

ETHICAL PRACTICES BOARD

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

Issued to:

Colleen Fjelstad, Director of Administration
Minnesota Society of Certified Public Accountants
1230 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, MN 55431-1183

RE: Gift to Legislators

ADVISORY OPINION #203

SUMMARY

203. The publication and complimentary distribution of a "Tax Guide for Minnesota Legislators" to legislators by the Minnesota Society of Certified Public Accountants, a lobbyist principal, is not within the exceptions to the laws prohibiting a lobbyist principal from giving a gift to a legislator. A legislator is prohibited from accepting the tax guide unless the giver receives contemporaneous payment of equal or greater value in return. Minn. Stat. § 10A.071.

FACTS

As director of administration for the Minnesota Society of Certified Public Accountants ("the MNCPA"), a lobbyist principal, you ask the Board for an advisory opinion based on your statement of the following facts and information provided:

1. The publication of a Tax Guide for Minnesota Legislators ("tax guide") has been an annual project of the federal & state tax committee of the MNCPA for the past seventeen years (copy of 1994 publication enclosed for reference.)
2. The tax guide is designed to be responsive to specific questions relating to federal income tax treatment of travel and other expenses incurred by legislators because of their membership in the legislature.
3. The tax guide does not deal with itemized deductions of a personal nature or expenses of other businesses with which a legislator may be associated and suggests that tax or accounting questions about these matters should be directed to a legislator's certified public accountant.
4. The MNCPA has distributed the tax guide to all legislators without charge; the cost of printing the guide, \$6 per copy, is paid by the MNCPA; MNCPA members donate their time in compiling the data.

5. The MNCPA considers the tax guide a community service to be available as a source of tax information for the legislature and the public.

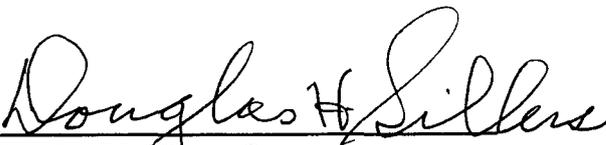
QUESTION

Is the distribution to all Minnesota legislators of a complimentary copy of the tax guide by the MNCPA, a lobbyist principal, a gift that is permitted under Minn. Stat. § 10A.071?

OPINION

No. The assembling and distribution of information about the application of federal income tax laws, such as the tax guide described in this request, is not within the exceptions to the laws prohibiting a lobbyist principal from giving a gift to a legislator. A legislator is prohibited from accepting a gift from a lobbyist principal, such as the tax guide described in this request, unless the MNCPA receives contemporaneous payment of equal or greater value in return. Minn. Stat. § 10A.071.

Issued: 3-1-95


Douglas H. Sillers, Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

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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.