

State of Minnesota

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: Application of gift prohibition exception for program participant

ADVISORY OPINION 278

SUMMARY

The exception to the gift prohibition for meals given to program speakers or participants requires that the individual participant accept an invitation to be a formal part of the program and thereby incur an obligation to appear and participate in a specific and significant manner.

FACTS

You ask the Campaign Finance and Public Disclosure Board (the "Board") for an advisory opinion based on the following facts which were provided by you or obtained by Board staff from the lobbyist principal involved:

1. You are a legislator, and thus an official as defined in Minn. Stat. § 10A.071, subd. 1(c).
2. You have been invited to attend a dinner hosted by a local society of the Minnesota Optometric Association, (the "MOA") which is a lobbyist principal as defined in Minn. Stat. § 10A.01, subd. 28.
3. The invitation to the dinner is addressed to "MOA members, State Legislators, and Guests". The letter you received indicated that the organization's local members would be contacting you about hosting you and your spouse at the dinner.

4. The MOA's local societies will be holding seven such dinners throughout the state. Every state legislator will be invited to one of the dinners. The dinners will be paid for by the MOA local society members.
5. The MOA provides overall organizational support for this series of dinners. The MOA's president, CEO, and executive director will appear at each dinner. The MOA's CEO will facilitate a formal dialogue between attending legislators and MOA members. There will also be a formal presentation by the MOA of information about optometry and the services MOA members donate to their communities.
6. The agenda for the dinner includes an item for "State Legislator's issues for 1998 Session". Time has been allotted in the dinner program for this agenda item, during which legislators in attendance will "have the opportunity to share issues of importance to [their] district[s] with those in attendance . . .". Legislative issues voted on in 1997 will be discussed, as will regulations proposed by state agencies. The allocation of time for this part of the program is not specific to a legislator, since any legislator who accepts the invitation by attending will be allowed to participate.
7. No legislators are named on the program. However, follow up contact is made with legislators and an agenda is made up of those who indicate that they will attend and speak. An attending legislator is not required to share any issues and no specific criteria have been established for a legislator's participation.

You ask whether, under the exceptions to Minn. Stat. § 10A.01, you may accept this dinner if you participate in the sharing of issues for the 1998 legislative session.

ISSUE

May a legislator accept a dinner given by, or at the request of, a lobbyist principal if the legislator speaks about legislative issues during a portion of the event set aside for that purpose?

OPINION

No. The gift of the dinner is prohibited by Minn. Stat. § 10A.071 and does not fit within any of the exceptions provided in the statute.

A gift given by, or at the request of, a lobbyist principal is prohibited unless it fits within one of the exceptions provided in Minn. Stat. § 10A.071. The significant involvement of MOA in organizing and participating in the subject dinners is sufficient to make MOA the requester of the gift even if an MOA member actually pays for the dinner.

The only exception with possible application to the dinners is the exception provided in Minn. Stat. § 10A.071, subd. 3(a)(7). That exception applies to a meal given by an organization "before whom the recipient appears to make a speech or answer questions as a part of a program".


In order for the exception to apply, the individual official's speech or participation must be a formal and significant part of the program. The official must be specifically invited to the event for the purpose of giving a speech or answering questions. The official must make a commitment to be a part of the program and must thereby incur an obligation to participate in a specific and significant manner.

The fact that you will be given an "opportunity" to share issues during a time designated for that purpose is not sufficient to bring the activity within the requirements of the exception. You have no obligation to attend and, if you do attend, you have no obligation to speak or answer questions. If you have indicated your intention to attend and speak and then do not do so, the event's program will, nevertheless, proceed without significant change. Under these circumstances, your voluntary participation would not entitle you to accept the gift of a dinner.

The Board notes two additional matters which may be relevant to your decision regarding this dinner. First, if you pay consideration of equal or greater value for the dinner, it is removed from the definition of a gift and from the prohibitions of Minn. Stat. § 10A.071. Second, depending on the particular event and your reasons for attending, it may be permissible to use principal campaign committee funds to pay for the cost involved. See Advisory Opinions 255 and 277 for a discussion of this issue.

Issued: _____

10/31/97



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

CITED STATUTES

10A.01 DEFINITIONS.

Subdivision 1. **Scope.** 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

(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.