

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: Application of gift prohibition to employment search

ADVISORY OPINION # 236

SUMMARY

The provisions of Minn. Stat. § 10A.071 prohibiting a promise of future employment made by a lobbyist or lobbyist principal to an official do not prohibit bona fide employment search activities, including the making and accepting of offers of employment.

FACTS

As a member of the legislature, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following statement of facts:

1. You are an elected public official and are thus an official as defined in Minn. Stat. §10A.071.
2. You do not plan to run for re-election at the end of your term.
3. You would like to begin searching for an job.
4. Some of the potential employers who you may contact or who may offer you positions are lobbyist principals or lobbyists.
5. You ask the Board several questions about application of the gift prohibition of Minn. Stat. §10A.071 to your efforts to search for a job.

Issue

Does the gift prohibition of Minn. Stat. §10A.071, particularly the prohibition of a "promise of future employment", apply to an official's right to seek employment and to solicit or accept employment offers from lobbyists or lobbyist principals, or to the right of a lobbyist or lobbyist principal to offer employment to an official?


Opinion

No. It is the Board's opinion that Minn. Stat. §10A.071 does not prohibit officials from engaging in bona fide employment search activities which include seeking employment with and soliciting employment offers from lobbyists or lobbyist principals. Neither does the statute prohibit lobbyists or lobbyist principals from making bona fide offers of employment to officials or officials from accepting such offers.

In order to address this issue, the Board has considered the meaning of "a promise of future employment", which is a prohibited gift under Minn. Stat. §10A.071. The Board concludes that a promise of future employment is not the same as a firm offer of employment which the job seeker may accept and which then becomes a binding contract of employment.

A promise of future employment is a pledge of the promisor's future intent, conferred on its beneficiary without action by the beneficiary and without consideration from the beneficiary.

A bona fide offer of employment, on the other hand, includes with it the requirement that the offeree give consideration in the form an agreement to perform services as an employee. Unlike a promise of future employment, an offer of employment may be accepted by the offeree so as to create a binding contract to perform the designated employment services on the specified terms and conditions.



Carolyn D. Rodriguez, Acting Chair
Ethical Practices Board

4-26-96
Date

CITED STATUTES

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.