

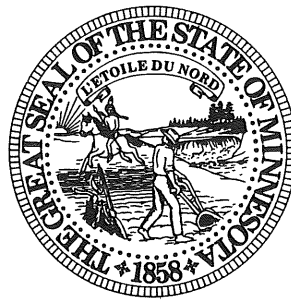
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A D V I S O R Y O P I N I O N S

(Under Minn. Stat. § 10A.02, Subds. 8 and 12)

October 14, 1993 - August 31, 1994

Numbers 133 - 164



O C T O B E R, 1 9 9 4

MINNESOTA STATE ETHICAL PRACTICES BOARD

First Floor South, Centennial Building

658 Cedar Street

St. Paul, MN 55155-1603

612/296-5148

ABOUT ADVISORY OPINIONS

● The Ethical Practices Board is authorized to issue advisory opinions on the requirements of the Ethics in Government Act, Minn. Stat. Ch. 10A, enacted in 1974, (see Minn. Stat. §10A.02, subd. 12) and the Hennepin County Disclosure Law (see Minn. Stat. § 383B.055). Individuals or associations may ask for advisory opinions about these laws to guide their actions in compliance with Minn. Stat. Ch. 10A and Minn. Stat. §§ 383B.041 - 383B.058.

Effective August 1, 1994:

● A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

- .. the Board has amended or revoked the opinion before the initiating of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;
- .. the request has omitted or misstated material facts; or
- .. the person making or covered by the request has not acted in good faith in reliance on the opinion.

● A request for an advisory opinion is nonpublic data and the advisory opinion to the requester is nonpublic data. The Board may publish an opinion that does not include the name of the requester or other identifying information unless the requester consents to the inclusion. The Board provides Consent for Release of Information forms to requesters. If the requester files a Consent form, the Board seeks public comment on the request before action is taken by the Board. Advisory opinion requests are discussed in meetings open to the public.

ABOUT THE BOARD

Mission Statement

● To promote public confidence in state government decision making through development and administration of disclosure, public financing, and enforcement programs which will ensure public access to information filed with the Board.

Members

- Six-member citizen body;
- Appointed by the governor; confirmed by a 3/5th vote of both houses of the legislature;
- One former legislator of each major party;
- Two individuals who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding appointment to the Board;
- No more than three members of the Board shall support the same political party;
- No member of the Board may currently serve as a lobbyist.

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Issued to:
The Honorable Allan Spear
G-27 State Capitol
St. Paul, MN 55155

Approved: November 5, 1993

RE: Transfer of Funds

ADVISORY OPINION #133

SUMMARY

133. The disclosure provisions of Minn. Stat. Ch. 10A do not extend to the transfer of principal campaign committee funds to candidates for state or local office in states other than Minnesota; however, this use of campaign funds may be subject to prohibitions on certain uses of campaign funds in Minn. Stat. § 211B.12, as amended in Laws of 1993, Ch. 318, Art. 2, Sec. 48.

FACTS

You, a member of the Minnesota Senate, have requested an interpretation of the recently enacted campaign finance reform, Laws of 1993, Chapter 318. Although you are aware that transfers between Minnesota candidates at the state level are prohibited, you assert your lack of clarity on the issue of whether your campaign committee could transfer funds to a state legislative or municipal candidate in another state. You ask the Board to answer the following question:

QUESTION

Can a Minnesota legislator transfer funds to a candidate for state or local office running in a state other than Minnesota?

OPINION

No. The disclosure provisions of Minn. Stat. Ch. 10A do not extend to the transfer of principal campaign committee funds to a candidate for state or local office in states other than Minnesota. However, this use of campaign funds may be subject to prohibitions on certain uses of campaign funds in Minn. Stat. § 211B.12, as amended in Laws of 1993, Ch. 318, Art. 2, Sec. 48.

In reaching its decision, the Board must determine whether the transfer is a campaign expenditure, an independent expenditure, or a noncampaign disbursement. The Board finds that the transfer of a principal campaign committee's funds to a candidate for state or local office running in a state other than Minnesota is not a campaign expenditure nor an independent expenditure because the intended recipient is not a candidate within the meaning of Minn. Stat. § 10A.01, subd. 5. The Board further finds that the aforementioned transfer is not a noncampaign disbursement because it is not included in the list within the statute (see Minn. Stat. § 10A.01, subds. 10, 10b, and Minn. Stat. § 10A.01, 10c, as amended in Laws of 1993, Ch. 318, Art. 2, Sec. 3), and we declined to define it as such.

The treasurer of a principal campaign committee must account for the disposition of all funds contributed to or otherwise received by the candidate or the committee for campaign purposes. Therefore, it is the opinion of the Board that the transfer of principal campaign committee funds to an individual running for state or local office in a state other than Minnesota may be subject to the prohibitions on the use of campaign funds imposed by Minn. Stat. § 211B.12, as amended in Laws of 1993, Ch. 318, Art. 2, Sec. 48.

Issued to:

Kathleen H. Corley
Legal Counsel, Steering Committee
Minnesota Women's Political Caucus
550 Rice Street, Suite 101-A
St. Paul, MN 55103

Approved: October 14, 1993

RE: Campaign Finance

ADVISORY OPINION #134

SUMMARY

134. A local chapter of an association and the association do not constitute a "subsidiary" and "parent" relationship under Minn. Stat. § 10A.15, subd. 3c, unless the association establishes, finances, maintains, or controls the local chapter's activities.

FACTS

You state that as legal counsel to the steering committee of the Minnesota Women's Political Caucus ("MWPC") you are requesting clarification and/or further definition to Laws of 1993, Chapter 318, Art. 2, Sec. 9. You state that the referenced section of the 1993 Campaign Finance Reform Act amends Minn. Stat. § 10A.15 by adding a subdivision that allows individuals, associations, political committees, and political funds to establish, finance, maintain, or control a political committee or political fund. You further state that the organizations participating in this action are identified in the 1993 law as either a "parent" or a "subsidiary."

You state that the MWPC encourages the growth and development of chapters of the MWPC throughout the state of Minnesota and that MWPC is itself is a chapter of the National Women's Political Caucus. You further state, however, that the MWPC does not finance, maintain, or control these statewide chapters. You state that each chapter raises and spends its own income and reports that income to the appropriate state and federal agencies. You state that each chapter governs and manages its own mission and membership and develops its own internal policies and systems including those for screening candidates for political office in their individual geographic area.

You state that you are asking that the Board clarify the meaning behind the words in Laws of 1993, Ch. 318, Art. 2, Sec. 9[Minn. Stat. § 10A.15, subd. 3c], thereby allowing the MWPC to make an informed judgment about the status of the relationship between the MWPC and the various statewide chapters of the MWPC.

OPINION

If local chapters of an association operate independently from the association, each local chapter that makes contributions, approved expenditures, or independent expenditures that singly or in aggregate exceed \$100 to influence the nomination or election of state candidates must register with and report to the Ethical Practices Board. Minn. Stat. §§ 10A.14 and 10A.20 (1992).

A local chapter of an association and the association do not constitute a "subsidiary" and "parent" relationship under Minn. Stat. § 10A.15, subd. 3c, unless the association establishes, finances, maintains, or controls the local chapter's activities. It is the opinion of the Board that if the MWPC does not finance, maintain, or control the local chapters, the local chapters are not subsidiaries of the MWPC.

Issued to:
Nancy J. Miller, Esq.
Gordon-Miller-O'Brien Attorneys
1208 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402-1259

Approved: November 23, 1993

RE: Campaign Finance Disclosure

ADVISORY OPINION #135

SUMMARY

135. The creation of subsidiary political committees under Minn. Stat. § 10A.15, subd. 3c, for the purpose of allowing individuals to contribute more than \$100 per calendar year by contributing \$100 to each of the subsidiaries of the parent political committee is prohibited under Minn. Stat. § 10A.29.

FACTS

You state that you have been asked by your client, a labor organization, to request an advisory opinion on its obligations under the Campaign Finance Reform act of 1993 ("Act".) You further state that prior to the enactment of the Act your client's political committee received individual contributions in excess of \$100 per year. You state that the individuals in question want to continue making contributions in excess of \$100 per year and that the political committee wants to provide a method for receiving such contributions that is consistent with the provisions of the Act.

You ask the Board the following questions:

QUESTION ONE

Is it permissible under the Act for your client's political committee to create several subsidiary or related political committees so that those individuals who contribute more than \$100 per year can continue to contribute the same annual amount to political committees by contributing \$100 or less to each subsidiary or related political committee?

OPINION

No. It is the opinion of the Board that an attempt by a political committee to circumvent the provisions of the Act by redirecting funds through a subsidiary for the purpose of allowing individuals to continue to contribute more than \$100 per year is contrary to the provisions of the Act. Minn. Stat. §§ 10A.15, subd. 3c; 10A.27, subd. 12; 10A.29.

QUESTION TWO

Is it permissible for a political committee of a labor organization to receive unlimited contributions from the general funds of its local unions?

OPINION

Yes, provided the portions of the contributions attributable to individual members do not exceed \$100 per calendar year per member.

QUESTION THREE

Are local unions subject to a contribution limit [to their political committees or political funds] of \$100 per each union member?

OPINION

Yes. The contribution limit of \$100 per calendar year per contributor applies to contributions to any political committee, other than a political committee established by a political party, and to any political fund. Minn. Stat. § 10A.27, subd. 12.

QUESTION FOUR

Do the answers to Question Two and Question Three depend upon whether the local union is registered as a supporting association of the political committee?

OPINION

No.

Issued to:
Kenneth E. Stevens
Hennepin County Filing Officer
Department of Property Tax and Public Records
A-607 Government Center
Minneapolis, MN 55487-0067

Approved: November 23, 1993

RE: Hennepin County Disclosure Law

ADVISORY OPINION #136

SUMMARY

136. Candidates for statewide, legislative, and judicial offices as defined in Minn. Stat. Ch. 10A are prohibited from making contributions to and receiving contributions from the principal campaign committees of candidates for political subdivision offices. Minn. Stat. § 10A.27 as amended by Laws of 1993, Ch. 318, Art. 2, Sec. 28.

