

**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: Gift to officials of a commercially available digital video disk**

**ADVISORY OPINION 396**

**SUMMARY**

Minnesota Statutes, Section 10A.071 prohibits a lobbyist principal from providing to officials a commercial digital video disk that sells to the public at a retail price of approximately \$19.

**FACTS**

As a registered lobbyist and the representative of a lobbyist principal (“the organization”) as defined in Minnesota Statutes, Section 10A.01, subd. 33, you ask the Campaign Finance and Public Disclosure Board (“the Board”), for an advisory opinion based on the following facts:

1. The organization conducts an annual lobby day during which participants visit the state capitol and engage in conversations with legislators.
2. The organization has become aware of a commercially available documentary produced in digital video disk format (DVD) that focuses on issues that are of concern to the organization. The organization was not involved in the production of the DVD.
3. The disk containing the documentary may be purchased by the organization in bulk quantities for \$11.00 or by consumers on the internet for approximately \$19. The organization proposes to make copies of the documentary disk available to its members, lobby day participants, or other interested persons who could then offer them to legislators and to the Governor.
4. The documentary focuses on experiences of families that are dealing with issues that are the subject of the organization’s lobbying and legislative agenda. According to the organization, it examines the issues in-depth and helps expose the underpinnings of the problems the organization seeks to address through the legislative process.
5. The organization’s stated purpose in distribution of the documentary is to assist elected officials in making decisions about legislation affecting groups for which the organization advocates and in preparing for votes on that legislation.

## Issue

**May a lobbyist principal provide to its members and others for distribution to officials a commercial documentary digital video disk to assist those officials in making decisions about legislation and in voting on that legislation?**

## Opinion

The transfer a digital video disk (DVD) to officials as described in the facts is a gift requested by a lobbyist principal and is prohibited unless it falls within one of the exceptions to the general gift prohibition.

Two exceptions are potentially applicable. The first exception (the “services exception”) is stated in Minnesota Statutes, Section 10A.071, subd. 3(2), which provides an exception for:

“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”.

The overriding requirement of the §10A.07, subd. 3(2) services exception is that it is for providing “services”. To constitute the “service” of providing information, it is necessary that that the lobbyist or principal have a significant role in the creation, development, or production of the information. Giving official an informational item purchased in the public marketplace is not a service within the meaning of the exception and is, thus, a prohibited gift.

The second exception is in Minnesota Statutes, Section 10A.071, subd. 3(6), which provides an exception for :

“informational material of unexceptional value”.

The Board has previously addressed the exception for informational materials of “unexceptional value” and under that exception has permitted a calendar valued at \$3.50 and an audio tape valued at \$4 - \$6.

The Board notes that when the legislature amended a similar exception to remove the words “insignificant value”, it replaced the words with: “costing \$5 or less”. In the 2008 session when the legislature made an exception for plaques, the exception was limited to items that had a resale value of \$5 or less.

Although “unexceptional value” has not yet been specifically defined, the Board concludes that a gift with a retail cost of approximately \$19 exceeds the upper limit for gifts of unexceptional value.

The gift proposed by the requester is does not fall within an exception to the general prohibition of Minnesota Statutes, Section 10A.071 and is, thus, prohibited.

Issued June 17, 2008

/s/ Sven A. Wehrwein  
Sven A. Wehrwein, Chair  
Campaign Finance and Public Disclosure Board

## Cited Statutes and Rules

### 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;

. . . .

(5) a trinket or memento costing \$5 or less;