

State of Minnesota
Campaign Finance and Public Disclosure Board
190 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: Jan Malcolm
Commissioner
Department of Health
PO Box 64882
St. Paul, MN 55164-0882

RE: A public officials presence at a party paid for by a lobbyist principal.

ADVISORY OPINION # 330

SUMMARY

A public official may attend a party paid for by a lobbyist principal without violating the gift law by, 1) directly reimbursing the lobbyist principal for the official's fair share of the expenses incurred by the lobbyist principal in hosting the party; or, 2) contributing to the party some item or items whose value is equal to or greater than the official's fair share of the value of the party.

FACTS

You ask the Campaign Finance and Public Disclosure Board (Board) for an advisory opinion concerning issues related to the following facts:

1. You are a public official as defined in Minn. Stat. 10A.01, subd. 35, and therefore subject to the restriction on gifts provided in Minn. Stat. 10A.071.
2. Before accepting your current position you were employed by a corporation that is a lobbyist principal (an entity that employs lobbyists) in the state of Minnesota.
3. Your former employer paid for a farewell party in your honor after you had assumed your duties as a public official.
4. You made remarks expressing gratitude at the party.
5. You brought an item of value (wine) to the party.

ISSUE ONE

Was partaking in food or beverage or entertainment at the farewell party a prohibited gift under the provisions of Minn. Stat. 10A.071?

OPINION

Yes, as provided in the facts a lobbyist principal paid for the cost of the party, and you were a public official at the time the party occurred. Furthermore, Minn. Rules 4512.0100, subp. 3, defines meals and entertainment as a prohibited gift. The Board has recognized in previous opinions that the gift prohibition statute does not make a distinction or exception for gifts given at occasions, or with motives, that are purely social in nature. Therefore, the Board concludes that the gift prohibition extends to situations that might be seen as common courtesy if the individual receiving the gift was not a public official.

ISSUE TWO

Did your remarks at the party qualify as one of the exceptions to the gift prohibition?

OPINION

No. Minn. Stat. 10A.071, subd. 3 (a)(7), provides an exception to the gift prohibition for food or beverage provided to public officials that make a speech or answer questions as part of a program. The Board has held in previous opinions, and continues to understand, that this exception is narrow. The exception is intended only for events at which there is a formal program centered, at least in part, on the presentation made by the public official. Remarks made by a public official that are informal, even if there is a social expectation that they are made, are not of the type that qualifies as an exception to the gift prohibition .

ISSUE THREE

Could you partake in food or beverage or entertainment at the party without violating the gift prohibition if you contributed an item of equal or greater value to the fair value of the goods and services you consumed at the party?

Yes. Minn. Stat. 10A.071, subd. 1, defines a gift in part as something "...received without the giver receiving consideration of equal or greater value in return." Consequently, if the value of the wine you provided is at least equal to the fair market worth of the goods and services you received while at the party, then attending the party was a transaction and not a prohibited gift. One way of determining the fair market value of the goods and services you were provided would be to total the cost of the food, beverage, entertainment, decoration, and wait staffing provided by the lobbyist principal, and dividing that amount by the number of individuals that

attended the party. If the fair value of your proportional share of attending the party is greater than your contribution, you should reimburse the difference to the lobbyist principal.

Although not included as a fact in this opinion request, the Board notes that any present provided to a public official cannot be added to the calculation used to determine the fair market value of attending the party. The public official must reimburse the full value of any present paid for by a lobbyist or lobbyist principal in order to avoid a violation of the gift prohibition.

Issued: Aug 28 2001


Shirley Chase, Chair
Campaign Finance and Public Disclosure Board

CITED STATUTES AND RULES

MINNESOTA STATUTES 10A.01 DEFINITIONS.

Subd. 35. **Public official.** "Public official" means any:

- (1) member of the legislature;
- (2) 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;
- (3) constitutional officer in the executive branch and the officer's chief administrative deputy;
- (4) solicitor general or deputy, assistant, or special assistant attorney general;
- (5) commissioner, deputy commissioner, or assistant commissioner of any state department or agency as listed in section 15.01 or 15.06;
- (6) member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has either the power to adopt, amend, or repeal rules, or the power to adjudicate contested cases or appeals;
- (7) individual employed in the executive branch who is authorized to adopt, amend, or repeal rules or adjudicate contested cases;
- (8) executive director of the state board of investment;
- (9) deputy of any official listed in clauses (7) and (8);
- (10) judge of the workers' compensation court of appeals;
- (11) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of economic security;
- (12) member, regional administrator, division director, general counsel, or operations manager of the metropolitan council;
- (13) member or chief administrator of a metropolitan agency;
- (14) director of the division of alcohol and gambling enforcement in the department of public safety;
- (15) member or executive director of the higher education facilities authority;
- (16) member of the board of directors or president of Minnesota Technology, Inc.; or

(17) member of the board of directors or executive director of the Minnesota state high school league.

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 11;

(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.

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.