FACTS

You are the Hennepin County Filing Officer and in that capacity you seek clarification of the scope of Minn. Stat. § 211A.13, specifically whether it prohibits a candidate for political subdivision office from transferring contributions to the principal campaign committee of another candidate for political subdivision office.

You state that the first sentence of Section 211A.13 appears to prohibit candidates for political subdivision office from accepting contributions from Minn. Stat. § 10A.01, subd. 5, candidates. You further state that since "principal campaign committee" is used in Minn. Stat. Chapters 10A, 211A, 211B, and 383B, the meaning of the second sentence is not clear.

You ask the Board to answer the following question:

Is Section 211A.13 intended to limit candidates from contributing to all principal campaign committees or only the principal campaign committees of Chapter 10A candidates?

OPINION

The Ethical Practices Board is not authorized to interpret the provisions of Minn. Stat. § 211A.13. You may wish to request an Opinion from the Attorney General's office which is authorized to interpret Minn. Stat. § 211A.13.

A candidate for statewide, legislative, or judicial office as defined in Minn. Stat. § 10A.01, subd. 5, is prohibited from making a contribution from the candidate's principal campaign committee to and receiving a contribution from the principal campaign committee of a candidate for political subdivision office. Minn. Stat. §§ 10A.01, subds. 5 and 27; 10A.27, subd. 9 (c).

Issued to:
Kay Erickson, President
League of Women Voters of Minnesota
Jane McWilliams, Chair
LWVMN Fund for Opposition to Legislative Term Limits
550 Rice Street
St. Paul, MN 55103

Approved: December 21, 1993

RE: Ballot Question Disclosure

ADVISORY OPINION #137

SUMMARY

137. The ballot issue campaign of the League of Women Voters of Minnesota (LWVMN) begins when the LWVMN engages in activities to promote or defeat a state ballot question or to qualify or to oppose qualification of a state ballot question for placement on the ballot. Based on the facts presented to the Board by the LWVMN, the \$100 contribution limit established by Minn. Stat. § 10A.27, subd. 12, will not be imposed upon the separate political fund established by the LWVMN to oppose term limits on a strictly ballot issue basis pending a final decision on the constitutionality of Minn. Stat. § 10A.27, subd. 12. The LWVMN must include its expenditures on term limits through December 31, 1993, on the regular lobbyist report due January 18, 1994. The treasurer of the separate political fund established by the LWVMN must report the LWVMN's expenditures on term limits as an in-kind contribution from the LWVMN and as an in-kind expenditure of the separate political fund. The LWVMN may bill the separate political fund for the support services the LWVMN provides to the fund; the fund must disclose the transactions in accordance with Minn. Stat. § 10A.20. If the fund does not raise enough money to pay the LWVMN for its support services, the fund must report the unpaid bill until paid or forgiven.

FACTS

You have submitted to the Board the registration and statement of organization for the League of Women Voters of Minnesota Fund for Opposition to Legislative Term Limits. You state that in the course of completing this registration a number of questions arose for which you seek the guidance of the Board.

You state that the League of Women Voters of Minnesota (LWVMN), the supporting association of the fund, is a nonpartisan, multi-issue, grassroots membership organization whose membership dues from 2,600 members support the general operating budget and the advocacy or lobbying budget of the LWVMN. You further state that lobbying on a wide variety of issues is done by volunteer LWVMN members with support provided by a small staff.

You state that the LWVMN never supports or opposes candidates for office and that funds raised for a ballot issue campaign (or any issue) are used solely to advance the position of the LWVMN on issues and never on behalf of a candidate or political party. You further state that you ask for guidance on how to report to the Board contributions and expenses related to the LWVMN campaign against term limits.

You state that it is your understanding that the present law requires the LWVMN to register a separate fund as soon as the LWVMN has spent more than \$100 on a ballot issue campaign. You further state that it is your understanding that contributions to the fund from individuals and from organizations cannot exceed \$100 per year per contributor and that in your opinion the LWVMN is now operating at a

distinct disadvantage because the organization working as advocates for term limits is currently exempt from the contribution limit of \$100. You state that you believe that the Supreme Court Decision in Buckley v. Valeo upholding first amendment protection of political speech cited by Judge Murphy in her November 26, 1993, order granting the preliminary injunction should apply to the LWVMN.

You state that to date the LWVMN has raised no cash contributions for the campaign against term limits and has spent money from the LWVMN's advocacy budget to educate its members about the LWVMN's position on term limits through your newsletter, through regularly scheduled mailings to local Leagues of Women Voters, and through regional meetings. You further state that volunteer lobbyists for the LWVMN have made calls on legislators; that the LWVMN has mailed a letter to every legislator outlining the LWVMN position on term limits; and that costs incurred to date include postage, copying, staff support, mileage for volunteers, and phone calls.

You state that the LWVMN has been contacting and meeting with other organizations that are or might be interested in supporting the LWVMN's position against term limits. You further state that most if not all of these organizations have lobbyists registered with the Board.

You ask the Board the following questions:

QUESTION ONE

Does the LWVMN's ballot issue campaign begin with the legislative process or when the legislature has placed the issue on the ballot?

OPINION

The LWVMN's ballot issue campaign begins as soon as the LWVMN engages in activities to promote or defeat a state ballot question or to qualify or to oppose qualification of a ballot question for placement on the ballot that require disclosure under Ch. 10A. Minn. Stat. §§ 10A.01, subds. 11, 16, and 23, 10A.03, 10A.14.

QUESTION TWO

Will the Board apply Judge Murphy's ruling to the fund the LWVMN is establishing to educate the citizens of Minnesota to the problems of term limits and to gather support to oppose this ballot question?

OPINION

Yes. Based on the facts presented to the Board by the LWVMN, the \$100 contribution limit established by Minn. Stat. § 10A.27, subd. 12, will not be imposed upon the separate political fund established by the LWVMN to oppose term limits on a strictly ballot issue basis pending a final decision on the constitutionality of Minn. Stat. § 10A.27, subd. 12 (Minnesotans for Term Limits v. Vanne Owens Hayes, U.S.District Court, D.Minn. #4-93-766).

QUESTION THREE

Should the LWVMN report expenditures on term limits through December 31, 1993, on its regular lobbying report due January 18, 1994?

OPINION

Yes.

QUESTION FOUR

Should the Fund report LWVMN's expenditures on term limits as an in-kind contribution to the fund and as an expenditure of the fund?

OPINION

Yes.

QUESTION FIVE

As the LWVMN proceeds through the term limits campaign can the LWVMN contract to provide support services to the Fund and bill the Fund for the fair market value of those services?

OPINION

Yes, provided the cash expenditures for this purpose are disclosed as required by Sec. 10A.20.

QUESTION SIX

If the fund does not raise enough money to pay for the services described in Question Five, should the Fund report the cost of the services as an in-kind contribution to the Fund from the LWVMN?

OPINION

No. The fund should report the cost of the services described in Question Five as an unpaid bill continuously until paid or forgiven.

QUESTION SEVEN

What registration and reporting requirements will be imposed upon organizations that form a coalition to support or oppose a state ballot question?

OPINION

The information submitted is insufficient to allow the Board to provide a response.

Issued to:
The Honorable Gil Gutnecht
State Representative District 30A
3421 16th Avenue N.W.
Rochester, MN 55901

Approved: February 22, 1994

RE: Fundraising During Legislative Session

ADVISORY OPINION #138

SUMMARY

138. A Minnesota legislator who has a principal campaign committee registered with the Board under Minn. Stat. §§ 10A.01, subd. 5, 10A.14, and 10A.19 is not subject to Minn. Stat. § 10A.065 with regard to campaign fundraising for federal office. The Board requests the legislature to review the application of Minn. Stat. § 10A.065 to state candidates subject to Ch. 10A who are raising funds for nomination or election to a federal office.

FACTS

You are a member of the Minnesota House of Representatives whose principal campaign committee is registered with the Ethical Practices Board. You state that you are requesting a written opinion as to whether a sitting legislator may raise funds for a campaign for federal office during a legislative session.

OPINION

A Minnesota legislator who has a principal campaign committee registered with the Board under Minn. Stat. §§ 10A.01, subd. 5, 10A.14, and 10A.19 is not subject to Minn. Stat. § 10A.065 with regard to campaign fundraising for federal office.

A candidate as defined in Minn. Stat. § 10A.01, subd. 5, remains a candidate until the candidate's principal campaign committee for the office sought or held files a termination report under Minn. Stat. §§ 10A.24 or 10A.242 (1992). Minn. Stat. § 10A.065 prohibits a legislative candidate or a candidate for constitutional office from soliciting or accepting a contribution on behalf of "...any committee authorized by the candidate..." from a registered lobbyist, a political committee (other than a political party unit), or a political fund during a regular session of the legislature. However, in light of court decisions such as Weber v. Heaney, 995 F.2d 872 (8th Cir. 1993), concluding that federal law preempts state laws governing fundraising by candidates for federal office, the Board concludes that Minn. Stat. § 10A.065 applies to all committees of a sitting legislator except for a committee for election to federal office. The Board requests the legislature to review the application of Minn. Stat. § 10A.065 to state candidates subject to Ch. 10A who are raising funds for nomination or election to a federal office.

Issued to:
Richard Ottman
2335 Blomquist Avenue
St. Paul, MN 55110-4809

Approved: March 23, 1994

RE: First-time Candidate

ADVISORY OPINION #139

SUMMARY

139. An individual who has been a candidate for state representative and who was a candidate for Ramsey County Soil and Water Conservation Board is not a first-time candidate under Minn. Stat. § 10A.25, subd. 2 (c).

