



Gift Ban Primer

Minnesota Campaign Finance and Public Disclosure Board

GUIDE TO INTERPRETATION OF MINNESOTA STATUTES 10A.071

PROHIBITION OF CERTAIN GIFTS

Includes annotated statutes and Campaign Finance and Public Disclosure Board
opinions through November 28, 2017

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Introduction

Minnesota Statutes section 10A.071 prohibits most gifts to officials given or requested by lobbyists or lobbyist principals and represents a significant change from previous restrictions on such gifts.

The Campaign Finance and Public Disclosure Board has received numerous requests for interpretation of section 10A.071, resulting in the issuance of advisory opinions and the promulgation of administrative rules with respect to some of the statute's provisions.

This publication assembles the statutes and rules relevant to examination of a gift prohibition issue. It also incorporates and organizes those advisory opinions that appear to represent the Board's position on issues that have not been the subject of administrative rules.

Application of prohibition limited to certain individuals and entities

The prohibition applies if

(1) the **giver** is:

- A lobbyist, or
- A lobbyist principal, or
- A person or entity giving a gift as the result of a request by a lobbyist or lobbyist principal

and

(2) the **receiver** is:

- A public official as defined in Minn. Stat. § 10A.01, subd. 35, or
- A local official in a metropolitan governmental unit as defined in Minn. Stat. § 10A.01, subds. 22 and 24, or
- An employee of the legislature

Minnesota Rules part 4512.0500 states that a gift is requested by a lobbyist or lobbyist principal if the giving of the gift is the direct result of a request, suggestion, or other affirmative effort by the lobbyist or lobbyist principal.

Definition of a gift

To be a gift, the item or benefit must be given and received without the receiver giving equal or greater value in return. Contemporaneous transfer of such consideration from the receiver to the giver removes the item or benefit from the definition of a gift and from the scope of the prohibition.

According to Minnesota Statutes section 10A.071, gifts include:

- money,
- real property,
- personal property,
- a service,
- a loan,
- a forbearance or forgiveness of indebtedness,
- a promise of future employment.

By rule, the Board has clarified that certain specific items or benefits are included in the above categories. Minnesota Rules part 4512.0100, subpart 3, states that gifts include:

- meals and entertainment,
- loans of personal property for less than payment of fair market value,
- giving preferential treatment for services,
- honoraria, as defined in Minnesota Rules part 4501.0100, subpart. 5, and
- payment of loans or other obligations.

Scope of prohibition

If the transaction involves both a covered giver and receiver and a gift, both the giving and receiving of the gift are prohibited unless the transaction falls under one of the specific exceptions provided by the statute. Minn. Stat. § 10A.071, subd. 2; Minn. R. 4512.0200.

Advisory opinion interpretation

The following sections summarize selected advisory opinion decisions by general subject matter.

Employment activities

The Board has interpreted employment related activities as they relate to the general gift prohibition and to the specific prohibition of a “promise of future employment”.

In Advisory Opinion 215, the Board held that a public official employed by a lobbyist principal may receive an increase in salary, a promotion, or move from a part-time to a full-time position. The holding in this opinion has been promulgated as Minnesota Rules 4512.0600, subpart 2.

A bona fide independent contractor relationship wherein an official provides services to a lobbyist for compensation is not a gift and, thus is not prohibited. (#215, #231)

Bona fide employment search activities by officials, including offers and acceptances of job offers from lobbyists or lobbyist principals are not promises of future employment. (#236)

Gift - Scope of definition

Campaign contribution to a campaign for local office, subject to Minnesota Statutes chapter 211B, is not a gift within the meaning of Minnesota Statutes section 10A.071. (#260) Likewise, donation to a principal campaign committee of volunteer services by an attorney who is a lobbyist is not within the meaning of a gift under the statute. However, to the extent that the volunteer attorney's law firm provides support services, the services are a contribution to the principal campaign committee, which may be prohibited or limited by other provisions of Minnesota Statutes chapter 10A. (#282)

The cost of tickets to an event hosted by an official included an amount for the cost of the event and an amount which was a contribution to a nonprofit corporation. The purchase of such tickets at full price by lobbyists or lobbyist principals is not a gift to the official. (#161)

Gifts from a lobbyist principal given to an official for distribution to foreign officials are prohibited gifts. (#176)

In Advisory Opinion 178, the Board found that providing an opportunity to officials to purchase tickets prior to sale to public was a prohibited gift of a service. The holding in this opinion has been promulgated in a broader form as Minnesota Rules 4512.0100, subpart 3 item C, that includes in the definition of a gift "giving preferential treatment for purchases". In Advisory Opinion 287, the Board concluded that this rule prohibits a lobbyist principal's sale of box seating at an athletic event to an official at any price unless equivalent seating is available for purchase by the public. If it is, the lobbyist principal must charge the official the same amount a member of the public would be required to pay for the seating.

