

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON-PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

RE: Acceptance of Gifts by a Local Official in a Metropolitan Governmental Unit

ADVISORY OPINION 348

SUMMARY

A metropolitan governmental unit may not retroactively accept gifts to local officials in order to make the gifts permissible under the provisions of Minn. Stat. §10A.071.

FACTS

As a local official of a metropolitan governmental unit you ask the Campaign Finance and Public Disclosure Board (the Board), for an advisory opinion based on the following hypothetical facts:

1. As an elected local official of a metropolitan governmental unit you accept an offer to fly on a private plane for the purpose of attending an out of state event. You also accept a ticket to attend the event.
2. You do not pay for either the cost of the flight or the ticket to the event.
3. The association that provides the ticket to the event has a lease and a service contract with the metropolitan governmental unit.
4. The owner of the private plane has a financial interest in the association, and is part owner of another business that is in litigation with the governmental unit.
5. While out of state you conduct business for the governmental unit by attending a meeting.
6. While attending the event you meet with business leaders to discuss the state of local business and to promote the metropolitan governmental unit.

7. The metropolitan governmental unit did not take action to accept the plane ride or event ticket as gifts to the governmental unit prior to their use. The metropolitan governmental unit may take action to accept the plane ride and event ticket as gifts to the governmental unit after they have been used.

ISSUE ONE

If you conduct government business or promote the metropolitan governmental unit, may you accept the event ticket and plane ride?

OPINION

No. A local official in a metropolitan governmental unit may not accept gifts under Minn. Stat. §10A.071 if they are given by a lobbyist, a lobbyist principal, or are given at the request of a lobbyist or lobbyist principal. Board records show that the association that provided the event ticket, and organizations affiliated with the association, employ registered lobbyists. Therefore, a game ticket provided by the team is a prohibited gift from a lobbyist principal.

As provided in the facts of this opinion an individual who has a financial interest in the association that provided the event ticket provided the use of his personal airplane for the flight. A financial interest in, or employment by, an association that is a lobbyist principal does not in itself make an individual a lobbyist (See Advisory Opinions 177 and 201). If the use of the airplane was not at the request of a lobbyist, or any association that is, or should be, registered as a lobbyist “principal” as defined in Minn. Stat. §10A.01, subd. 33, then the transportation to the out of state event was not prohibited under Minn. Stat. §10A.071. However, if an individual provides a gift at the request of a lobbyist or lobbyist principal, or is reimbursed for the cost of the gift by a lobbyist or lobbyist principal, then the individual is a conduit for the gift that does not change its prohibited status (Minnesota Rules 4512.0300). The facts provided for this opinion are insufficient for the Board to conclude whether the use of the plane would be a prohibited gift under Chapter 10A.

The Board has consistently found that the cost of attending a meeting or conference provided by a lobbyist or lobbyist principal to an official is a prohibited gift that does not fall within the exceptions to the gift prohibition provided in Minn. Stat. §10A.071, subd. 3, (See Advisory Opinions 155, 163, 168, 172, 175, 179, 186, and 206). Attending a conference or meeting at which government business is conducted does not make the travel to the conference or meeting exempt from the gift prohibition contained in Minn. Stat. §10A.071.

ISSUE TWO

May the governing body of the metropolitan governmental unit accept the gifts on behalf of the governmental unit after I have used them?

OPINION

No. Retroactive acceptance of a gift(s) used by an official does not change the nature of the gift, or override the gift prohibition contained in Minn. Stat. §10A.071. As a state statute the provisions of Minn. Stat. §10A.071 may not be modified or nullified by local ordinance or resolution.

ISSUE THREE

May the governing body of the metropolitan governmental unit pass a resolution to accept an offered service from a lobbyist or a lobbyist principal as a gift to the governmental unit, if only local officials of the governmental unit are expected to use the gift?

OPINION

No. If the gift is provided for the use of local officials it may not be accepted even if it is the governing body (made up of local officials) that determines which specific official will use the gift. It is possible that a lobbyist or lobbyist principal could make a gift to the metropolitan governmental unit that would not violate Minn. Stat. §10A.071 if the gift is made without knowledge or condition as to which individuals will use the service, and if the gift is made in such a way that it is not targeted for the use of local officials. A metropolitan governmental unit may wish to ask for another advisory opinion based on the specific facts of an offered gift if there are questions as to whether the gift is appropriate.

NOTE

The Board notes that Minn. Stat. §471.895, prohibits local official from accepting gifts from individuals who are not lobbyists under certain circumstances. This statute is not under the Board's jurisdiction. You are advised to consult your own legal advisors with regard to its possible application to the facts you presented.

Issued May 28, 2003



Clyde Miller, Chair
Campaign Finance and Public Disclosure Board

Cited Statutes and Rules

10A.01 Definitions.

Subd. 22. **Local official.** "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

Subd. 24. **Metropolitan governmental unit.** "Metropolitan governmental unit" means any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the metropolitan council, or a metropolitan agency as defined in section 473.121, subdivision 5a.

Subd. 33. **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 metropolitan governmental units, as described in section 10A.04, subdivision 6.

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.

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 11;

(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.

471.895 Certain gifts by interested persons prohibited.

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 an 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 section 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 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 local officials, and an equivalent gift is given or offered to the other members of the group;

(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; or

(3) by a national or multistate organization of governmental organizations or public officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization, if the gift is food or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

4512.0300 GIFTS PAID FOR BY THIRD PARTIES.

A gift is given by the individual or association paying for the gift or reimbursing another for the gift.