

ETHICAL PRACTICES 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) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #159

SUMMARY

159. Officials are prohibited from accepting a gift from lobbyists or principals unless the givers bill the officials and the officials make payment to the lobbyists or officials of equal or greater value at the same time the gift is received. The only exception to the gift prohibition that relates to food and beverages is found in Minn. Stat. § 10A.071, subd. 3(a)(7), which excepts from the prohibitions of the statute "food or 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."

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board about implications and practicality of the new prohibition on accepting gifts from lobbyists and principals enacted in the 1994 legislative session (Laws of 1994, Ch. 377, sec. 5).

You ask the Board the following:

QUESTION ONE

If a lobbyist or principal provides a meal to a group of persons, one of whom is an official who is not permitted to accept the gift, and the restaurant or facility is not able to provide a separate check, is it permissible for the lobbyist or principal to submit a bill to the official, and for the official, at that point, to reimburse the lobbyist or principal? Must the bill be given and paid contemporaneously or will exchange by mail suffice?

OPINION

Yes. The bill must be submitted by the lobbyist or principal contemporaneously and must be

paid by the official contemporaneously. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return. It is the opinion of the Board that an official must adopt a pay-as-you-go procedure when accepting a gift from a lobbyist or principal; therefore, the billing for a gift and the payment for the gift must be made at the time when the gift is accepted by the public official.

QUESTION TWO

A "gift" is apparently only considered a "gift" under the law when the giver does not receive consideration of equal or greater value in return. How soon after a lobbyist or principal provides something of value to an official must the official provide something of equal or greater value to the lobbyist or principal for the item provided and accepted not to be considered a gifts? The same day? Month? Year? Must there be a formal agreement at the time the lobbyist or principal provides the thing of value to the official that the lobbyist or principal will receive something of equal or greater value in return? E. g., if a principal takes on official fishing on Monday, and the official takes the principal fishing on Saturday.

OPINION

See response to Question One, above.

QUESTION THREE

If a lobbyist or principal provides a hospitality suite at a conference or convention which is open to all members of a particular organization, and a majority of those members are **not** Minnesota officials, may an official receive food and beverage from that hospitality suite since an equivalent gift is being given to other members of the organization? Does it matter if the conference is not being conducted in Minnesota?

OPINION

No. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return. The only exception to the gift prohibition that relates to food and beverages is found in Minn. Stat. § 10A.071, subd. 3(a)(7), which excepts from the prohibitions of the statute "food or 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." That exception would not apply to the facts you have described regardless of

where the conference is conducted.

QUESTION FOUR

If, because of an official's membership in a group (organization), a majority of whose members are **not** Minnesota officials, the official receives an invitation to dinner from a lobbyist or principal, and the lobbyist or principal has also invited a number of other members of that group (organization) who are not Minnesota officials, may the Minnesota official accept the invitation and receive food and beverage from a lobbyist or principal without reimbursing the lobbyist or principal for the cost of the meal? Is the result different if the offer is accepted only by Minnesota officials, or if the resulting attendees consist of a majority of Minnesota officials, or if the resulting attendees contain a guest list with a minority of Minnesota officials? How is a "group" defined? Is it synonymous with organization?

OPINION

No. See response to Question Three, above.

QUESTION FIVE

Is it permissible for a lobbyist or principal to provide a meal or give a gift to a spouse or significant other of an official? Does it make a difference if the official is also in attendance at the meal (although the official pays for his or her own meal)?

OPINION

Gifts to spouses of officials or gifts to significant others of officials as defined in Minn. Stat. § 10A.071, subd. 1(c), from lobbyists or principals are not addressed in Minn. Stat. Ch. 10A.

Issued: 8/22/94



John L. Holahan, Jr., Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

...

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than \$250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative action or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

...

Subd. 18. "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 jobs and training;
 - (m) solicitor general or deputy, assistant or special assistant attorney general;
 - (n) individual employed by the legislature as secretary of the senate, 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 or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;
 - (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 or the division of gambling enforcement in the department of public safety;
 - (r) member or executive director of the higher education facilities authority; or
 - (s) member of the board of directors or president of the Minnesota world trade center corporation.
- ...

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 governmental units, as described in section 10A.04, subdivision 6.

Laws of 1994, Ch. 377, Sec. 5, created Minn. Stat. § 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED which provides:

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 sections do not apply if the gift is:

- (1) a contribution as defined in section 10A.01, subdivision 7;
- (2) services to assist an official in the performance of official duties, including by 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.