In Advisor Opinion 213, the Board stated that payment at regular prices for commercial services purchased by a lobbyist or lobbyist principal from an official was not a gift. The holding in this opinion has been promulgated as Minnesota Rules 4512.0600, subpart 1.

In Advisory Opinion 234, the Board clarified its position regarding solicitation by officials of gifts to nonprofit corporations from lobbyists or lobbyist principals. The Board concluded that a gift solicited for a nonprofit corporation was a gift to the corporation, not to the official who solicited it. That being the case, Minnesota Statutes section 10A.071 was not applicable to such solicitations. This position was subsequently reiterated in Advisory Opinion 315.

A gift to the state, accepted by an agency head acting under specific statutory authority granted to the agency is not a gift to an official under Minnesota Statutes section 10A.071. (#283)

Referral of legal clients by a lobbyist who is an attorney to another attorney who is an official is not a transaction that is within the definition of a gift under Minnesota Statutes section 10A.071. (#289)

Gifts through conduits

The Board has repeatedly held that a gift given by a lobbyist or lobbyist principal through a conduit does not isolate the lobbyist or principal as the actual giver so as to remove the

prohibition. (#163, #172, #186, #380) The general holding of these opinions has been promulgated as Minnesota Rules 4512.0300.

However, not every gift that has a lobbyist principal participating in some way is a conduit gift. In Advisory Opinion 227, the Board stated that a free performance was a gift from the presenting association, not from a lobbyist principal that provided some of the underlying funding. The gift by the principal was a gift to the presenting association, not a conduit gift to any officials ultimately attending.

Advisory Opinion 227, rendered after promulgation of part 4512.0300, suggests that in some situations a giver may become so far removed from the ultimate gift that the conduit rule will not apply.

The issue was examined again in Advisory Opinion 268, which held that a gift of airline transportation by a lobbyist principal to a nonprofit corporation did not result in a prohibited gift to an official when the nonprofit eventually allowed the official to use one of the gift tickets. The opinion noted that the lobbyist principal giver did not know or have control over who would eventually use the transportation and that the gift was not made in such a way that it was targeted for one or more officials.

A gift through a conduit may, nevertheless, fall within an exception to the gift prohibition. In Advisory Opinion 273, the Board considered the exception for gifts based on membership in a group. In that opinion, the Board signaled abandonment of the reasoning adopted in Advisory Opinion 175, which held certain gifts to members in a group to be prohibited as gifts through a conduit. It appears that the benefits conferred would still be considered gifts through a conduit, but that under the facts of that particular opinion, they would fall under the exception for gifts given based on membership in a group.

In Advisory Opinion 242, the Board concluded that donations given or requested by lobbyist or lobbyist principal to a legal defense fund established for the benefit of public officials would result in prohibited gifts when the fund provided benefits to public officials using those donations.

Givers

To fall under the jurisdiction of Minnesota Statutes section 10A.071, the giver must be a lobbyist, lobbyist principal, or a person or entity requested by a lobbyist or lobbyist principal to give the gift. Advisory opinions suggest that the definitions will not be extended artificially.

An association is not a lobbyist principal just because the association belongs to another association that is a lobbyist principal. (#143)

A member of the board of an association that is a lobbyist principal is not a lobbyist or lobbyist principal merely because of the position held. (#177)

A part owner of an association that is a lobbyist principal is not a lobbyist because of the financial investment alone. (#348)

An association is not a lobbyist principal just because some members of the association are lobbyist principals. (#180)

Gifts to officials from officers of a corporation which is a lobbyist principal, that the principal requests the officers to give, are prohibited; however, an unsolicited, personal gift to an official by an officer, member of the board, or an employee of a company that is a lobbyist is not prohibited. (#201)

A law firm is not a lobbyist principal just because one of its attorneys is a lobbyist. (#220) However, a lobbyist or a lobbyist principal may be so closely affiliated with an association that gifts given by the association will be considered gifts requested by the lobbyist or principal even in the absence of a specific request. (#171, revised version, July 26, 1996, #246)

A gift of free admission to a performance presented by an association that is not a lobbyist principal is not a prohibited gift even if lobbyist principals provided some of the underlying support for the performance. The gift of support for the performance is a gift from the lobbyist principal to the presenting association, not to an official who may ultimately attend. (#227)

A gift of airline transportation by a lobbyist principal to a nonprofit corporation did not result in a prohibited gift by the principal to an official when the nonprofit eventually allowed the official to use one of the gift tickets. The opinion recognized the nonprofit as the giver of the gift to the official, noting that the lobbyist principal did not know or have control over who would eventually use the transportation and that the gift to the nonprofit was not made in such a way that it was targeted to benefit one or more officials. (#268)

