

## **ETHICAL PRACTICES BOARD**

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

Issued to:

Peter S. Wattson, Senate Counsel

G-17 State Capitol

St. Paul, MN 55155

**RE: Gift to Official**

### **ADVISORY OPINION #173**

#### **SUMMARY**

173. A Minnesota official who is a member of either the National Conference of State Legislature's Executive Committee or the Legislative Staff Coordinating Committee, or both committees, is not a member of a group within the meaning of Minn. Stat. § 10A.071, subd. 3(b)(1). The official must pay contemporaneously for food and beverages underwritten by lobbyists or lobbyist principals and offered to the official at joint meetings of the two committees. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 2.

#### **FACTS**

As an attorney in the office of Senate Counsel you are a public official as defined in Minn. Stat. § 10A.01, subd. 18 (n), 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. The National Conference of State Legislatures (NCSL) is run by an Executive Committee of 57 members, all of whom are legislators or legislative staff from other states. When the Executive Committee meets, it is joined by the Legislative Staff Coordinating Committee (LSCC). The LSCC consists of the Executive Committee members who are legislative staff plus 29 members representing the various staff organizations within NCSL.
2. You are a member of both the Executive Committee and the LSCC and the only Minnesota public official, as defined in Minn. Stat. § 10A.01, subd. 18, in either the Executive Committee or the LSCC. There are two other employees of the Minnesota Legislature in the LSCC who are officials as defined in Minn. Stat. § 10A.071, subd. 1(c).
3. The Executive Committee and LSCC meet about four times a year. A typical meeting will include a reception and a dinner underwritten by corporate sponsors, both companies headquartered in the host state and national companies that lobby in Minnesota. All members of the Executive Committee and LSCC, including the one, two, or three Minnesotans present, are offered the same food and beverages at no cost to them.
4. The Minnesota officials, as defined in Minn. Stat. §§ 10A.01, subd. 18, and 10A.071, subd. 1 (c), are less than a majority of the Executive Committee, less than a majority of the LSCC, and less than a majority of the 86-member group that is formed when the Executive Committee and LSCC meet jointly.

## QUESTION

Do the food and beverages underwritten by lobbyist principals and offered to the Minnesota officials at no cost, when the Executive Committee and LSCC meet jointly, fall within the exception in Minn. Stat. § 10A.071, subd. 3(b)(1), for a gift that is given 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?

## OPINION

No. Based on the information presented in this request, a Minnesota official who is a member of either or both of these two committees is not a member of a group within the meaning of Minn. Stat. § 10A.071, subd. 3(b)(1). The official must pay contemporaneously for the food and beverages underwritten by lobbyists or lobbyist principals and offered to the official at joint meetings of the two committees. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 2.

Issued:

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:

- 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:
  - a. a contribution as defined in section 10A.01, subdivision 7;
  - b. 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;
  - c. services of insignificant monetary value;
  - d. a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;
  - e. a trinket or memento of insignificant value;
  - f. informational material of unexceptional value; or
  - g. 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:
  - a. 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
  - b. 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.