

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: Exception to Gift Prohibition

ADVISORY OPINION #214

SUMMARY

214. A donation by a lobbyist or a lobbyist principal to a 501(c)(3) charitable organization that is personally requested by a public official who is a volunteer member of the organization's board of directors is a gift within the meaning of Minn. Stat. § 10A.071. The gift prohibitions in Minn. Stat. § 10A.071 do not apply to a request from the charitable organization which has a public official on the board of directors as a volunteer member.

FACTS

You are a public official as defined in Minn. Stat. § 10A.01, subd. 18 (a), 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 on your statement of the following facts and information provided:

1. You have been approached by a group of persons who have requested your participation as a founding board member of a start up charitable organization organized under § 501 (c) (3) of the Internal Revenue Code.
2. The organization proposes to deal with public issues, but not for partisan purposes.
3. One of your responsibilities in the organization would be to raise funds for the organization through solicitations either directly as a member of the board or collectively through direct mail solicitations as a group. Some of the solicitations would be made to lobbyists or lobbyist principals.

4. There would be no compensation for any of the volunteer activities associated with this organization.

QUESTION ONE

Is a financial donation by a lobbyist or a lobbyist principal to a charitable organization organized under § 501 (c) (3) of the Internal Revenue Code that is requested by a public official who is a volunteer member of the organization's board of directors considered to be a gift to the official within the meaning of Minn. Stat. § 10A.071?

OPINION

Yes. A request personally made by a public official to a lobbyist or lobbyist principal which results in a donation is a gift within the meaning of Minn. Stat. § 10A.071.

QUESTION TWO

Is a donation by a lobbyist or a lobbyist principal to a charitable organization organized under § 501 (c) (3) of the Internal Revenue Code that is requested by a public official who is a volunteer member of the organization's board of directors considered to be a gift to the official if a majority of the organization's board of directors are not public officials as defined in Minn. Stat. § 10A.071?

OPINION

Yes. Please see response to Question One, above.

QUESTION THREE

Is a donation by a lobbyist or a lobbyist principal to a charitable organization organized under § 501 (c) (3) of the Internal Revenue Code that is requested by the organization's board of directors considered to be a gift to a official if the request were made in the form of a letter signed by all the members of the board of directors and you were the only public official on that board?

OPINION

No. Under the circumstances described, Minn. Stat. § 10.071 does not apply to a solicitation made by an organization that has a public official on the board of directors.

QUESTION FOUR

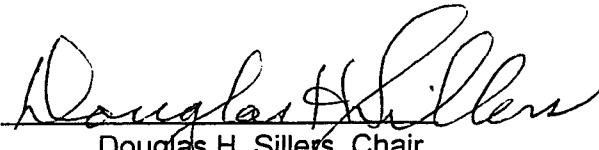
Is a donation by a lobbyist or a lobbyist principal to a charitable organization a gift to a public official under Minn. Stat. § 10A.071 when the donation is solicited by the public official as a volunteer member of the organization, provided that the letterhead of the solicitation contains the names of the board of directors (including the public official's) and a majority of the board of directors are not public officials?

OPINION

Yes. See response to Question One, above. The donation does not qualify as an exception under Minn. Stat. § 10A.071, subd. 3(b)(1) because an equivalent gift is not being given to other members of the group.

The Ethical Practices Board refers the requester to Advisory Opinion Nos. 190 and 210, in which the Board has answered similar questions.

Issued: 8/21/95


Douglas H. Sillers, 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, regional administrator, division director, general counsel, or operations manager of the metropolitan council;

(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.

(t) member or chief administrator of a metropolitan agency.

...

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.