A trip for two awarded by a lobbyist principal to its employee based on performance is compensation to the employee, not a gift to the employee's spouse, an official, who accompanies the employee on the trip. (#229)

A statutorily-created state agency is not an association and therefore is not a principal under Chapter 10A even if the agency employs a lobbyist. An event conducted by the agency is not a prohibited gift unless the event is held at the request of a lobbyist. (#441)

Informational materials - Minn. Stat. § 10A.071, subd. 3(a)(2) and 3(a)(6)

In Laws of 2010, chapter 327, section 8, the legislature amended the list of exceptions to the gift prohibition by changing Minnesota Statutes, section 10A.071, subdivision 3 (a)(6), to read "*informational material with a resale value of \$5 or less.*"

The Board has not issued an advisory opinion on providing informational material to a public official since chapter 327 was enacted. Existing advisory opinions on informational material are based on the prior language of the statute which permitted the giving of informational material if the material was of unexceptional value. The Board has also not formally revoked any prior advisory opinion on informational material of unexceptional value. However, existing advisory opinions on the value of informational material that may be provided as a gift are not based on the amended statute and should not be taken as reflecting the opinion of the Board given the significant change in statutory language.

Additionally, the Board has issued advisory opinions that in some cases informational materials may be given to public officials using the exception for providing services in the form of information to assist the official in the performance of official duties. Minn. Stat. § 10A.071, subd. 3(a)(2).

Informational audio tapes which cost \$1.50 to produce and will be available to the public for \$4 to \$6 are informational materials of unexceptional value and fall within the Minnesota Statutes section 10A.071, subdivision 3(a)(6), exception to the gift prohibition. (#269) Gift of booklet which is available to the public at no cost is a gift of informational material of unexceptional value. (#286)

A lobbyist principal was permitted to distribute to officials a quarterly periodical about public policy issues. The periodical was valued at \$3.50 per issue and was permitted under the subdivision 3(a)(2) and 3(a)(6) exceptions. (#156)

Three organizations that are lobbyist principals were allowed to provide to officials complimentary copies of their membership directories valued at \$12, \$25, and \$20 under both exceptions. (#184, #204, #205).

A gift of a pocket calendar and a calendar book held not to fall within exceptions. Opinions do not provide discussion of the basis for the decisions. (#141, #189)

More recently, the gift of a legislative guide valued at about \$20 was permitted under the exception in Minnesota Statutes section 10A.01, subdivision 3(a)(2), for providing services in the form of information to assist the official in the performance of official duties. The “unexceptional value” exception was not used as a basis for this opinion. (#246) A similar result was reached in Advisory Opinion 280 in which a gift to legislators by a lobbyist principal of home district telephone directories was permitted under the subdivision 3 exception without regard to cost.

In Advisory Opinion 317, the Board addressed the question of informational materials that are available to the public without charge. A book compiling the history of a Minnesota corporation and discussing the company’s relation to Minnesota’s future was produced by the corporation. The corporation was going to make the book available to the public without charge. Based on the fact that the book was available free to anyone who wanted it, the Board concluded that it had “unexceptional value” for Minnesota Statutes section 10A.071 purposes and would not constitute a prohibited gift if given to officials. The book may have had more than unexceptional value when viewed from a cost of production standpoint. However, the Board concluded that when a producer makes an item available free to the general public, it is the cost to the public that should be used in establishing the item’s value for gift purposes. (#317)

Meals, including exceptions in Minn. Stat. § 10A.071, subd. 3(a)(7)

In 2013, the legislature added an exception to Minnesota Statutes section 10A.071, subdivision 3 (a) (7), for food or beverage given at a reception, meal, or meeting when “the recipient is a member or employee of the legislature and an invitation to attend the reception, meal, or meeting was provided to all members of the legislature at least five days prior to the date of the event.” Minn. Stat. § 10A.071, subd. 3(a)(7)(ii).

The Board has not issued any advisory opinions on this new exception. The advisory opinions discussed below were all decided before the adoption of the new exception. Consequently, these opinions did not consider whether all members of the legislature were invited to attend the event in question at least five days in advance of the event.

