

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE 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 to members of a group of conference receptions or meals

ADVISORY OPINION # 273

SUMMARY

Gift of meal or reception by lobbyist principal to all members of a membership organization may be exempt from gift prohibition if each criteria for application of Minn. Stat. § 10A.071, subd. 3(b)(1), is met.

FACTS

You are an official, as defined in Minn. Stat. § 10A.071, and ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The State of Minnesota (the State) has purchased a membership in certain national organizations. By virtue of the State's membership, all officials in your position are individual members of the organizations.
2. You are also a member of the leadership body of each of these organizations. In one case, you were appointed to this position by the governmental unit in which you serve. In the other case, you were elected to your position by the membership of the organization.
3. The organizations each hold periodic meetings of their leadership bodies and conferences for their entire membership.
4. Leadership meetings may include receptions and dinners that are paid for in part either directly or indirectly by businesses and corporations which include lobbyist principals as defined in Minnesota Statutes, § 10A.01, subd. 28. These receptions and dinners are not open to the entire organization membership.
5. The organizations' member conferences may also include receptions or dinners that are paid for in part either directly or indirectly by lobbyist principals. These conference receptions or dinners are part the conference program and are included in the conference registration fee. They are open to all conference attendees, which include members of the sponsoring organization as well as some persons who are not members.

6. As a result of the payments by lobbyist principals, members of the organizations' leadership may not be required to pay for receptions or dinners associated with meetings of the leadership. As a further result of these payments, conference registration fees for all participants are less than would be required if the lobbyist principals did not participate.
7. Minnesota "officials", as defined in Minn. Stat. § 10A.071, subd. 1(c), do not comprise a majority of the leadership body or of the full membership of either organization.

ISSUE

Do dinners and receptions paid for in part by lobbyist principals at a conference or meeting as described in the facts fall within an exception to the Minn. Stat. § 10A.071 prohibition on gifts from lobbyist principals to officials?

OPINION

Yes. The gift of dinners or receptions as described in the facts falls within the exception provided in Minn. Stat. § 10A.071, subd. 3(b)(1), which is cited in full at the end of this opinion.

Generally, meals or receptions for Minnesota "officials" paid for in part with contributions from lobbyist principals are prohibited gifts. However, certain exceptions may remove a gift from the prohibition. The Board considers both the leadership body dinners or receptions and those dinners or receptions which are a part of the organizations' general membership conferences to fall within the exception for gifts given because of the recipient's membership in a group.

For the purposes of this request, the Board considers two possible groups. The first is the group which consists of the membership of the organization as a whole. The second is the group which consists of the leadership of each organization.

In Advisory Opinion 220, the Board stated that to constitute "membership in a group" within the meaning of the subd. 3(b)(1) exception, a certain level of formality in both the element of membership and the definition of the group is required. Those requirements are met with respect to both groups considered in this opinion.

Membership in the organizations is accomplished through the formality of the State becoming a member of the organization and the individual being one of the designated officials who is entitled to membership. Likewise, the leadership body of each organization consists of a defined group of positions, to which individuals are elected or appointed through a formal process. The leadership body has particular duties and obligations distinct from the duties and obligations of the general membership.

For the statutory exception to be applicable, an equivalent gift must be given to all members of the group. Making the gift available to all members of the group is sufficient to meet this requirement even if some members of the group do not accept it.

Under the facts of this opinion, the meals and receptions under consideration are available to all members of each group because they are a part of the organization's leadership body meeting or conference program and thus are offered to all members of the subject group.

This opinion does not apply to activities which are not a part of the leadership meeting or conference program, such as gifts of meals, side trips, or hospitality rooms made available to specific individuals or sub-groups attending conferences.

The final requirement of the exception is that a majority of the members in the group not be "officials" as defined in §10A.071. "Officials" include Minnesota public officials, local officials of Minnesota metropolitan governmental units, and Minnesota legislative employees. In the case of each group considered here, such "officials" constitute a minority of the group's membership.

Previous Opinions

Finally, the Board considers the conclusions reached in this opinion in relation to a number of its previous opinions. While advisory opinions do not set precedent, the Board recognizes that interested persons often seek understanding of the Board's interpretation by examining past Board opinions. Because this opinion stands in contrast to certain other opinions, the Board wishes to acknowledge that this opinion represents an evolution in Board interpretation of the "membership in a group" exception to the general prohibition on gifts to officials.

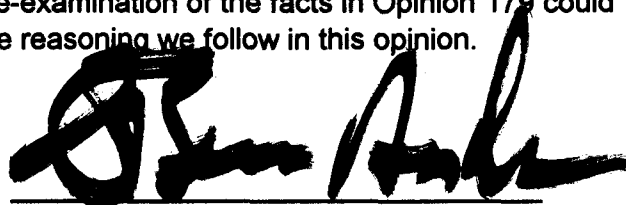
In Advisory Opinion 173, when considering a similar fact situation, the Board stated that being a member of the Executive Committee of the National Conference of State Legislatures did not constitute being a member of a group within the meaning of Minn. Stat. § 10A.071. This opinion signifies an abandonment of the result reached in Opinion 173.

In Opinion 175, the Board concluded that reduced conference fees due to lobbyist principal contributions to the sponsoring organization resulted in a prohibited gift. The Board concluded that being an attendee at a conference similar to those described in this request did not constitute being a member of a group. The analysis in the current opinion delves further into the definition of membership in a group and would result in an opposite conclusion if the request resulting in Opinion 175 was considered again.

In Opinion 179, the Board addressed a similar question, but the "group" under consideration was not one of those considered today. Re-examination of the facts in Opinion 179 could result in a different conclusion based on the reasoning we follow in this opinion.

Issued: _____

10/28/97



G. Barry Anderson, Chair
Campaign Finance and Public Disclosure 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. 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.

Subd. 3. **Exceptions.** (a) The prohibitions in this section 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 but 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