

**ETHICAL PRACTICES BOARD**

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

Issued to:

Kevin G. Maas

c/o John F. Moon, Executive Director

Economic Development Association of Minnesota

One Appletree Square, Suite 201

Bloomington, MN 55425

**RE: Gifts to Officials**

**ADVISORY OPINION #186**

**SUMMARY**

186. The acceptance by an official of a gift in the form of payments by a lobbyist or a lobbyist principal to defray the costs of a conference is not within any exception to the gift prohibition in Minn. Stat. § 10A.071. An official is prohibited from accepting a gift from a lobbyist or a lobbyist principal without the giver receiving consideration of equal or greater value in return regardless of the conduit through which the official receives the gift.

**FACTS**

As a member of the Economic Development Association of Minnesota, a lobbyist principal, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. The Economic Development Association of Minnesota ("EDAM") is a nonprofit corporation organized by economic development professionals with both private sector and public sector members.
2. EDAM finances its educational opportunities and professional development activities through members' annual membership fees and two conferences each year.
3. EDAM generates revenues from its conferences through registration fees and from donations that are used to sponsor the conference in general or individual activities such as receptions or door prize drawings.

4. A majority of EDAM's members are not officials as defined in Minn. Stat. § 10A.071, subd. 1(c); however, because EDAM's conferences are open to its members and others, it is possible that at a given conference a majority of the attenders may be officials.

#### **QUESTION ONE**

May EDAM, a lobbyist principal, provide lunches, beverages, hors d'oeuvres, prizes, and other items of more than insignificant value to officials attending an EDAM conference if the source of funding for the items is the registration fees paid by members registered for the conference and if all attenders are offered similar access to such items?

#### **OPINION**

Yes. When an official provides a lobbyist or a lobbyist principal with consideration of equal or greater value than the item provided by the giver, then no gift is involved in the transaction. Minn. Stat. § 10A.071, subd. 1(b). This response assumes that the registration fees paid by attenders cover the full cost of the conference and that there is no violation of Minn. Stat. § 471.895 or any other state statute. See copy of Minn. Stat. § 471.895 attached.

#### **QUESTION TWO**

May EDAM, a lobbyist principal, provide lunches, beverages, hors d'oeuvres, prizes, and other items of more than insignificant value to an official attending an EDAM conference if the items are financed in part by donations received by EDAM from sources other than registration fees paid by persons in attendance?

#### **OPINION**

No. Donations from a lobbyist or lobbyist principal to pay in whole or in part for the cost of a conference attended by officials are not within any exception to the gift prohibition in Minn. Stat. § 10A.071. To the extent that any portion of the costs of a conference is paid by a lobbyist or a lobbyist principal, an official is prohibited from accepting the gift, and the lobbyist or lobbyist principal is prohibited from making the gift. EDAM also should review the applicability of Minn. Stat. § 471.895, a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. That statute prohibits gifts from interested persons to local officials as those terms are defined by Minn. Stat. § 471.895, subds. 1(c) and (d), and it likely applies to the activities you describe if individuals attending the conference are employed in cities and counties other than metropolitan governmental units. A copy is attached for your reference.

#### **QUESTION THREE**

Would the response to Questions One and Two be different if a majority of attenders at an EDAM

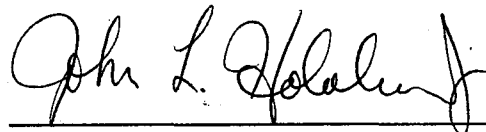
conference were officials as defined in Minn. Stat. § 10A.071 even though a majority of the members of EDAM were not officials?

### OPINION

No.

The Ethical Practices Board refers the requester to Advisory Opinion Nos. 142, 147, 148, 155, 157, 159, 160, 161, 163, 167, 168, 169, 171, 172, 173, 174, 175, 179, and 180, in which the Board has answered similar questions.

Issued: 12-21-1994



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. 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.

Laws of 1994, Ch. 377, Sec. 6, created Minn. Stat. § 471.895 CERTAIN GIFTS BY INTERESTED PERSONS PROHIBITED which provides:

**Subdivision 1. Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" has the meaning given it in section 10A.071, subdivision 1.

(c) "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

(d) "Local official" means an elected or appointed official of a county or city or of any agency, authority, or instrumentality of a county or city.

**Subd. 2. Prohibition.** An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

**Subd. 3. Exceptions.** (a) The prohibitions in this sections do not apply if the gift is:

- (1) a contribution as defined in section 211A.01, subdivision 5;
- (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 an interested person 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.