

ETHICAL PRACTICES BOARD

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

Issued to:

Jeff C. Cole, Treasurer

Minnesota Association of County Officers

Goodhue County Courthouse

P. O. Box 408

Red Wing, MN 55066-0408

RE: Gifts to Officials

AMENDED ADVISORY OPINION #142

SUMMARY

142. Effective August 1, 1994, officials attending meetings of the Minnesota Association of County Officers may not accept gifts in the form of payments that reduce the costs of the meetings from vendors that are lobbyists or lobbyist principals, pursuant to Minn. Stat. § 10A.071. The Association also should consider the application to such payments of Minn. Stat. § 471.895 (1994 Minn. Laws, ch. 377, sec. 6), a statute that is not within the jurisdiction of the Ethical Practices Board.

FACTS

As treasurer of the Minnesota Association of County Officers you ask the Ethical Practices Board for direction on the application of certain provisions of a 1994 law to the activities of your Association. You state that it is your understanding that after August 1, 1994, city, county, and state officials cannot receive benefits such as meals from paid lobbyists if the gift is over \$5.00. You advise the Board that 1) many of Association meetings are held in the Twin Cities Area; and 2) some vendors contribute money in excess of \$100 for group breakfasts or contribute towards the cost of a hospitality room, snacks, refreshments.

You ask the Board the following:

QUESTION

Will the Minnesota Association of County Officers be permitted to accept contributions from vendors after August 1, 1994?

OPINION

Pursuant to Minn. Stat. § 10A.071, which was effective August 1, 1994, officials are prohibited

from accepting gifts from lobbyists or lobbyist principals, subject to certain exceptions defined in the statute. "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit. Minn. Stat. § 10A.071, subd. 1(c). In turn, "public official" is defined by Minn. Stat. § 10A.01, subd. 18; "local official" is defined by Minn. Stat. § 10A.01, subd. 25; and "metropolitan governmental unit" is defined by Minn. Stat. § 10A.01, subd. 26. Copies of those statutory definitions are attached. As you will note from those definitions, it is likely that some of the members of the Minnesota Association of County Officers ("the Association") are local officials of metropolitan governmental units. Those officials are prohibited by Minn. Stat. § 10A.071, subd. 2, from accepting a gift from a lobbyist or lobbyist principal.

The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and all property, whether real or personal, that is given and received without the giver receiving consideration of equal or greater value in return. The only exception to the gift prohibition that relates to food or beverages is found in Minn. Stat. § 10A.071, subd. 3(a)(7), which excepts from the prohibitions of the statute "food or 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." That exception would not apply to the facts you have described. You also should note that there is no blanket exception in the statute for gifts of less than \$5, as your statement of the facts assumes. The Board is aware that Minn. Stat. § 10A.04, subd. 4(c) requires lobbyists to report gifts equal in value to \$5 or more to public or local officials. However, it is the Board's opinion that the only legal gifts to which that provision applies are gifts that fall within one of the statutory exceptions to the general prohibition.

It is the Board's opinion that Minn. Stat. § 10A.071 prohibits a vendor who is a lobbyist or a lobbyist principal from making payments to reduce the costs of the Association meetings you describe if officials--as defined by the statute--are in attendance, unless the officials reimburse the lobbyist or lobbyist principal vendor for the value of the benefit they receive.

However, the Association also should be aware of the existence of Minn. Stat. § 471.895 (1994 Minn. Laws, ch. 377, sec.6), a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. That statute, which also became effective on August 1, 1994, prohibits gifts by interested persons to local officials, and it likely has applicability to the Association activities you describe. A copy is attached for your reference.

Issued: 8-12-1994



John L. Holahan, Jr., Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

...

Subd. 2. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule pursuant to chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting and granting of certificates of need under chapter 116J.

...

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. 25. **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. 26. **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, a metropolitan agency as defined in section 473.121, subdivision 5a, the Minnesota state high school league, and Minnesota Technology, Inc.

Subd. 27. **Political subdivision.** "Political subdivision" means the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, a municipality as defined in section 471.345, subdivision 1, the Minnesota state high school league, and Minnesota Technology, Inc.

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.