

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: Value of Transportation

ADVISORY OPINION #188

SUMMARY

188. The value of transportation on a corporation's aircraft that is provided to an official by a corporation, that is a lobbyist principal, is determined by the amount the official would have to pay to obtain equivalent commercial airfare. Otherwise, the transportation offered to the official by the lobbyist principal is a gift prohibited under Minn. Stat. § 10A.071.

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 for an advisory opinion based upon your statement of the following facts and information provided:

1. You and your spouse and have been invited to join two personal friends and other social friends for a skiing weekend next spring. Your host is an executive officer of a corporation which is a lobbyist principal; however, your host is not a lobbyist.
2. The invitation is to travel in an aircraft owned and operated by the corporation, a lobbyist principal.
3. Six passengers, plus two pilots, would be making the flight: the corporate executive and five guests.
4. State law provides that a gift from a lobbyist principal to an official must be given and received without the giver receiving consideration of equal or greater value in return. Therefore, you are prepared to pay the corporation for the air transportation being provided.
5. The round trip commercial coach airfare between Minneapolis and the destination is \$508.
6. You consider asking for corporate cost allocation information to be intrusive;

however, you point out that the operating costs of flying a corporate aircraft, on a pro rata passenger basis, jet or turbo prop, would be significantly in excess of the commercial airfare.

QUESTION ONE

Is the value of the transportation being provided to you, an official, by the corporation, a lobbyist principal, determined by the equivalent commercial airfare or by the pro rata cost to the corporation in conducting the flight?

OPINION

The value of the transportation is determined by what the official would pay to obtain equivalent commercial airfare. Based upon the facts presented, the payment would be most consistent if first class airfare, with no special discounts, including weekend discounts, were used as the measure of value.

QUESTION TWO

Is the corporation's cost determined by its direct flight expense, its overhead allocation, aircraft depreciation, or by some combination thereof?

OPINION

See response to Question One, above. Use of equivalent commercial airfare as the measure of value would eliminate inconsistencies that may result from a requirement that the corporation use any one of its cost accounting procedures to determine the value.

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.