

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Gifts by a political subdivision's employee-lobbyist to an official of the same political subdivision

ADVISORY OPINION 402

SUMMARY

A lobbyist may provide an official with transportation of insignificant value without violating Minnesota's prohibition on gifts from lobbyists to officials. A lobbyist may pay for food and beverage for an official of a political subdivision if the lobbyist is a full-time employee of the same political subdivision and the lobbyist is reimbursed in full by the political subdivision for the cost of the official's food and beverage. A lobbyist is prohibited from paying for food and beverage for an official with the lobbyist's unreimbursed personal funds.

FACTS

As the representative a political subdivision you ask the Campaign Finance and Public Disclosure Board, ("the Board"), for an advisory opinion based on the following facts:

1. The political subdivision has within its organizational structure individuals who are public officials or local officials of a metropolitan governmental unit under Minnesota Statutes, Section 10A.071, commonly referred to as Minnesota's gift prohibition statute.
2. The political subdivision employs various staff, including some individuals who lobby for the political subdivision. These individuals register with and report to the Board as lobbyists under Minnesota Statutes, Sections 10A.03 and 10A.04.
3. The lobbyists who are the subject of this opinion are not contract lobbyists, but regular full-time employees of the political subdivision. These staff members do not provide lobbying services for any entity other than the political subdivision.
4. In the course of their employment, the staff lobbyists may meet with the officials of the political subdivision that employs them to seek input, to advise as to the status of various lobbying efforts, or for other purposes.
5. A meeting between a staff lobbyist and an official of the employer may occur during a meal. In this case, the staff lobbyist may provide transportation to the location of the meeting and may pay for the meal.

6. The staff lobbyist may be reimbursed for costs of the meal and transportation by the political subdivision employer or may treat those costs as a personal expense and not seek reimbursement.

You ask whether the lobbyist's provision of transportation or payment for food and beverages under the stated facts violates the gift prohibition provisions of Minnesota Statutes, Section 10A.071.

Issue One

Does providing an official with transportation to a meeting under the stated facts constitute a prohibited gift?

Opinion

Providing transportation is a service, which is included in the definition of a gift. Thus, a lobbyist providing transportation to an official is prohibited unless it falls within one of the exceptions provided in §10A.071.

Minnesota Statutes, Section 10A.01, subd. 3(1) includes an exception for "services to assist an official in the performance of official duties . . .". The statute lists examples of services that are included, such as "providing advice, consultation, information, and communication . . .".

The list of examples in §10A.071, subd. 3(1) is not exclusive. However it suggests that the type of services that are to be included relate directly to the official's duties. The exception does not lend itself through reasonable interpretation to extend to the provision of transportation to allow an official to reach the place where official duties may take place. Thus, this exception does not provide a basis to remove the transaction from the gift prohibition.

Section 10A.01, Subd. 3(3) provides an exception for "services of insignificant value". This is a blanket exception limited only by the value of the services. Providing a ride in a lobbyist's personal vehicle from an office to a nearby local eatery would likely fall within the scope of this exception and would be permitted. Trips by other means or of longer distances would likely have more than insignificant value and would be prohibited.

Without specific information regarding the proposed transportation, the Board is unable to provide a more definite opinion.

Issue Two

Does paying for food and beverages for an official at a meeting under the stated facts constitute a prohibited gift if the lobbyist who makes the payment is reimbursed by the political subdivision that employs the lobbyist and in which the official serves?

Opinion

Nothing in Minnesota Statutes Chapter 10A prohibits a political subdivision from paying expenses of its officials. If an employee of the political subdivision pays certain expenses of an official and is fully reimbursed for those expenses by the political subdivision in the regular course of business, the payment is attributed to the political subdivision. Thus, there is no gift from the lobbyist and the transaction is not governed by §10A.071.

The Board does not express an opinion regarding the legality of the reimbursement policy of any political subdivision. Such policies are not under the Board's jurisdiction.

Issue Three

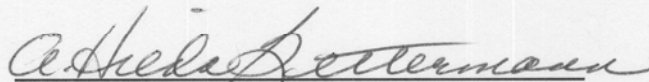
Does paying for food and beverages for an official at a meeting under the stated facts constitute a prohibited gift if the lobbyist who makes the payment does so with his or her own personal funds?

Opinion

Minnesota Statutes, Section 10A.071 provides very limited and specific exclusions to its general prohibition of gifts. There is no exception that would apply to a lobbyist paying for a meal for an official if payment is made with the lobbyist's personal funds. The fact that the lobbyist is an employee of the political subdivision in which the official serves does not give rise to any applicable statutory exception. Thus, a prohibited gift would result.

The situation presented in this request may not have been contemplated when §10A.071 was enacted. However, there is no basis in the language of the statute to establish an exception based on the fact that a lobbyist and an official serve the same political subdivision.

Issued March 3, 2009



A. Hilda Bettermann, 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.

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 costing \$5 or less;
- (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.