FACTS

You state that as a candidate for House District 55A you have registered a principal campaign committee for that office and you have signed and filed a Public Subsidy Agreement. You also indicate the following: 1) that you ran, filed for office, and were listed on the ballot for Ramsey County Soil and Water Conservation Board in 1990; 2) that the vote for the office you sought was county wide; 3) that the portion of House District 55A that is in Ramsey County is less than 20% of the total population of Ramsey County; 4) that at least 70% of House District 55A's population is in Ramsey County with the remainder in Washington County; 5) that you are confused by the meaning of "...and who has not run previously for any other office whose territory now includes a population that is more than one-third of the population of the territory of the new office." Minn. Stat. § 10A.25, subd. 2 (c); 6) that you registered a principal campaign committee in December, 1981, to run for the state House of Representatives in an area that is different from the present boundaries of House District 55A; 7) that although you collected some campaign contributions and filed necessary reports with the Board you did not file for office in 1982; and 8) that you did not file for office at any other time except in the 1990 election as a candidate for Ramsey County Soil and Water Conservation Board.

You ask the Board the following questions:

QUESTION ONE

Is Ramsey County Soil and Water Conservation Board one of the "other offices" within the meaning of Minn. Stat. § 10A.25, subd. 2 (c)?

OPINION

Yes. A candidate for election to the Ramsey County Soil and Water Conservation Board is listed on a ballot to be voted upon by all legal voters of Ramsey County at a general election. Minn. Stat. §§ 103C.305, 204D.03.

QUESTION TWO

As a candidate running for election in District 55A in 1994, are you a "first-time candidate" within the meaning of Minn. Stat. § 10A.25, subd. 2 (c)?

OPINION

No. Based on the facts presented to the Board, you ran previously for the office of state representative and you ran for election to the Ramsey County Soil and Water Conservation Board, an office whose territory includes more than one-third of the population of District 55A. The Board concludes that you do not qualify for the increase in expenditure limit provided in Minn. Stat. § 10A.25, subd. 2 (c).

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

Advisory Opinion Request #140 dated March 10, 1994, from
William P. Donohue, Esq.
Associate General Counsel
University of Minnesota
325 Morrill Hall, 100 Church Street S.E.
Minneapolis, MN 55455

RE: Lobbyist Principal

On May 27, 1994, the Board notified Mr. Donohue that the Board was unable to approve an advisory opinion by the required four votes on the issue of whether the University of Minnesota is a lobbyist principal for the purposes of Minn. Stat. § 10A.04, subd. 6 (1992), and, therefore, it is up to the University of Minnesota to decide whether to complete and file the annual report of lobbyist principal.

Issued to:
Wes D. Lane, Minnesota D.R.I.V.E.
Suite 510, 3001 University Avenue S.E.
Minneapolis, MN 55414

Approved: June 2, 1994

RE: Gift from Lobbyist or Principal

ADVISORY OPINION #141

SUMMARY

141. A gift from a lobbyist or a lobbyist principal to an official is prohibited unless the gift falls within an exemption provided in Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, sec. 2).

FACTS

As a registered lobbyist for Minnesota D.R.I.V.E., you advise the Board that every year around the end of December, Minnesota D.R.I.V.E., the political committee representing Minnesota Teamsters, gives desk diaries or pocket calendars to the Minnesota House and Senate, County Commissioners in the seven county area, and some City Council members and County Attorneys. You state that D.R.I.V.E. gives a newly elected person a leatherette folder with the calendar insert; however, because the folder generally lasts a few years, most elected officials receive the calendar refill each year and a new folder every three or four years. You further state that the pocket calendars [leatherette folder and insert] are also given to certain elected officials.

You list the following costs to D.R.I.V.E. for each of these gifts: leatherette folder, \$5.65; calendar insert for this folder, \$4.45; pocket calendar [folder and insert], \$2.00.

You ask the Board how to proceed for the coming year [1995] because you would need to order the gifts this summer if the gifts are permitted under a 1994 law that becomes effective August 1, 1994.

OPINION

The gifts as described do not fall within any of the exemptions in Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, sec. 5); therefore, the gifts are prohibited.

Issued to:

Jeff C. Cole, Treasurer
Minnesota Association of County Officers
Goodhue County Courthouse
P. O. Box 408
Red Wing, MN 55066-0408

Approved: August 12, 1994

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.

Issued to:

Mark R. Anfinson, Esq.
Lake Calhoun Professional Building
3109 Hennepin Avenue South
Minneapolis, MN 55408

Approved: June 7, 1994

RE: Complimentary Copies of Newspapers

ADVISORY OPINION #143

SUMMARY

143. The distribution of complimentary copies of a newspaper to legislators by the newspaper's publisher is included in the exceptions to the gift prohibition in Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, sec. 5). Payment of dues to the Minnesota Newspaper Association does not cause a member to be a lobbyist or a lobbyist principal.

FACTS

As attorney for the Minnesota Newspaper Association (MNA) you request an advisory opinion as to whether MNA's practice of providing complimentary copies to legislators violates Minn. Stat. § 10A.071 based on your statement of the following facts:

1. MNA has over the years provided legislators with complimentary copies of their home newspapers during the legislative session.
2. MNA's main purpose for providing complimentary copies is to keep legislators informed about events that occur in their home district.
3. MNA members pay dues which go into the organization's general funds, some of which are periodically spent on lobbying.
4. Although MNA conducts lobbying activities, you do not read the statute to mean that the newspapers that are members are principals within the meaning of the statute.
5. The practice of distributing complimentary newspapers as described above in your opinion does not meet either of the criteria in subdivision 28 though all members pay dues to MNA.

OPINION

No, the practice described is included in the exceptions to the gift prohibition in Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, sec. 5). It is further the opinion of the Board that payment of dues to the Minnesota Newspaper Association, which conducts lobbying activities, does not in and of itself cause a member to be a lobbyist or a lobbyist principal.

Issued to:
Thomas L. Owens, Esq.
One Financial Plaza, Suite 1512
120 South Sixth Street
Minneapolis, MN 55402

Approved: June 3, 1994

RE: Campaign Expenditure Limits

ADVISORY OPINION #144

SUMMARY

144. A candidate who has agreed to be bound by spending limits must abide by spending limits unless the candidate has an opponent who: 1) is the nominee of a major political party; and 2) does not agree to be bound by spending limits but is otherwise eligible to receive a public subsidy. Spending limits are not waived for a candidate because an opponent was nominated to the general election ballot as an independent. Minn. Stat. § 10A.25, subd. 10 (1992).

FACTS

As legal counsel for a candidate for state representative (the "Candidate") and the Candidate's principal campaign committee (the "Committee"), you state that 1) the Candidate has filed with the Ethical Practices Board a Registration and Statement of Organization declaring no party affiliation; 2) the Candidate has not agreed to be bound by the limits on campaign expenditures as set forth in Minn. Stat. § 10A.25; 3) the Candidate has neither sought nor obtained the endorsement of any political party and may run as an independent; 4) the Candidate's opponent is an incumbent state representative affiliated with a major political party who has filed with the Board a written agreement, known as a "public subsidy agreement", to be bound by the limits on campaign expenditures set forth in Minn. Stat. § 10A.25; and 5) the Candidate's opponent will receive a public subsidy. You further state that the Board's opinion on the following question is vital to the Candidate's conduct of an effective campaign:

Under the foregoing facts and assumptions and applicable law, will the Candidate's opponent remain bound by the expenditure limits in Minn. Stat. § 10A.25?

OPINION

Yes, the spending limit applies in the circumstances described if the Candidate runs as an independent and unless the incumbent has a major party opponent who does not sign a written agreement with the Board to be bound by the expenditure limits but is otherwise eligible to receive a public subsidy. Minn. Stat. § 10A.25, subd. 10 (1992).

Issued to:

Approved: June 15, 1994

Donald W. Esau, Treasurer

(Arne) Carlson/(Joanne) Benson Volunteer Committee, #1-2300 GOV

1821 University Avenue West, Suite 135 South

St. Paul, MN 55104

RE: Governor and Lt. Governor Joint Expenditures

ADVISORY OPINION #145

SUMMARY

145. An individual who runs for lieutenant governor who has not previously sought or held statewide office and is running together with an individual who has run previously for governor does not qualify for the expenditure increase as set out in Minn. Stat. § 10A.25, subd. 2 (c). The 1994 expenditure limit of \$1,725,920 may be increased by up to \$86,296 for the amount spent by the Carlson/Benson Volunteer Committee on behalf of Joanne Benson's endorsement for the office of lieutenant governor. Any expenditures made by the governor and lieutenant governor running together as a single team, under Minn. Stat. § 10A.25, subd. 1, toward the endorsement of the lieutenant governor candidate may be treated as expenditures under Minn. Stat. § 10A.25, subd. 3, in addition to the expenditures limit of Minn. Stat. § 10A.25, subd. 2 (a) (1).

FACTS

As treasurer of the Carlson/Benson Volunteer Committee, you request an advisory opinion from the Ethical Practices Board on three matters related to the lieutenant governor expenditure provisions of the Ethics in Government Act based on your statement of the following facts:

1. State Senator Joanne Benson has replaced Joanell Dyrstad as the candidate for lieutenant governor on the Carlson/Benson ticket.
2. Senator Benson is a candidate for statewide office for the first time.
3. A candidate for governor and a candidate for lieutenant governor, running together, shall be deemed a single candidate.
4. Minn. Stat. § 10A.25, subd. 2, provides that expenditure limits are increased by ten percent for first-time candidates.
5. Five percent of the spending limit is available for expenditures made on behalf of Joanne Benson as she seeks endorsement as a candidate for lieutenant governor (Minn. Stat. § 10A.25, subd. 3).
6. Many of the activities of candidates for governor and lieutenant governor are done on a combined basis as is recognized by law and in those instances of joint activities, the committee proposes to allocate joint expenditures to the two candidates fifty-fifty unless there is a more specific determination that can be made of such expenditures.
7. The matters as described above require immediate attention as the state party endorsing convention is scheduled for mid June.

You ask the Board to respond to the following questions:

QUESTION ONE

Is the expenditure limit of the Carlson/Benson Volunteer Committee increased under Minn. Stat. § 10A.25, subd. 2, because Senator Joanne Benson is a first-time candidate for statewide office?

