content or message conveyed by the sign." Id. at 1404. In supporting this determination, the Court also noted that the ordinance granted certain forms of commercial speech a greater degree of protection than political speech. Id. at 1404-05. Such commercial speech -- which included construction, advertising, and real-estate signs -- did not have the durational limitations imposed upon political signs. Id.

A content-based restriction implicates the most exacting level of judicial review commonly known as "strict scrutiny." Id. at 1408. According to the United States Supreme Court, "it is the rare case in which . . . a law survives strict scrutiny." Burson v. Freeman, 504 U.S. 191, 211, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992). Accord Whitton v. City of Gladstone, 54 F.3d at 1408. "With rare exceptions, content discrimination in regulations of speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one." City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36, 50 (1994) (O'Connor, J., concurring). Accord Whitton v. City of Gladstone, 54 F.3d at 1408. To survive strict scrutiny, content-based restrictions must serve a "compelling governmental interest" and must represent "the least restrictive alternative" available. Whitton v. City of Gladstone, 54 F.3d at 1408.

Applying these principles to the city ordinance under consideration, the Court in Whitton v. City of Gladstone determined that the durational limitations neither served a compelling governmental interest nor represented the least restrictive alternative available to the city. Id. at 1408-09. First, a city's interests in its aesthetic appearance and traffic safety, "while significant, have never been held to be compelling." Id. at 1408. Second, other ordinances regulating political signs within the city adequately furthered these interests. Id. Third, the city failed to present sufficient evidence that political signs required treatment different from that it had afforded other types of signs. Id. In view of these three factors, the Court held that the city ordinance's durational limitations unconstitutionally restrained free speech. Id. at 1409.

\*3 We do not perceive any significant difference between the durational limitations in the city ordinance under consideration in Whitton v. City of Gladstone and those limitations in section 56.14(2)(a). Compare Whitton v. City of Gladstone, 54 F.3d at 1402 n. 2 (city ordinance: political signs may be placed on property not sooner than thirty days before election and must be removed no later than seven days after election) with Iowa Code § 56.14(2)(a) (yard signs, administratively construed to mean political signs, 351 IAC 4.5(5), may be placed on any property adjoining public roadway not sooner than forty-five days before election and must be removed no later than seven days after election).

We also do not perceive any governmental interests underlying sections 56.14(2)(a), not advanced by the city in Whitton v. City of Gladstone, which could be considered compelling in nature. See generally 7 E. McQuillin, The Law of Municipal Corporations §§ 24.380-384.50 (1989). Moreover, we note that section 56.14(2)(b) permits the placement of a political sign on certain designated properties without imposing any time limitations at all. Under such circumstances, we must conclude that the time limitations in section 56.14(2)(a) offend the First Amendment as interpreted by the Court in Whitton v. City of Gladstone.

We make one final comment. You mention that the Iowa Ethics and Campaign Disclosure Board has suspended administrative enforcement of section 56.14(2)(a). Given the "relatively close" similarity between the city ordinance examined in Whitton v. City of Gladstone and section 56.14(2)(a), we believe that this administrative action appears proper. See 1984 Op. Att'y Gen.

66, 69 (under unusual and limited circumstances involving a recent decision by the United States Supreme Court on a statute essentially similar to one in Iowa, state agency charged with enforcing the Iowa statute should proceed in accordance with that decision); see also Iowa Auto Dealers Ass'n v. Iowa State Appeal Bd., 420 N.W.2d 460, 461-62 (Iowa 1988).

III.

Iowa Code section 56.14(2)(a), which imposes time limitations upon the placement of political signs on property, violates the federal constitutional guarantee of free speech as interpreted by the Court in Whitton v. City of Gladstone.<sup>1</sup>

Sincerely,

Bruce Kempkes  
Assistant Attorney General

Footnotes

1 Your request also notes that chapter 306C restricts the use of billboards and signs and provides a statewide system for controlling such advertising devices along the state's roadways. See 1992 Op. Att'y Gen. 8 (# 91-3-1(L)). Section 306C.22 provides: It shall be lawful to place political signs on private property . . . at any time during the period beginning forty-five days before the date of the election to which the signs pertain and ending on the day of the election . . . . The exemption from the provisions of this chapter granted by this section for political signs shall expire on the seventh day following the date of the election to which the signs pertain. . . .

See generally Iowa Code § 306C.10(13) ("political sign" defined); 761 IAC ch. 117. Section 306C.22, like section 56.14(2)(a), limits the time that political signs may be placed on property. We have limited our opinion, however, to the specific issue posed by your opinion request. See generally 61 IAC 1.5. In doing so, we take into account that section 306C.22, by granting a temporary exemption for political signs from otherwise generally applicable provisions, may pose a different issue than the one addressed in this opinion.

1997 WL 154728 (Iowa A.G.)