

CAMPAIGN FINANCE & 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: Consideration for transaction which would otherwise be a prohibited gift

ADVISORY OPINION 276

SUMMARY

Payment of consideration of equal or greater value for food and lodging removes the benefit from the definition of a gift under Minn. Stat. § 10A.071.

FACTS

As the representative of an association which is a lobbyist principal, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. The association you represent is a lobbyist principal which is interested in bills before the Minnesota legislature relating to a construction project.
2. Certain legislators may wish to conduct on-sight inspections of the subject of the construction project. You state that the purpose of the on-site observation would be to gain knowledge that can only be obtained through first hand viewing. The only practical way to view the subject of the project is by arranging an inspection trip with third parties. Your association will request these third parties to make inspection trips available.
3. The inspection trip is not available to the general tourist public, but is available to individuals having a business reason for taking the trip. For example, the trip has been made available to various magazine, newspaper, and radio reporters, and to certain federal officials and employees.
4. The third party providers have established rates for food and lodging during business related trips such as the one under consideration. Participants will be required to pay their food and lodging at these rates.

ISSUE ONE

Is the trip, as described in the facts, excluded from the definition of a gift under Minn. Stat. § 10A.071 based on the consideration to be paid for it?

OPINION

The trip, arranged by a lobbyist principal and taken by a public official, is a prohibited gift unless consideration of equal or greater value is paid by the official.

The trip is primarily educational and does not appear to include significant pleasure or entertainment value. The provision of transportation to the site is necessary to accomplish the inspection, but otherwise has negligible value. Thus, the value of the gift, for Minn. Stat. § 10A.071 purposes, is the value of the meals and lodging provided. It is this value on which the determination of adequate consideration must be based.

In a situation where operators limit the category of guests they will accept and also determine how much a guest must pay, the established price does not necessarily reflect the value of the food and lodging provided. Thus, the room and board rates set by operators may not be used as the sole basis for establishing the actual value of the meals and lodging provided.

In a similar situation, involving use of a corporate aircraft, the Board concluded that the value of the transportation should be determined based on the cost of commercial transportation of similar quality (Advisory Opinion 188). That reasoning is applicable to the present request.

One reasonable means of determining the value of the meals and lodging, for Minn. Stat. § 10A.071 purposes, is to base the value on the cost of meals and lodging of similar quality and quantity which could be purchased by a member of the public in commercial establishments.

ISSUE TWO

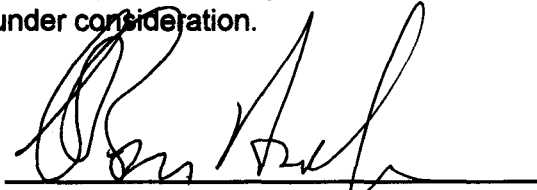
If consideration of equal or greater value is not paid, does the gift, nevertheless, fall within any exception to the general prohibition of gifts under Minn. Stat. § 10A.071?

OPINION

No. The only possible exception relevant to this gift is that of Minn. Stat. § 10A.071, subd. 3(a)(2), for services to assist an official in the performance of official duties. However, the Board does not consider the provision of food and beverages or lodging to be a service. Thus, the services exception is not applicable to the gift under consideration.

Issued: _____

4/26/97



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

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.

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
 - (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