

**ETHICAL PRACTICES BOARD**

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

Issued to:

Samuel Brunelli, Executive Director  
American Legislative Exchange Council  
910 17th Street N.W., Fifth Floor  
Washington, DC 20006

**RE: Issues Forum**

**ADVISORY OPINION #202**

**SUMMARY**

202. The American Legislative Exchange Council's sponsorship and proposed operation of an issues forum that is available to the public is within the exceptions to the gift prohibition in Minn. Stat. § 10A.071, subd. 3 (a)(2) and (3). However, the American Legislative Exchange Council's disbursements in this endeavor may require disclosure under the lobbyist registration and reporting laws in Minnesota. Minn. Stat. § 10A.01, subd. 11; Minn. Rules pt. 4510.0100, subps. 4 and 5.

**FACTS**

As executive director of the American Legislative Exchange Council ("ALEC") you ask the Ethical Practices Board for an advisory opinion based on your statement of the following facts and information provided:

1. ALEC is a national bipartisan organization composed of members who are individual legislators from all 50 states and members who are corporations and other business associations from across the country.
2. ALEC's activities include the sponsoring of educational seminars throughout the country designed for legislators and other interested persons.
3. ALEC receives its operating funds in the form of dues and contributions from its members, some of whom are lobbyist principals as defined by Minn. Stat. § 10A.01, subd. 28.
4. ALEC does not now have a lobbyist registered in Minnesota and does not otherwise fall within the definition of lobbyist principal. ALEC recognizes that the issues forum described herein may constitute lobbying under Minnesota law and may thereby require that ALEC register a lobbyist with the Board, although the forum is not designed to influence any specific legislation.
5. ALEC proposes sponsoring an issues forum for which the target audience would be primarily members of the Minnesota legislature, but ALEC business members and other Minnesota businesses, and any interested person could attend.

6. Presentations at the forum would be designed to provide information to legislators or other officials to assist them in the performance of their official duties.
7. Persons could attend the forum at no cost; persons who choose to attend the dinner would pay a charge of \$19, with advance or contemporaneous payment required. This charge equals the per-plate amount the event facility would be charging ALEC.
8. General operating funds of ALEC would cover the costs of the speakers' expenses and honoraria, printing costs, facility rental, and other expenses not related to the dinner itself. Attenders would be given photocopied outlines for several of the presentations at the forum.
9. Agenda sheets and invitations that have been sent contain a statement that advice on this matter will be sought from the Ethical Practices Board. ALEC will notify persons that the event has been canceled if the Board finds that the program is a prohibited gift.

#### **QUESTION ONE**

Does ALEC's sponsorship and operation of the issues forum require ALEC to register a lobbyist with the Board?

#### **OPINION**

Yes, in the event that the issues forum and any written materials distributed include information that communicates with or urges others to communicate with officials in attempts to advocate a particular position to an official about legislative or administrative action, or which requests initiation of any particular legislative or administrative action. If ALEC authorizes the expenditure of more than \$250 for the costs of the issues forum, a lobbyist must register with the Ethical Practices Board to represent ALEC and report on ALEC's disbursements for lobbying purposes in Minnesota. Minn. Stat. § 10A.01, subd. 11; Minn. Rules pt. 4510.0100, subps. 4 and 5.

#### **QUESTION TWO**

Does ALEC's sponsorship and proposed operation of the issues forum as described in this request constitute a gift to officials that is prohibited by Minn. Stat. § 10A.071?

#### **OPINION**

No. The issues forum as described in this request is offered without charge to officials and any others who may wish to attend. Officials and others who choose to attend the dinner each would pay the amount that the facility would charge ALEC for the dinner. The operation of the issues forum is a gift that is within the exception from the gift prohibition for services to assist an official in the performance of official duties. Minn. Stat. § 10A.071, subd. 3 (a) (2).

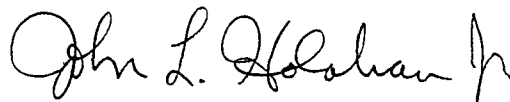
### QUESTION THREE

Is the distribution of photocopied outlines of the presentations at the issues forum to legislators, other officials, and other attenders at no charge prohibited by Minn. Stat. § 10A.071?

### OPINION

No, provided that any photocopied materials that may be distributed to legislators or officials are within the exception for informational material of unexceptional value specified in Minn. Stat. § 10A.071, subd. 3 (a)(6).

Issued: 2-3-1995



John L. Holahan, Jr., Chair  
Ethical Practices Board

### PERTINENT STATUTES AND RULES

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. 27. **Political subdivision.** "Political subdivision" means the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, a municipality as defined in section 471.345, subdivision 1, 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.

Minn. Stat. § 10A.03 LOBBYIST REGISTRATION provides:

Subdivision 1. Each lobbyist shall file a registration form with the Board within five days

after becoming a lobbyist.

Subd. 2. The registration form shall be prescribed by the Board and shall include (a) the name and address of the lobbyist, (b) the principal place of business of the lobbyist, (c) the name and address of each person, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears, and (d) a general description of the subject or subjects on which the lobbyist expects to lobby.

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Minn. Stat. § 10A.04 LOBBYIST REPORTS provides:

Subdivision 1. Each lobbyist shall file reports of the lobbyist's activities with the Board as long as the lobbyist continues to lobby. A lobbyist may file a termination statement at any time after ceasing to lobby.

Subd. 2. Each report shall cover the time from the last day of the period covered by the last report to 15 days prior to the current filing date. The reports shall be filed with the Board by the following dates: (a) January 15; (b) April 15; and (c) July 15.

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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 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 section 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.

Minn. Rules pt. 4510.0100 DEFINITIONS provides:

...  
Subp. 4. **Lobbyist.** "Lobbyist" means an individual as set forth in Minnesota Statutes, section 10A.01, subd. 11. "Lobbyist" does not include an individual who merely communicates with a public official to obtain information or request an interpretation of a law, rule, or agency action.

Subp. 5. **Urging/urges others to communicate.** "Urging/urges others to communicate" means any written or oral communication by a lobbyist which requests that an individual or association advocate a particular position to a public official concerning any legislative action or administrative action, or which requests an individual or association to advocate a public official initiate any particular legislative or administrative action. The term does not include mere presentation of factual material without comment.