Lobbyist principal must charge a fee to attending officials which covers the cost of food and beverage provided at a meeting and require contemporaneous payment of the fee by the official. (#159, #160, #169, #171, #185, #193, #195)

Payments from lobbyists or lobbyist principals to reduce the cost of meetings of officials, including complimentary hospitality rooms at conferences, are prohibited. (#142, #148)

Complimentary meals and goods distributed at an event paid by lobbyists or lobbyist principals are prohibited. (#147, #183, #191, #364, #372, #380)

The Board has issued a number of opinions regarding the exception found in Minnesota Statutes section 10A.071, subdivision 3(a)(7)(i), for meals given at an event where the recipient appears to make a speech or answer questions as a part of a program. In Advisory Opinion 153 the Board held that complimentary breakfasts were not prohibited for officials participating in a series of legislative breakfasts where the officials spoke to the group as a whole and responded to questions as part of a program. The continuing application of the conclusion reached in this opinion is seriously called into question by the subsequent opinions described below. In addition, it is possible that events that do not fit under the subdivision 3(a)(7)(i) exception may now be permitted under subdivision 3(a)(7)(ii) if invitations were issued to all legislators at least five days in advance of the event.

The second and more recent opinion discussing the subdivision 3(a)(7)(i) exception was issued in November 1996, as Advisory Opinion 252. In that opinion, the Board addressed the nature of the recipient's participation necessary to bring the meal within the exception. The Board said that conversation at the tables before the meal did not trigger the exception, even if the organization encouraged the conversation by indicating on invitations and on the program that it would take place. The Board said that the statutory language implies that the individual recipient will make a presentation to the organization as a whole as a formal part of the program. The Board also cautioned against relying on Advisory Opinion 153 to conclude that less formal participation would bring the exception into effect.

Advisory Opinion 259, issued in March 1997, reiterated the position of Advisory Opinion 252. The Board said that the exception is applicable only to an official who is specifically asked "to make a speech or answer questions as part of a program." The official asked to make the speech or appear to answer questions must formally accept the request and accept the obligation to be a part of the program. A blanket invitation to a dinner, extended to a group of officials, is not sufficient to bring the event within the subdivision 3(a)(7)(i) exception even if it indicates that those officials who accept, and then ultimately attend, are expected to make brief remarks or possibly answer questions. Given the adoption of the new exception in Minnesota Statutes section 10A.071, subdivision 3(a)(7)(ii), it is possible that the dinner in this opinion may have been permitted if the blanket invitation was issued to all legislators at least five days before the event.

In Advisory Opinion 278, the Board took a slightly stronger position with regard to application of the subdivision 3(a)(7)(i) exception. The Board said that for an official's participation in a meeting to trigger application of the exception, the official must make a commitment to be a part of the program and must thereby incur an obligation to participate in a specific and significant manner. Because a group of officials were invited and would be permitted to speak, the Board noted that if a particular official indicated an intention to attend and speak and then did not do so, the event's program would, nevertheless, proceed without significant change. As a result of Advisory Opinion 278, it appears that the subdivision 3(a)(7)(i) exception may be applicable only to principal speakers at meetings and does not apply to any dinner function where officials are invited as a group and the program consists of every official who accepts the invitation.

In Advisory Opinion 330 the Board found that informal remarks made by an official at a social event, even if there is a social expectation that they are made, are not the type of remarks that qualify as an exception to the gift prohibition. Taken as a whole, more recent advisory opinions on subdivision 3(a)(7)(i) strongly suggest that Advisory Opinion 153 is no longer an accurate statement of the Board's interpretation of the exception.

Meals and beverages (and lodging) are not "services" under Minnesota Statutes section 10A.071 for the purpose of applying the exceptions for provision of services. (#276)

In Advisory Opinion 402 the Board determined that 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. This same opinion found that a lobbyist is prohibited from paying for food and beverage for an official with the lobbyist's unreimbursed personal funds. (#402)

Membership in a group - Minn. Stat. § 10A.071, subd. 3(b)(1)

An official may accept complimentary meals and reimbursement for expenses when the official serves on a board or advisory committee of an association that is a lobbyist principal when a majority of members are not officials and when members receive the same gifts. (#190, #210)

A certain level of formality in the organization and membership elements of a group are required before the exception for gifts based on membership in a group applies. (#220)

The Minnesota Chiefs of Police Association meets the criteria for a group to which the gift exception for gifts to members in a group may apply. The group has a formal membership process; charges membership fees; and is limited to persons meeting specified membership qualifications. (#258)

Individual membership in a national organization, obtained by virtue of State of Minnesota purchasing a state membership, constitutes membership in a group to which the Minnesota Statutes section 10A.071, subdivision 3(b)(1) exception may apply. Membership in such a group's leadership body, achieved by election, or appointment by a legislative house, constitutes membership in a separate group. A lobbyist principal's subsidy of a conference or meeting, available to all members of the group, was found to be within the exception where a majority of the group's members are not Minnesota officials. Advisory Opinion 273 signals a

clarification of the exception for gifts given based on membership in a group, but does not appear to go significantly beyond the Board's statements in Advisory Opinion 220, in which it required formality in the organization and membership of the group.

In Advisory Opinion 315, the exception for gifts given because of membership in a group was applied to a regional meeting of a multi-state governmental organization of which Minnesota is a member.

