

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: Gift to official of special seating rights at athletic event

ADVISORY OPINION 287

SUMMARY

A lobbyist principal is prohibited by Minn. Stat. § 10A.071 and Minn. Rules, part 4512, from giving or selling an official the right to sit in the box seating area it has leased for athletic events unless the right to purchase equivalent seating is available to members of the public.

FACTS

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

1. The association you represent (the Association) is a lobbyist principal in Minnesota.
2. The Association has entered into a license agreement with the University of Minnesota to use a loft (box seating) at Williams Arena for the Minnesota Gophers home basketball games. The loft contains a block of 24 seats.
3. The license includes the right to sit in the loft and also entitles the Association to season tickets for the 24 seats in the loft.

4. In order to use the loft seating, an attendee must have a ticket for one of the loft seats, which carries a face value of \$22.50, as well as the Association's consent to use its licensed space.
5. The cost of the license for the loft exceeds the face value of the individual tickets for all games which are included in the license.

Based on these facts, you ask whether, under Minn. Stat. § 10A.071, the Association may sell its tickets to officials for the face value of \$22.50 and allow the officials to view the games from its loft.

ISSUE

May a lobbyist principal allow an official to use its licensed box seating at an athletic event if the official pays for the ticket or the right to use the box seating area?

OPINION

No. The sale by a lobbyist principal to an official of a ticket to an event, along with the right to sit in the Association's licensed space is a prohibited gift under Minn. Stat. § 10A.071 and Minn. Rules, part 4512.0100, subp. 3, unless the equivalent right is available for purchase by members of the public on the same terms.

This request involves a potential gift of entertainment, which is included in the gift prohibition under Minn. Rules, part 4512.1000, subp. 3(A) as well as a potential gift of preferential treatment for purchases, which is a prohibited gift under Minn. Rules, part 4512.0100, subp. 3(C).

The right to attend a game and sit in the Association's box seating requires (1) the purchase of a ticket to get in to the game, and (2) the Association's invitation to share in the license rights it purchased to use the box seating area. The Association's cost for these combined rights is unrelated to the price printed on the ticket. Thus, giving an official the right to use this licensed space in consideration for payment of the amount printed on the ticket results in a prohibited gift of entertainment.

The minimum value one could place on the prohibited gift would be the difference between the amount paid by the official and the Association's actual pro-rated per seat cost for the loft space license. However, the giver's cost is not always determinative of the value of the gift under Minn. Stat. § 10A.071. Rather, the value of a gift is its fair market value. See also, Minn. Rules. part 4512.0400.

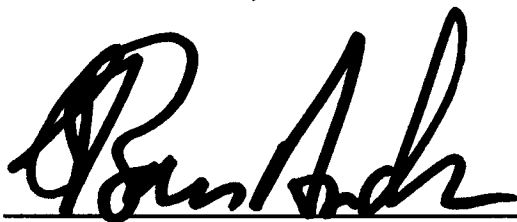
If there is a market through which members of the general public may purchase the right to sit in equivalent box seats for the same games to which the Association would invite officials, then this market may establish the value of the gift. In that case, contemporaneous payment by the official of the market value of the gift removes the transaction from the definition of a gift under Minn. Stat. § 10A.071.

However, if there is not a market through which members of the public may purchase rights equivalent to those the Association intends to make available to officials, then the transaction is prohibited by Minn. Rules part 4512.0100, subp. 3(C), and may not be undertaken regardless of the amount of consideration paid by the official.

Minn. Rules part 4512.0100, subp. 3(C) prohibits giving an official preferential treatment for purchases. The prohibition on giving an official preferential treatment for purchases prohibits the Association from permitting officials to purchase the right to sit in its box seating at athletic events unless the equivalent right is available for purchase by the general public on the same terms and conditions.

Issued:

1/23/98



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.

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Minn. Rules part 4512.0100

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Subp. 3. Gift. In addition to those categories specified in Minnesota Statutes, section 10A.071, subdivision 1, the following are included within the definition of gift:

- A. meals and entertainment;
- B. loans of personal property for less than payment of fair market value;
- C. giving preferential treatment for purchases;
- D. honoraria; and
- E. payment of loans or other obligations.

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4512.0400 GIFTS PARTIALLY PAID FOR BY LOBBYIST OR LOBBYIST

PRINCIPAL. An official must contemporaneously reimburse the lobbyist or lobbyist principal for the fair market value of any part of a gift paid for by the lobbyist or lobbyist principal.