OPINION

No. An individual who has run previously for governor is not a first-time candidate under Minn. Stat. § 10A.25, subd. 2 (c). A candidate for lieutenant governor who has not previously sought or held statewide office and is running together with an individual who has been a candidate for governor does not qualify for the expenditure increase as set out in Minn. Stat. §§ 10A.25, subd. 2 (c) (1993 Supplement). See also Minn. Stat. §§ 204.12, subd. 2 (b), and 204B.13, subd. 5 (a) (1992).

QUESTION TWO

Are the expenditures made by the Carlson/Benson Volunteer Committee on behalf of Joanne Benson's candidacy for the lieutenant governor endorsement included in the \$30,000 or five per cent of the expenditure limit, whichever is greater, increased spending available to a lieutenant governor candidate who seeks endorsement at a political party convention as set out in Minn. Stat. § 10A.25, subd. 3?

OPINION

Yes, provided the expenditures are made to seek Joanne Benson's endorsement for the office of lieutenant governor at the convention of a political party.

QUESTION THREE

May the Carlson/Benson Volunteer Committee allocate a portion of the committee's joint expenditures for activities of the two candidates as lieutenant governor endorsement expenditures under Minn. Stat. § 10A.25, subd. 3?

OPINION

Any expenditures made by the governor and lieutenant governor running together as a single team, under Minn. Stat. § 10A.25, subd. 1, toward the endorsement of the lieutenant governor candidate at the convention of a political party may be treated as expenditures under Minn. Stat. § 10A.25, subd. 3, in addition to the expenditures limits of Minn. Stat. § 10A.25, subd. 2 (a) (1).

Issued to:
Bob Krogman, Executive Director
Minnesota Petroleum Marketers Association
2345 Rice Street, Suite 173
St. Paul, MN 55113

Approved: August 12, 1994

RE: Contribution Plan

AMENDED ADVISORY OPINION #146

SUMMARY

146. If permitted by Minn. Stat. § 211B.15, a statute that is not within the jurisdiction of the Ethical Practices Board, a contribution by the Northwest Petroleum Association of more than \$100 to the Northwest Petroleum Political Action Committee must be accompanied by a statement that meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. See Minn. Stat. § 10A.22, subd. 7 (1992).

FACTS

As executive director of the Northwest Petroleum Association, doing business as the Minnesota Petroleum Marketers Association, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. Membership dues of some Northwest Petroleum Association members are paid by check from individual proprietors and other dues are paid by check from corporate members and partnerships.
2. Annual convention registrations and purchases of various tickets for convention events are paid by check and cash from sole proprietors, corporations, partnerships, and individuals who are employees of Northwest Petroleum Association members.
3. Minn. Stat. § 10A.12, subd. 5, provides that an association may deposit in its political action fund money derived from dues or membership fees.
4. Northwest Petroleum Association is aware of the 1982 Minnesota supreme court case Minnesota Association of Commerce and Industry v. Foley in which the Court held that the statute prohibiting corporate political activity does not apply to nonprofit corporations.
5. Northwest Petroleum Association is a nonprofit trade association.
6. Based on Minn. Stat. § 10A.12, subd. 5, and the Supreme Court case cited above Northwest Petroleum Association is considering a contribution of surplus funds from dues and convention activities to the Northwest Petroleum Political Action Committee, a political committee registered with the Ethical Practices Board as #4-0069.

QUESTION

May the Northwest Petroleum Association contribute surplus funds from its dues and convention activities to the Northwest Petroleum Political Action Committee?

OPINION

The Board believes that the question posed by the Northwest Petroleum Association ("the Association") may be controlled by the provisions of Minn. Stat. § 211B.15, a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. However, the Association should be aware that Minn. Stat. § 211B.15, the statute relating to corporate political activity, is no longer in the form in which it existed at the time of the decision of the Minnesota Supreme Court in *Minnesota Association of Commerce and Industry v. Foley*, 316 N.W.2d 525 (Minn.1982). Amendments made by the Legislature in 1993 particularly affect application of the statute to the activities of nonprofit corporations, and the Association should carefully consider the effect of Minn. Stat. § 211B.15 on the proposed use of the Association's surplus funds as a contribution to the Northwest Petroleum Political Action Committee.

If the Association is satisfied that both the fact of a contribution to the Northwest Petroleum Political Action Committee and the source of the funds with which the contribution will be made are permitted by Minn. Stat. § 211B.15, the implications of the Association's contribution under Minn. Stat. Ch. 10A are as follows: Pursuant to Minn. Stat. § 10A.22, subd. 7 (1922), if the Association makes a contribution of more than \$100 to the Northwest Petroleum Political Action Committee, the Association must register a political fund with the Ethical Practices Board or furnish to the Northwest Petroleum Political Action Committee a statement that meets the disclosure and reporting period requirements of Minn. Stat. § 10A.20. The statement must be certified as true and correct by an officer of the Association and must be covered by at least the 30 days immediately preceding and including the date on which the contribution was made. The treasurer of the Northwest Petroleum Political Action Committee must include a copy of the Association's certified statement with the Committee's periodic report to the Board that discloses the contribution.

Issued to:
Dollin M. Dennistoun
209 Ridgeview Drive
Apple Valley, MN 55124

Approved: June 30, 1994

RE: Gifts to Officials

ADVISORY OPINION #147

SUMMARY

147. Minn. Stat. Ch. 10A does not prohibit the distribution of gifts to officials or the acceptance of gifts by officials unless the donor is a lobbyist principal or a lobbyist. Effective August 1, 1994, officials participating in the State Fair Agricultural Get-together may accept items or funds from a commodity organization unless the organization is a lobbyist principal or the items or funds are provided by a lobbyist. Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5). The Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council may wish to confer with legal counsel about the existence of other laws that may apply to preparations for the 1994 State Fair Agricultural Get-together including, but not limited to, Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, Sec. 6).

FACTS

You are working part time with the Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council in preparation for the 1994 State Fair Agricultural Get-together. You ask the Board for an advisory opinion based upon your statement of the following facts:

1. You were directly associated with this event from 1965 until 1987 and have been indirectly associated with it since then.
2. You visit with legislators from time to time during the legislative sessions; you do not consider yourself a lobbyist, but rather a provider of information.
3. The Coalition is a nonprofit group that works with other groups for the betterment of agriculture, rural Minnesota, and the Minnesota economy.
4. The Minnesota State Fair has been the leading organization for the event.
5. The Minnesota Department of Agriculture has provided a list of participants to be invited the event in previous years.
6. You list 22 commodity groups that have contributed items or funds for the event in a previous year [seven of the listed organizations are lobbyist principals who employ lobbyists who are registered with the Ethical Practices Board.]
7. The event has always been considered an educational, informational, and get-acquainted gathering for all those invited and attending; a means for nonrural residents to become acquainted with those groups that help provide one of the necessities of life.
8. Planning for the 1994 event must begin within the next two weeks; the organizations will abide by the Board response to the advisory opinion request.

QUESTION

Are the products or funds and hand-out materials provided for the 1994 State Fair Agricultural Get-together by commodity groups for the event prohibited?

OPINION

No, with certain exceptions, the donations you describe are not prohibited under Minn. Stat. Ch. 10A, the only statute for which the Ethical Practices Board has advisory opinion authority; however, the Board suggests that you examine the application of other Minnesota statutes before proceeding.

Minn. Stat. Ch. 10A does not prohibit acceptance and distribution of gifts to officials unless the donating commodity organization is a lobbyist principal or the items or funds are provided by a lobbyist and the individuals who participate in the event are officials as defined in Minn. Stat. § 10A.071, subd. 1 (c) which becomes effective August 1, 1994. (Laws of 1994, Ch. 377, Sec. 5).

An official, including a public official, a member of the legislature, an employee of the legislature, or a local official of a metropolitan governmental unit, may not accept a gift from a lobbyist or principal. A lobbyist or principal may not give a gift or request another to give a gift to an official. Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5).

The Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council may wish to confer with legal counsel about the existence of other laws that may apply to the preparations for the 1994 State Fair Agricultural Get-together including, but not limited to, Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, Sec. 6).

Issued to:

3. D. Garski, Executive Secretary
Minnesota Board of Assessors
Minnesota Department of Revenue
Mail Station 3340
St. Paul, MN 55146-3340

Approved: June 27, 1994

RE: Gifts to Officials

ADVISORY OPINION #148

SUMMARY

148. Effective August 1, 1994, a licensed assessor who is a local official of a metropolitan governmental unit is subject to the provisions of state law prohibiting acceptance of gifts from lobbyists and lobbyist principals. Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5). Licensed assessors who serve local governments other than metropolitan governmental units should confer with legal counsel or contact the county attorney about the existence of other laws that may apply including Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, Sec. 6).

FACTS

As a public official administering a state agency you have received the Ethical Practices Board Bulletin for Officials, May, 1994. You ask the Board for direction on the application of certain provisions of a 1994 law to the activities of licensed assessors. You state that assessors who are licensed by the Board of Assessors are appointed as department heads serving in local governments or are employed by units of government. You advise the Board that some industries that pay property taxes have contributed toward the cost of a hospitality room, snacks, and refreshments at state meetings of licensed assessors.

QUESTION

Are licensed assessors deemed to be officials within the meaning of a 1994 law which prohibits officials' acceptance of gifts from lobbyist principals or lobbyists?

OPINION

Yes, provided the licensed assessor is a local official of a metropolitan governmental unit as defined in Minn. Stat. § 10A.01, subds. 25 and 26 (1992). Beginning August 1, 1994, an official, including a public official, a member of the legislature, an employee of the legislature, or a local official of a metropolitan governmental unit, may not accept a gift from a lobbyist or principal; a lobbyist or principal may not give a gift or request another to give a gift to an official. Minn. Stat. § 10A.071 (Laws of 1994, Ch. 377, Sec. 5). Assessors must not accept payments from an industry that is a lobbyist principal to reduce the cost of state meetings of assessors. Licensed assessors who serve local governments other than metropolitan governmental units should confer with legal counsel or contact the county attorney about the existence of other laws that may apply including Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, Sec. 6).