Advisory Opinion 273 does not suggest that a group that is defined by invitation is sufficient to trigger the exception.

Advisory Opinion 335 reminds the requestor that a gift given under the exception provided for membership in a group must be reported to the Board. The designated lobbyist for the lobbyist principal is required to report the name and office of each official who received a gift as well as a description of the gift and its monetary value. This disclosure is provided in the Lobbyist Disbursement Report for the reporting period in which the gift is made.

For the exception provided in Minnesota Statutes section 10A.071, subdivision 3(b)(1) to be applicable, the gift must be given to all members of the group. In Advisory Opinion 277, an organization intended to pay travel costs for its public members (legislators from the various states), but not for the representatives of its corporate members. The Board found the exception to be inapplicable because the same gift was not given to each member.

In Advisory Opinion 348 the Board found that a governing body (made up of local officials) of a metropolitan governmental unit may not accept gifts from a lobbyist principal as gifts to the governmental unit if the gifts are intended for the use of local officials. The Board found that the timing of the acceptance of the gift by the governing body, either before or after a local official used the gifts, was irrelevant. In either case the gifts did not fall within an exception to Minnesota Statutes section 10A.071, and the governing body lacked the authority to create a new exception.

Advisory Opinion 361 provides that a lobbyist principal may co-sponsor an event for all members of a Minnesota delegation to the national convention of a major political party as long as the majority of the delegates are not officials, and an equivalent gift (dinner and entertainment) is provided to all delegates. The selection process for the Minnesota delegation was consistent with the standard for group membership set in Advisory Opinions 220 and 273 in that the delegation was not ad hoc or self-selecting.

In Advisory Opinion 393 the Board found that a public official may enter a random drawing offered by a lobbyist principal if the drawing is held at the national convention of a formal group and if the drawing is available to all conference attendees, the majority of who are not public officials. The advisory opinion emphasizes however that the group exception is not available for gifts provided at trade shows or conventions where membership in a group is not required to attend, or where the majority of the group members are public officials.

Plaques - Minn. Stat. § 10A.071, subd. 3(a)(4)

In Laws of 2008, chapter 295, section 3, the legislature amended the list of exceptions to the gift prohibition by changing Minnesota Statutes section 10A.071, subdivision 3(a)(4), to read “a *plaque with a resale value of \$5 or less.*” The Board has not formally revoked any advisory opinion issued prior to this change in statute, but existing advisory opinions on the giving of a plaque ((#165, #198, #218 and #245) are not based on the amended statute and should not be taken as reflecting the opinion of the Board given the significant change in statutory language.

The Board did issue Advisory Opinion 414 after the addition of the \$5 resale valuation to the statute. The Board concluded that a presentation “axe” that is engraved to make it unique to the person to whom it is given, and that has no use other than as a commemorative item, has no “resale value” within the meaning of Minnesota Statutes section 10A.071, subdivision 3(a)(4). Thus the item, which cost considerably more than \$5 to produce, fell within the gift prohibition exception for plaques.

In Minnesota Statutes section 10A.071, subdivision 1 (d), “plaque” is defined as “a decorative item with an inscription recognizing an individual for an accomplishment.”

Services

An incumbent legislator may accept, and a lobbyist may provide, volunteer services to assist the legislator's campaign for re-election. (#151)

Training to officials provided by a lobbyist principal as part of a purchase agreement is permitted because the entity employing the official paid for the service; however, meals provided by the principal at the training sessions are prohibited except if paid by the entity under a purchase agreement. (#157)

An official is prohibited from accepting and a lobbyist is prohibited from giving a gift of complimentary registration for an event not directly related to the official's responsibilities. (#162, #166)

A lobbyist principal may pay for training sessions which will be attended by officials when the training is a service to assist officials in the performance of official duties. (#372)

Complimentary professional services, including health screenings, provided to officials by or at the request of a lobbyist principal are prohibited. (#167, #250)

In Advisory Opinion 178, the Board found that an opportunity extended by lobbyist principal to officials to purchase tickets prior to sale to public was a prohibited gift. The holding in this opinion has been promulgated in a broader form as Minnesota Rules 4512.0100, subpart 3, item C, that includes in the definition of a gift “giving preferential treatment for purchases.”

In Advisory Opinion 181, the Board found that the loan of a wildlife picture to an official by an association that is a lobbyist principal was a prohibited gift. The holding in this opinion has been

promulgated as Minnesota Rules 4512.0100, subpart 3, item B, that includes in the definition of a gift “loans of personal property for less than payment of fair market value.”

