

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: Gift to Official

ADVISORY OPINION #163

SUMMARY

163. An official is prohibited from accepting the payment of the cost of an event if a lobbyist or lobbyist principal contributes to defraying the cost of the event. Donations from a lobbyist principal to pay in part for the cost of meetings among governmental officials are not within any exemption from the gift prohibition in Minn. Stat. § 10A.071. An official is prohibited from accepting a gift from a lobbyist or from a lobbyist principal regardless of the conduit through which the official receives the gift.

FACTS

As a public official 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. You hold a committee office in an organization that sponsors programs to promote exchanges of information among the several states.
2. You have been invited to participate in a series of meetings outside the United States among governmental officials.
3. Costs of the event are paid by the organization with money raised from charges to participants and donations from private sponsors, including a lobbyist principal, which is making a contribution through a charitable organization organized under § 501(c)(3) of the Internal Revenue Code, which will defray part of the costs of the event.

QUESTION ONE

Does Minnesota law, specifically new Minn. Stat. § 10A.071, prohibit you from accepting the

organization's invitation to participate in this event?

OPINION

No. Minn. Stat. Ch. 10A does not prohibit an official from attending an event; however, the law restricts gifts from lobbyists and lobbyist principals to an official. To the extent that any portion of the official's expenses for the event are paid by a lobbyist or a lobbyist principal, you are prohibited from accepting from accepting the payment of the cost of the event. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b). Donations from a lobbyist principal to pay in part for the cost of meetings among governmental officials are not within any exemption from the gift prohibition in Minn. Stat. § 10A.071.

QUESTION TWO

Would the answer to Question One be different if the contribution from the lobbyist principal, were made directly to the sponsoring organization, instead of to the charitable organization organized under § 501(c)(3) of the Internal Revenue Code?

OPINION

No. An official is prohibited from accepting a gift from a lobbyist or from a lobbyist principal for regardless of the conduit through which the official receives the gift.

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

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.