Issued to:

Alan W. Weinblatt, Esq.
Weinblatt and Associates
Suite 1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

Approved: June 27, 1994

RE: Change in Office Sought

ADVISORY OPINION #149

SUMMARY

149. The campaign expenditure limit is increased by ten percent for the first time a candidate runs for a statewide office. If the same candidate seeks another statewide office the ten percent increase is not applicable to the candidate's expenditure limit for the second office. Minn. Stat. § 10A.25, subd. 2 (c) (1993 Supplement). When a candidate who sought nomination or election to one statewide office subsequently seeks nomination or election to another statewide office in the same election year, expenditures incurred by that candidate's principal campaign committees for all the statewide offices must be aggregated for purposes of the application of the limits on campaign expenditures. Minn. Stat. § 10A.25, subd. 2a (1992).

FACTS

As attorney representing Todd Otis, who is the DFL endorsed candidate for election to the office of Minnesota State Auditor in 1994, you request an advisory opinion from the Ethical Practices Board on matters related to certain campaign expenditure limit provisions of the Ethics in Government Act based upon your statement of the following facts:

1. Mr. Otis declared his candidacy for the position of state auditor in March, 1994. Prior to that declaration, Mr. Otis was a candidate for the office of governor of the state of Minnesota.
2. Mr. Otis' gubernatorial campaign "Citizens for Otis" is registered with the Ethical Practices Board. Mr. Otis' campaign for state auditor "Minnesotans for Otis" is also registered with the Board.
3. Mr. Otis signed and filed with the Board a Public Subsidy Agreement to abide by applicable campaign expenditure limits as a candidate for governor. Mr. Otis signed and filed with the Board Public Subsidy Agreement to abide by applicable campaign expenditure limits as a candidate for state auditor.
4. The 1994 election year campaign expenditure limit for governor and lieutenant governor, running together, is \$1,725,920, and the 1994 campaign expenditure limit for state auditor is \$143,829. Minn. Stat. §§ 10A.25, subd. 2 (a), and 10A.255 (1993 Supplement).
5. Minn. Stat. § 10A.25, subd. 2 (c) provides that the expenditure limits listed above are increased by ten percent for candidate who is running for that office for the first time and who has not run previously for any other office whose territory now includes a population that is more than one-third of the population in the territory of the new office.

6. Minn. Stat. § 10A.25, subd. 2a provides that if a candidate makes expenditures from more than one principal campaign committee for nomination or election to statewide office in the same election year, the amount of expenditures from all of the candidate's principal campaign committees for statewide office for that election year must be aggregated for purposes of the application of the limits on campaign expenditures under subdivision 2, clauses (a) to (c).

You ask the Board to respond to the following questions:

QUESTION ONE

Does the provision of Minn. Stat. § 10A.25, subd. 2 (c) authorize a ten percent increase for Mr. Otis' expenditure limit against either the gubernatorial limit or the state auditor limit, and if so, which?

OPINION

Yes, the ten percent increase in campaign expenditure limit under Minn. Stat. § 10A.25, subd. 2 (c) applies to Mr. Otis' governor committee because the office of governor is the first statewide office for which Mr. Otis is a candidate within the meaning of Minn. Stat. § 10A.01, subd. 5. The ten percent increase in campaign expenditure limit under Minn. Stat. § 10A.25, subd. 2 (c) does not apply to Mr. Otis' state auditor committee because Mr. Otis has been a candidate for another statewide office that includes the same population and territory as the new office.

QUESTION TWO

Under Minn. Stat. § 10A.25, subd. 2a, do expenditures made by the Otis for Governor campaign under Sec. 10A.25, subd. 2 (a) (1) count against the expenditure limit that applies to the state auditor election under Sec. 10A.25, subd. 2 (a) (3)?

OPINION

Yes. A candidate with principal campaign committees for more than one statewide office must aggregate the campaign expenditures of all the committees for statewide office for purposes of the application of the limits on campaign expenditures. Minn. Stat. § 10A.25, subd. 2a, and Minn. Rules pt. 4500.1200.

Issued to:

Thomas B. Heffelfinger, Esq.
Bowman and Brooke
150 South Fifth Street, Suite 2600
Minneapolis, MN 55402

Approved: June 27, 1994

RE: Report of Receipts and Expenditures

ADVISORY OPINION #150

SUMMARY

150. The Carlson/Benson Volunteer Committee (formerly Carlson/Dyrstad Volunteer Committee) need not amend its report for 1990. The detailed description of the Committee transactions in November and December, 1990, provided by Attorney Thomas B. Heffelfinger in his letter dated June 13, 1994, and a copy of this advisory opinion have been entered into the committee file in the office of the Ethical Practices Board.

FACTS

As attorney representing the Carlson/Benson Volunteer Committee ("Committee",) formerly the Carlson/Dyrstad Volunteer Committee, you request an advisory opinion from the Ethical Practices Board regarding the Committee's need to file an amended 1990 report under the Ethics in Government Act based upon your statement of the following facts:

1. The transaction described herein arose in the context of the highly unique 1990 two-week general election gubernatorial campaign of Arne Carlson. Because the campaign was confined to approximately two weeks, all campaign activities were conducted on an expedited basis.
2. On approximately November 1, 1990, the Committee contracted with a vendor for the development, printing, and mailing of a campaign brochure which was to be mailed no later than November 3, 1990; approximate cost: \$60,000.
3. On November 1, 1990, the Committee made payment to the vendor in two checks totaling \$27,000; however, the vendor would not produce and distribute the mailing without receipt in advance of either payment in full or a deposit for the balance.
4. Because the Committee was unable to process payments for the balance in time for distribution, three individual volunteers wrote personal checks payable to the vendor totaling \$34,404 to serve as deposits to insure the mailing within the requisite time frame.
5. The mailing was produced and distributed on November 2, 1990. On November 7, 1990, the vendor mailed an invoice to the Committee for the balance due on the cost of the mailing. The committee was not given credit for the \$34,404 in postage deposits made by the three volunteers.
6. In two payments dated November 12, 1990, and December 12, 1990, the Committee paid the vendor the balance due, and the vendor refunded directly to the three volunteers the \$34,404 deposited with the vendor as a postage deposit.

7. Because the entire amount of the mailing was directly invoiced to the Committee by the vendor and the entire amount of the invoice was paid by the Committee directly to the vendor, the Committee reported the transaction in the Committee's 1990 campaign finance report as an expenditure to the vendor of \$59,960.48.

QUESTION

Does the Carlson/Benson Volunteer Committee (formerly Carlson/Dyrstad Volunteer Committee) need to amend its 1990 Ethical Practices Report?

OPINION

No. The detailed description of the Committee transactions in November and December, 1990, provided by Attorney Thomas B. Heffelfinger in his letter dated June 13, 1994, and a copy of this advisory opinion have been entered into the file of the Carlson/Benson Volunteer Committee, #1-2300 GOV (formerly Carlson/Dyrstad Volunteer Committee).

Issued to:
Kathryn L. Nelson
8983 Preserve Boulevard
Eden Prairie, MN 55347

Approved: June 30, 1994

RE: Volunteer Activities

ADVISORY OPINION #151

SUMMARY

151. Services provided without compensation by an individual volunteering personal time on behalf of a candidate are not considered a contribution to that candidate. Minn. Stat. § 10A.01, subd. 7 (1992). Therefore, volunteer activities by a lobbyist provided without compensation on behalf of an incumbent legislator or constitutional officer seeking re-election are included in the exception from the gift prohibition for services of insignificant monetary value. Minn. Stat. § 10A.071, subd. 3 (3) (Laws of 1994, Ch. 377, Sec. 5).

FACTS

As a lobbyist registered with the Ethical Practices Board who is also a local DFL party officer and who has been active in the past in a wide variety of political campaigns you have received the Board's Bulletin for Lobbyists and Principals, May, 1994, about a 1994 law that becomes effective August 1, 1994. You ask the Board for an advisory opinion based upon your statement of the following facts:

1. Volunteers play a prominent role in Minnesota political campaigns at both the legislative and statewide level.
2. Volunteer activities include, but are not limited to, doorknocking and literature dropping, phone bank activities, volunteer fundraising, preparing and assembling candidate mailings, drafting and designing letters and literature on behalf of a candidate, coordinating volunteer activities of other volunteers, and serving as campaign manager or treasurer in volunteer capacity.
3. Chapter 377 of Minnesota Session Laws 1994, Sec. 5, provides that 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.
4. The law cited above defines "gift" to mean money, real or personal property, or a service that is given and received without the giver receiving consideration of equal or greater value in return.
5. The law cited above defines "official" to include a public official, which includes members of the legislature and constitutional officers under Minn. Stat. § 10A.01, subd. 18.
6. The prohibition on gifts in the 1994 law does not apply if the gift is a contribution as defined in Minn. Stat. § 10A.01, subd. 7; to services to assist an official in the performance of official duties; to services of insignificant monetary value.
7. Minn. Stat. § 10A.01, subd. 7, provides that contribution does not include services without compensation by an individual volunteering personal time on behalf of a candidate, political committee, or political fund.

QUESTION

Are volunteer activities by a lobbyist on behalf of an incumbent legislator or constitutional officer seeking re-election prohibited?

OPINION

No. Services provided without compensation by an individual volunteering personal time on behalf of a candidate are not considered a contribution to that candidate. Minn. Stat. § 10A.01, subd. 7 (1992). Therefore, volunteer activities by a lobbyist provided without compensation on behalf of an incumbent legislator or constitutional officer seeking re-election are included in the exception from the gift prohibition for services of insignificant monetary value. Minn. Stat. § 10A.071, subd. 3 (3) (Laws of 1994, Ch. 377, Sec. 5).

