

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)**

RE: Gift of transportation

ADVISORY OPINION # 268

SUMMARY

A gift from a lobbyist principal to a nonprofit corporation which is not a lobbyist principal is not a prohibited gift when later transferred to an official if, at the time of the original gift, the donor was unaware of who would benefit from the gift and the circumstances demonstrate that the underlying purpose of the original gift was not to benefit one or more officials.

FACTS

As the representative of a Minnesota nonprofit corporation, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following facts:

1. The nonprofit corporation you represent ("the Corporation"), is a Minnesota nonprofit corporation which is also recognized by the Internal Revenue Service as a section 501(3)c nonprofit corporation.
2. The Corporation is working with a group of volunteers and others on a project to develop and fund a memorial for a former public official.
3. You are the project coordinator and are responsible for fundraising and marketing for the project. As a part of the fundraising efforts for the project, a benefit reception will be held out of the state of Minnesota.
4. You have arranged for a lobbyist principal to be a corporate sponsor of the benefit reception and to donate to the Corporation airline tickets to the benefit for up to 9

people. These tickets may be used by the Corporation as needed for staff, guests, family members, and others who you, as the project coordinator, determine should attend the event using the Corporation's tickets. The donor will not know who will use the tickets until advised by the Corporation of the passenger names.

5. You have determined that it would be appropriate for one of the Corporation's tickets to be used by an individual who is an official under Minn. Stat. § 10A.071.
6. You are not a lobbyist under Minn. Stat. § 10A.01, subd. 11. The Corporation is not a lobbyist principal under Minn. Stat. § 10A.01, subd. 28, however, the donor of the tickets is a lobbyist principal.

ISSUE

May the nonprofit Corporation give an airline ticket to an official if the ticket was originally a gift to the Corporation from a lobbyist principal?

OPINION

Yes, the Corporation may give an airline ticket to an official under the specific facts presented.

Minn. Stat. § 10A.071 prohibits gifts given to officials by, or at the request of, lobbyists and lobbyist principals. In this case, the contemplated gift from the lobbyist principal will be a gift to a nonprofit corporation recognized under both Minnesota and federal tax law as a separate legal entity.

The gift is made under specific circumstances which demonstrate that its underlying purpose is not to benefit a particular official or group of officials. Thus, the transaction is recognized as a gift to the Corporation, not to an official who may later benefit from the Corporation's own subsequent gift of the item.

Issued: 6-23-97



Carolyn D. Rodriguez, 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.

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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 or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling 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. 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 metropolitan governmental units, as described in section 10A.04, subdivision 6.

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.

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