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ADVISORY OPINIONS

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

October 1995 - September 1996

Numbers 218 - 248

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MINNESOTA 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. Stats. §§ 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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THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to:

Kelvin Johnson, President
Printing Industry of Minnesota, Inc.
2829 University Avenue SE
Suite 750
Minneapolis, MN 55414

RE: Gift Requested by Lobbyist Principal

July 26, 1996

**ADVISORY OPINION #171
REVISED BY THE ETHICAL PRACTICES BOARD**

SUMMARY

A gift to a legislator by a lobbyist principal is prohibited. The relationship between a lobbyist principal and a foundation may be so close that gifts by the foundation are deemed to be requested by the principal. If a legislator contemporaneously pays the full price for a benefit received, it is not a prohibited gift.

FACTS

As the president of The Printing Industry of Minnesota, Inc. ("PIM"), a lobbyist principal, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following facts:

1. PIM is a trade organization whose members are companies doing business in the print communications industry in Minnesota. The government affairs activities of the association include monitoring, direct lobbying, and representation before legislative and regulatory committees on issues important to the continued expansion of the Minnesota printing industry.
2. As the president of PIM, you are one of its registered lobbyists.
3. The Printing Industry of Minnesota Education Foundation ("the Foundation") is a charitable organization organized under § 501 (c) (3) of the Internal Revenue Code. The Foundation board of directors is identical to the PIM board of directors; consequently, as president of the PIM, you are president of the Foundation, also.
4. The Foundation pays PIM for staff and administrative support to the extent that restrictions on its balances permit it to. Beyond that, PIM makes a contribution to the Foundation of those services.
5. The Foundation exists to enhance job capabilities of persons employed in the print communications industry in Minnesota. It sponsors education and training programs, research, and career development. It also provides scholarships and youth programs.

6. The funding received by the Foundation is for the following designated areas: scholarship fund, education and training, career fair, career materials, industry outreach program, annual awards luncheon for students in graphic arts competition awards program, and Print Communication Week Banquet
7. Each January the Foundation sponsors Print Communication Week and provides a full day of programs for schools and executives in the industry that includes industry career tours, a luncheon, career fair, and an evening reception and dinner. The dinner includes speakers on a variety of issues of importance to the printing industry.
8. In the past, the Foundation has invited legislators and their spouses or significant others to be the guests of the Foundation for the evening program at no charge.
9. In addition, many companies represented at the event will invite their state legislators to attend the event and sit at the company purchased tables.
10. It is inevitable that company executives seated at company tables would likely talk with legislators about issues important to their companies.
11. The individual ticket price for evening event is \$65, which includes \$21.50 for the dinner and \$43.50 for other costs such as marketing, postage, speaker fees, administrative overhead, complimentary tickets provided to legislators, and net profits for event planning, education scholarships, and educational materials for schools.

QUESTION ONE

May the Foundation invite legislators to attend the evening reception and dinner as non-paying guests ?

OPINION

No, the gift to legislators of free admission to the event is prohibited as a gift requested by a lobbyist principal.

The event is a dinner featuring speakers on issues important to the printing industry. It is attended by industry executives and by teachers and students who have participated in print communication week. Neither the nature of the event nor the mission of the Foundation suggest a motivation for the Foundation to invite legislators to attend without charge.

Beyond its potential to create good will, a gift to legislators of free admission to the event provides the industry with an opportunity to present speeches about industry issues to legislators and gives industry executives an opportunity to informally discuss concerns with them. As you have described PIM and the Foundation, the gift would help accomplish the goals of PIM, but seems unrelated to the mission of the Foundation.

The PIM president and Board of Directors are the same as those of the Foundation, thus, one of PIM's lobbyists is the president of the Foundation. Because of the particular relationship between PIM and the Foundation the two cannot be separated for the purpose of giving gifts to legislators. Even if the

Foundation is recognized as a separate legal entity, its gift to legislators must be considered to be requested by PIM, a lobbyist principal, and is prohibited.

QUESTION TWO

May the Foundation invite as non-paying guests persons who are not officials as defined in Minn. Stat. § 10A.071, subd. 1(c), but who accompany the legislator to the event?

OPINION

Gifts to persons other than officials as defined in Minn. Stat. § 10A.071, subd. 1(c), are not addressed in Minn. Stat. Ch. 10A.

QUESTION THREE

- A. If a printing company sponsors a company table and pays the Foundation for the cost of a table, may the company invite as non-paying guests officials and their guests?
- B. If the official must pay the costs of the event, would the expenses be paid to the printing company or to the Foundation.

OPINION

- A. A printing company that is a lobbyist principal is prohibited from providing an official with a complimentary ticket to the banquet, and the official is prohibited from accepting the benefit. Minn. Stat. § 10A.071, subd. 1. If the company providing the complimentary ticket is not a lobbyist principal, but provides the gift at the request or suggestion of PIM or the Foundation, the gift would be prohibited as a gift requested by a lobbyist principal.
- B. The official must pay whichever entity provided the complementary admission to the event.

QUESTION FOUR

What happens if the official who attends the event is billed the appropriate costs but does not pay?

OPINION

The lobbyist principal must require contemporaneous or advance payment for the event. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 1.

QUESTION FIVE

If it is the advice of the Board that the official should pay for the event, what portion of the ticket price should the official be charged?

OPINION

The official should pay contemporaneously the full price of the ticket for the evening event. Otherwise, the acceptance of food and beverage by the official is a gift prohibited by Minn. Stat. § 10A.071, subd. 1. This response assumes that payment covers the cost of the event.

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

RE: Gifts to Officials

October 20, 1995

ADVISORY OPINION #218

SUMMARY

218. The presentation of a plaque or similar memento of more than insignificant value to a state legislator in recognition of his or her voting record is prohibited by Minn. Stat. § 10A.071.

FACTS

As a registered lobbyist for a lobbyist principal, you request an advisory opinion based on your statement of the following facts:

1. Every biennium the lobbyist principal rates state legislators on their voting records.
2. Legislators who receive a 100% voting record receive a recognition plaque from the lobbyist principal.
3. The cost of the plaque is approximately \$40.00 to \$85.00.

ISSUE

Is the award of the plaque under the stated facts prohibited by Minn. Stat. §10A.071?

OPINION

Yes, the proposed plaque is a prohibited gift pursuant to Minn. Stat. §10A.071 because a plaque of value between \$40.00 and \$85.00 is not of insignificant value and thus does not fall within the exception for trinkets or mementos of insignificant value.¹

The plaque is a gift to an official² by a registered lobbyist principal. Both the giving and the receiving of the gift are prohibited³ unless it falls within a statutory exception.

¹ Minn. Stat. § 10A.071, Subd 3(a)5

² Minn. Stat. § 10A.071, Subd. 1

³ Minn. Stat. § 10A.071, Subd 2

ADVISORY OPINION REQUEST #219

This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to: William E. Connors
Fiscal Analyst
Minnesota House of Representatives
430 State Office Building
St. Paul, MN 55155

October 20, 1995

RE: Law firm employee reunion

ADVISORY OPINION #220

SUMMARY

220. An official may accept a gift of food and beverages at a law firm's reunion for its former employees provided payment of expenses for the reunion is not made by or requested by a lobbyist or a lobbyist principal. The fact that a current attorney with the firm is a lobbyist does not make the firm a principal. Being a former member of a law firm does not constitute "membership in a group" so as to bring the gift within an exception to the gift prohibition established by Minn. Stat. § 10A.071.

FACTS

This opinion is based on your statement of the following statement of facts and information from the Board's records:

1. You are an employee of the State legislature and are also a former member of a Minnesota law firm.
2. One of the law firm's attorneys is a registered lobbyist, however, the firm is not named as a lobbyist principal in the Board's records.
3. The firm is hosting a reunion for its former employees and shareholders and intends to provide food and beverages without charge to attendees.

ISSUE ONE

Would your acceptance of the gift of food and beverages under the stated facts be prohibited by Minn. Stat. §10A.071?

OPINION

No, unless payment of expenses for the reunion was made by or requested by a lobbyist or a lobbyist principal you may accept a gift of food and beverages at a law firm's reunion for its former employees⁴.

⁴ Minn. Stat. § 10A,071, subd. 2. See also Advisory Opinion 212

The fact that the law firm has among its attorneys a lobbyist does not make the firm a lobbyist principal.

If the reunion is the result of a management decision made in the ordinary course of the firm's business it would not be considered to be made or requested by a lobbyist or principal.

ISSUE TWO

What constitutes "membership in a group" so as to bring an otherwise prohibited gift within the exception provided in Minn. Stat. § 10A.071, subd. 3(b)(1).

OPINION

Being a former member of a particular law firm does not rise to the status of "membership in a group" as that phrase is used in the exception provided in Minn. Stat. § 10A.071, Subd. 3(b)(1).

A certain level of formality in both the element of membership and the definition of the group are required. In determining whether an individual falls within the "membership in a group" definition, the Board will consider all relevant information about the group and membership in it.

Under the facts you present, the group consists of former employees of the law firm. These persons are included in the group based solely on their former employment status. They do nothing to join the group, have no obligations to it, and cannot be excluded from the group even if they wanted to be. The group has no incidents of formality or organization. It has no name and no organizational structure. It holds no meetings and conducts no business.

Based on this analysis, being a former employee of a particular law firm does not constitute "membership in a group" which would bring the individual within the exemption provided in Minn. Stat. § 10A.071 Subd. 3(b)(1).

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

November 17, 1995

RE: Noncampaign disbursements

ADVISORY OPINION #221

SUMMARY

The costs of driver services needed to enable a disabled person to conduct a campaign for public office should be reported as noncampaign disbursements.

FACTS

You request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You are considering becoming a candidate for the state legislature.
2. You have a disability.
3. In order to conduct a campaign for the legislature, your disability requires that you pay for the services of a driver to transport you to various campaign related functions.