Minnesota legislators are prohibited from accepting and a lobbyist principal is prohibited from giving a gift of a tax guide for Minnesota legislators. (#203)

Provision of meals, beverages, or lodging is not a service for the purpose of triggering exceptions for services under Minnesota Statutes section 10A.071. (#276)

A lobbyist principal may sponsor educational seminars for members of the legislature if the seminars assist legislatures in the performance of an official duty. (#364, #380)

A lobbyist may provide an official with transportation of insignificant value without violating Minnesota’s prohibition on gifts from lobbyists to officials. (#402)

Social gifts

The Board has recognized that the statute does not provide any exception for covered gifts merely because they are based on purely social motives. Thus, the Board has found that the statute mandates the following conclusions: a lobbyist may not give a wedding gift to an official (#217); a lobbyist may not provide refreshments to officials attending a baby shower, nor give gifts to the official for whom the shower was given. (#232)

In Advisory Opinion 330, the Board considered a situation in which a lobbyist principal hosted a party for a former employee who left to become a public official. The Board concluded that items of value (food, beverage, entertainment, etc.) consumed at the party would be prohibited gifts, even if the party were purely social in nature.

Travel

An official may accept payment from funds other than those paid by lobbyists or lobbyist principals for travel and other costs to attend meetings; however, the official is prohibited from accepting a gift from lobbyists or lobbyist principals in the form of payments to defray the cost of conferences the official attends. (#168)

Payment by lobbyist principal for meals, transportation, or lodging for attending a conference or meeting is prohibited. (#155, #206, #348)

Acceptance by officials of payments from lobbyists or lobbyist principals to defray cost of meetings that officials attend outside the state or the United States, regardless of the conduit through which the officials receive the gift, is prohibited. (#163, #172, #175, #179, #186)

Transportation and lodging furnished by the employer of the official's spouse, a lobbyist principal, to the official accompanying the spouse, who is not an official, is prohibited unless the official pays the lobbyist principal contemporaneously for the services received. (#164) However, see Advisory Opinion 229 in which the trip was compensation to the employee and thus held not to constitute a gift. The difference between the two results appears to be that

under the facts in opinion #164 there was nothing to suggest that the travel to be provided was anything other than a gift.

Provision of meals, beverages, or lodging is not a service for the purpose of triggering exceptions for services under Minnesota Statutes section 10A.071. (#276)

Valuation of gifts

Four exceptions to the gift prohibition based on value are limited to gifts which are either “services of insignificant monetary value,” “informational material with a resale value of \$5 or less,” “a trinket or memento costing \$5 or less,” or “a plaque with a resale value of \$5 or less.” The \$5 value for a trinket or memento was established by the legislature in 2005, the \$5 value for the resale value of a plaque was established in 2008, and the \$5 value for the resale value of informational material was established in 2010. Prior to these legislative changes the maximum value of these types of gifts was not provided in statute.

The Board has not promulgated a rule or made a firm statement as to what the terms “insignificant” or “resale value” means. However, a number of advisory opinions provide some guidance in this area.

A book compiling the history of a Minnesota corporation and discussing the company’s relation to Minnesota’s future was produced by the corporation. The corporation was going to make the book available to the public without charge. Based on the fact that the book was available free to anyone who wanted it, the Board concluded that it had “unexceptional value” for Minnesota Statutes section 10A.071 purposes and would not constitute a prohibited gift if given to officials. The book may have had more than unexceptional value when viewed from a cost of production standpoint. However, the Board concluded that when a producer makes an item available free to the general public, it is the cost to the public that should be used in establishing the item’s value for gift purposes. (#317)

A plaque valued at \$40 - \$85 was not a memento of insignificant value. (#218) More recently, a plaque valued at \$20 - \$100 was held to be of greater than insignificant value. (#238) (Note: As stated above the statute now provides that a plaque is an exception to the gift prohibition as long as the resale value of the plaque is no more than \$5. Therefore, while these two advisory may continue to provide insight to the parameters of insignificant value their conclusions that the plaques in question were prohibited gifts should not be considered applicable to the status of plaques under the amended statute.)

An informational calendar that may be purchased for \$5 is informational material of unexceptional value. (#226)

The question of valuation of gifts also arises in the context of determining how much consideration an official should pay for a benefit that would otherwise be a prohibited gift. In that context, the Board has held that the value of the gift is the value of the benefit received. In Advisory Opinion 188 the Board said that the value of transportation on a corporate airplane was the value that the receiver would have to pay for comparable accommodations and service on a commercial airline. In Advisory Opinion 330 the Board found that the consideration paid must be equal to or greater than the fair market value of the goods and services consumed by

the official. The Opinion suggests that one way to determine the proportional share of the value of the materials consumed at a party would be to total the cost of the goods and services provided at the party, and then divide that amount by the number of people who attend the party.

