

State of Minnesota
Campaign Finance and Public Disclosure Board
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Issued to: Paul Sherman
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RE: Gift of publications to public officials

ADVISORY OPINION 445

SUMMARY

Informational material provided by a principal to public officials may qualify for the exception in the gift prohibition for services to assist an official in the performance of official duties if the principal or the principal's lobbyist had a significant role in the creation, development, or production of the information.

FACTS

As senior attorney for the Institute for Justice (the Institute) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts.

1. A lobbyist registered in Minnesota represents the Institute. The Institute is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33.
2. Institute employees write books and reports on public-policy issues. The Institute would like to use two of these publications to support an upcoming lobbying effort in Minnesota. The publications are intended to help public officials better understand issues of concern to the Institute. Therefore, the Institute would like to give the two publications to public officials, which includes all members of the Minnesota legislature, and to public officials serving in the executive branch.
3. One of the publications is entitled *License to Work* (2nd Edition), and is a report on occupational licensing laws in all 50 states. The report is available as a free PDF download on the Institute's website. The Institute estimates that the cost to print and bind the report is approximately six to ten dollars.
4. The other publication is entitled *Bottlenecks: Gaming the Government for Power and Private Profit* (*Bottlenecks*). This publication is described on the Institute's website, but it is not available for free download. A link is provided to the publisher where the book may be purchased new for \$27.99. The Institute

may purchase the book with an author's discount that lowers the price to less than \$17.00. The current chairperson and founding general counsel for the Institute for Justice, and the director of strategic research at the Institute for Justice, are the co-authors of *Bottleneckers*.

5. *Bottleneckers* is also available for purchase used at various internet sites. A search by Board staff found used copies of the book readily available for around \$13.70. The Institute states that at one time a used copy of the book was available for \$2.06. The review by Board staff was not able to replicate that price point.
6. Your review of the gift prohibition in Minnesota Statutes section 10A.071 leads you to believe that *License to Work* qualifies for the exception provided for informational material with a resale value of \$5 or less, but you would like the Board to confirm that conclusion. You are not sure if *Bottleneckers* may be provided to the public officials.

ISSUE ONE

May the Institute provide *License to Work* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION ONE

Minnesota Statutes section 10A.071, generally prohibits a principal or lobbyist from giving a gift to a public official. There are however, a number of exceptions to the prohibition provided in the statute. In specific, subdivision 3 (6) exempts "informational material with a resale value of \$5 or less."

The *License to Work* report is available as a free download to anyone on the Institute's website. In Advisory Opinion 317, the Board approved of giving a book to public officials that was also available free to the public. Consistent with the prior opinion, informational material, such as *License to Work*, that is available for free distribution to the public on a website may also be given to public officials under the exception for informational material.¹

Lobbyists must report gifts made by their principal if the value of the gift is five dollars or more.² Providing public officials with the website link to the publication does not exceed the five-dollar threshold, and does not need to be reported as a gift.

The Institute may decide to print and bind *License to Work* for distribution to public officials at a cost of six to ten dollars per copy. If that occurs, the publication will still qualify for the exception for informational material with a resale value of five dollars or less. However, the cost of preparing a bound copy of the report will result in a gift that

¹ When Advisory Opinion 317 was issued in 1999, Minnesota Statutes section 10A.071, subdivision 3 (6), provided an exception for "informational material of unexceptional value." The exception was modified to replace "unexceptional value" with the standard of "resale value of \$5 or less" in 2012.

² Minnesota Statutes section 10A.04, subdivision 4 (c).

must be reported on the first lobbyist disbursement report following distribution of the publication.

ISSUE TWO

May the Institute provide *Bottleneckers* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION TWO

The exception to the gift prohibition for material with a resale value of less than five dollars does not apply to *Bottleneckers* because the resale value for the book is consistently over the five-dollar limit. However, another exception is potentially applicable.

In Minnesota Statutes section 10A.071, subdivision 3 (2), an exception is made for

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.

In prior advisory opinions the Board has found that providing informational materials may qualify as a service to assist an official in the performance of official duties if the material provides information and communication in connection with legislation.³ In Advisory Opinion 396, the Board limited the application of this exception to informational materials where “the lobbyist or principal have a significant role in the creation, development, or production of the information.”

The book *Bottleneckers* provides information on upcoming legislation, and was authored by the chairperson and director of strategic research for the Institute. In view of these facts, providing the publication to public officials qualifies as a service to assist an official in the performance of official duties, and is not a prohibited gift.

The value of the book exceeds the five-dollar threshold for the reporting of gifts, and must be reported by the Institute’s lobbyist on the applicable report of lobbyist disbursements.

The Board notes that *License to Work* also appears to qualify for this exception. However, in most situations the application of a set resale value will be easier to apply than an evaluation of the material for its service to an official in the performance of official duties. The Board therefore evaluated *License to Work* under the resale value criteria.

Issued: January 9, 2018

/s/ Carolyn Flynn
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

³ See Advisory Opinions 156, 204, and 246.