



## **Senate Counsel, Research, and Fiscal Analysis**

State of Minnesota

# **Gifts to Public Officials**

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## I. Introduction

Since 1994, public officials in Minnesota have been subject to the “gift ban” found in Minnesota Statutes § 10A.071. With some exceptions, the gift ban prohibits public officials from receiving gifts from lobbyists or principals. At the same time, lobbyists and principals are prohibited from giving gifts to public officials. For purposes of the gift ban, officials include legislators, legislative employees, judges, county commissioners, local officials of a metropolitan government unit, and various other executive and administrative positions. Local officials are not subject to the gift ban in chapter 10A; the gift ban for these officials is found in Minnesota Statutes § 471.895. The parameters are similar.

This memo provides legislative history on the gift ban, an overview of the gift ban, and references to advisory opinions relating to the gift ban issued by the Campaign Finance and Public Disclosure Board. The gift ban for local officials is briefly discussed at the end of this memo.

## II. Legislative History

### A. Introduction

In 1994, the Minnesota Legislature passed significant legislation prohibiting most gifts to public officials. That legislation was based on the premise that a person with a direct financial interest in a decision that a public official is authorized to make should not give that official a gift because of the concern that it could improperly influence the official’s decision. While outright bribery is illegal, the giving of gifts in a social context has been approved and has been an accepted way to build and maintain relationships.

Historically, drawing the line between appropriate social gifts and inappropriate gifts to influence a public official in the performance of official duties was left to the judgment of each individual. It was an ethical problem, rather than a legal one. However, in 1994 the Minnesota Legislature decided to cease relying on the judgment of individuals and enacted a law intended to address this concern. The new law was driven by two main factors. First, a series of ethical lapses by members of the Legislature left the institution open to criticism that the judgment of its individuals was not good enough. Second, at least one member of the legislature believed strongly that public officials were being led into temptations they would be better off avoiding.

### B. Leading Up to the Gift Ban (1988-1994)

The movement in Minnesota to limit gifts to public officials began in the interim between the 1988 and 1989 sessions. The Senate Committee on Governmental Operations held hearings during that interim at which the ethics code administrators from Wisconsin and Massachusetts testified on how these laws worked in their states. Based on those hearings, Senator John Marty drafted a bill that was based primarily on the Massachusetts law, Mass. Gen. Laws, ch. 268B, with some influence from Wisconsin, Wis. Stat. Ann., ch. 19, subch. III.

Senator Marty’s code of ethics for public officials was first introduced in the 1989 session as S.F. No. 5. It covered all public officials, local as well as state, under the expanded jurisdiction of the Ethical Practices Board (later renamed the Campaign Finance and Public Disclosure Board), and

prohibited the use of a public position for private gain, revolving door contracts with former public officials, and gifts that “could reasonably be expected to influence the performance of the official’s or employee’s public duties.” The bill was referred to the Committee on Elections and Ethics, but the bill did not receive a hearing.

In the 1991 session, Senator Marty introduced the bill again, this time as S.F. No. 367. It was again referred to the Committee on Elections and Ethics. In 1992, the chair of the committee, Senator Jerome M. Hughes, signed on as a co-author and gave the bill a hearing, but no vote was taken.

In 1993, Senator Marty became the chair of the Committee on Ethics and Campaign Reform (previously the Committee on Elections and Ethics). Senator Marty introduced S.F. 24, which proposed a code of conduct for public officials.

### C. Enacting the Gift Ban (1994)

Before the 1994 session started, hearings were held on the code of conduct. Testimony was taken from various interested groups about what was needed to improve the ethics of public officials in this state. The testifiers recommended action on many of the subjects that were in Senator Marty’s bill, but they also recommended that any code of ethics be clear, simple, and draw a bright line between conduct that was acceptable and conduct that was not.

By the start of the 1994 session, the Speaker of the House resigned his leadership position because of ethical lapses. The House Majority Leader pleaded guilty to misuse of the state telephone system and resigned from office. In response to these issues, both bodies were eager to pass some kind of ethics legislation.

At the time, lobbyists were the focus of concern because of their obvious interest in giving gifts to influence public officials. Limiting the gift ban to them and their principals (the entities who employ them) also served the committee’s desire to have a bright-line test—lobbyists were already required to register with the Board, so it would be relatively easy to determine the persons to whom the ban applied. Minn. Stat. § 10A.03.