Issued to:

Barbara Lawrence, Campaign Manager
(Anthony) Bouza for Governor, #1-2962 GOV
P. O. Box 19454
Minneapolis, MN 55419

Approved: June 24, 1994

RE: Governor-Lieutenant Governor Contribution Limit

ADVISORY OPINION #152

SUMMARY

152. A candidate for governor and a candidate for lieutenant governor, running together, are to be treated as a single entity. If they accept a public subsidy, the total contributions and loans from the candidate for governor and from the candidate for lieutenant governor to their principal campaign committee must not exceed \$20,000 in 1994. Minn. Stat. §10A.25, subd. 1 (1992); Minn. Stat. §10A.27, subds. 1 (a), 8, and 10 (1993 Supplement).

FACTS

As campaign manager of the Bouza for Governor Committee, you request an advisory opinion from the Ethical Practices Board on the contribution limit applicable to candidates for governor and lieutenant governor running together based on your statement of the following facts:

1. Information published by the Ethical Practices Board states that a candidate for governor/lt. governor who signs and files a public subsidy agreement with the Board must limit personal contributions to up to \$20,000 in 1994.
2. The information about this \$20,000 limit is unclear as to whether the governor candidate and the lieutenant governor candidate may each contribute \$20,000 in 1994 or whether they must limit their joint contributions to a total of \$20,000 in 1994.
3. There are less than 85 days remaining before the September 13, 1994, therefore a prompt ruling by the Board is requested.

OPINION

A candidate for governor and a candidate for lieutenant governor, running together, are to be treated as a single entity. Minn. Stat. § 10A.25, subd. 1 (1992). Because they are a single entity and if they accept a public subsidy, the total contributions and loans from the candidate for governor and from the candidate for lieutenant governor to their principal campaign committee must not exceed \$20,000 in 1994. Minn. Stat. § 10A.27, subds. 1 (a), 8, and 10 (1993 Supplement).

Issued to:
John Rajkowski, Lobbyist
Twin West Chamber of Commerce
10550 Wayzata Boulevard
Minnetonka, MN 55305

Approved: August 2, 1994

RE: Gifts to Officials

ADVISORY OPINION #153

SUMMARY

153. Complimentary breakfasts given to legislators who appear at an organization's series of meetings to speak or to respond to questions as part of the program are included in the exceptions to the gift prohibition in Minn. Stat. § 10A.071, subd. 3 (7) (Laws of Minnesota, Ch. 377, sec. 5).

FACTS

As a lobbyist for Twin West Chamber of Commerce ("Chamber") you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. From September through June the Chamber sponsors a series of legislative breakfast meetings that are funded through subscriptions and corporate sponsorships.
2. When soliciting sponsorships the Chamber explains that the money underwrites the cost of publicizing and staffing the program and the cost of complimentary breakfasts for speakers, students, and local legislators.
3. During the 30 minutes of breakfast before the program starts, local legislators are engaged in directed conversations on business issues. A member of the Chamber government affairs committee is assigned to each table to keep the conversation on issues, e. g., taxes, workers compensation.
4. This year as part of the program the Chamber will ask local legislators to spend a few minutes talking about current or pending legislation or offer their opinion of an issue important to the Chamber.
5. After the legislators' talks, the program consists of one or two featured speakers followed by a question and answer session in which local legislators will take part by asking questions or offering further insights if they are asked to do so by the main speakers.

QUESTION

Should the Chamber continue to provide complimentary breakfasts to legislators during the Chamber's series of legislative breakfasts or should the Chamber charge the legislators for the cost of their breakfasts?

OPINION

The Chamber may continue to provide complimentary breakfasts to legislators during the Chamber's series of legislative breakfasts when the legislators speak at the meeting or respond to questions from the organization and its subscribers or corporate sponsors as part of the program. Under Minn. Stat. § 10A.071 the gift prohibitions do not apply to food or a beverage given by an organization before whom the recipient appears to make a speech or to respond to questions as part of a program. Minn. Stat. § 10A.071, subd. 3 (7) (Laws of 1994, Ch. 377, sec. 5).

Issued to:

Juane E. Schumacher, Jr.

Candidate for State Representative

P. O. Box 403

St. Cloud, MN 55302-0403

Approved: August 12, 1994

RE: Campaign Finance

ADVISORY OPINION #154

SUMMARY

154. Production and broadcasting of a cable public access program by a legislative candidate without compensation or cost to the candidate will not result in an in-kind contribution to the candidate under Minn. Stat. § 10A.01, subds. 5, 7, and 10. The Board expresses no opinion as to the application of any law or regulation administered by the Federal Communications Commission act or any other laws or regulations to a legislative candidate's participation in or the content of a cable public access program, because these issues, if any, are outside the Board's jurisdiction.

FACTS

As a candidate for state representative, you state that 1) as producer and host of cable public access program for over three years you have aired many informational forums including co-producing political programming with TCI cable company; 2) TCI cable company is required to offer public access programming to all individuals and does so at no cost to the producers of public access programs; 3) public access programming is not for profit and is not a commercial endeavor by the producers nor is it for TCI cable company; 4) the Federal Communications Commission (FCC) regulates the cable industry including public access programming and prohibits censorship of programming of any nature, in part or whole, including political programming.

QUESTION ONE

Is a cable public access program required to be disclosed by a legislative candidate as a contribution? And, if so, as an in-kind contribution, or is it not recognized as a contribution per definition?

OPINION

No. Based on a review of the information submitted, the Board concludes that production and broadcasting of the proposed continuation of the cable public access program will not result in an in-kind contribution to the candidate under Minn. Stat. § 10A.01, subds. 5, 7, and 10.

The Board expresses no opinion as to the application of any law or regulation administered by the Federal Communications Commission or any other laws or regulations to a legislative candidate's participation in or the content of a cable public access, program because these issues, if any, are outside the Board's jurisdiction.

QUESTION TWO

Can I continue my public access program, "Neighbor to Neighbor" as governed by the Federal Communications Commission (FCC)?

OPINION

As noted above, the Board expresses no opinion as to the application of any law or regulation administered by the Federal Communications Commission or any other laws or regulations to a legislative candidate's participation in or the content of a cable public access program, because these issues, if any, are outside the Board's jurisdiction.

Issued to:
Susan Mitchell, Policy Development Director
HealthSpan Health Systems Corporation
2810 Fifty-Seventh Avenue North
Minneapolis, MN 55430

Approved: August 12, 1994

RE: Gifts to Officials

ADVISORY OPINION #155

SUMMARY

155. HealthSpan, a lobbyist principal, may not pay for expenses for team members who are "officials" as defined in Minn. Stat. § 10A.071, subds. 1 (c) and who attend a forum held by HealthSpan. A lobbyist principal is prohibited from giving a gift to an official that is given and received without the principal receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subds. 1 and 2. The application of a parallel gift prohibition in Minn. Stat. § 471.895 for local officials and interested persons should be considered in connection with payment of expenses for local officials who attend the proposed forum. Laws of 1994, Ch. 377, secs. 5 and 6.

FACTS

As policy development director for HealthSpan Health Systems Corporation (HealthSpan), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. For the second year HealthSpan is planning an event called Healthy Communities Leadership Forum to be held August 26 - 28 in Alexandria, Minn., at the Radisson Arrowwood resort to bring together teams of civic leaders from fifteen different communities around the state where HealthSpan provides health care services.
2. The teams meet throughout the weekend discussing the needs and assets of their specific communities and solutions to make their communities healthier.
3. Skill building workshops will be held for team members to attend, and all team members will be answering questions, providing advice, consultation, and information as they actively participate in community problem solving.
4. The teams currently are made up of clergy, city council members, mayors, legislators, health care providers, community health service agency staff, large and small employers, human service agency staff, county commissioners, and county administrators.
5. HealthSpan is prepared to pay all forum expenses -- meals and lodging -- for all team members this year as last year.

QUESTION

Can HealthSpan pay all forum expenses for team members who are officials under Minn. Stat. § 10A.071, subds. 1 and 2?

OPINION

No. HealthSpan may not pay for expenses for team members who are "officials" as defined in Minn. Stat. § 10A.071, subds. 1 (c). HealthSpan, a lobbyist principal, is prohibited from giving a gift to an official that is given and received without HealthSpan receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subds. 1 and 2 (Laws of 1994, Ch. 377, sec. 5).

The gift to officials you describe is prohibited under Minnesota Statutes, Ch. 10A, the only statute governing lobbyists and lobbyist principals for which the Ethical Practices Board has advisory opinion authority. You should be aware that there is a parallel gift prohibition in Minn. Stat. § 471.895 that applies to local officials and interested persons, and you should consider the application of that statute to your proposed activities. See Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, sec. 6).

Issued to:

Frank J. Corrigan, Executive Director
The Minnesota Transportation Alliance
672 Transfer Road
St. Paul, MN 55110-1402

Approved: August 12, 1994

RE: Gifts to Officials

ADVISORY OPINION #156

SUMMARY

156. The Minnesota Transportation Alliance, a lobbyist principal, may provide to officials at no cost a periodical publication relating to public policy issues. The publication as described in this request is within the exception from the gift prohibition for services to assist an official in the performance of official duties, including information and communication in connection with legislation, and it also is within the exception for informational material of unexceptional value. Minn. Stat. § 10A.071, subd. 3 (2), (6) (Laws of 1994, Ch. 377, sec. 5).

FACTS

As executive director of The Minnesota Transportation Alliance (Alliance), a lobbyist principal represented by lobbyists registered with the Ethical Practices Board, you ask the Board for an advisory opinion on your statement of the following facts:

1. The Alliance is a not-for-profit coalition of groups, businesses, labor, and local governments concerned about surface transportation in Minnesota that was founded in 1893 and is funded through membership dues.
2. The Alliance is planning to introduce a public policy magazine to be published four times per year that will discuss public policy issues affecting the delivery and operation of Minnesota's surface transportation systems.
3. The magazine will be financially supported by paid advertising and distributed by the Alliance to its membership, government officials and employees, local government officials and employees, and others at no cost.
4. The value of a single copy of the publication would be approximately \$3.50.
5. It has been the understanding of the Alliance that this publication meets the intentions of Sections 5 and 6 of Laws of 1994, Chapter 377, which allow "informational material of unexceptional value" to be given as a gift to government officials and local officials.

