

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: Requested Gift

ADVISORY OPINION #197

SUMMARY

197. A lobbyist principal or a lobbyist is prohibited from requesting another to pay for food and beverage provided to legislators at a reception held by a lobbyist principal to which legislators are invited. A legislator is prohibited from accepting a gift that a lobbyist principal or a lobbyist has requested another to give to the legislator. Minn. Stat. § 10A.071, subs. 1 and 2.

FACTS

As a lawyer advising clients regarding the implications of Minn. Stat. § 10A.071, you ask the Ethical Practices Board for an advisory opinion on facts which you describe as follows:

1. A trade association with business members located throughout the state of Minnesota is conducting a "day on the hill" event, a portion of which is a reception where food and beverage will be served.
2. The trade association, a lobbyist principal, invites legislators to the reception, and those in attendance will be offered food and beverage. Legislators will not be asked to make any formal presentations at the reception.
3. Payment for the food and beverage of attending legislators is planned as follows:
 - a) Individual legislators will be invited to the reception by individual members of the trade association who are neither principals nor lobbyists as defined in Minnesota statutes.
 - b) In each instance where an invited legislator attends the reception, the non-principal or nonlobbyist individual or company that invited the legislator will pay for the cost of the food and beverage provided to the legislator and will not be reimbursed by the trade association.

- c) The cost paid by the individual or company who invited the legislator will meet or exceed the value of the food or beverage provided.
4. A trade association, as described above, at some time in the past organized a nonprofit foundation for educational or other similar purposes that is legally separate and distinct from the trade association, having been organized as a separate organization or entity subject to the laws applicable to the organization of a separate foundation.
5. The foundation, neither a principal nor a lobbyist as defined in Minnesota statutes, would either:
- a) put on the entire event at its own expense;
 - b) put on the reception at its own expense; or
 - c) separately invite legislators to the event and pay for the food and beverage of any such legislator that actually attends, at the expense of the foundation.
6. The foundation is not reimbursed for the expenses it incurs.

QUESTION ONE

Does the payment for food and beverage of attending legislators planned by the trade association, a lobbyist principal, violate the provisions of Minn. Stat. § 10A.071?

OPINION

Yes, if a lobbyist principal or a lobbyist requests another to pay for food and beverage provided to a legislator at the reception. A lobbyist principal or a lobbyist is prohibited from requesting another to give a gift to an official; an official is prohibited from accepting a gift that a lobbyist principal or a lobbyist has requested another to give to the official. Minn. Stat. § 10A.071, subds. 1 and 2.

QUESTION TWO

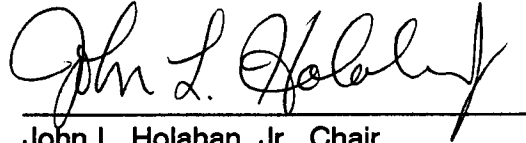
Does the payment for food and beverage of attending legislators planned by the foundation, neither a principal nor a lobbyist, violate the provisions of Minn. Stat. § 10A.071?

OPINION

Yes, if a lobbyist principal or a lobbyist requests the foundation to pay for food and beverage provided to attending legislators at the reception. A lobbyist principal or a lobbyist is prohibited

from requesting another to give a gift to an official; an official is prohibited from accepting a gift that a lobbyist principal or a lobbyist has requested another to give to the official. Minn. Stat. § 10A.071, subds. 1 and 2.

Issued: 2-13-95



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.

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