

ETHICAL PRACTICES BOARD

First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

Issued to:

Theodore M. Thompson, Legislative Counsel
Minnesota Medical Association
Suite 300, Broadway Place East
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Minneapolis, MN 55413-1761

RE: Gifts to Officials

ADVISORY OPINION #167

SUMMARY

167. Complimentary copies of publications by the Minnesota Medical Association, a lobbyist principal, are not within the exceptions to the gift prohibitions in Minn. Stat. § 10A.071. The Association must observe the prohibitions against providing gifts to officials when planning its biennial Day at the Capitol with the health screening services, refreshments, and reception that may be offered to officials without charge to cover the costs.

FACTS

As legislative counsel to the Minnesota Medical Association, a lobbyist principal, you ask the Ethical Practices Board for an advisory opinion based on your statement of the following facts:

1. The Minnesota Medical Association (MMA) publishes a monthly journal entitled Minnesota Medicine. The magazine is provided to the MMA members as part of their membership; individuals and organizations may subscribe to the magazine for \$36 per year or \$3 per copy. From January to June each year the MMA publishes a section of the magazine, The Monitor, twice monthly - the first issue as part of the magazine and the second issue mailed separately.
2. The MMA has provided complimentary copies of Minnesota Medicine and The Monitor to selected staff and members of the state legislature, the governor's office, and selected state departments. The MMA would like to continue providing these complimentary copies to officials and believes it is important that health care issues discussed in these publications be disseminated to a broad audience.
3. In years past, the MMA has conducted a biennial Day at the Capitol structured to begin with the distribution by the MMA Alliance (Alliance) of a reminder note with

some sort of trinket, such as an apple, to each member of the legislature. The Alliance is an independent, dues-paying membership organization of physician spouses. The cost of the trinkets is borne by the Alliance. The MMA and the Alliance work together but are separate, independent entities. The Alliance is not a lobbyist or a lobbyist principal.

4. The Day at the Capitol includes a display with a variety of health screenings, informational materials, and refreshments, such as coffee, juice, cookies, and healthy-recipe foods. Volunteer physicians would tend the screening tables, and physicians and staff would be available to answer any questions and to assist people who stopped by.
5. The display area and refreshments are part of the Day at the Capitol; however, they are not exclusively for legislators. The MMA welcomes members of the public as well as legislators and staff.
6. Throughout the Day at the Capitol, individual physicians would be attending meetings with their legislators to discuss issues related to health care. After the day's activities, members of the legislature and the governor would be invited to a reception hosted by the MMA away from the Capitol. The reception is open to members of the MMA and the Alliance. Legislators are invited to the reception to speak with MMA members and every effort is made to assure that MMA and Alliance members are connected with their individual legislators.
7. The program at the reception generally consists of welcoming comments from the MMA president, who introduces the primary guest speaker and the other legislators in attendance. While not very legislator is provided an opportunity to address the entire audience, all legislators are in attendance with the primary purpose of meeting with constituents in an informal setting.

QUESTION ONE

May the Minnesota Medical Association, a lobbyist principal, distribute complimentary copies of Minnesota Medicine and The Monitor to officials?

OPINION

No. It is the opinion of the Board that complimentary copies of these publications provided to officials are not within the exceptions to the gift prohibitions in Minn. Stat. § 10A.071.

QUESTION TWO

A. May members of the MMA Alliance (physician spouses) give a small trinket, such as an apple, to the officials with a note on it?

B. Instead of an apple, could the item be a ceramic coffee cup with the Minnesota Medical Association logo imprinted on it?

OPINION

- A. Yes. Officials may accept gifts from individuals or associations who are not lobbyists or lobbyist principals.
- B. Yes, provided the cost of the ceramic coffee cups with the MMA logo is paid by the Alliance.

QUESTION THREE

May the Minnesota Medical Association sponsor display tables with literature on health-related topics that are open to the public and public officials alike?

OPINION

Yes, provided that any literature that may be distributed to officials is within the exception for informational materials of unexceptional value specified in Minn. Stat. § 10A.071, subd. (3)(a)(6).

QUESTION FOUR

May the Minnesota Medical Association make food and beverages available at the display, which would be open to the public and to officials?

OPINION

An organization that is a lobbyist principal may make food and beverages available to the public but may not provide food and beverages to officials unless the officials pay contemporaneously for the benefit. Minn. Stat. § 10A.071, subd. 1.

QUESTION FIVE

May physicians, who are not lobbyists and who are members of the MMA, as part of the event, provide screening services open to the public and to officials, including checking for conditions such as high blood pressure and skin cancer, as part of the event?

OPINION

If the MMA pays for overhead costs associated with the screening services, then the services are provided, at least in part, by a lobbyist principal, and, therefore acceptance is prohibited unless the official pays contemporaneously for such costs. Officials may accept screening services from

physicians who are not lobbyists, provided the costs associated with the services are not paid by a lobbyist principal.

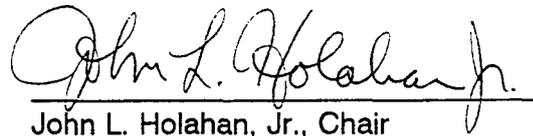
QUESTION SIX

May the MMA sponsor an evening reception at which legislators are invited to speak with constituents and respond to questions as part of a program highlighted by guest speakers, generally the governor or House and Senate leaders?

OPINION

The Minnesota Medical Association may sponsor the reception, but an official is prohibited from accepting complimentary admission to the reception unless the official appears to make a speech or answer questions as part of the program. Minn. Stat. § 10A.071, subd. 3 (a)(7).

Issued: 10-29-1994


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. 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 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 7;
- (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.