QUESTION

May The Minnesota Transportation Alliance provide to officials at no cost to the officials a periodical publication relating to public policy issues in the field of transportation infrastructure that is supported by paid advertising?

OPINION

Yes. Minn. Stat. § 10A.071 prohibits gifts from lobbyists or lobbyist principals to officials. The statute also provides certain exceptions to the prohibition including services to officials to assist them in the performance of their official duties.

Based on a review of the information submitted, the Board concludes that the publication described therein is within the exception from the gift prohibition for services to assist an official in the performance of official duties, including information and communication in connection with legislation, and it also is within the exception for informational material of unexceptional value. Minn. Stat. § 10A.071, subd. 3 (2), (6) (Laws of 1994, Ch. 377, sec. 5).

Approved: August 22, 1994

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA**
under Minn. Stat. § 10A.02, subd. 12 (b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #157

SUMMARY

157. A training session about the operation of computer products provided to officials by the vendor is not a gift to the officials regardless of whether the vendor is a lobbyist principal. Training in the operation of computer products is within the exception from the gift prohibition for services by a lobbyist principal to assist an official in the performance of official duties. However, officials must not accept meals given by a vendor at a training session unless the meals are part of the purchase agreement with the vendor. Minn. Stat. § 10A.071.

FACTS

As a local official as defined in Minn. Stat. § 10A.01, subds. 25 and 26, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. A lobbyist principal, from which computer products and services have been purchased, is sponsoring a training session for its customers about the operation of computer systems and has invited local officials to attend.
2. In addition to information and advice, the principal has proposed to provide the attenders with meals during the training session at no cost.
3. Based on information provided by the principal, it is your understanding that a majority of the persons composing the group who have been invited are not officials as defined in Minn. Stat. § 10A.071. Officials as defined in Minn. Stat. §§ 10A.01, subd. 25, and 10A.071, subd. 1(c) have been invited.
4. Minn. Stat. § 10A.071 prohibits an official from accepting gifts from a lobbyist or principal.

QUESTION

If the training session constitutes a gift under Minn. Stat. § 10A.071, subd. 1(b), is all or part of the gift exempt from the prohibition of Minn. Stat. § 10A.071, subd. 2, on the basis of the exemption in Minn. Stat. § 10A.071, subd. 3(a)(2) and/or because the gift is given to a group, in the manner described in Minn. Stat. § 10A.071, subd. 3(b)(1), a majority of whose members are not local officials?

giver receives full or equal consideration in return. The training session is not a gift to the officials if the training was provided under a computer purchase agreement with the vendor. If the training session was not part of a computer purchase agreement with the principal, the training session is exempt from the gift prohibition because it is within the exception for services to assist officials in the performance of official duties pursuant to Minn. Stat. § 10A.071, subd. 3(a)(2).

The officials who participate in the training session are prohibited from accepting the meals offered by the principal unless the meals are specifically part of the training purchased from the principal.

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Campaign Finance

ADVISORY OPINION #158

SUMMARY

158. The Ethical Practices Board believes that the establishment of a political action committee by a nonprofit corporation whose members are corporations is controlled by the provisions of Minn. Stat. § 211B.15, as amended in 1993, a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions.

FACTS

As a registered lobbyist for an association that is a nonprofit corporation whose members are dues paying corporations, you state that the association has been discussing the possibility of establishing a political action fund. You ask the Ethical Practices Board for a written response to a series of questions.

QUESTIONS

1. Can the administrative cost of the association's political action fund be paid from Association dues or does it have to come from fund contributions?
2. Can a portion of a member's dues be assigned to the political fund?
3. Can the association solicit contributions to the political fund from nonmembers of the association?
4. As a registered lobbyist and president of the association, what role can you play in recommending members' support (financially or in-kind) of a candidate if the association chooses not to establish a fund?
5. Can the association endorse a candidate publicly without having established a political fund?
6. Would the association or members of the association on an individual basis be able to run an ad paid from the association dues or funded by an individual in support or opposition of a candidate when it is without the candidate's knowledge prior to the act?

OPINION

The Board believes that the questions presented are controlled by the provisions of Minn. Stat. § 211B.15, as amended in 1993, a statute that is not within the Board's jurisdiction and with regard to which the Board may not issue advisory opinions. See copy of Minn. Stat. § 211B.15 below:

Minn. Stat. § 211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;

- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Subd. 2. Prohibited contributions. A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free services of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Subd. 3. Independent expenditures. A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate.

Subd. 4. Ballot question. A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.

Subd. 5. News media. This section does not prohibit publication or broadcasting of news items or editorial comments by the news media.

Subd. 6. Penalty for individuals. An officer, manager, stockholder, member, agent, employee, attorney, or other representative of a corporation acting in behalf of the corporation who violates this section may be fined not more than \$20,000 or be imprisoned for not more than five years, or both.

Subd. 7. Penalty for corporations. A corporation convicted of violating this section is subject to a fine not greater than \$40,000. A convicted domestic corporation may be dissolved as well as fined. If a foreign or nonresident corporation is convicted, in addition to being fined, its right to do business in this state may be declared forfeited.

Subd. 8. Permitted activity; political party. It is not a violation of this section for a political party, as defined in section 200.02, subdivision 7, to form a nonprofit corporation for the sole purpose of holding real property to be used exclusively as the party's headquarters.

Subd. 9. Media projects. It is not a violation of this section for a corporation to contribute to or conduct public media projects to encourage individuals to attend precinct caucuses, register, or vote if the projects are not controlled by or operated for the advantage of a candidate, political party, or committee.

Subd. 10. Meeting facilities. It is not a violation of this section for a corporation to provide meeting facilities to a committee, political party, or a candidate on a nondiscriminatory or nonpreferential basis.

Subd. 11. Messages on premises. It is not a violation of this section for a corporation selling products or services to the public to post on its public premises messages that promote participation in precinct caucuses, voter registration, or elections if the messages are not controlled by or operated for the advantage of a candidate, political party, or committee.

Subd. 12. Reports required. The total amount of an expenditure or contribution for any one project permitted by subdivisions 9 through 11 that is more than \$100, together with the date, purpose, and the names and addresses of the persons receiving the contribution or expenditures, must be reported to the secretary of state. The reports must be filed on forms provided by the secretary of state on the dates required for committees under section 211A.02. Failure to file is a misdemeanor.

Subd. 13. Aiding violation; penalty. An individual who aids, abets, or advises a violation of this section is guilty of a gross misdemeanor.

Subd. 14. Prosecutions; venue. Violations of this section may be prosecuted in the county where the payment or contribution was made, where services were rendered, or where money was paid or distributed.

Subd. 15. Nonprofit corporation exemption. The prohibitions in this section do not apply to a nonprofit corporation that:

- (1) cannot engage in business activities;
- (2) has no shareholders or persons affiliated so as to have a claim on its assets or earnings; and
- (3) was not established by a business corporation or a labor union and has a policy not to accept significant contributions from those entities.

Subd. 16. Employee political fund solicitation. Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.

Approved: August 22, 1994

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA**
under Minn. Stat. § 10A.02, subd. 12 (b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #159

SUMMARY

159. Officials are prohibited from accepting a gift from lobbyists or principals unless the givers bill the officials and the officials make payment to the lobbyists or officials of equal or greater value at the same time the gift is received. The only exception to the gift prohibition that relates to food and 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."

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board about implications and practicality of the new prohibition on accepting gifts from lobbyists and principals enacted in the 1994 legislative session (Laws of 1994, Ch. 377, sec. 5).

You ask the Board the following:

QUESTION ONE

a lobbyist or principal provides a meal to a group of persons, one of whom is an official who is not permitted to accept the gift, and the restaurant or facility is not able to provide a separate check, is it permissible for the lobbyist or principal to submit a bill to the official, and for the official, at that point, to reimburse the lobbyist or principal? Must the bill be given and paid contemporaneously or will exchange by mail suffice?

OPINION

Yes. The bill must be submitted by the lobbyist or principal contemporaneously and must be paid by the official contemporaneously. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return. It is the opinion of the Board that an official must adopt a pay-as-you-go procedure when accepting a gift from a lobbyist or principal; therefore, the billing for a gift and the payment for the gift must be made at the time when the gift is accepted by the public official.

QUESTION TWO

A "gift" is apparently only considered a "gift" under the law when the giver does not receive consideration of equal or greater value in return. How soon after a lobbyist or principal provides something of value to an official must the official provide something of equal or greater value to the lobbyist or principal for the item provided and accepted not to be considered a gifts? The same day? Month? Year? Must there be a formal agreement at the time the lobbyist or principal provides the thing

of value to the official that the lobbyist or principal will receive something of equal or greater value in return? E. g., if a principal takes on official fishing on Monday, and the official takes the principal fishing on Saturday.

OPINION

See response to Question One, above.

QUESTION THREE

If a lobbyist or principal provides a hospitality suite at a conference or convention which is open to all members of a particular organization, and a majority of those members are **not** Minnesota officials, may an official receive food and beverage from that hospitality suite since an equivalent gift is being given to other members of the organization? Does it matter if the conference is not being conducted in Minnesota?

OPINION

No. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service 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 and 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 regardless of where the conference is conducted.

QUESTION FOUR

If, because of an official's membership in a group (organization), a majority of whose members are **not** Minnesota officials, the official receives an invitation to dinner from a lobbyist or principal, and the lobbyist or principal has also invited a number of other members of that group (organization) who are **not** Minnesota officials, may the Minnesota official accept the invitation and receive food and beverage from a lobbyist or principal without reimbursing the lobbyist or principal for the cost of the meal? Is the result different if the offer is accepted only by Minnesota officials, or if the resulting attendees consist of a majority of Minnesota officials, or if the resulting attendees contain a guest list with a minority of Minnesota officials? How is a "group" defined? Is it synonymous with organization?