ISSUE

Should the costs of driver services for a disabled candidate be reported as noncampaign disbursements?

OPINION

Yes, the costs of such services are reported as noncampaign disbursements⁵.

Based on the facts you present, the costs of services to assist in conducting a campaign are noncampaign disbursements if the services are needed because of the disability.

⁵ Minnesota Statutes § 10A.01, subd. 10c

ADVISORY OPINION REQUEST #222

This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

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

RE: Chapter 10A regulation of federal campaign committees

December 18, 1995

ADVISORY OPINION # 223

SUMMARY

A Minnesota official is not subject to the provisions of Minnesota Statutes Chap. 10A with regard to fundraising for federal office.

FACTS

You request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You are an official who also has a federal campaign committee.
2. Your federal committee has outstanding debt and may wish to accept a donation from a lobbyist to help pay the debt.

ISSUES

Do the provisions of Minnesota Statutes Chap. 10A restrict the rights of a Minnesota official to accept a contribution from a lobbyist or to employ other means to retire the debt of the official's federal campaign committee?

OPINION

A Minnesota official is not subject to the provisions of Minnesota Statutes Chap. 10A with regard to campaign fundraising for federal office.

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 Minnesota Statutes Chap. 10A applies to the activities of a candidate's principal campaign committee registered with the Board, but not to the candidate's committee for election to federal office.

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

January 26, 1996

RE: Lobbyist principal definition
Lobbyist definition

ADVISORY OPINION # 224

SUMMARY

Under Minnesota Statutes, §10A.01, subd. 28, the University of Minnesota is not included in the types of entities which may be lobbyist principals. The University of Minnesota is a public higher education system, whose employees cannot be defined as lobbyists based on their activities as University employees.

FACTS

You request an advisory opinion from the Ethical Practices Board based on the following facts:

1. This opinion is requested on behalf of a public official as defined in Minn. Stat. § 10A.01, subd. 18.
2. The University of Minnesota is a public university created by the Minnesota Legislature.

ISSUE ONE

Is the University of Minnesota a lobbyist principal under Minn. Stat. § 10A.01, subd. 28?

OPINION

No, the University of Minnesota ("University") is not a lobbyist principal under Minn. Stat. § 10A.01, subd. 28.

Under Minn. Stat. § 10A.01, subd. 28, a "lobbyist principal means an individual or association" (emphasis added).

The University is a constitutionally established institution which is recognized as a unique entity of state government. It is more than "an association" as that phrase is defined in Minn. Stat. § 10A.01, subd. 3. The definition of "association" does not include the state's public higher education systems, or the University specifically.

While the phrase "public higher education system" is not statutorily defined, the plain language of the phrase suggests that the University is included within the entities it encompasses.

In 1990, when the definition of lobbyist principal was established and the definition of lobbyist was revised, the legislature used different language in each of the definitions. A lobbyist principal was "an individual or association . . ." while a lobbyist was an "individual engaged by another individual, association, political subdivision or public higher education system . . .". It is the Board's opinion that the two definitions require consideration of different entities. Under the Minn. Stat. § 10A.01, subd. 28, a public higher education system is not included within the entities which may be lobbyist principals.

ISSUE TWO

Are all employees of the University of Minnesota, regardless of position, excluded from the definition of a lobbyist?

OPINION

An individual cannot become a lobbyist based on the individual's activities as an employee of the University of Minnesota.

Minn. Stat. § 10A.01, subd. 11 (b)(2) excludes from the definition of a lobbyist "an employee of the state, including an employee of any of the public higher education systems".

Based on the Board's conclusion above, that the University of Minnesota is one of the state's public higher education systems, the statutory exclusion applies to all employees of the University, regardless of their positions or job classifications.

The exclusion is limited to lobbyist status based on the individual's activities as a University employee. A University employee would be a lobbyist if the individual meets the statutory definition of a lobbyist based on activities outside of the individual's University employment.

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

January 26, 1996

**RE: Allocation of campaign expenditures and
noncampaign disbursements**

ADVISORY OPINION # 225

SUMMARY

Where a candidate's end of session report includes a fundraising component and a constituent services component, the cost of production and distribution of the piece must be allocated between campaign expenditures and noncampaign disbursements on a reasonable basis. It is reasonable to allocate production costs of a single piece on the basis of the percentage of each component making up the piece. Where distribution costs are not directly related to the size of the piece, it is reasonable to allocate those costs in proportion to the cost of distributing each component separately.

FACTS

As a candidate with a principal campaign committee, you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff:

1. Your principal campaign committee has produced a 1995 end-of-session report which includes a fundraising solicitation.
2. The report is one 25 1/2" by 11" sheet printed in two colors on both sides and tri-folded to make six 8 1/2" by 11" pages. The front and back of the page which folds to the inside consists of fundraising material. The other four pages contain articles about your votes on legislation, your work on various issues, and similar matters.
3. Your committee distributed the report to your constituents by having it inserted into a local "shopper" publication which is distributed free to residents in your district. Your committee's cost for this distribution was 4 cents per insertion. The cost would have been the same whether the report had been 2, 4, or 6 pages.

ISSUE

May the costs of production and distribution of your 1995 year-end report and fundraising solicitation be allocated between noncampaign disbursements and campaign expenditures for reporting purposes?

OPINION

Yes, in the case of the particular publication which you present, the costs of publication and distribution may be allocated between campaign expenditures and noncampaign disbursements.

One-third of the cost of production and one-half of the cost of distribution of the report should be allocated to campaign expenditures. Two-thirds of the cost of production and one-half of the cost of distribution should be allocated to noncampaign disbursements.

The report consists of two components: four pages of information to constituents and two pages of fundraising materials.

Pursuant to Minn. Stat. § 10A.01, subd. 10c (f), the costs of constituent services performed prior to adjournment sine die (final adjournment in the second year of the biennium) are noncampaign disbursements. While certain costs of fundraising events are noncampaign disbursements, the costs of producing and distributing fundraising materials are campaign expenditures as defined in Minn. Stat. § 10A.01, subd. 10.

When a publication includes both constituent services information and fundraising materials, in distinctly separate sections, the costs of production and distribution of the material must be allocated on a reasonable basis between noncampaign disbursements and campaign expenditures.

Where the publication is produced as a single piece, and the style and design of the entire piece is consistent, the cost of production is generally proportional to the size of the piece. Therefore, it is reasonable to allocate the cost of production in proportion to the percentage of the publication which falls into each category. In the case of your publication, one-third is fundraising material and thus, one-third of the cost of production must be reported as a campaign expenditure and two-thirds as a noncampaign disbursement.

The cost of distribution of the report must also be allocated on a reasonable basis. However, distribution costs are often not closely related to the size of the piece. In the case of your report, the cost to separately distribute the constituent services portion would be equal to the cost to separately distribute the fundraising piece.

Where the distribution cost of a piece is not directly related to its size, the distribution costs should be allocated between the components in proportion to what the cost would have been to distribute each component separately. In the case of your report, you should allocate one-half of the distribution cost to noncampaign disbursements and one-half to campaign expenditures.

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

January 26, 1996

RE: Gift of informational material to official

ADVISORY OPINION # 226

SUMMARY

A black and white calendar produced by a lobbyist principal and containing informational material only, which is available for sale for \$5.00, is exempt from the Minn. Stat. § 10A.071 prohibition of gifts to officials because it is informational material of unexceptional value.

FACTS

As a the representative of a lobbyist principal, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The lobbyist principal represents organizations which are its members.
2. Annually, the principal produces a calendar, which is black and white and has no pictures, but includes extensive text indicating deadlines and other dates and information important to the principal's members.
3. The calendar costs \$1.81 to produce. One copy is given without charge to each of the principal's members. Additional copies may be purchased for \$5.00 each.

ISSUE

Is a gift to an official of the informational calendar described exempt from the gift prohibitions established in Minnesota Statutes § 10A.071?

OPINION

Yes, the calendar is exempt under Minnesota Statutes 10A.071, subd. 3(6), because it is informational material of unexceptional value.

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

January 26, 1996

RE: Gift of free admission to public performance

ADVISORY OPINION # 227

SUMMARY

An official is not prohibited by Minn. Stat. § 10A.071 from attending a free public performance merely because a lobbyist principal has contributed to the funding of the performance.

FACTS

As an official as defined in Minn. Stat. § 10A.071, subd. 1(c), you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff.

1. You wish to attend a presentation of a theatrical performance relating to health issues facing mothers and babies.
2. The performance was commissioned and is presented by the Conference on Healthy Families / Healthy Babies, which is an association of social service and health organizations. The Conference is not a lobbyist principal.
3. The production costs are being underwritten by contributions solicited by the Conference for this purpose from corporations and businesses which include one or more lobbyist principals.
4. The performance will be presented on three occasions, each of which will be advertised to the public and is free to the public.
5. There are no tickets and no advance reservations. You and any member of the public wishing to attend a performance will be seated as long as space is available.

ISSUE

Is an official prohibited by Minn. Stat. § 10A.071 from attending a free public performance presented by an association which is not a lobbyist principal if a portion of the underlying funding for the performance was provided by a lobbyist principal?

OPINION

No, under the facts presented, the official is not prohibited by Minn. Stat. § 10A.071 from attending the performance.

The presenter of the performance is an association which is not a lobbyist or lobbyist principal. Only gifts given or requested by lobbyists or lobbyist principals are prohibited by Minn. Stat. § 10A.071. The gift of free admission to the public is given by the conference presenting the performance.

The fact that a lobbyist principal provided partial funding for the performance does not make the lobbyist principal the giver or the requester of the gift of free admission.

While gifts by lobbyist principals to officials are prohibited regardless of the conduits through which they pass, not every contribution by a lobbyist principal to an organization results in a gift to officials who benefit from the organization's activities.

