



# DAVISBROWN<sup>®</sup>

LAW FIRM



## ENDOWED FUNDS LEGISLATION MEMO

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DAVIS BROWN KOEHN SHORS & ROBERTS P.C.



## MEMORANDUM

TO: Clients and Friends  
FROM: Beverly Evans  
DATE: February 11, 2009  
RE: Endowed Funds Legislation

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This brief memo is for those who serve on Foundation Boards, or other nonprofit organizations that may receive and be responsible for investing and disbursing endowed funds. For purposes of this discussion, "endowed funds" means funds that are donated to a charitable institution that are not freely expendable by the institution. Two factors may make this a subject of renewed interest.

1. Market conditions have resulted in decreased value of many endowed funds.
2. In 2008 the Iowa legislature adopted the Uniform Prudent Management of Institutional Funds Act (the "New Act"), changing the standards that apply to the actions of such Boards.

These two factors leave some Board members wondering how to determine how much they may spend of their endowed funds in support of the charitable institution. Prior to the 2008 legislation, Iowa law was based upon the "historic dollar value" of such funds. Under the New Act, funds may be expended from an endowed fund as long as the expenditures are "**prudent in light of the uses, benefits, purposes and duration of the endowment fund.**"

The New Act focuses on the purposes of the endowment fund, rather than on the purposes of the institution it may have been created to support. Directors should strive to act in good faith, with the care a prudent person acting in a like position would

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exercise under similar circumstances. Under the terms of the New Act, in determining the amount that may be expended annually, the following factors should be considered:

1. the duration and preservation of the endowment fund;
2. the purposes of the endowment fund;
3. general economic conditions;
4. the possible effect of inflation or deflation;
5. the expected total return from income and the appreciation of investments;
6. other recourses available to carry out the charitable purposes of the gift;  
and
7. the governing investment policies.

When a Board determines to engage an external agent to manage and invest an endowment fund, the duty of care applies to the selection of the agent and to establishing the scope and terms of the delegation. A Board that has retained such assistance remains obligated to periodically review the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

Some gifts are made to an endowment fund accompanied with restrictive language. If the Board determines that such a restriction is unlawful, impracticable, or impossible to fulfill, the institution may release or modify the restriction, in whole or in part, sixty days after notifying the attorney general, if all of the following conditions are met:

- a. The institutional fund subject to the restriction has a total value of less than fifty thousand dollars.
- b. More than twenty years have elapsed since the fund was established.
- c. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The New Act specifically provides that a donor whose aggregate gifts to an endowment fund exceed \$100,000 may maintain a court action to enforce restrictions respecting the purposes of the fund established by the donor in a gift instrument.

This memo is designed to share with you the general principles embodied in Iowa law. The New Act seems to provide more flexibility in spending endowment funds. However, courts have not had the opportunity to provide any guidance on the prudent person standards of the legislation.

## BEVERLY EVANS

### CONCENTRATION

Bev is a senior shareholder of the Davis Brown Law Firm in the Business Division. She has a general practice in but not limited to the areas of Business Organizations, Mergers, Acquisitions and Securities.

### PROFESSIONAL RECOGNITION

• **AV rated by Martindale-Hubbell.** An AV® certification mark is a significant rating accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence.

### SUMMARY

Bev enjoys working with start-up enterprises as well as with publicly-held companies, in regional as well as international transactions. She works with the Iowa Capital Investment Corporation (ICIC), an entity authorized by the state for the purpose of forming, through the use of incentive tax credits, a fund of funds designed to encourage the development of venture capital in the state. She also works with Iowa Community Development, L.C., (ICD) an entity that has successfully applied for and deployed Federal New Market Tax Credits. Her work with ICIC, ICD and with start-up enterprises has fueled her enthusiasm for the economic development potential of Iowa.

### MEMBERSHIPS

- Iowa State Bar Association Business Law Section
- Author and editor Iowa State Bar Association Business Law Practice Manual.

### OF NOTE

Bev is active in Lex Mundi, an international association of independent law firms. She represents the Firm at meetings around the world and enjoys developing worldwide relationships that enhance the Firm's ability to provide exceptional service to businesses interested in international trade or in engaging in international transactions.



### BORN

RUSHVILLE, NEBRASKA, 1949

### EDUCATION

CREIGHTON UNIVERSITY (B.A., 1971);  
UNIVERSITY OF NEBRASKA AT  
LINCOLN COLLEGE OF LAW (J.D.,  
1979)

### ADMITTED TO BAR

1979, NEBRASKA; 1996, IOWA

### AREAS OF LAW

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### MEMBERSHIPS

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PRACTICE AREA

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SECURITIES

Davis, Brown, Koehn, Shors & Roberts, P.C. acts as issuer's counsel in securities and corporate finance matters, including private placements, Rule 144A placements, and other exempt offerings, as well as registered initial and secondary public offerings, and venture capital financings. The department advises financial institutions with respect to the purchase, sale or distribution of securities. Other clients include investor groups, venture capital firms, health care organizations, high-tech and industrial companies, agricultural cooperatives and state agencies.

For further description of state and local government financings, see Public Finance.



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