

**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 #201**

**SUMMARY**

201. A lobbyist principal or a lobbyist is prohibited from requesting another to pay for an event for a legislator. 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. A purely personal gift to an official by an officer, member of the board, or employee of a company that is a lobbyist principal is not prohibited unless the gift is paid for or reimbursed by the company or is requested by a lobbyist principal or a lobbyist or both. Minn. Stat. § 10A.071.

**FACTS**

As president of an association ("Association"), you ask the Ethical Practices Board for an advisory opinion on facts which you describe as follows:

1. The Association is a nonprofit corporation whose purpose is to promote the ethical and professional standards. Its membership is composed of government relations professionals who represent clients before the Minnesota legislature and administrative agencies.
2. Many of the members' clients are lobbyist principals who ask your members whether members of the principals' board of directors, officers, or other employees are regulated by Minn. Stat. § 10A.071 even though the individuals are neither lobbyists nor lobbyist principals.
3. The Association members also question what, if anything, they can ask their clients to do that may be governed by Minn. Stat. § 10A.071.
4. A typical situation confronting members of the Association and their clients might be:
  - a) The vice-president of marketing for Acme Widgets, Inc. ("the company"), an association that is a lobbyist principal, takes a legislator out for lunch and a round of golf. The vice-president pays for the outing out of his or her own funds; the company does not reimburse the vice-president for these expenses.

- b) The vice-president and the legislator may or may not have a prior professional or personal relationship; the vice-president may or may not be the legislator's constituent; the vice-president and the legislator may or may not talk business, the company's business or public business, during the outing; the company may or may not have any issue currently before the legislature or the individual legislator; the two individuals may or may not discuss the current issue; the company's issue may or may not be within the responsibility of the vice-president; the vice-president may or may not supervise the company's government relations activity.

#### QUESTION ONE

Is the vice-president violating Minn. Stat. Ch. 10A?

#### OPINION

The vice-president may not be violating Minn. Stat. Ch. 10A; however, if a lobbyist principal or a lobbyist requested the vice-president to pay for an official's golf outing, the law prohibits a lobbyist principal or a lobbyist 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

Is the legislator violating Minn. Stat. Ch. 10A?

#### OPINION

The legislator may not be violating Minn. Stat. Ch. 10A; however, if a lobbyist principal or a lobbyist asked the vice-president to pay for the legislator's golf outing, the legislator is prohibited from accepting the gift. See response to Question Two, above.

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 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.

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 but 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.