When a lobbyist principal makes a contribution to an organization with no express or implied condition or understanding that the contribution will be then transferred to or used for the particular benefit of an official or group of officials, the contribution is a gift to the organization receiving it, not to those persons who eventually may benefit from the activities of the organization.

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

January 26, 1996

**RE: Campaign expenditure limit
Campaign expenditures**

ADVISORY OPINION # 228

SUMMARY

A candidate who has exceeded the applicable calendar year campaign expenditure limit for a time during the year, but who has through legal means reduced total expenditures to an amount below the limit by the end of the year is not in violation of Minn. Stat. § 10A.25, subds. 2 and 6. A candidate who purchases a computer with campaign funds must report the entire purchase price as a campaign expenditure.

FACTS

As a candidate with a registered principal campaign committee, you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff:

1. During calendar year 1995 your principal campaign committee purchased a computer on the assumption that the purchase would be reported as a noncampaign disbursement.
2. Eventually, you came to the conclusion that it would be appropriate to treat the purchase of the computer as a campaign expenditure. However, such treatment would put your committee's 1995 expenditures \$1,638.30 over the \$4,316.00 campaign expenditure limit for the year.
3. To remedy the situation, you rescinded the purchase and deposited the purchase price back into your campaign fund prior to the end of 1995.
4. You ask the Board whether there is anything further you should do to avoid violation of the 1995 campaign expenditure limits. You also ask whether you may purchase a computer in 1996 out of campaign funds.

ISSUE ONE

Based on the facts as stated, is your committee in violation of Minn. Stat. § 10A.25, subds. 2 and 6 which limit campaign expenditures? If so, is there anything further you may do to correct the violation?

OPINION

Your committee is not in violation of the 1995 campaign expenditure limit as a result of the computer purchase you describe. However, you will be required to report any applicable donation in kind for use of the computer, which may or may not put your committee's expenditures over the applicable limit.

The campaign expenditure limit is an aggregate annual limit. If a campaign committee's expenditures at the end of a year exceed the limit, a violation exists. However, the level of expenditures during the year is not examined on a continuous basis. A committee which recognizes that it is over the limit and is legally able to take steps to bring campaign expenditures within the limit before the end of the year, by such means as returning goods purchased, is not considered to be in violation of the statute.

The temporary excess spending condition you describe, which was cured prior to the end of the calendar year, does not result in a violation of the Minn. Stat. § 10A.25.

However, the fact that you received the full computer purchase price back indicates that you may have had some use of the computer without charge for a period of time. The fair market value of any use of the computer during the period you had it is a donation in kind to your committee by the seller of the computer pursuant to Minn. Stat. § 10A.01, subd. 7b, and Minn. Stat. § 10A.20, subd. 3(b). This donation is a campaign expenditure in the period in which it was given pursuant to Minn. Stat. § 10A.20, subd. 3(b), and must be reported if it exceeds \$20.00. Depending on the value of use of the computer for this period, your committee may still be in violation of the spending limits for 1995.

Because 1995 is over, there are no further steps you can take to remedy any possible spending limit violation that may have occurred in that year.

ISSUE TWO

May you purchase a computer in 1996 with campaign funds?

OPINION

Minnesota Statutes Chap. 10A does not preclude the purchase of a computer with campaign funds. Minnesota Statutes Chap. 211B, which is not under the jurisdiction of the Board governs the purposes for which campaign funds may be used.

If you do purchase a computer with campaign funds, the entire purchase price should be reported as a campaign expenditure in the year in which the purchase is made or the obligation to pay for the goods is incurred.

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

February 23, 1996

RE: Official's participation in trip awarded to spouse

ADVISORY OPINION # 229

SUMMARY

A trip for two awarded by a lobbyist principal to its employee for superior performance is not a gift to an official who is the employee's spouse and who accompanies the employee on the trip.

FACTS

As a legislator, and therefore an official as defined by Minn. Stat. § 10A.071, subd. 1(c), you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff:

1. Your spouse is a long-time sales employee of a lobbyist principal.
2. For many years, your spouse's employer has annually awarded its most outstanding sales people with a trip which includes a program of motivational presentations as well as time for leisure activities.
3. The award to the employee includes travel, lodging, meals and activities for the employee and another person of the employee's choice. Both the employee and the person accompanying the employee are expected to attend the motivational presentations.

ISSUE

May an official whose spouse is awarded a trip for two by the spouse's employer, a lobbyist principal, accompany the spouse on the trip without giving consideration to the employer and without violating the gift prohibitions of Minn. Stat. § 10A.071?

OPINION

Yes, you may participate in the trip you describe without giving consideration to your spouse's employer.

It is the opinion of the Board that the trip you describe is an award of a bonus to your spouse for superior performance made in the form of in-kind compensation. Minn. Stat. § 10A.071 does not prohibit the spouse of an official from sharing compensation with the official.

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

February 23, 1996

**RE: Application of Minn. Stat. Chapter 10A to activities
of political committees and principal campaign committees**

ADVISORY OPINION # 230

SUMMARY

A political committee created solely to conduct campaign activities and make approved expenditures on behalf of two identified candidates is a committee controlled by the candidates and is prohibited by Minn. Stat. § 10A.19. The individual principal campaign committees of two candidates may have the same officers and committee members and may conduct joint campaign activities if they are conducted in such a way as to avoid violation of applicable provisions of Minnesota Statutes Ch. 10A.

FACTS

As the representative of a group of individuals, you ask the Ethical Practices Board for an Advisory Opinion based on the following facts.

1. The group you represent is interested in supporting two identified candidates who will run for re-election in 1996.
2. Your group wants to form a political committee to support these two candidates by doing everything necessary and proper to ensure their re-election including soliciting votes, raising and spending money, advertising, campaigning and related activities.
3. Your committee would conduct all of the campaign activities and do all of the spending on behalf of the candidates rather than raising money and contributing it to the candidates' individual principal campaign committees.
4. Your committee would not be making independent solicitations or independent expenditures as described in Minn. Stat. § 10A.01, subd. 10b and Minn. Stat. § 10A.17, subd. 4.
5. Your committee intends to terminate after the 1996 election.
6. Presently, neither of the two candidates has a principal campaign committee registered with the Ethical Practices Board. The candidates also want to assure their compliance with the provisions of Minnesota Statutes Ch. 10A.

Your request states a number of individual questions which have been restated for the purposes of this Opinion to identify the key issues the Board believes require consideration.

ISSUE ONE

Are the individual candidates required to form their own principal campaign committees?

OPINION

Yes.

The political committee you describe would conduct activities to further the election of the two candidates by making approved expenditures. Those approved expenditures constitute contributions to the candidate. Minn. Stat. § 10A.01, subd. 10a.

In order to accept contributions which are, in aggregate, more than \$100.00, each candidate must establish a principal campaign committee. Minn. Stat. § 10A.19.

ISSUE TWO

May the proposed political committee be established to conduct all campaign activities and make all expenditures on behalf of the two candidates without violation of Minnesota Statutes Ch. 10A?

OPINION

No. The limited purpose of the specific political committee you describe and the proposed method of operation would result in violation by the two candidates of the prohibition against authorization and control of a political committee other than the candidate's principal campaign committee.

As described, all of your political committee's activities on behalf of each candidate would be donations in kind to that candidate. These donations would have to be made as approved expenditures, each requiring the written approval of the candidate's principal campaign committee with respect to purpose and amount. Minn. Stat. § 10A.17, subd. 2.

Your political committee would be unable to carry out its stated purpose without ongoing consultation with and approval by the candidates, acting through their principal campaign committees.

Minn. Stat. § 10A.19 states that:

"A candidate may not authorize . . . or cause to be formed any other political committee [than the candidate's principal campaign committee] operating under the direct or indirect control of the candidate."

It is the Board's opinion that ongoing approval by the candidates of each of your political committee's expenditures would result in the candidates exercising direct or indirect control over your political committee. The formation of such a controlled committee is prohibited by Minn. Stat. § 10A.19.

ISSUE THREE

If each of the two candidates establishes a principal campaign committee, may the principal campaign committees have common officers and conduct joint campaign activities?

OPINION

Yes, if the activities are conducted according to the statutes and rules governing such activities.

The same individuals may serve as officers and committee members of each principal campaign committee. Minn. Stat. ch. 10A makes it clear that all accounts and records of the two committees must be kept separately. Each committee is a separate and distinct entity for all purposes.

The committees may participate in joint fundraising, advertising and other joint campaign activities as long as those activities do not result in the violation of the provisions of Minnesota Statutes Ch. 10A. Particular care must be taken to avoid violation of those provisions against earmarking of contributions, contributions between principal campaign committees, and the making of approved expenditures by one principal campaign committee on behalf of another.

While they have not yet been finally adopted, the Board has promulgated rules relating to campaign finance and, in particular, to certain issues related to joint activities of principal campaign committees. The Board has given its final approval to these rules, which will be adopted after final publication. The rules which are particularly relevant to your request are incorporated into this opinion and reflect the opinion of the Board on the issues covered. The rules are set forth in the statutory citation section at the end of this opinion and are as follows:

Definition of Fundraising event	M.R. 4503.0100, subp. 4
Campaign Materials Including Other Candidates	M.R. 4503.1000, subp. 2
Joint Fundraising Events by Principal Campaign Committees	M.R. 4503.1200

NOTE

Because the Board has concluded that the proposed political committee may not be established consistent with the provisions of Minn. Stat. § 10A.19, it does not make a determination as to whether contributions to the proposed committee would violate the provision against earmarking established in Minn. Stat. § 10A.16.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to: Sarah Janecek
Spano & Janecek
26 East Exchange Street
St. Paul, MN 55101

February 23, 1996

RE: Contract Between Lobbyist and Official

ADVISORY OPINION # 231

SUMMARY

A contract for services is not a promise of future employment and payments made for services provided under a bona fide contract are not gifts under Minn. Stat. § 10A.071.

