

ETHICAL PRACTICES BOARD

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**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: Relationships between lobbyist principal and legislators

ADVISORY OPINION # 234

SUMMARY

An official is not prohibited from being a member of the board of directors of a nonprofit corporation or from receiving reimbursement of actual and reasonable expenses associated therewith. Serving as an uncompensated board member does not make the corporation an associated business of an official so serving. Minn. Stat. § 10A.065 does not apply to solicitation of gifts of money to a nonprofit corporation which do not fall within the statutory definition of contributions. An official is not prohibited by Minn. Stat. § 10A.071 from soliciting gifts of money to a nonprofit corporation as long as the official does not directly benefit from the gift and no part of the gift is transferred to the official. Research and analysis materials related to pending or recommended legislation are generally exempt from the gift prohibition of Minn. Stat. § 10A.071 as services in connection with legislation. A corporation's executive director must register with the Board upon meeting the statutory definition of a lobbyist.

FACTS

As an individual representing an informal association, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. You represent a working group of officials, as defined in Minn. Stat. § 10A.071, who are drawn together as a result of their mutual concerns about certain issues affecting Minnesota State Government.
2. The group has in the past participated in public education efforts relating to the issues with which they are concerned. In particular, the group has issued a report including particular actions the legislature might take to bring about changes the group believes are appropriate.

3. Because the informal group members have demanding schedules and duties, it is considering forming a non-profit corporation to undertake its efforts. The non-profit corporation would be headed by a paid executive director.

4. The executive director would direct research and analysis efforts relating to the issues of concern to the group. The analyses, while nonpartisan, would advocate positions on issues which will be the subjects of legislative action. They may urge legislators to vote in a certain way on particular issues and may urge members of the public to contact legislators to influence their votes on these issues. These analyses will be distributed to members of the legislature and to the general public.

5. Part of the duties of the executive director of the corporation will be to encourage members of the public to contact their legislators and urge a particular position with regard to issues of concern to the group.

6. The corporation would not undertake any activities or make any expenditures, transfers, approved expenditures, or independent expenditures to influence the nomination or election of a candidate or to promote or defeat a ballot question.

7. Officials, including members of the legislature may serve on the Board of Directors of the proposed corporation. If they do so, it will be without compensation; however, they may be reimbursed for their actual expenses associated with such service. Other than this expense reimbursement, no money will be transferred to any official.

8. You ask the Board's opinions on a number of issues based on the above factual background.

Issue One

May officials serve on the board of directors of the described non-profit corporation and be reimbursed for their actual and reasonable expenses of so serving?

Opinion

Minn. Stat. Chapter 10A does not prohibit officials from serving on the board of directors of the corporation you describe.

The purpose of the existing informal group and of the proposed corporation is to influence legislative action. Because the purpose is not to influence the nomination or election of a candidate or to promote or defeat a ballot question, it is not a political committee as defined in Minn. Stat. §10A.01, subd. 15, or a political fund as defined in Minn. Stat. §10A.01, subd. 16. Since the corporation is not a political committee, Minn. Stat. § 10A.19, which prohibits a candidate from controlling a political committee other than the candidate's principal campaign committee, has no application.

For the purposes of this opinion, the Board assumes that the executive director of the corporation will be a lobbyist and that the corporation will be a lobbyist principal. (See discussion in Issue Six, below).

While Chapter 10A does not prohibit an official from serving on the board of directors of a corporation which is a lobbyist principal, Minn. Stat. § 10A.071 does prohibit gifts from lobbyist principals to officials.

It is the Board's opinion that your expressed intention of reimbursing board members for their actual and reasonable expenses incurred on behalf of the corporation would not constitute a prohibited gift since the corporation would be receiving consideration of equal or greater value in return, that is, the board member's services and the value of any cost incurred.

However, you should be aware that this arrangement presents pitfalls and opportunities for abuse which could lead to violations of the gift prohibition. Reimbursement of expenses which are not reasonable or are not necessary to the operation of the corporation could be found to be without consideration of equal or greater value from the official and would be prohibited. Likewise, if the corporation were operated in ways which appeared to be for the purpose of circumvention of the gift prohibition, transfers made to or for the benefit of officials serving on the board of directors could be found to be prohibited gifts.

Issue Two

Would the proposed corporation be an associated business, as defined in Minn. Stat. §10A.01, subd. 4, of any official serving on its board of directors?

Opinion

No. You have indicated that the corporation will be non-profit and that officials will not be compensated for serving on its board of directors.

The corporation will be an associated business of an official only if it pays the official more than \$50 in compensation in any month, excluding reimbursement of actual and reasonable expenses. Minn. Stat. § 10A.01, subd. 4.

Issue Three

Are candidates prohibited from soliciting money for the proposed corporation during the legislative session under Minn. Stat. §10A.065?

Opinion

No. Solicitation of money for the proposed corporation is not controlled by Minn. Stat. § 10A.065.

Minn. Stat. §10A.065 prohibits solicitation or acceptance by candidates and various other listed associations of "a contribution" from a lobbyist, political committee, or political fund during the legislative session.

