

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: Contractual Relationship

ADVISORY OPINION #215

SUMMARY

215. A public official employed by a lobbyist principal who receives an increase in salary, a promotion or moves from a part-time to a full-time position is not in violation of Minn. Stat. § 10A.071. A public official engaged in a contractual relationship to provide services to a lobbyist principal for monetary compensation is not in violation of Minn. Stat. § 10A.071 (1994).

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion concerning the provisions of Minn. Stat. § 10A.071, which the Board is charged with administering. You state that you are specifically concerned with Minn. Stat. § 10A.071, subd. 1 (b), which cites that a gift to an official from a lobbyist or a lobbyist principal includes a promise of future employment. You further state that you have several questions concerning the Board's definition and application of the term a promise of future employment as it may apply to your personal employment situation.

QUESTION ONE

If a public official, as defined in Minn. Stat. § 10A.01, subd. 18, or as defined in Minn. Stat. § 10A.071, subd. 1, were working for a principal as defined in Minn. Stat. § 10A.01, subd. 28, prior to the enactment of Minn. Stat. § 10A.071 in 1994 and subsequently received from that employer either an increase in salary or a promotion with an increased salary, would either instance be a violation of the provisions outlined in Minn. Stat. § 10A.071 dealing with a promise of future employment?

OPINION

No.

QUESTION TWO

If a public official, as defined in Minn. Stat. § 10A.01, subd. 18, or as defined in Minn. Stat. § 10A.071, subd. 1, were working for a principal as defined in Minn. Stat. § 10A.01, subd. 28, on a limited basis such as a part-time employee working less than 40 hours a week and were offered a full-time position with that employer, would the acceptance of full-time position with additional salary, responsibilities, and benefits, be construed as a violation of Minn. Stat. § 10A.071, subd. 1 (b)?

OPINION

No.

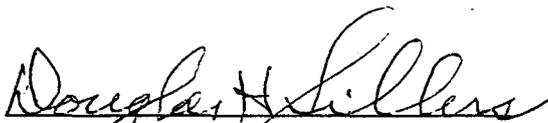
QUESTION THREE

If a public official, as defined in Minn. Stat. § 10A.01, subd. 18, or as defined in Minn. Stat. § 10A.071, subd. 1, were to engage in a contractual relationship as an independent contractor to provide services rendered to a principal as defined in Minn. Stat. § 10A.01, subd. 28, receiving monetary compensation for such services, would such a contractual relationship be a violation of Minn. Stat. § 10A.071, subd. 1 (b), as it relates to a promise of future employment?

OPINION

No.

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.