FACTS

As a registered lobbyist, you request an advisory opinion from the Ethical Practices Board based on the following facts.

1. You are the sole shareholder and officer of a corporation which intends to publish a book.
2. You want to have the corporation enter into contracts with various individuals who would be paid to research or write sections of the book.
3. Some of the individuals who would be contracted with are officials as defined in Minn. Stat. § 10A.071, Subd. 1(c).

ISSUE

May a lobbyist enter into a contractual relationship with an official as an independent contractor and pay the official for research or writing services under the contract without violating Minn. Stat. §10A.071?

OPINION

Yes. A contract for services is not "a promise of future employment" and payments for services provided under a bona fide contract are not gifts under Minn. Stat. §10A.071.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to: Sarah Janecek
Spano & Janecek
26 East Exchange Street
St. Paul, MN 55101

February 23, 1996

RE: Baby shower gifts and refreshments

ADVISORY OPINION # 232

SUMMARY

A lobbyist may not give a gift of refreshments to officials attending a baby shower. A gift given by a lobbyist at a baby shower for an official is a prohibited gift to the official. A lobbyist may not request others attending a baby shower for an official to give gifts to the official.

FACTS

As a registered lobbyist, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You would like to give a baby shower for a friend who is an official as defined in Minn. Stat. § 10A.071, subd. 1(c).
2. You would provide refreshments for the guests at the shower, some of whom would be officials as defined in Minn. Stat. § 10A.071, subd. 1(c).
3. You would like to have those present give gifts.
4. Your request for an Advisory Opinion refers to the gifts as "gifts to the baby". You state that the gifts which will be given at the shower are gifts for the expected baby, not the official.

ISSUE ONE

Must your friend and any other officials attending the shower pay you the fair market value of the refreshments which you provide?

OPINION

Yes. A gift of food provided by a lobbyist to an official is a prohibited gift under Minn. Stat. § 10A.071, unless the official contemporaneously pays the lobbyist the fair market value of the food provided.

ISSUE TWO

Is a gift given at the baby shower by a lobbyist prohibited by Minn. Stat. § 10A.071?

OPINION

Yes.

It is the Board's opinion that gifts at a baby shower for an official are gifts to the official rather than to the baby. Minn. Stat. § 10A.071 applies to all gifts from lobbyists to officials. There are no provisions permitting separate treatment for social gifts or gifts given to an official in some non-official capacity.

ISSUE THREE

May officials or others who are not lobbyists give gifts to the official at the shower?

OPINION

No.

By definition, a shower is a social occasion where gifts are given to the recipient of the shower. The giver of a shower, by strong implication and social custom, is requesting the invitees to give gifts to the person for whom the shower is given.

When a shower is given by a lobbyist for an official, gifts given at the shower are requested by the lobbyist within the meaning of Minn. Stat. § 10A.071 and are thus prohibited.

ADVISORY OPINION REQUEST #233

This advisory opinion request was withdrawn by the requester prior to the Board's issuance of an opinion.

The request is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

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: Relationships between lobbyist principal and legislators

April 26, 1996

ADVISORY OPINION # 234

SUMMARY

An official is not prohibited from being a member of the board of directors of a nonprofit corporation or from receiving reimbursement of actual and reasonable expenses associated therewith. Serving as an uncompensated board member does not make the corporation an associated business of an official so serving. Minn. Stat. § 10A.065 does not apply to solicitation of gifts of money to a nonprofit corporation which do not fall within the statutory definition of contributions. An official is not prohibited by Minn. Stat. § 10A.071 from soliciting gifts of money to a nonprofit corporation as long as the official does not directly benefit from the gift and no part of the gift is transferred to the official. Research and analysis materials related to pending or recommended legislation are generally exempt from the gift prohibition of Minn. Stat. § 10A.071 as services in connection with legislation. A corporation's executive director must register with the Board upon meeting the statutory definition of a lobbyist.

FACTS

As an individual representing an informal association, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. You represent a working group of officials, as defined in Minn. Stat. § 10A.071, who are drawn together as a result of their mutual concerns about certain issues affecting Minnesota State Government.
2. The group has in the past participated in public education efforts relating to the issues with which they are concerned. In particular, the group has issued a report including particular actions the legislature might take to bring about changes the group believes are appropriate.
3. Because the informal group members have demanding schedules and duties, it is considering forming a non-profit corporation to undertake its efforts. The non-profit corporation would be headed by a paid executive director.
4. The executive director would direct research and analysis efforts relating to the issues of concern to the group. The analyses, while nonpartisan, would advocate positions on issues which will be the subjects of legislative action. They may urge legislators to vote in a certain way on particular issues and may urge members of the public to contact legislators to influence their votes on these issues. These analyses will be distributed to members of the legislature and to the general public.
5. Part of the duties of the executive director of the corporation will be to encourage members of the public to contact their legislators and urge a particular position with regard to issues of concern to the group.

6. The corporation would not undertake any activities or make any expenditures, transfers, approved expenditures, or independent expenditures to influence the nomination or election of a candidate or to promote or defeat a ballot question.

7. Officials, including members of the legislature may serve on the Board of Directors of the proposed corporation. If they do so, it will be without compensation; however, they may be reimbursed for their actual expenses associated with such service. Other than this expense reimbursement, no money will be transferred to any official.

8. You ask the Board's opinions on a number of issues based on the above factual background.

ISSUE ONE

May officials serve on the board of directors of the described non-profit corporation and be reimbursed for their actual and reasonable expenses of so serving?

OPINION

Minn. Stat. Chapter 10A does not prohibit officials from serving on the board of directors of the corporation you describe.

The purpose of the existing informal group and of the proposed corporation is to influence legislative action. Because the purpose is not to influence the nomination or election of a candidate or to promote or defeat a ballot question, it is not a political committee as defined in Minn. Stat. §10A.01, subd. 15, or a political fund as defined in Minn. Stat. §10A.01, subd. 16. Since the corporation is not a political committee, Minn. Stat. § 10A.19, which prohibits a candidate from controlling a political committee other than the candidate's principal campaign committee, has no application.

For the purposes of this opinion, the Board assumes that the executive director of the corporation will be a lobbyist and that the corporation will be a lobbyist principal. (See discussion in Issue Six, below).

While Chapter 10A does not prohibit an official from serving on the board of directors of a corporation which is a lobbyist principal, Minn. Stat. § 10A.071 does prohibit gifts from lobbyist principals to officials.

It is the Board's opinion that your expressed intention of reimbursing board members for their actual and reasonable expenses incurred on behalf of the corporation would not constitute a prohibited gift since the corporation would be receiving consideration of equal or greater value in return, that is, the board member's services and the value of any cost incurred.

However, you should be aware that this arrangement presents pitfalls and opportunities for abuse which could lead to violations of the gift prohibition. Reimbursement of expenses which are not reasonable or are not necessary to the operation of the corporation could be found to be without consideration of equal or greater value from the official and would be prohibited. Likewise, if the corporation were operated in ways which appeared to be for the purpose of circumvention of the gift prohibition, transfers made to or for the benefit of officials serving on the board of directors could be found to be prohibited gifts.

ISSUE TWO

Would the proposed corporation be an associated business, as defined in Minn. Stat. §10A.01, subd. 4, of any official serving on its board of directors?

OPINION

No. You have indicated that the corporation will be non-profit and that officials will not be compensated for serving on its board of directors.

The corporation will be an associated business of an official only if it pays the official more than \$50 in compensation in any month, excluding reimbursement of actual and reasonable expenses. Minn. Stat. § 10A.01, subd. 4.

ISSUE THREE

Are candidates prohibited from soliciting money for the proposed corporation during the legislative session under Minn. Stat. §10A.065?

OPINION

No. Solicitation of money for the proposed corporation is not controlled by Minn. Stat. § 10A.065.

Minn. Stat. §10A.065 prohibits solicitation or acceptance by candidates and various other listed associations of "a contribution" from a lobbyist, political committee, or political fund during the legislative session.

A "contribution" is defined in Minn. Stat. §10A.01, subd. 7, as a "transfer of funds" or a "donation in kind". A "transfer of funds" is defined in Minn. Stat. §10A.01, subd. 7a, as "money . . . given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question". A "donation in kind" is defined in Minn. Stat. §10A.01, subd. 7b, as "anything of value . . . given . . . for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question".

Based on the above definitions, money solicited for the proposed corporation, which would be used for the purpose of influencing legislative action, would not be a "contribution" as that term is used in Minn. Stat. §10A.065, and would not be prohibited by that section.

ISSUE FOUR

Are officials prohibited from soliciting money for the proposed corporation by any other section of Minnesota Statutes Chapter 10A?

OPINION

No, neither the provisions of Minn. Stat. §10A.071, nor other provisions of Minnesota Statutes Chapter 10A prohibit the solicitation by officials of gifts of money to the proposed corporation.

is the Board's opinion that a gift of money to a nonprofit corporation, although solicited by an official, is a gift to the nonprofit corporation and not to the official. This conclusion is based on the condition

that the official will not directly and personally benefit from the gift and that no part of the gift will be transferred to the official.

The Board has twice previously considered the application of Minn. Stat. §10A.071, prohibiting gifts from lobbyists and lobbyist principals to officials, to the solicitation by officials of donations to nonprofit corporations.

In Advisory Opinion 161, the Board considered a charity event sponsored by a legislator. The event itself was conducted by the legislator, not by the nonprofit corporation. In the context of the event, the legislator solicited prizes which would be given out at the event. Tickets sold for the event included both the price of the event and a monetary contribution to the nonprofit corporation.

