

**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)

**RE: Legal defense fund for public official**

**ADVISORY OPINION # 242**

**SUMMARY**

**Donations given by or at the request of lobbyists or lobbyist principals to a legal defense fund established for the benefit of public officials are prohibited gifts under by Minn. Stat. § 10A.071 when the fund provides benefits to public officials using those donations.**

**FACTS**

As the representative of a group of individuals, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The group you represent is considering starting a legal defense fund which would assist with the legal defense costs of public officials who have been accused of crimes.
2. Any public official assisted would not have any direct or indirect control of the fund.
3. The fund would like to solicit and accept donations from lobbyists and lobbyist principals as those groups are defined in Minn. Stat. § 10A.02, subs. 11 and 28, respectively.

## ISSUE

Are donations to a legal defense fund given by or at the request of lobbyists or lobbyist principals prohibited gifts under Minn. Stat. § 10A.071?

## OPINION

Yes, at the time the donations are conveyed to a public official or used to provide services to a public official, a prohibited gift results.


A lobbyist or lobbyist principal cannot directly give or request another to give a public official a gift of money for legal defense costs or a gift of the legal services themselves. The former would be a prohibited gift of money; the latter a prohibited gift of services.

Where a gift would be prohibited if given directly, the prohibition cannot be overcome by the establishment or use of some conduit through which the gift is passed. This concept was codified into Minnesota Rules, part 4512.0300, which states that a gift is considered to be given by the individual or association paying for it.

Under the facts you suggest, a lobbyist or lobbyist principal would transfer money to the fund with both the knowledge and the intention that it be used for the direct benefit of public officials. The fund would then pass the benefit on to the public official to complete the gift transaction. The substance of the transaction is that the lobbyist or principal is the entity paying for the legal services, making the gift prohibited.

None of the exceptions provided in Minn. Stat. § 10A.071, subd. 3, are applicable to remove the described gift from the general prohibition.

Issued: 7-26-96

  
Carolyn D. Rodriguez, Chair  
Ethical Practices Board

## CITED STATUTES

### 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED.

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.

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