

**ETHICAL PRACTICES BOARD**

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

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec.1)

**RE: Gifts to Officials**

**ADVISORY OPINION #160**

**SUMMARY**

160. A lobbyist or lobbyist principal is prohibited from giving a gift to an official and an official is prohibited from accepting a gift from a lobbyist or lobbyist principal, both within and outside the state of Minnesota. Minn. Stat. § 10A.071. The lobbyist principal should review the applicability of Minn. Stat. § 471.895 (1994 Minn. Laws, ch. 377, sec.6), a statute that is not within the jurisdiction of the Ethical Practices Board, if its hospitality suite is offered to local officials.

**FACTS**

As a registered lobbyist for an association that is a lobbyist principal, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. The association provides a hospitality suite for Minnesota delegates to a national conference. The delegates typically include managers in businesses, legislators, and executive branch staff.
2. The association provides the hospitality suite, arranges group travel for delegates, provides light snacks and drinks, holds an open bar during limited hours, and holds a reception which is open to all Minnesotans in attendance and invited guests from around the country.
3. Funds for this purpose are raised in advance from voluntary contributions of members of the association in response to a specific request.

You ask the Board the following:

**QUESTION ONE**

Do the new restrictions of Chapter 377 (1994 Laws of Minnesota) relating to gifts to public officials apply to meetings out of state?

## **OPINION**

Yes. A lobbyist or lobbyist principal is prohibited from giving and an official is prohibited from accepting a gift, both within and outside the state of Minnesota. Minn. Stat. § 10A.071. The association also should review the applicability of Minn. Stat. § 471.895 (1994 Minn. Laws, ch. 377, sec.6), a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. That statute prohibits gifts from interested persons to local officials as those terms are defined by Minn. Stat. § 471.895, subs. 1 (c) and (d), and it likely applies to the activities you describe if the association's hospitality suite is offered to local officials. A copy is attached for your reference.

## **QUESTION TWO**

What is an appropriate way to determine the value of the gift to attending legislators and other covered officials?

## **OPINION**

The association should calculate the total costs for providing the hospitality suite, including overhead costs such as the suite itself, and divide the product by the number of individuals who receive the benefits to determine the value of the gift per person.

## **QUESTION THREE**

If covered officials pay the same group travel costs as other attenders, do travel discounts need to be apportioned?

## **OPINION**

No. When an official pays the same price for travel costs that is charged to other attenders, then the transaction is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

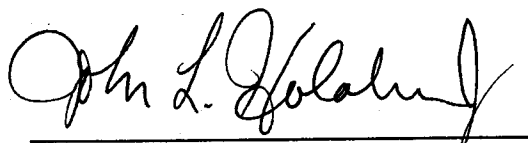
## **QUESTION FOUR**

- A. Would it be appropriate to charge a fee to attending legislators and other covered officials to cover the costs of snacks, drinks, the reception, and other things of value?
- B. Would such a fee have to include a portion of overhead costs such as the cost of the suite?
- C. What apportionment method should be used to calculate the fee to be charged?

**OPINION**

- A. Yes; otherwise, the benefit is a gift. The benefit is not a gift if the giver receives equal or greater value in return. Minn. Stat. § 10A.071, subd. 1 (b).
- B. Yes.
- C. See response to Question Two, above.

Issued: 9-15-1994



John L. Holahan, Jr., Chair  
Ethical Practices Board

**PERTINENT STATUTES**

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

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. 18. "Public official" means any:

- (a) member of the legislature;
- (b) constitutional officer in the executive branch and the officer's chief administrative deputy;
- (c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;
- (d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;
- (e) individual employed in the executive branch who is authorized to adopt, amend or

repeal rules or adjudicate contested cases;

- (f) executive director of the state board of investment;
- (g) executive director of the Indian affairs intertribal board;
- (h) commissioner of the iron range resources and rehabilitation board;
- (i) commissioner of mediation services;
- (j) deputy of any official listed in clauses (e) to (i);
- (k) judge of the workers' compensation court of appeals;
- (l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of jobs and training;
- (m) solicitor general or deputy, assistant or special assistant attorney general;
- (n) individual employed by the legislature as secretary of the senate, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;
- (o) member or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;
- (p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;
- (q) director or the division of gambling enforcement in the department of public safety;
- (r) member or executive director of the higher education facilities authority; or
- (s) member of the board of directors or president of the Minnesota world trade center corporation.

...

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's 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's 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.