

State of Minnesota
Campaign Finance & Public Disclosure Board
First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Issued to: Richard J. Cohen
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RE: Application of gift prohibition to referral of legal client

ADVISORY OPINION 289

SUMMARY

Gift prohibition of Minn. Stat. § 10A.071 does not extend to referral of legal matters between attorneys.

FACTS

As an attorney licensed to practice law in the State of Minnesota, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. For various reasons, it is customary in legal practice to refer matters between attorneys.
2. Under certain circumstances, the referring attorney may be paid a referral fee.
3. On occasion, an attorney who is a lobbyist may have reason to refer a matter to an attorney who is an official as defined in Minn. Stat. § 10A.071, subd. 1(c).

You ask if the referral of a legal matter by an attorney who is a lobbyist to an attorney who is an official is prohibited by Minn. Stat. § 10A.071.

ISSUE

Is the referral of a legal client by an attorney who is a lobbyist to an attorney who is an official prohibited by Minn. Stat. § 10A.071?

OPINION

No. Referrals of legal clients are not gifts under the definitions established in Minn. Stat. § 10A.071, subd. 1(b) or the Board's administrative rules.

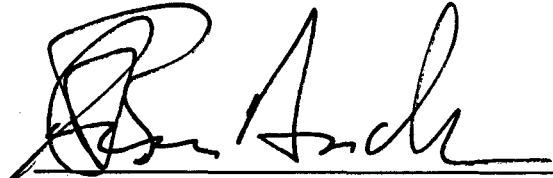
The referral of a legal client provides the recipient with, at most, a contingent opportunity to earn a legal fee. The actual fee, if earned, results from the services rendered by the recipient of the referral.

In addition to the provision of legal services, the realization of value from a referral is contingent on the referred client accepting the new attorney and is often further contingent on success on the merits of the referred matter.

None of the definitions of "gift" in statute or rule can reasonably be interpreted to include such a transaction.

Issued: _____

4/04/98



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

CITED STATUTES AND RULES

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.

Minn. Rules. 4512.0100 DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to this chapter and Minnesota Statutes, section 10A.071. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

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.