

ETHICAL PRACTICES BOARD

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

Issued to:

John F. Apitz, Esq.

Messerli & Kramer P. A.

1800 Fifth Street Towers

150 South Fifth Street

Minneapolis, MN 55401-4218

RE: Fee Charged to Attending Officials

ADVISORY OPINION #169

SUMMARY

169. A principal must charge a fee to attending officials that covers the cost of the food and beverage provided at the meeting and require contemporaneous payment of the fee by the officials. Otherwise, the acceptance of food and beverage by the officials is a gift prohibited by Minn. Stat. § 10A.071, subd. 1.

FACTS

As a lawyer advising a number of clients regarding the implications of the new Ethics in Government Act, 1994 Laws of Minnesota, Chapter 377, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. An official attends a meeting sponsored by a lobbyist principal at which food and beverage are provided. The food and beverage are defined as a gift as defined under the Act.
2. To assure compliance with the Act, the official is invoiced for the value of the food and beverage provided and is expected to reimburse the lobbyist principal for same.
3. The official fails to reimburse the lobbyist principal for the value of the food and beverage.

QUESTION

- A. Is the act of invoicing the official for the full value of the food and beverage provided at the meeting, regardless of whether the official reimburses the lobbyist principal for the same, sufficient to eliminate the principal's liability for providing the official with a gift as

defined under the act?

- B. What steps must the principal take in seeking reimbursement from an official for gift items before the principal will no longer be considered liable for giving the gift?

OPINION

- A. No. The lobbyist principal must charge a fee to attending officials that covers the cost of the food and beverage provided at the meeting and require contemporaneous payment of the fee. Otherwise, the acceptance of food and beverage by the officials is a gift prohibited by Minn. Stat. § 10A.071, subd. 1.
- B. See Answer A., above.

Issued: _____

10-7-1994



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. 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.

ETHICAL PRACTICES BOARD

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

Issued to:

Kelvin Johnson, President
Printing Industry of Minnesota, Inc.
2829 University Avenue SE
Suite 750
Minneapolis, MN 55414

RE: Gift Requested by Lobbyist Principal

**ADVISORY OPINION #171
REVISED BY THE ETHICAL PRACTICES BOARD**

SUMMARY

A gift to a legislator by a lobbyist principal is prohibited. The relationship between a lobbyist principal and a foundation may be so close that gifts by the foundation are deemed to be requested by the principal. If a legislator contemporaneously pays the full price for a benefit received, it is not a prohibited gift.

FACTS

As the president of The Printing Industry of Minnesota, Inc. ("PIM"), a lobbyist principal, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following facts:

1. PIM is a trade organization whose members are companies doing business in the print communications industry in Minnesota. The government affairs activities of the association include monitoring, direct lobbying, and representation before legislative and regulatory committees on issues important to the continued expansion of the Minnesota printing industry.
2. As the president of PIM, you are one of its registered lobbyists.
3. The Printing Industry of Minnesota Education Foundation ("the Foundation") is a charitable organization organized under § 501 (c) (3) of the Internal Revenue Code. The Foundation board of directors is identical to the PIM board of directors; consequently, as president of the PIM, you are president of the Foundation, also.

4. The Foundation pays PIM for staff and administrative support to the extent that restrictions on its balances permit it to. Beyond that, PIM makes a contribution to the Foundation of those services.
5. The Foundation exists to enhance job capabilities of persons employed in the print communications industry in Minnesota. It sponsors education and training programs, research, and career development. It also provides scholarships and youth programs.
6. The funding received by the Foundation is for the following designated areas: scholarship fund, education and training, career fair, career materials, industry outreach program, annual awards luncheon for students in graphic arts competition awards program, and Print Communication Week Banquet
7. Each January the Foundation sponsors Print Communication Week and provides a full day of programs for schools and executives in the industry that includes industry career tours, a luncheon, career fair, and an evening reception and dinner. The dinner includes speakers on a variety of issues of importance to the printing industry.
8. In the past, the Foundation has invited legislators and their spouses or significant others to be the guests of the Foundation for the evening program at no charge.
9. In addition, many companies represented at the event will invite their state legislators to attend the event and sit at the company purchased tables.
10. It is inevitable that company executives seated at company tables would likely talk with legislators about issues important to their companies.
11. The individual ticket price for evening event is \$65, which includes \$21.50 for the dinner and \$43.50 for other costs such as marketing, postage, speaker fees, administrative overhead, complimentary tickets provided to legislators, and net profits for event planning, education scholarships, and educational materials for schools.

QUESTION ONE

May the Foundation invite legislators to attend the evening reception and dinner as non-paying guests ?

OPINION

No, the gift to legislators of free admission to the event is prohibited as a gift requested by a lobbyist principal.

The event is a dinner featuring speakers on issues important to the printing industry. It is attended by industry executives and by teachers and students who have participated in print communication week. Neither the nature of the event nor the mission of the Foundation suggest a motivation for the Foundation to invite legislators to attend without charge.

Beyond its potential to create good will, a gift to legislators of free admission to the event provides the industry with an opportunity to present speeches about industry issues to legislators and gives industry executives an opportunity to informally discuss concerns with them. As you have described PIM and the Foundation, the gift would help accomplish the goals of PIM, but seems unrelated to the mission of the Foundation.

The PIM president and Board of Directors are the same as those of the Foundation, thus, one of PIM's lobbyists is the president of the Foundation. Because of the particular relationship between PIM and the Foundation the two cannot be separated for the purpose of giving gifts to legislators. Even if the Foundation is recognized as a separate legal entity, its gift to legislators must be considered to be requested by PIM, a lobbyist principal, and is prohibited.

QUESTION TWO

May the Foundation invite as non-paying guests persons who are not officials as defined in Minn. Stat. § 10A.071, subd. 1(c), but who accompany the legislator to the event?

OPINION

Gifts to persons other than officials as defined in Minn. Stat. § 10A.071, subd. 1(c), are not addressed in Minn. Stat. Ch. 10A.

QUESTION THREE

- A. If a printing company sponsors a company table and pays the Foundation for the cost of a table, may the company invite as non-paying guests officials and their guests?
- B. If the official must pay the costs of the event, would the expenses be paid to the printing company or to the Foundation.

OPINION

- A. A printing company that is a lobbyist principal is prohibited from providing an official with a complimentary ticket to the banquet, and the official is prohibited from accepting the benefit. Minn. Stat. § 10A.071, subd. 1. If the company providing the complimentary ticket is not a lobbyist principal, but provides the gift at the request or suggestion of PIM or the Foundation, the gift would be prohibited as a gift requested by a lobbyist principal.

- B. The official must pay whichever entity provided the complementary admission to the event.

QUESTION FOUR

What happens if the official who attends the event is billed the appropriate costs but does not pay?

OPINION

The lobbyist principal must require contemporaneous or advance payment for the event. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 1.


QUESTION FIVE

If it is the advice of the Board that the official should pay for the event, what portion of the ticket price should the official be charged?

OPINION

The official should pay contemporaneously the full price of the ticket for the evening event. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 1. This response assumes that payment covers the cost of the event.

Issued: 7-26-96


Carolyn D. Rodriguez
Chair

CITED STATUTES

Minn. Stat. § 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED

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 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.