

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 #161

SUMMARY

161. Prizes donated or paid for by lobbyists or lobbyist principals for an event hosted by an official are not exempt from the statutory gift prohibition because hosting the event is not an official duty. Tickets to the event purchased at full price by lobbyists or lobbyist principals are not gifts to the official hosting the event. Prizes won by officials based upon demonstrated skill are not gifts to the officials, pursuant to Minn. Stat. § 10A.071.

FACTS

As a public officials as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. Each year you host an event, the proceeds of which go to a 501(c)(3) organization.
2. The event solicits prizes from individuals and corporations in Minnesota which prizes are awarded to participants for their skills exhibited during the event.
3. Tickets that are sold for the event entitle the purchaser to luncheon and to participate in the event and the opportunity to win donated prizes.
4. The price of the event includes the costs of the event and a contribution to a 501(c)(3) charitable organization as defined by the Internal Revenue Tax Code.
5. You have a list of questions concerning the possible application of Minn. Stat. § 10A.071 upon the structure of this event which you believe need to be answered by the Ethical Practices Board prior to conducting this event.

QUESTION ONE

Is a donation of prizes or funds to purchase a prize, which is donated by a lobbyist or a principal, to the event which you sponsor considered a "gift" to an official as defined in Minn. Stat. § 10A.071?

OPINION

Yes. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyists or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return.

QUESTION TWO

Is a ticket to the charitable event purchased by a lobbyist or principal lobbyist from personal funds for participation in the event and subsequent donation to a 501(c)(3) charitable organization a "gift" to an official as defined in Minn. Stat. § 10A.071, subd. 1?

OPINION

No. When a lobbyist or principal pays full price for participation in the event and the admission price includes the costs of the event and a contribution to a 501(c)(3) charitable organization as defined by the Internal Revenue Tax Code, then the transaction is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

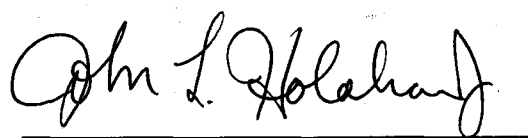
QUESTION THREE

Since other officials as defined in Minn. Stat. § 10A.071, subd. 1(c), may participate in this event, would their winning of a prize at the event, which is donated by a lobbyist or principal be considered a "gift" as defined in Minn. Stat. § 10A.071, subd. 1(b)?

OPINION

No. When a prize is presented to an official based upon the official's demonstrated skill in the event, the prize is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

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 of 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. 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.