Introduction

The premise of the gift ban is simple: a lobbyist or principal (e.g. an entity that employs a lobbyist or engages in lobbying) may not give a gift to an official or request another person to give a gift on their behalf; an official may not accept a gift from a lobbyist or principal. Minnesota Statutes § 10A.071. This memo provides a brief overview of the gift ban and includes a flow chart designed to help determine whether a gift is prohibited by the gift ban. This memo does not include any discussion of the gift ban for local officials in Minnesota Statutes § 471.895.

Who is subject to the gift ban?

The gift ban in Minnesota Statutes § 10A.071 applies to "officials." This includes public officials, employees of the legislature, local officials, and some charter school officials. There are many types of public officials who are subject to the gift ban, including members of the legislature, constitutional officers in the executive branch, and state agency or department commissioners. For a complete listing of public officials, refer to Minnesota Statutes § 10A.01, subd. 35.

Who is a lobbyist or principal?

A lobbyist is a person who:

1) is compensated more than $3000 in a year for the purposes of attempting to influence legislative or administrate action, or the official action of a political subdivision, by communicating with public or local officials;
2) is compensated more than $3000 in a year from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or
3) spends more than $3000 of their personal funds in a year for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials.

Minnesota Statutes § 10A.01, subd. 21.

A principal is a person or association that either:

1) spends more than $3000 in aggregate in a year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or
2) spends at least $50,000 in a year on efforts to influence legislative action, administrative action, or the official action of political subdivisions.

See Minnesota Statutes § 10A.01, subd. 33.

Lobbyists must register with the Minnesota Campaign Finance and Public Disclosure Board. Lobbyists and principals must submit reports to the Board. The Board maintains a database of lobbyists and associations. The database is available on the Board's website, under the "Citizen Resources" tab.

What is a gift?

A gift is defined as "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." The following items or services are also defined as a gift: meals; entertainment; loans of personal property for less than payment of fair market value; preferential treatment for purchases; honoraria; and payment of loans or other obligations. Minnesota Statutes § 10A.071, subd. 1; Minnesota Rules part 4512.0100, subd. 3.

A gift given to an official by an individual who is not a lobbyist or principal is still subject to the gift ban if the gift was given on behalf of or at the request of a lobbyist or principal. Similarly, a gift given to an individual who is not an official by a lobbyist or principal is still subject to the gift ban if it is intended or implied that the recipient will give the gift to an official.

Are there exceptions to the gift ban?

Yes, there are exceptions to the gift ban. Per Minnesota Statutes § 10A.071, subd. 3. the exceptions are:

1) a political 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 with a resale value of $5 or less;
5) a trinket or memento costing $5 or less;
6) informational material with a resale value of $5 or less; or
7) food or a beverage given at a reception, meal, or meeting if:
    i. the reception, meal, or meeting is held 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; or
    ii. the recipient is a member or employee of the legislature and an invitation to attend the reception, meal, or meeting was provided to all members of the legislature at least five days prior to the date of the event.

There are also two situations where the gift ban is not applicable. The first scenario has to do with gifts being given to groups. The gift ban is not applicable if:

1) the gift is given because of the recipient's membership in a group;

2) a majority of the members of the group are not officials; and
3) an equivalent gift is given to the other members of the group.

The second scenario has to do with gifts to family members. The gift ban is not applicable if the gift is given 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.

What should an official do if they are uncertain about accepting a gift from someone?

There are many places to look for assistance. Alexis Stangl in Senate Counsel, Research, and Fiscal Analysis is available to assist Senators and Senate employees in discussing gift ban issues. Supervisors, managers, or caucus leaders are also valuable resources when considering these issues.

You may also contact the Campaign Finance and Public Disclosure Board at (651) 539-1180 or toll free (800) 657-3889 or cf.board@state.mn.us. The Board also has advisory opinions on gift ban scenarios that may provide guidance. Advisory opinions are available online on the Campaign Finance and Public Disclosure Board's website. You may search for opinions relating to the gift ban by selecting "Gift Ban" from the "Program" drop down menu.

Always keep in mind that while accepting a gift in some circumstances may be legal, there may be a public perception that the acceptance of a particular gift is inappropriate. In situations where acceptance of a gift is not prohibited by law, the decision to accept the gift is personal to the recipient and the decision will be based on the recipient's perception of the situation. It may be helpful to consult the resources listed above to talk about possible perceptions and concerns.

Where can I learn more about the gift ban?

For more detailed information on the gift ban, refer to the memo titled "Gifts Ban for Public Officials," available on the Senate Website.

The Campaign Finance and Public Disclosure Board's "Gift Ban Primer" is also available online.

For more information, please contact Alexis Stangl at alexis.stangl@mnsenate.gov.