

ETHICAL PRACTICES BOARD

First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

Issued to:

Rollin M. Dennistoun
209 Ridgeview Drive
Apple Valley, MN 55124

RE: Gifts to Officials

ADVISORY OPINION #147

SUMMARY

147. Minn. Stat. Ch. 10A does not prohibit the distribution of gifts to officials or the acceptance of gifts by officials unless the donor is a lobbyist principal or a lobbyist. Effective August 1, 1994, officials participating in the State Fair Agricultural Get-together may accept items or funds from a commodity organization unless the organization is a lobbyist principal or the items or funds are provided by a lobbyist. Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5). The Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council may wish to confer with legal counsel about the existence of other laws that may apply to preparations for the 1994 State Fair Agricultural Get-together including, but not limited to, Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, Sec. 6).

FACTS

You are working part time with the Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council in preparation for the 1994 State Fair Agricultural Get-together. You ask the Board for an advisory opinion based upon your statement of the following facts:

1. You were directly associated with this event from 1965 until 1987 and have been indirectly associated with it since then.
2. You visit with legislators from time to time during the legislative sessions; you do not consider yourself a lobbyist, but rather a provider of information.
3. The Coalition is a nonprofit group that works with other groups for the betterment of agriculture, rural Minnesota, and the Minnesota economy.
4. The Minnesota State Fair has been the leading organization for the event.

5. The Minnesota Department of Agriculture has provided a list of participants to be invited the event in previous years.
6. You list 22 commodity groups that have contributed items or funds for the event in a previous year [seven of the listed organizations are lobbyist principals who employ lobbyists who are registered with the Ethical Practices Board.]
7. The event has always been considered an educational, informational, and get-acquainted gathering for all those invited and attending; a means for nonrural residents to become acquainted with those groups that help provide one of the necessities of life.
8. Planning for the 1994 event must begin within the next two weeks; the organizations will abide by the Board response to the advisory opinion request.

QUESTION

Are the products or funds and hand-out materials provided for the 1994 State Fair Agricultural Get-together by commodity groups for the event prohibited?

OPINION

No, with certain exceptions, the donations you describe are not prohibited under Minn. Stat. Ch. 10A, the only statute for which the which the Ethical Practices Board has advisory opinion authority; however, the Board suggests that you examine the application of other Minnesota statutes before proceeding.

Minn. Stat. Ch. 10A does not prohibit acceptance and distribution of gifts to officials unless the donating commodity organization is a lobbyist principal or the items or funds are provided by a lobbyist and the individuals who participate in the event are officials as defined in Minn. Stat. § 10A.071, subd. 1 (c) which becomes effective August 1, 1994. (Laws of 1994, Ch. 377, Sec. 5).

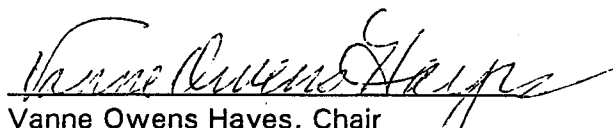
An official, including a public official, a member of the legislature, an employee of the legislature, or a local official of a metropolitan governmental unit, may not accept a gift from a lobbyist or principal. A lobbyist or principal may not give a gift or request another to give a gift to an official.

Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5).

The Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council may wish to confer with legal counsel about the existence of other laws that may apply to the preparations for the 1994 State Fair Agricultural Get-together including, but not limited to, Minn. Stat. §471.895 (Laws of 1994, Ch. 377, Sec. 6), which is reprinted below.

Issued:

June 30, 1994


Vanne Owens Hayes, Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

Subd. 2. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule pursuant to chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting and granting of certificates of need under chapter 116J.

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative action or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

...

Subd. 25. **Local official.** "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

Subd. 26. **Metropolitan governmental unit.** "Metropolitan governmental unit" means

any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, the Minnesota state high school league, and Minnesota Technology, Inc.

Subd. 27. Political subdivision. "Political subdivision" means the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, a municipality as defined in section 471.345, subdivision 1, the Minnesota state high school league, and Minnesota Technology, Inc.

Subd. 28. Principal. "Principal" means an individual or association that:

- (1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or
- (2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of governmental units, as described in section 10A.04, subdivision 6.

Laws of 1994, Ch. 377, Sec. 5, created Minn. Stat. § 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED which provides:

Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

Subd. 2. Prohibition. A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

Subd. 3. Exceptions. (a) The prohibitions in this sections do not apply if the gift is:

- (1) a contribution as defined in section 10A.01, subdivision 7;
- (2) services to assist an official in the performance of official duties, including by not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- (3) services of insignificant monetary value;
- (4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
- (5) a trinket or memento of insignificant value;
- (6) informational material of unexceptional value; or
- (7) food or a beverage given at a reception, meal, or meeting away from the recipient place of work by an organization before whom the recipient appears to make a speech or

answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or

(2) by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Laws of 1994, Ch. 377, Sec. 6, created Minn. Stat. § 471.895 CERTAIN GIFTS BY INTERESTED PERSONS PROHIBITED which provides:

Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Gift" has the meaning given it in section 10A.071, subdivision 1.

(c) "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

(d) "Local official" means an elected or appointed official of a county or city or of any agency, authority, or instrumentality of a county or city.

Subd. 2. Prohibition. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Subd. 3. Exceptions. (a) The prohibitions in this sections do not apply if the gift is:

(1) a contribution as defined in section 211A.01, subdivision 5;

(2) services to assist an official in the performance of official duties, including by not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento of insignificant value;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or

(2) by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.