In Advisory Opinion 276, the Board considered a situation in which the price of meals, beverages, and lodging were set by a provider, which also restricted the group of individuals to whom the benefits would be made available. The Board concluded that under these circumstances, the provider's price was not a sufficient basis to establish the value of the benefits in order to determine whether consideration or equal or greater value was paid. As in Advisory Opinion 188, the Board referred the requester to commercial sources providing similar food, beverages, and lodging, as a means of ascertaining the value of the benefits.

On two occasions the Board has determined that a ticket to an athletic event sold to a public official must be valued at the price for equivalent seating that is available to the general public. If the opportunity to buy equivalent seating is not available to the public, the sale of the ticket by a lobbyist principal to an official at any price is a prohibited gift. (#287, #407)

Relevant Statutes

Minn. Stat. § 10A.01 Definitions

* * *

Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

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Subd. 22. **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.

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Subd. 24. **Metropolitan governmental unit.** "Metropolitan governmental unit" means any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the Metropolitan Council, or a metropolitan agency as defined in section 473.121, subdivision 5a.

* * *

Subd. 33. **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.

* * *

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 of representatives, 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, or the state chief information officer;
- (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 under chapter 14, or the power to adjudicate contested cases or appeals under chapter 14;
- (7) individual employed in the executive branch who is authorized to adopt, amend, or repeal rules under chapter 14 or adjudicate contested cases under chapter 14;
- (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 unemployment law judge in the Department of Employment and Economic Development;
- (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 Enterprise Minnesota, Inc.;
- (17) member of the board of directors or executive director of the Minnesota State High School League;
- (18) member of the Minnesota Ballpark Authority established in section 473.755;
- (19) citizen member of the Legislative-Citizen Commission on Minnesota Resources;
- (20) manager of a watershed district, or member of a watershed management organization as defined under section 103B.205, subdivision 13;
- (21) supervisor of a soil and water conservation district;
- (22) director of Explore Minnesota Tourism; or
- (23) citizen member of the Lessard Outdoor Heritage Council established in section 97A.056.
- (24) citizen member of the Clean Water Council established in section 114D.30;

(25) member or chief executive of the Minnesota Sports Facilities Authority established in section 473J.07;

(26) district court judge, appeals court judge, or Supreme Court justice;

(27) county commissioner;

(28) member of the Greater Minnesota Regional Parks and Trails Commission; or

(29) member of the Destination Medical Center Corporation established in section 469.41.

Minn. Stat. § 10A.02 Campaign Finance and Public Disclosure Board

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Subd. 12. **Advisory opinions.** (a) The Board may issue and publish advisory opinions on the requirements of this chapter based on real or hypothetical situations. An application for an advisory opinion may be made only by an individual or an association who wishes to use the opinion to guide individual's or association's own conduct. The Board shall issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the Board agrees to extend the time limit.

(b) A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

(1) the Board has amended or revoked the opinion before the initiation of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;

(2) the request has omitted or misstated material facts; or

(3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The Board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester unless the person consents to the inclusion.

Subd. 12a. **Rules.** If the Board intends to apply principles of law or policy announced in an advisory opinion issued under subdivision 12 more broadly than to the individual or association to whom the opinion was issued, the Board must adopt these principles or policies as rules under chapter 14.

Minn. Stat. § 10A.071 Certain Gifts By Lobbyists And Principals Prohibited

[Annotated by Campaign Finance and Public Disclosure Board staff]

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.

[Annotation: The term "gift" has been interpreted broadly by the Board in its advisory opinions with the recognition that nearly every benefit which may be conferred will fall into either real or personal property or services. In Minnesota Rules 4512.0100, subpart 3, the Board sets forth certain categories of benefits which are specifically included in the definition. The definition extends to loans of personal property for less than payment of fair market value and giving preferential treatment for purchases. The latter category may be traced to Advisory Opinion 178 in which officials were allowed to purchase tickets to an event before they were made available to the general public.]

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

[Annotation: See the definitions of "public official" and "local official" in Minnesota Statutes section 10A.01, subdivision 35 and subdivision 22, respectively, and the definition of metropolitan governmental units in Minnesota Statutes section 10A.01, subdivision 24. Also review the list of metropolitan governmental units. It is important to note that the definition of "official" for the gift prohibition extends to employees of the legislature; a group not included in the definitions of public officials or local officials. This extended definition makes the gift prohibition the only section of Minnesota Statutes Chapter 10A having specific application to all legislative employees.]

(d) "Plaque" means a decorative item with an inscription recognizing an individual for an accomplishment.

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.

[Annotation: Implicit in this subdivision is the reciprocal prohibition on both the giver and the receiver of the gift. This prohibition as it applies to the receiver is stated explicitly in Minnesota Rules 4512.0200, subpart 1.]

