

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 - definition of official

ADVISORY OPINION 316

SUMMARY

The gift prohibitions established in Minn. Stat. § 10A.071 do not apply to the director or employees of a state government office if those individuals are not "officials" as defined under the statute.

FACTS

As the manager of a state government office, you ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion based on the following facts:

1. The office in which you work is a part of an executive branch agency of the State of Minnesota.
2. The office is headed by a director whose position is established and defined by statute.
3. The office has relationships with businesses in Minnesota, some of which are lobbyist principals under Minn. Stat. § 10A.01, subd. 28. From time to time these businesses offer meetings or events to the director or other employees of the office. These meetings or events are usually related in general to the duties and responsibilities of the office. They may include the provision of food and beverages.
4. The director and other employees of the office do not fit any of the definitions of "public official" in Minn. Stat. § 10A.01, subd. 18. They are not employees of the legislature and are not local officials.

ISSUE

Do the gift prohibitions of Minn. Stat. § 10A.071 prevent the director or other employees of the office from accepting gifts from businesses that are lobbyist principals?

OPINION

No. Minn. Stat. § 10A.071 prohibits gifts to "officials", which include "public officials" as defined in Minn. Stat. § 10A.01, subd. 18, certain "local officials" as defined in Minn. Stat. § 10A.01, subd. 25, and employees of the legislature. The director and other employees of the office do not fall within the definition of "official" and, thus, the statutory prohibitions are not applicable to them.

The Board notes that Minn. Stat. § 43A.38, the Code of Ethics for Employees in the Executive Branch, prohibits executive branch employees from accepting gifts under certain circumstances. This statute is not under the Board's jurisdiction. You are advised to consult your own legal advisors with regard to its possible application.

Issued: 8/24/99

Sidney Pauly
Sidney Pauly, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES

10A.01 Definitions

Subd. 18. **Public official.** "Public official" means any:

- (a) member of the legislature;
- (b) constitutional officer in the executive branch and the officer's chief administrative deputy;
- (c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;
- (d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;
- (e) individual employed in the executive branch who is authorized to adopt, amend or repeal rules or adjudicate contested cases;
- (f) executive director of the state board of investment;
- (g) executive director of the Indian affairs intertribal board;
- (h) commissioner of the iron range resources and rehabilitation board;
- (i) commissioner of mediation services;
- (j) deputy of any official listed in clauses (e) to (i);
- (k) judge of the workers' compensation court of appeals;
- (l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of economic security;
- (m) solicitor general or deputy, assistant or special assistant attorney general;

- (n) individual employed by the legislature as secretary of the senate, legislative auditor, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;
- (o) member, regional administrator, division director, general counsel, or operations manager of the metropolitan council;
- (p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;
- (q) director of the division of gambling enforcement in the department of public safety;
- (r) member or executive director of the higher education facilities authority;
- (s) member of the board of directors or president of the Minnesota world trade center corporation; or
- (t) member or chief administrator of a metropolitan agency.

Subd. 25. **Local official.** "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

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.

43A.38 Code of ethics for employees in the executive branch.

Subd. 2. **Acceptance of gifts; favors.** Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision . . . [text of exceptions omitted].