The Board recognized a difference between the prizes solicited for the event and the portion of the ticket price which represented a contribution to the nonprofit corporation. The prizes were always within the control of the official. They were solicited by the official and given out according to rules established by the official. They were not intended to be transferred to the nonprofit corporation. The prizes themselves were gifts to the official to assist the official in presenting the event. On that basis, prizes given by lobbyists or lobbyist principals were prohibited by Minn. Stat. §10A.071.

On the other hand, the portion of the ticket which was a contribution to the nonprofit corporation, while arranged, coordinated, and solicited by the official, was a gift to the nonprofit. The official had no discretion over these funds and had the obligation to turn them over to the nonprofit. The Board recognized this gift of money as a gift to the nonprofit corporation and held that it was not a prohibited gift to the official.

The Board reached a contrary result in Advisory Opinion 214 when it held that a gift of money to a nonprofit corporation solicited by an official was a prohibited gift to the official.

Having this opportunity to review the conflict between Opinions 161 and 214, the Board is of the opinion that the holding in Advisory Opinion 161 is correct.

ISSUE FIVE

Will research and analysis materials prepared by the corporation be exempt from the gift prohibition of Minn. Stat. § 10A.071?

OPINION

Yes. If the research and analysis materials relate to pending or recommended areas of legislation, they would fall within the exemption for "services to assist an official in the performance of official duties, including . . . advice, consultation, information and communication in connection with legislation . . ." found at Minn. Stat. § 10A.071, subd. 3(a)2.

To the extent that the materials do not relate to pending or recommended areas of legislation, the Board is unable to issue an opinion on their gift status without a description of the particular materials in question.

ISSUE SIX

Will the proposed corporation be a lobbyist principal; will its executive director be a lobbyist?

OPINION

If an executive director, who is engaged for pay, spends more than five hours in any month or more than \$250 in a year for the purpose of influencing legislative action by communicating or urging others to communicate with public officials the executive director will fall within the definition of a lobbyist under Minn. Stat. § 10A.01, subd. 11, and must register with the Board.

If that is the case, the Board assumes that the corporation will meet the definition of a lobbyist principal on the basis that it will spend more than \$500 in a calendar year to compensate its executive director for lobbying or on lobbying expenditures it authorizes the executive director to make.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester

Issued to:
Mr. Ronald B. Sieloff
Sieloff and Associates, P.A.
Suite 938 Minnesota Building
46 East Fourth Street
St. Paul, MN 55101

RE: Gift to official of computer mouse pad

April 26, 1996

ADVISORY OPINION # 235

SUMMARY

A gift to an official requested by a lobbyist of a computer mouse pad described by the requester is exempt from the prohibition of Minn. Stat. § 10A.071 because it is of insignificant value.

FACTS

As a registered lobbyist and the owner of a law firm, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. To promote your firm, you want to have the firm's name, address, and telephone number printed on a computer mouse pad along with promotional information and other data.
2. You want to distribute the mouse pad free to clients, prospective clients, selected members of the general public, and to legislators and legislative staff, persons who are defined as officials under Minn. Stat. §10A.071.
3. Your cost to produce and distribute the pad is approximately \$2.70 each.
4. Your estimate of the retail value of a mouse pad is \$3.00 to \$6.00 each.
5. You ask the Ethical Practices Board whether distribution of the mouse pad to officials would constitute a prohibited gift under Minn. Stat. §10A.071.

ISSUE

Is a gift to an official of a computer mouse pad which costs the giver \$2.70 exempt from the gift prohibitions of Minn. Stat. §10A.071?

OPINION

The gift of a mouse pad, as described in the request is exempt from the gift prohibitions of Minn. Stat. §10A.071 because it is a trinket or memento of insignificant value.

The gift in question is given by a law firm owned by a lobbyist. Because the lobbyist owns the law firm, the Board considers the gift to be a gift requested by a lobbyist. Thus, unless the gift falls under one of the exceptions provided in Minn. Stat. §10A.071, subd. 3, it is prohibited.

It is the Board's opinion that the only exception with application to the gift you contemplate is the exception for "a trinket or memento of insignificant value" found at Minn. Stat. §10A.071, subd. 3(a)5.

The value to be considered is the value of the gift to the receiver. The cost to produce the gift may be a factor in determining its value, but that cost is not conclusive. Estimates of the retail cost of a similar item are also a factor in determining the value of the gift. Other information readily available to the Board may also be considered. You estimate the retail cost of a similar mouse pad at \$3 to \$6. The Board has verified that the mouse pads available from three local retail outlets sell for between \$2 and \$4.97.

The Board finds that the gift is a trinket of insignificant value and falls within the exception for such gifts provided in Minn. Stat. §10A.071, subd. 3(a)5).

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: Application of gift prohibition to employment search

April 26, 1996

ADVISORY OPINION # 236

SUMMARY

The provisions of Minn. Stat. § 10A.071 prohibiting a promise of future employment made by a lobbyist or lobbyist principal to an official do not prohibit bona fide employment search activities, including the making and accepting of offers of employment.

FACTS

As a member of the legislature, you ask the Ethical Practices Board (Board) for an advisory opinion based on the following statement of facts:

1. You are an elected public official and are thus an official as defined in Minn. Stat. §10A.071.
2. You do not plan to run for re-election at the end of your term.
3. You would like to begin searching for an job.
4. Some of the potential employers who you may contact or who may offer you positions are lobbyist principals or lobbyists.
5. You ask the Board several questions about application of the gift prohibition of Minn. Stat. §10A.071 to your efforts to search for a job.

ISSUE

Does the gift prohibition of Minn. Stat. §10A.071, particularly the prohibition of a "promise of future employment", apply to an official's right to seek employment and to solicit or accept employment offers from lobbyists or lobbyist principals, or to the right of a lobbyist or lobbyist principal to offer employment to an official?

OPINION

No. It is the Board's opinion that Minn. Stat. §10A.071 does not prohibit officials from engaging in bona fide employment search activities which include seeking employment with and soliciting employment offers from lobbyists or lobbyist principals. Neither does the statute prohibit lobbyists or lobbyist principals from making bona fide offers of employment to officials or officials from accepting such offers.

In order to address this issue, the Board has considered the meaning of "a promise of future employment", which is a prohibited gift under Minn. Stat. §10A.071. The Board concludes that a promise of future employment is not the same as a firm offer of employment which the job seeker may accept and which then becomes a binding contract of employment.

A promise of future employment is a pledge of the promisor's future intent, conferred on its beneficiary without action by the beneficiary and without consideration from the beneficiary.

A bona fide offer of employment, on the other hand, includes with it the requirement that the offeree give consideration in the form an agreement to perform services as an employee. Unlike a promise of future employment, an offer of employment may be accepted by the offeree so as to create a binding contract to perform the designated employment services on the specified terms and conditions.

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

RE: Potential Conflicts of Interest for Public Official

May 31, 1996

ADVISORY OPINION # 237

SUMMARY

A potential conflict of interest under Minn. Stat. § 10A.07 arises only when an official's financial interests or the financial interests of an associated business are substantially affected by an action or decision taken by an official in the conduct of the official's duties. In the absence of any associated business or financial interest, an official's action or decision will not raise a potential conflict of interest issue.

FACTS

As a public official, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following statement of facts:

1. You are a legislator, which makes you a public official as defined in Minn. Stat. § 10A.01, subd. 18. You are also a member of a state board whose members are defined as public officials. As a public official, you are subject to the provisions of Minn. Stat. §10A.07.
2. The state board on which you serve unanimously voted to grant a package of financial incentives to a company in order to convince it to locate a new facility in Minnesota.
3. At the time of the vote, and presently, you have no financial interest in, or relationship with, this new company.
4. You have national, regional, and local contacts with individuals or entities which may be interested in the products to be offered by the new Minnesota company. The new company has expressed interest in retaining you on a compensated basis to assist it in making national, regional, and local business contacts.
5. Because state funds are included in the financial incentive package awarded to the new company, there is a possibility that compensation you would receive from the company might be viewed as coming from those state funds.
6. You are concerned that a compensated contractual or employment relationship with the company may raise conflict of interest issues.

ISSUE

Would a compensated contract or employment relationship with the company described in the facts give rise to conflict of interest issues under Minnesota Statutes Chapter 10A?

OPINION

No, entry into the contract or employment relationship you describe, in itself, would not give rise to conflict of interest issues under Minnesota Statutes Chapter 10A. However, your proposed association with the company could create future potential conflicts of interest.

Minn. Stat. § 10A.07 is the only provision of Minnesota Statutes Chapter 10A which deals with conflicts of interest. Under its limited provisions, conflicts of interest arise only in the context of an official being called upon to take an action or make a decision. A potential conflict of interest exists if the action to be taken or the decision to be made would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than the effect on others in the same business classification, profession, or occupation.

Your action in awarding the financial incentive package to the company was taken at a time when you had no financial relationship with the company (it was not an associated business of yours as defined in Minn. Stat. § 10A.01, subd. 4 and you had no financial interest in it as defined in Minn. Rules 4515.0100, subp. 5); therefore, no potential conflict of interest existed.

Likewise, under Minn. Stat. § 10A.07, a potential conflict of interest would not arise as a result of your acceptance of a compensated relationship with the company. Your acceptance of a relationship with the company does not constitute an official action or decision on your part. Additionally, until after you accept a compensated relationship with the company, it will not be an associated business of yours. Thus, the two elements necessary to create a potential conflict of interest under Minn. Stat. § 10A.07 are missing. This is true regardless of whether or not state funds previously granted to the company would be used to pay your compensation.

If you accept compensation of more than \$50 in a month from the company, it will then be an associated business of yours. In that event, if you are called upon in the future to take action or make a decision on matters peculiar to the company, as opposed to general regulatory matters applicable to all companies, a potential conflict of interest could arise. This situation could occur in your capacity as a legislator or as a member of the state board on which you serve.

If a potential conflict of interest arises, you must prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict.