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;

[Annotation: The campaign contribution exception, as written, applies only to contributions to state candidates who must register with the Board under Chapter 10A. However, in Advisory Opinion 260, the Board stated that a contribution to a candidate for local office is not a gift under Minnesota Statutes section 10A.071. In response, the legislature amended Minnesota Statutes Chapter 211B to prohibit local candidates who are also legislators or constitutional officers from accepting lobbyist contributions during the legislative session.]

(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;

[Annotation: There is no dollar limit on gifts given under this exception. The Board has issued several advisory opinions on gifts falling under this exception that have included both traditional services and services such as the production and provision of informational materials within the exception. The key element of the exception is that the benefit given must assist the official in the performance of official duties. Thus, for example, a federal tax guide for legislators, to assist them in preparation of their personal income tax returns, did not fall within this exception.]

(3) services of insignificant monetary value;

[Annotation: This exception applies to any services, even those of a personal nature. It might apply to something such as giving an official a ride home. "Insignificant monetary value" has not been specifically defined by the Board. In a past rulemaking procedure, a proposed definition of \$5.00 was withdrawn to allow further opportunity to review the issue.]

(4) a plaque with a resale value of \$5 or less;

(5) a trinket or memento costing \$5 or less;

[Annotation: This exception may be applied to virtually anything tangible that cost no more than \$5.]

(6) informational material with a resale value of \$5 or less; or

[Annotation: This exception includes material which may not necessarily relate to the performance of the official's official duties and includes a value limit.]

(7) food or a beverage given at a reception, meal, or meeting if:

(i) the reception, meal, or meeting is held 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; or

(ii) the recipient is a member or employee of the legislature and an invitation to attend the reception, meal, or meeting was provided to all members of the legislature at least five days prior to the date of the event.

[Annotation: The exception in (7)(ii) was added in 2013. The Board has not yet interpreted this provision in an Advisory Opinion or considered how the new exception affects the Board's decisions in advisory opinions interpreting the exception in (7)(i). In advisory opinions issued before 2013, the Board has given effect to each part of the (7)(i) exception and required that in order to fall within the (7)(i) exception, the official must appear before the sponsoring organization to speak or answer questions as a part of a program. It is not enough that an official attending a function may merely have occasion to answer casual questions.]

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

[Annotation: The Board has not defined membership in a group by rule. However, in advisory opinions, the Board has stated that membership in a group requires some level of formality to define the group and the member. The Board has also stated that a group in which the members self-select, such as the group of all persons attending a particular conference, does not fall within the exception. More recently, the Board has concluded that gifts of subsidies for certain conferences of membership organizations may fall within this exception. See particularly Advisory Opinion 273.]

(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.

[Annotation: The Board has not defined the scope of the phrase "member of the family" in an administrative rule, nor has it discussed the issue in advisory opinions.]

MINNESOTA RULES - CHAPTER 4512

4512.0010 SCOPE.

This chapter applies to the prohibition of certain gifts pursuant to Minnesota Statutes, section 10A.071.

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. 2. [Repealed, L 2017 1Sp4 art 3 s 18]

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.

Subp. 4. [Repealed, L 2017 1Sp4 art 3 s 18]

Subp. 5. [Repealed, L 2017 1Sp4 art 3 s 18]

4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

Subpart 1. **Acceptance.** An official may not accept a gift given by a lobbyist or lobbyist principal or given as the result of a request by a lobbyist or lobbyist principal.

Subp. 2. **Use of gift to metropolitan governmental unit.** An official may not use a gift given by a lobbyist or lobbyist principal to a metropolitan governmental unit until the gift has been formally accepted by an official action of the governing body of the metropolitan governmental unit.

4512.0300 GIFTS PAID FOR BY THIRD PARTIES.

A gift is given by the individual or association paying for the gift or reimbursing another for the gift.

4512.0400 GIFTS PARTIALLY PAID FOR BY LOBBYIST OR LOBBYIST PRINCIPAL.

An official must contemporaneously reimburse the lobbyist or lobbyist principal for the fair market value of any part of a gift paid for by the lobbyist or lobbyist principal.

4512.0500 WHEN A GIFT IS REQUESTED BY LOBBYIST OR LOBBYIST PRINCIPAL.

A gift is requested by a lobbyist or lobbyist principal if it is the direct result of a request, suggestion, or other affirmative effort by the lobbyist or lobbyist principal.

4512.0600 SPECIFIC EXCLUSIONS FROM GIFT DEFINITION.

Subpart 1. **Payment for goods and services.** Payment of the regular price for goods or services provided by an official or an official's business is not a gift to the official.

Subp. 2. **Employment compensation.** A salary increase, promotion, or change from part-time to full-time status for an official who is an employee is not a gift to the official.