A "contribution" is defined in Minn. Stat. §10A.01, subd. 7, as a "transfer of funds" or a "donation in kind". A "transfer of funds" is defined in Minn. Stat. §10A.01, subd. 7a, as "money . . . given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question". A "donation in kind" is defined in Minn. Stat. §10A.01, subd. 7b, as "anything of value . . . given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question".

Based on the above definitions, money solicited for the proposed corporation, which would be used for the purpose of influencing legislative action, would not be a "contribution" as that term is used in Minn. Stat. §10A.065, and would not be prohibited by that section.

Issue Four

Are officials prohibited from soliciting money for the proposed corporation by any other section of Minnesota Statutes Chapter 10A?

Opinion

No, neither the provisions of Minn. Stat. §10A.071, nor other provisions of Minnesota Statutes Chapter 10A prohibit the solicitation by officials of gifts of money to the proposed corporation.

It is the Board's opinion that a gift of money to a nonprofit corporation, although solicited by an official, is a gift to the nonprofit corporation and not to the official. This conclusion is based on the condition that the official will not directly and personally benefit from the gift and that no part of the gift will be transferred to the official.

The Board has twice previously considered the application of Minn. Stat. §10A.071, prohibiting gifts from lobbyists and lobbyist principals to officials, to the solicitation by officials of donations to nonprofit corporations.

In Advisory Opinion 161, the Board considered a charity event sponsored by a legislator. The event itself was conducted by the legislator, not by the nonprofit corporation. In the context of the event, the legislator solicited prizes which would be given out at the event. Tickets sold for the event included both the price of the event and a monetary contribution to the nonprofit corporation.

The Board recognized a difference between the prizes solicited for the event and the portion of the ticket price which represented a contribution to the nonprofit corporation. The prizes were always within the control of the official. They were solicited by the official and given out according to rules established by the official. They were not intended to be transferred to the nonprofit corporation. The prizes themselves were gifts to the official to assist the official in presenting the event. On that basis, prizes given by lobbyists or lobbyist principals were prohibited by Minn. Stat. §10A.071.

On the other hand, the portion of the ticket which was a contribution to the nonprofit corporation, while arranged, coordinated, and solicited by the official, was a gift to the nonprofit. The official had no discretion over these funds and had the obligation to turn them

over to the nonprofit. The Board recognized this gift of money as a gift to the nonprofit corporation and held that it was not a prohibited gift to the official.

The Board reached a contrary result in Advisory Opinion 214 when it held that a gift of money to a nonprofit corporation solicited by an official was a prohibited gift to the official.

Having this opportunity to review the conflict between Opinions 161 and 214, the Board is of the opinion that the holding in Advisory Opinion 161 is correct.

Issue Five

Will research and analysis materials prepared by the corporation be exempt from the gift prohibition of Minn. Stat. § 10A.071?

Opinion

Yes. If the research and analysis materials relate to pending or recommended areas of legislation, they would fall within the exemption for "services to assist an official in the performance of official duties, including . . . advice, consultation, information and communication in connection with legislation . . ." found at Minn. Stat. § 10A.071, subd. 3(a)2.

To the extent that the materials do not relate to pending or recommended areas of legislation, the Board is unable to issue an opinion on their gift status without a description of the particular materials in question.

Issue Six


Will the proposed corporation be a lobbyist principal; will its executive director be a lobbyist?

Opinion

If executive director, who is engaged for pay, spends more than five hours in any month or more than \$250 in a year for the purpose of influencing legislative action by communicating or urging others to communicate with public officials the executive director will fall within the definition of a lobbyist under Minn. Stat. § 10A.01, subd. 11, and must register with the Board.

If that is the case, the Board assumes that the corporation will meet the definition of a lobbyist principal on the basis that it will spend more than \$500 in a calendar year to compensate its executive director for lobbying or on lobbying expenditures it authorizes the executive director to make.

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Carolyn D. Rodriguez, Acting Chair
Ethical Practices Board

CITED STATUTES

10A.01 DEFINITIONS.

Subdivision 1. For the purposes of sections 10A.01 to 10A.34, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

. . . .

Subd. 4. "Associated business" means any association in connection with which the individual is compensated in excess of \$50 except for actual and reasonable expenses in any month as a director, officer, owner, member, partner, employer or employee, or is a holder of securities worth \$2,500 or more at fair market value.

. . . .

Subd. 7. "Contribution" means a transfer of funds or a donation in kind. . . .

Subd. 7a. "Transfer of funds" or "transfer" means money . . . given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

Subd. 7b. "Donation in kind" means anything of value other than money or negotiable instruments given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

. . . .

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 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. 15. "Political committee" means any association as defined in subdivision 3 whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question. "Political committee" includes a major political party as defined in subdivision 12, a minor political party as defined in subdivision 13, and any principal campaign committee formed pursuant to section 10A.19.

Subd. 16. "Political fund" means any accumulation of dues or voluntary contributions by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

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. . . .

10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED.

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.