If the potential conflict arises as the result of a legislative action or decision you are called upon to make, you must deliver this statement to the President of the Senate. If insufficient time is available to provide the written notice, the same information must be communicated orally. At your request, the senate may excuse you from taking part in the action or decision in question.

If the potential conflict of interest arises as the result of an action or decision you are called upon to make in your capacity as a board member, you must prepare the statement described above. While

Board's opinion that to make the statement meaningful, you should deliver it to the chair of the board on which you serve.

As a board member, you must abstain, if possible, from making a decision or taking action which creates a potential conflict of interest. You abstain by assigning the matter to a subordinate, if possible, or by requesting the appointing authority to designate another to determine the matter. In either case, you would not chair a meeting, participate in a vote, or offer any motion or discussion on the matter giving rise to the potential conflict of interest. Minn. Rules part 4515.0500.

If you are not permitted or are otherwise unable to abstain from action in connection with the matter, you must file a statement describing the potential conflict and the action taken. This statement must be filed with the Board within one week of taking the action.

This opinion is specifically limited to interpretation of Minn. Stat. § 10A.07 as it relates to conflict of interest issues you raise. While your request expresses concerns beyond the scope of Minnesota Statutes Chapter 10A, the Board expresses no opinion on questions of public perception relating to perceived conflicts of interest; legislative rules or customs which may have application; or the application of statutes other than those which make up Minnesota Statutes Chapter 10A.

ISSUE

Would a compensated contract or employment relationship with the company described in the facts give rise to conflict of interest issues under Minnesota Statutes Chapter 10A?

OPINION

No, entry into the contract or employment relationship you describe, in itself, would not give rise to conflict of interest issues under Minnesota Statutes Chapter 10A. However, your proposed association with the company could create future potential conflicts of interest.

Minn. Stat. § 10A.07 is the only provision of Minnesota Statutes Chapter 10A which deals with conflicts of interest. Under its limited provisions, conflicts of interest arise only in the context of an official being called upon to take an action or make a decision. A potential conflict of interest exists if the action to be taken or the decision to be made would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than the effect on others in the same business classification, profession, or occupation.

Your action in awarding the financial incentive package to the company was taken at a time when you had no financial relationship with the company (it was not an associated business of yours as defined in Minn. Stat. § 10A.01, subd. 4 and you had no financial interest in it as defined in Minn. Rules 4515.0100, subp. 5); therefore, no potential conflict of interest existed.

Likewise, under Minn. Stat. § 10A.07, a potential conflict of interest would not arise as a result of your acceptance of a compensated relationship with the company. Your acceptance of a relationship with the company does not constitute an official action or decision on your part. Additionally, until after you accept a compensated relationship with the company, it will not be an associated business of yours. Thus, the two elements necessary to create a potential conflict of interest under Minn. Stat. § 10A.07 are missing. This is true regardless of whether or not state funds previously granted to the company would be used to pay your compensation.

If you accept compensation of more than \$50 in a month from the company, it will then be an associated business of yours. In that event, if you are called upon in the future to take action or make a decision on matters peculiar to the company, as opposed to general regulatory matters applicable to all companies, a potential conflict of interest could arise. This situation could occur in your capacity as a legislator or as a member of the state board on which you serve.

If a potential conflict of interest arises, you must prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict.

If the potential conflict arises as the result of a legislative action or decision you are called upon to make, you must deliver this statement to the President of the Senate. If insufficient time is available to provide the written notice, the same information must be communicated orally. At your request, the senate may excuse you from taking part in the action or decision in question.

If the potential conflict of interest arises as the result of an action or decision you are called upon to make in your capacity as a board member, you must prepare the statement described above. While

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to: Minnesota Licensed Beverage Association, Inc.
2353 Rice Street, Suite 139
St. Paul, MN 55113

RE: Award of Plaque to Legislator

May 31, 1996

ADVISORY OPINION # 238

SUMMARY

The award of a plaque valued at \$20 to \$100 by a lobbyist principal to a legislator based on performance of legislative duties is prohibited by Minn. Stat. § 10A.071.

FACTS

An association which is a lobbyist principal requests an advisory opinion from the Ethical Practices Board based on the following facts provided in the request or conveyed by its representatives to Board staff:

1. The association wishes to make an annual award of a plaque to a state legislator based on the legislator's performance on issues important to the association's members.
2. The plaque would designate the selected legislator as "legislator of the year" and would have a cost of between \$20 and \$100.
3. The association asks whether the award of such a plaque is permitted under Minnesota Statutes Chapter 10A.

ISSUE

Is the award of a plaque costing between \$20 and \$100 by a lobbyist principal to a legislator based on performance of legislative duties permitted under Minn. Stat. § 10A.071?

OPINION

No, the award of the plaque described is not permitted under Minn. Stat. § 10A.071.

The plaque is a gift from a lobbyist principal to an official and is thus prohibited by Minn. Stat. § 10A.071, subd. 2, unless it falls under one of the exceptions to the prohibition.

An exception is provided in Minn. Stat. § 10A.071, subd. 3(a)(4), for plaques recognizing "individual services in a field of specialty or to a charitable cause". However, Minn. Rules part 4512.0100, subp. 4, limits the definition of "individual services" to "services performed by an official outside of official duties". Since the association would award the plaque on the basis of legislative performance, this exception is not applicable.

The only other exception under which the plaque might be given is found in Minn. Stat. § 10A.071, subd. 3(a)(5), which applies to a "trinket or memento of insignificant value". It is the opinion of the Board that a plaque costing at least \$20 is of more than insignificant value and that this exception is not applicable to the facts presented.

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

RE: Replacement of destroyed campaign materials

June 28, 1996

ADVISORY OPINION # 239

SUMMARY

The receipt of insurance proceeds by a principal campaign committee is reported as miscellaneous income. Use of insurance proceeds to replace destroyed campaign signs is reported as a noncampaign disbursement.

FACTS

As a candidate with a registered principal campaign committee, you request an advisory opinion from the Ethical Practices Board ("Board") based on the following facts provided in your request:

1. You ran for office in 1990 and 1992 and your principal campaign committee had 500 political signs left over from those elections. The committee planned to use these signs in your 1996 campaign.
2. The signs were destroyed in a fire while they were being stored in a machine shed on your property.
3. You maintained insurance on your property which also covered the signs. Under the insurance policy, a deductible is applicable to the entire claim.

ISSUE

How should the replacement of destroyed political signs through insurance proceeds be reported on a principal campaign committee's Report of Receipts and Expenditures?

OPINION

Insurance proceeds received by your principal campaign committee for the replacement of the destroyed signs must be reported as miscellaneous income. The purchase of replacement signs up to the amount of the insurance proceeds is reported as a noncampaign disbursement. Any cost to replace the signs in excess of the insurance proceeds is a campaign expenditure.

If the destroyed signs are not replaced, or if replacement is not made within a reasonable time after receipt of the insurance proceeds, expenditure of the proceeds must be reported as campaign expenditures or noncampaign disbursements based on how they are spent.

Payment of insurance premiums, a campaign expenditure, creates a contract under which the insurer may become obligated to replace destroyed property. In practice, the replacement may be accomplished by issuance of a check to the insured who then purchases the replacement. This two step process does not shift attribution of the purchase from the insurance carrier to the insured.

The only other exception under which the plaque might be given is found in Minn. Stat. § 10A.071, subd. 3(a)(5), which applies to a "trinket or memento of insignificant value". It is the opinion of the Board that a plaque costing at least \$20 is of more than insignificant value and that this exception is not applicable to the facts presented.

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

RE: **Political Activity as bona fide occupational qualification**

June 28, 1996

ADVISORY OPINION # 240

SUMMARY

A "bona fide occupational qualification", as that phrase is used in Minn. Stat. § 10A.20, subd. 11, may include a requirement that an employee who is a legislative lobbyist not be an endorsed candidate for legislative office.

FACTS

As the authorized representative of an association, you request an advisory opinion from the Ethical Practices Board based on the following facts provided in your request or conveyed by you to Board staff:

1. The association you represent is a Minnesota nonprofit corporation which exists to promote the goals of its members.
2. Part of the association's efforts on behalf of its members include employing lobbyists who are engaged to influence legislative action.
3. In order to be credible and effective in their lobbying efforts, the association believes that its employees who are lobbyists must:
 - (a) avoid any appearance of political affiliation in the performance of their lobbying activities;
 - (b) avoid becoming involved in situations which might result in placing their own interests or the interests of third parties in conflict with those of the association;
4. These employees are required to devote full time and their best efforts to representing the interests of the association and persuading members of the legislature to vote in favor of the association's positions.
5. One of the association's lobbyist employees was recently endorsed by a major political party as a candidate for the Minnesota legislature.
6. The association is concerned that a lobbyist who is an endorsed legislative candidate will not be able to effectively continue the work of the association because of the lobbyist's political activity. The association includes among its concerns its belief that:

(a) the lobbyist will no longer be effective as a representative of the association, since by accepting the nomination of a political party, the lobbyist becomes a member of an opposition party for many legislators;

(b) the individual as a candidate may take positions which are in opposition to those that the individual as a lobbyist would be required to advocate on behalf of the association.

7. The association further believes that it would not be possible for a sitting legislator to devote sufficient time during the legislative session to the association's lobbying efforts.

ISSUE

May a requirement that an employee who is a legislative lobbyist refrain from being an endorsed candidate for the legislature be established as a "bona fide occupational qualification" as that phrase is used in Minn. Stat. § 10A.20, subd. 11?

OPINION

Yes, a requirement that a legislative lobbyist employee refrain from being an endorsed candidate for the legislature may be established as a bona fide occupational qualification under the facts stated above.

Minn. Stat. § 10A.20, subd. 11, prohibits employers from taking certain actions against employees based on the employees' political activities. The prohibition is not applicable, however, "when the political affiliation or viewpoint of the employee is a bona fide occupational qualification of the employment."