OPINION

No. See response to Question Three, above.

QUESTION FIVE

Is it permissible for a lobbyist or principal to provide a meal or give a gift to a spouse or significant other of an official? Does it make a difference if the official is also in attendance at the meal (although the official pays for his or her own meal)?

OPINION

Gifts to spouses of officials or gifts to significant others of officials as defined in Minn. Stat. § 10A.071, subd. 1(c), from lobbyists or principals are not addressed in Minn. Stat. Ch. 10A.

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec.1)

RE: Gifts to Officials

ADVISORY OPINION #160

SUMMARY

160. A lobbyist or lobbyist principal is prohibited from giving a gift to an official and an official is prohibited from accepting a gift from a lobbyist or lobbyist principal, both within and outside the state of Minnesota. Minn. Stat. § 10A.071. The lobbyist principal should review the applicability 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, if its hospitality suite is offered to local officials.

FACTS

As a registered lobbyist for an association that is a lobbyist principal, you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. The association provides a hospitality suite for Minnesota delegates to a national conference. The delegates typically include managers in businesses, legislators, and executive branch staff.
2. The association provides the hospitality suite, arranges group travel for delegates, provides light snacks and drinks, holds an open bar during limited hours, and holds a reception which is open to all Minnesotans in attendance and invited guests from around the country.
3. Funds for this purpose are raised in advance from voluntary contributions of members of the association in response to a specific request.

You ask the Board the following:

QUESTION ONE

Do the new restrictions of Chapter 377 (1994 Laws of Minnesota) relating to gifts to public officials apply to meetings out of state?

OPINION

Yes. A lobbyist or lobbyist principal is prohibited from giving and an official is prohibited from accepting a gift, both within and outside the state of Minnesota. Minn. Stat. § 10A.071. The association also should review the applicability 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 prohibits gifts from interested persons to local officials as those terms are defined by Minn. Stat. § 471.895, subds. 1 (c) and (d), and it likely applies to the activities you describe if the association's hospitality suite is offered to local officials. A copy is attached for your reference.

QUESTION TWO

What is an appropriate way to determine the value of the gift to attending legislators and other covered officials?

OPINION

The association should calculate the total costs for providing the hospitality suite, including overhead costs such as the suite itself, and divide the product by the number of individuals who receive the benefits to determine the value of the gift per person.

QUESTION THREE

If covered officials pay the same group travel costs as other attenders, do travel discounts need to be apportioned?

OPINION

No. When an official pays the same price for travel costs that is charged to other attenders, then the transaction is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

QUESTION FOUR

- A. Would it be appropriate to charge a fee to attending legislators and other covered officials to cover the costs of snacks, drinks, the reception, and other things of value?
- B. Would such a fee have to include a portion of overhead costs such as the cost of the suite?
- C. What apportionment method should be used to calculate the fee to be charged?

OPINION

- A. Yes; otherwise, the benefit is a gift. The benefit is not a gift if the giver receives equal or greater value in return. Minn. Stat. § 10A.071, subd. 1 (b).
- B. Yes.
- C. See response to Question Two, above.

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12 (b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #161

SUMMARY

161. Prizes donated or paid for by lobbyists or lobbyist principals for an event hosted by an official are not exempt from the statutory gift prohibition because hosting the event is not an official duty. Tickets to the event purchased at full price by lobbyists or lobbyist principals are not gifts to the official hosting the event. Prizes won by officials based upon demonstrated skill are not gifts to the officials, pursuant to Minn. Stat. § 10A.071.

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. Each year you host an event, the proceeds of which go to a 501(c)(3) organization.
2. The event solicits prizes from individuals and corporations in Minnesota which prizes are awarded to participants for their skills exhibited during the event.
3. Tickets that are sold for the event entitle the purchaser to luncheon and to participate in the event and the opportunity to win donated prizes.
4. The price of the event includes the costs of the event and a contribution to a 501(c)(3) charitable organization as defined by the Internal Revenue Tax Code.
5. You have a list of questions concerning the possible application of Minn. Stat. § 10A.071 upon the structure of this event which you believe need to be answered by the Ethical Practices Board prior to conducting this event.

QUESTION ONE

Is a donation of prizes or funds to purchase a prize, which is donated by a lobbyist or a principal, to the event which you sponsor considered a "gift" to an official as defined in Minn. Stat. § 10A.071?

OPINION

Yes. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyists or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly

defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return.

QUESTION TWO

Is a ticket to the charitable event purchased by a lobbyist or principal lobbyist from personal funds for participation in the event and subsequent donation to a 501(c)(3) charitable organization a "gift" to an official as defined in Minn. Stat. § 10A.071, subd. 1?

OPINION

No. When a lobbyist or principal pays full price for participation in the event and the admission price includes the costs of the event and a contribution to a 501(c)(3) charitable organization as defined by the Internal Revenue Tax Code, then the transaction is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

QUESTION THREE

Since other officials as defined in Minn. Stat. § 10A.071, subd. 1(c), may participate in this event, would their winning of a prize at the event, which is donated by a lobbyist or principal be considered a "gift" as defined in Minn. Stat. § 10A.071, subd. 1(b)?

OPINION

No. When a prize is presented to an official based upon the official's demonstrated skill in the event, the prize is not a gift within the meaning of Minn. Stat. § 10A.071, subd. 1(b).

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #162

SUMMARY

162. An organization that is a lobbyist principal may not provide complimentary registration fees to one or more officials to attend the organization's educational programs. The service is a gift from a lobbyist principal to an official that is prohibited by Minn. Stat. § 10A.071, subd. 3 (2) (Laws of 1994, Ch. 377, sec. 5).

FACTS

As a registered lobbyist representing an organization that is a lobbyist principal, you ask the Ethical Practices Board for an for an advisory opinion based on your statement of the following facts:

1. A 1994 law prohibits a lobbyist principal from giving and prohibits an official from receiving a gift. Included in the definition of gift is a service.
2. The organization you represent has a large educational program and many of its offerings are made available to members of the public for a registration fee that includes tuition and refreshments, if any, during the program.
3. In the past at least one official has shown an interest in extending the official's knowledge about the subjects included in the organization's education programs and prior to the passage of the 1994 law that prohibits gifts from a lobbyist principal to an official, the organization has provided a complimentary registration fee for this official and would do so for other officials had they requested complimentary registration fees.
4. Some of these presentations may not have a direct bearing on issues currently under consideration by the official, but rather would expand the general knowledge of a official about the subject matter. The organization desires to be able to continue to compliment these occasional registration fees, since it shows initiative and interest on the part of the official in trying to build a general knowledge base about the subject matter of the programs.

QUESTION

May the organization continue to provide an occasional complimentary registration fee to one or more officials to attend one of the organization's educational programs that are made available to the public for a registration fee?

OPINION

No. The Board believes that providing this service is a gift from a lobbyist principal to an official, which is prohibited by Minn. Stat. § 10A.071, subd. 3 (2) (Laws of 1994, Ch. 377, sec. 5).

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12 (b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gift to Official

ADVISORY OPINION #163

SUMMARY

163. An official is prohibited from accepting the payment of the cost of an event if a lobbyist or lobbyist principal contributes to defraying the cost of the event. Donations from a lobbyist principal to pay in part for the cost of meetings among governmental officials are not within any exemption from the gift prohibition in Minn. Stat. § 10A.071. An official is prohibited from accepting a gift from a lobbyist or from a lobbyist principal regardless of the conduit through which the official receives the gift.

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. You hold a committee office in an organization that sponsors programs to promote exchanges of information among the several states.
2. You have been invited to participate in a series of meetings outside the United States among governmental officials.
3. Costs of the event are paid by the organization with money raised from charges to participants and donations from private sponsors, including a lobbyist principal, which is making a contribution through a charitable organization organized under § 501(c)(3) of the Internal Revenue Code, which will defray part of the costs of the event.

QUESTION ONE

Does Minnesota law, specifically new Minn. Stat. § 10A.071, prohibit you from accepting the organization's invitation to participate in this event?

OPINION

No. Minn. Stat. Ch. 10A does not prohibit an official from attending an event; however, the law restricts gifts from lobbyists and lobbyist principals to an official. To the extent that any portion of the official's expenses for the event are paid by a lobbyist or a lobbyist principal, you are prohibited from accepting from accepting the payment of the cost of the event. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b). Donations from a lobbyist principal to pay in part for the cost of meetings among governmental officials are not within any exemption from the gift prohibition in Minn. Stat. § 10A.071.

QUESTION TWO

Would the answer to Question One be different if the contribution from the lobbyist principal, were made directly to the sponsoring organization, instead of to the charitable organization organized under § 501(c)(3) of the Internal Revenue Code?

OPINION

No. An official is prohibited from accepting a gift from a lobbyist or from a lobbyist principal for regardless of the conduit through which the official receives the gift.

Approved: September 15, 1994

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #164

SUMMARY

164. An official, whose spouse is employed by a lobbyist or lobbyist principal, is prohibited from accepting a benefit from the employer of the spouse unless the official pays contemporaneously for the benefit received. Minn. Stat. § 10A.071, subd. 1(b) and (c).

FACTS

As a public official, as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board for an advisory opinion on the application of Minn. Stat. § 10A.071 to your activities. You state that your spouse is an employee of a lobbyist principal.

You ask the Board the following:

QUESTION ONE

Under the new Ethics Law that went into effect August 1, 1994, can you attend a function paid for by the employer of your spouse?

OPINION

Yes; however, you must pay contemporaneously for the benefit you receive. Officials are prohibited from accepting gifts from lobbyists or lobbyist principals, subject to certain exceptions defined in Minn. Stat. § 10A.071. 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.

QUESTION TWO

If you, a public official, accompany your spouse on a business trip, are you allowed to accept any meals, airfare, or use of hotel rooms that are paid for by your spouse's employer, a lobbyist principal?

OPINION

No. See response to Question One, above.