A bona fide occupational qualification concerning political affiliation may include an affirmative requirement of, or the prohibition of, a political affiliation. The occupational qualification your association asks about is a requirement that the employee not be affiliated with a political party as one of its endorsed legislative candidates.

While it is the opinion of the Board that the stated requirement **may be established** as a bona fide occupational qualification within the meaning of Minn. Stat. § 10A.20, subd. 11, the Board does not render an opinion on whether the requirement **has been effectively established** with respect to any particular employee of the association. Determination of that question requires interpretation of principals of contract and other law not within the Board's jurisdiction.

Issues you raise about the employee not having enough time to perform the association's work are not addressed by the Board because they do not relate to the employee's political affiliation and, thus, do not fall within the scope of Minn. Stat. § 10A.20, subd. 11.

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

RE: **Definition of first time candidate**

July 26, 1996

ADVISORY OPINION # 241

SUMMARY

A candidate who raises and spends over \$100 to seek nomination or election to a house seat in one election cycle is not a first time candidate when seeking the same office in a different district in a subsequent election cycle.

FACTS

As a candidate with a principal campaign committee registered with the Ethical Practices Board (Board), you request an advisory opinion from the Board based on the following facts provided in your request or contained in reports your previous committee filed with the Board.

1. In 1996 you registered a principal campaign committee with the Board for a campaign for a seat in the House of Representatives in the 1996 elections.
2. Previously, in December of 1993, you registered a principal campaign committee for a house seat for a district different than the one you currently seek.
2. In 1993 your previous committee raised \$2,400 and spent \$1,648.82. In 1994 the committee raised \$450 and spent \$1201.18. The committee terminated at the end of 1994.
3. You indicate that your previous committee raised and spent this money to influence your endorsement at the party's endorsing convention. You did not win that endorsement and did not file for election or make any further effort to be elected after the convention.

ISSUE

Are you a first time candidate even though you previously registered a principal campaign committee which raised and spent money in each of two years seeking nomination or election to a house seat in a different district?

OPINION

No. First time candidate status does not apply to an individual who has sought nomination or election to the same office previously.

(a) the lobbyist will no longer be effective as a representative of the association, since by accepting the nomination of a political party, the lobbyist becomes a member of an opposition party for many legislators;

(b) the individual as a candidate may take positions which are in opposition to those that the individual as a lobbyist would be required to advocate on behalf of the association.

7. The association further believes that it would not be possible for a sitting legislator to devote sufficient time during the legislative session to the association's lobbying efforts.

ISSUE

May a requirement that an employee who is a legislative lobbyist refrain from being an endorsed candidate for the legislature be established as a "bona fide occupational qualification" as that phrase is used in Minn. Stat. § 10A.20, subd. 11?

OPINION

Yes, a requirement that a legislative lobbyist employee refrain from being an endorsed candidate for the legislature may be established as a bona fide occupational qualification under the facts stated above.

Minn. Stat. § 10A.20, subd. 11, prohibits employers from taking certain actions against employees based on the employees' political activities. The prohibition is not applicable, however, "when the political affiliation or viewpoint of the employee is a bona fide occupational qualification of the employment."

A bona fide occupational qualification concerning political affiliation may include an affirmative requirement of, or the prohibition of, a political affiliation. The occupational qualification your association asks about is a requirement that the employee not be affiliated with a political party as one of its endorsed legislative candidates.

While it is the opinion of the Board that the stated requirement **may be established** as a bona fide occupational qualification within the meaning of Minn. Stat. § 10A.20, subd. 11, the Board does not render an opinion on whether the requirement **has been effectively established** with respect to any particular employee of the association. Determination of that question requires interpretation of principals of contract and other law not within the Board's jurisdiction.

Issues you raise about the employee not having enough time to perform the association's work are not addressed by the Board because they do not relate to the employee's political affiliation and, thus, do not fall within the scope of Minn. Stat. § 10A.20, subd. 11.

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

RE: Legal defense fund for public official

July 26, 1996

ADVISORY OPINION # 242

SUMMARY

Donations given by or at the request of lobbyists or lobbyist principals to a legal defense fund established for the benefit of public officials are prohibited gifts under by Minn. Stat. § 10A.071 when the fund provides benefits to public officials using those donations.

FACTS

As the representative of a group of individuals, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The group you represent is considering starting a legal defense fund which would assist with the legal defense costs of public officials who have been accused of crimes.
2. Any public official assisted would not have any direct or indirect control of the fund.
3. The fund would like to solicit and accept donations from lobbyists and lobbyist principals as those groups are defined in Minn. Stat. § 10A.02, subs. 11 and 28, respectively.

ISSUE

Are donations to a legal defense fund given by or at the request of lobbyists or lobbyist principals prohibited gifts under Minn. Stat. § 10A.071?

OPINION

Yes, at the time the donations are conveyed to a public official or used to provide services to a public official, a prohibited gift results.

A lobbyist or lobbyist principal cannot directly give or request another to give a public official a gift of money for legal defense costs or a gift of the legal services themselves. The former would be a prohibited gift of money; the latter a prohibited gift of services.

Where a gift would be prohibited if given directly, the prohibition cannot be overcome by the establishment or use of some conduit through which the gift is passed. This concept was codified into Minnesota Rules, part 4512.0300, which states that a gift is considered to be given by the individual or association paying for it.

Under the facts you suggest, a lobbyist or lobbyist principal would transfer money to the fund with both the knowledge and the intention that it be used for the direct benefit of public officials. The fund would then pass the benefit on to the public official to complete the gift transaction. The substance of the transaction is that the lobbyist or principal is the entity paying for the legal services, making the gift prohibited.

None of the exceptions provided in Minn. Stat. § 10A.071, subd. 3, are applicable to remove the described gift from the general prohibition.

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

RE: Candidate without public subsidy agreement exceeding campaign spending limit

August 20, 1996

ADVISORY OPINION # 243

SUMMARY

A candidate may sign a public subsidy agreement even if the limits it imposes were exceeded in a previous year.

FACTS

As the treasurer for a candidate's principal campaign committee, you request an advisory opinion from the Ethical Practices Board (Board) based on the following facts:

1. The candidate will be running for election in 1996 and has not signed a public subsidy agreement for the current election cycle.
2. Last year the principal campaign committee spent more money on campaign expenditures than would have been permitted if the candidate had a signed public subsidy agreement filed with the Board.
3. This year the candidate is within the spending and contribution limits applicable to candidates who have signed and filed public subsidy agreements.
4. The candidate is now considering signing a public subsidy agreement and participating in the public subsidy program.

ISSUE

May the candidate sign and file a public subsidy agreement and participate in the public subsidy program even though the committee spent more in a prior year than would have been permitted if the candidate had a public subsidy agreement in place during that year?

OPINION

Yes. The statutes do not specifically prohibit the candidate from signing a public subsidy agreement and participating in the public subsidy program in such a situation.

The Board reaches this conclusion only because the adoption of administrative rules to implement the intent of the statute has not been completed; not because the conclusion reflects the statutory intent.

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

RE: Use of Ethical Practices Board Data

ADVISORY OPINION # 244

Approved at September 20, 1996 Board Meeting
Signed October 12, 1996

SUMMARY

The use of Ethical Practices Board data on a worldwide web site providing political information to citizens is related to political activity and is not prohibited under Minn. Stat. § 10A.02, subd. 8e.

FACTS

As the representative of an organization, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The organization you represent is considering the creation of an advertising-supported worldwide web site on the internet.
2. The site would include information relating to politics in Minnesota and would be free to visitors to the site.
3. Visitors to the proposed site could see advertisements from sponsors of the site and could follow links from those advertisements to the sponsors' sites for additional information.
4. Your organization would like to incorporate into your site information from reports or statements filed with the Board.
5. The data your organization wishes to use in its site may include data from reports and statements filed by lobbyists, lobbyist principals, political committees and funds (including candidate's principal campaign committees and party units), and others.

ISSUE

May you use data obtained from reports and statements filed with the Board on a free, advertising supported, internet site dedicated to presenting Minnesota political information?

OPINION

Yes, use on the described worldwide web site of data obtained from reports and statements filed with the Ethical Practices Board is a permitted use for a purpose related to political activity.

Minn. Stat. § 10A.02, subd. 8e, prohibits use for a "commercial purpose" of information copied from reports or statements filed with the Board. However, the statute provides that "commercial purpose does not include purposes related to . . . political activities. . .".

Your use of Board data is to provide a source of Minnesota political information which may be accessed by all interested persons without charge. Use of Board data for this purpose is related to political activities and is not prohibited by Minn. Stat. § 10A.02, subd. 8e.

The Board requests that you include on your site appropriate notices that the commercial use of the data is prohibited by statute, so that visitors to your site do not inadvertently violate the law.

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

RE: Gift of plaque to official

ADVISORY OPINION # 245

August 23, 1996

SUMMARY

A plaque awarded by a lobbyist principal to a legislator based on individual services in the field of fire service falls within an exception to the general prohibition of gifts by lobbyist principals to officials.

FACTS

As a lobbyist representing a lobbyist principal, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. The principal you represent has an interest in matters related to the field of fire service. You describe fire service as including such areas as fire safety and prevention, fire fighting, and education and training related to fire service.
2. Your principal is exploring the possibility of giving a recognition plaque to a legislator based on service in the field of fire service. A proposed recipient has not yet been identified, however, you suggest that the selection may be based on actual participation in a fire service organization, or on a course of activities dedicated to the support of fire service.
3. Selection of the recipient would not be made based on votes or performance in the legislature, including bill drafting or making speeches as a part of the legislative process.
4. The plaque itself will include a decorative axe on its front, with a medallion representing the four fire services. The cost of the plaque is estimated at between \$150 and \$200.

ISSUE

Is the award of a plaque as described in the facts permitted as an exception to the general gift prohibition established in Minn. Stat. § 10A.071?

OPINION

Yes, the plaque falls within the exception provided in Minn. Stat. § 10A.073, subd. 3(a)(4).

Gifts to officials, including plaques, are generally prohibited by Minn. Stat. § 10A.071. However an exception is provided in subd. 3(a)(4) of the statute for "a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause".

The award must include an inscription recognizing the service of the individual in order to be considered a "plaque or similar memento". Minnesota Rules, part 4512.0100, subp. 5, states that a "plaque or similar memento" is "a decorative item with an inscription recognizing an individual for an accomplishment".

You state that the award will not be made based on legislative service or responsibilities. Thus the award will be based on "individual services", which, according to Minnesota Rules, part 4512.0100, subp. 4, means "services performed by an official outside of official duties".

Finally, you state that the services being recognized relate to the field of fire service. Minnesota Rules, part 4510.0100, subp. 2, states that "field of specialty means a vocation, profession, trade, craft, or avocation of the individual". If the official who you award has made fire service an avocation and provides services in that field, the requirements of the definition would be met.

The exception for plaques provided in Minn. Stat. § 10A.071, subd. 3(a)(4) does not include a restriction based on the value of the award.

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to Consent for Release of Information signed by requester.

Issued to: Sarah Janecek
Minnesota Political Press, Inc.
26 East Exchange Street, Suite 120
St. Paul, MN 55101

RE: Gift to officials of guide to the Minnesota legislature

ADVISORY OPINION # 246

September 20, 1996

SUMMARY

A gift to officials by a lobbyist of a legislative directory falls within the exception to the gift prohibition as information to assist an official in the performance of official duties.

FACTS

As the representative of an association, you request an advisory opinion from the Ethical Practices Board (Board) based on the following facts:

1. You are the president and sole shareholder of Minnesota Political Press, Inc., a Minnesota corporation which publishes Politics in Minnesota: The Directory. The Directory is a comprehensive guide to the Minnesota Legislature.
2. Minnesota Political Press, Inc. is not a lobbyist principal, however you are a lobbyist registered with the Board.
3. The Directory is a 500-plus page guide which includes legislative district maps; profiles of districts including information about major employers and special district concerns; and demographic and voting information by district.
4. The Directory also contains information about legislators, including election history; member addresses, committee assignments and other member information; and political analysis and key issue voting records of each legislator.
5. The Directory also includes other general information about the legislature such as committee rosters; lists of committee staff members, lobbyists, and press corps members; frequently called numbers; and similar data.
6. The Directory includes advertising which, in part, supports the cost of its production and distribution. It will be sold to the public for \$19.95 per copy.
7. Minnesota Political Press, Inc. would like to give copies of The Directory free to members of the legislature and other officials as defined in Minn. Stat. § 10A.071, subd. 1(c).

ISSUE

Is the gift of a copy of The Directory to an official prohibited under Minn. Stat. § 10A.071?

OPINION

No. The Directory is a gift under Minn. Stat. § 10A.071, however it is not prohibited because it falls within the exception to the gift prohibition provided in Minn. Stat. § 10A.071, subd. 3(a)2.

Minn. Stat. § 10A.071, subd 3(a)2, provides that a gift is not prohibited if the gift is "services to assist an official in the performance of official duties. . .". The Board has included within this exception, the provision of informational materials. (See advisory opinions #156 and #204.) The materials you propose to provide are information which will assist an official in the performance of official duties and fall within the exception.

Minn. Stat. § 10A.071 governs only those gifts to officials which are given or requested by a lobbyist or a lobbyist principal. You state that Minnesota Political Press, Inc. is, itself, neither a lobbyist or a lobbyist principal. However, there may be situations where the relationship between a lobbyist and an association is so close that the acts of the lobbyist cannot be separated from those of the association. The facts of this request present such a situation making the proposed gift a gift from a lobbyist. (See also, revised advisory opinion #171.)

While not prohibited, the proposed gift must be reported as a gift from a lobbyist to an official. If it is not attributable to a particular entity you represent, it must be reported on your report of disbursements from personal funds.

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

RE: Political committee use of free world wide web page

ADVISORY OPINION # 247

September 26, 1996

SUMMARY

Use by a party unit or a principal campaign committee of a service provided without charge to the public and to civic organizations does not result in a contribution to the committee or a gift to the candidate.

FACTS

You are the chair of a political party unit. On behalf of the party unit and some of the party's candidates, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. Geocities is a for-profit provider of internet services. Its web site is supported in part by on-line advertising, some of which may be placed by companies which are lobbyist principals.
2. As a service to the internet community as a whole, Geocities offers free world wide web home page space to individuals and civic organizations.
3. There is no cost to the home page holder, and the service is available to any individual or civic organization requesting it.
4. Your party unit and some of the party's candidates would like to accept Geocities offer of free home page space for use by their political committees.

ISSUE

May a political committee, including a principal campaign committee, accept free world wide web home page space from Geocities under the terms described in the facts without violating the provisions of Minnesota Statutes, chapter 10A?

OPINION

Yes, your party unit and the candidates' principal campaign committees may accept the Geocities home page space offer.

The service in question is available to civic organizations and to the public as a whole without charge and without restrictions as to who may use the service. The acceptance of such a service by a political

committee does not result in a contribution to the committee from the service provider. (See also, advisory opinion #154.)

The gift prohibitions of Minn. Stat. § 10A.071 are not applicable to the facts you present. Even if the services provided were recognized as a contribution, it would be a contribution to the committee involved, not to an individual. Party units are not subject to the provisions of Minn. Stat. § 10A.071, and contributions to principal campaign committees are specifically excluded from the general prohibition by the exception provided in Minn. Stat. § 10A.071, subd. 3(a)(1).

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

RE: Campaign Expenditures and noncampaign disbursements

ADVISORY OPINION # 248

SUMMARY

Costs associated with educating candidates and legislators on issues of interest to a public official are not included in the noncampaign disbursements defined in Minn. Stat. § 10A.01, subd. 10c. However, appropriate use of campaign funds is governed primarily by Minn. Stat., chapter 211B, which is not within the Board's jurisdiction. Constituent services are defined in Minn. Rules, part 4503.0100, subp. 6, and must actually provide a service to the constituent. Certain contributions from entities not registered with the Board may be accepted by principal campaign committees if statutory requirements are met.

FACTS

As a legislator, you request an advisory opinion from the Ethical Practices Board based on the following facts:

1. You are particularly interested in a number of legislative issues that you believe are important to the whole state.
2. You are considering contacting other legislators or candidates in the current election to educate them about these issues. You believe that your efforts may have the following effects, some of which you recognize may be indirect:
 - A. candidates you talk to may have a better chance of getting elected because they are better educated on the issues;
 - B. legislators (including newly elected legislators) who you have contacted may be more willing to support your position on these issues in the legislature;
 - C. your own chances of re-election in your next general election may be enhanced if you are successful in your efforts.
3. Your efforts to inform legislators or candidates would be performed by yourself or by others as volunteers. Some costs would be incurred in conducting these activities.
4. You also are considering the design of various written materials your committee might produce and you ask direction from the Board about defining constituent services.
5. You also wish to know what contributions you may accept from entities not registered with the Board.

ISSUE ONE

Can contributions received by your principal campaign committee be used to educate and inform other legislators and candidates about legislative issues in which you are interested?

OPINION

Use of campaign funds is governed primarily by Minnesota Statutes, chapter 211B, the Fair Campaign Practices Act, which is not under the Board's jurisdiction. To determine whether the proposed use is permitted under chapter 211B, you will need to consult your own legal advisors.

Chapter 211B does permit use of campaign funds for those items defined as noncampaign disbursements in Minn. Stat. § 10A.01, subd. 10c, a statute which is within the Board's jurisdiction.

The Board has reviewed the noncampaign disbursement categories, and concludes that no category includes the activities you describe without expanding its definition significantly. Thus, the activities you describe are not permitted as noncampaign disbursements.

ISSUE TWO

How can you determine if the provision of written material is a constituent service?

OPINION

Minnesota Rules, part 4503.0100, subp. 6, defines constituent services as follows:

"Services for a constituent" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district. "Services for a constituent" do not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures.

In order to be a constituent service the item must, in fact, serve the constituent in some way. Acts which are primarily designed to enhance the giver's reputation (and presumably the chances for re-election) are not services to constituents.

What a written piece actually says will often determine whether it provides a service to the constituent or is for the purpose of influencing the nomination or election of the candidate. If the primary purpose of the piece is to influence the nomination or election of a candidate, it does not provide a constituent service. In some cases it may not be readily apparent whether a piece constitutes a valid constituent service or not. To give an opinion in more specific terms, the Board would need to examine specific examples of proposed materials.

ISSUE THREE

May your principal campaign committee accept contributions from non-corporate entities which are not registered with the Board?

OPINION

Yes, under certain circumstances your principal campaign committee may accept contributions from non-corporate entities which are not registered with the Board.

Contributions from a sole proprietorship may be accepted and are considered contributions from the owner of the proprietorship. Such contributions are subject to all of the statutory provisions applicable to contributions from the individual owner. Contributions made in the name of the proprietorship are aggregated with those made in the name of the owner for the purpose determining the amount of the owner's total contributions.

Contributions from associations, as defined in Minn. Stat. § 10A.01, subd. 3, which are not corporations, and which are not registered with the Board may be accepted up to \$100.

Your principal campaign committee may not accept a contribution of more than \$100 from an unregistered association unless the association provides, at the time of the contribution, a statement in lieu of registration as provided by Minn. Stat. § 10A.22, subd. 7. The statement provides financial disclosure in essentially the same manner as is provided by registered political committees and political funds. If the unregistered association provides this statement, its contribution limit is the same as that a registered political committee or political fund.