The House bill, H.F. No. 1863, authored by Representative Edgar Olson, focused primarily on disclosure of gifts, reducing the reporting threshold for individual gifts from lobbyists from \$50 to \$5 and providing an expedited procedure for disclosing gifts of food and beverages given or made available to all members of the legislature or a legislative body. The bill passed the House early in the session and was referred in the Senate to the Committee on Ethics and Campaign Reform.

When H.F. No. 1863 was heard by the Senate Committee on Ethics and Campaign Reform, Senator Roger D. Moe moved to amend it by substituting a compromise proposal. His amendment, adopted by the committee on March 8, 1994, included a broad exemption for “food or a beverage,” but it also reduced the threshold for having to report gifts from \$50 to \$5 and created a simplified reporting procedure for gifts of food or beverages. The language read: “A lobbyist need report only the aggregate amount and nature of food or beverages given or made available to all members of the legislature or a house of the legislature or to all members of a

local legislative body, along with the name of the legislative body and the date it was given or made available.” But the Moe amendment was further amended at the same meeting by an amendment offered by Senator Marty that required that the food or beverage be “given at a reception, meal, or meeting away from the recipient’s place of work.” This narrowed the exemption considerably.

When the bill was considered on the Senate floor on March 14, Senator David Knutson offered another amendment to require that the food and beverage not only be given away from the recipient’s place of work but also “by an organization before whom the recipient appears to make a speech or answer questions as part of a program.” Very few meals would meet this new requirement. So instead of a broad exemption to go with the strict reporting requirement for gifts and simplified procedure for reporting gifts of food or a beverage, the Senate bill had only a very narrow exemption.

When the amended House file was returned to the House, the House voted to concur in the Senate amendments. The bill became law with the Governor’s signature on March 22, 1994, and became effective on August 1 of that year.

Ultimately, the gift ban is a flat prohibition that uses an objective, bright-line test. This test was adopted partly in response to the public input asking for a clear test and partly for reasons of administration. The objective test that was enacted does not require a subjective determination that the gift was given to influence the official in the performance of official duties, a requirement that was considered and rejected because it was too difficult to prove. If it were possible to prove that a gift was given to influence the performance of official duties, it would be a bribe under existing law.

#### D. Amendments to the Gift Ban (1995-2017)

In 2005, the gift ban was amended by adding a \$5 or less limit on trinkets or mementos. This dollar limit replaced the phrase “of insignificant value.” Minnesota Laws 2005, chapter 156 (H.F. 1481).

Similar changes followed in 2008 and 2010. Until 2008, there was an exemption for “a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause.” This was changed to an exemption for “a plaque with a resale value of \$5 or less.” Minnesota Laws 2008, chapter 295 (H.F. 3172). Again in 2010, the exemption for “informational material of unexceptional value” was changed to “information material with a resale value of \$5 or less.” In addition, judges were added to the definition of “official,” so judges became subject to the gift ban. Minnesota Laws 2010, chapter 327 (S.F. 80).

In 2013, another exception relating to food or beverage given at a reception, meal, or meeting was added for members or employees of the legislature when an invitation to attend the event was provided to all members at least five days before the event. This exception was added on the Senate floor by an amendment offered by Senator David Senjem. Minnesota Laws 2013, chapter 138 (S.F. 661).

Also in 2013, judges were added to the definition of “public official” for purposes of chapter 10A and were removed from definition of “official” in the gift ban statute. This had the effect of making judges subject to all requirements of chapter 10A, including the gift ban. Minnesota Laws 2013, chapter 138 (S.F. 661).

### III. The Role of the Campaign Finance and Public Disclosure Board

The Campaign Finance and Public Disclosure Board (or “Board”) is a six member board that is responsible for administering the provisions of Minnesota Statutes Chapter 10A. Minn. Stat. § 10A.071. The Board may issue advisory opinions on the provisions of Chapter 10A, including the gift ban. Only a person who is subject to the provisions of Chapter 10A may apply for a written advisory opinion. The request for an opinion may be based on real or hypothetical situations. Minn. Stat. § 10A.02.

A written advisory opinion issued by the Board is binding on the Board in all later Board proceedings concerning the issue in the opinion. A written advisory opinion is also a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person that made the request for the opinion or is covered by the opinion. Because of these protections, an advisory opinion is often referred to as a “safe harbor” if it is obtained and followed. There are three exceptions to these safe harbor protections: 1) the Board amends or revokes the opinion before the board or judicial proceeding; 2) the request for the opinion omitted or misstated material facts; or 3) the person making the request or covered by the request did not act in good faith in relying on the opinion. Minn. Stat. § 10A.02, subd. 12.

Advisory opinions, while offering safe harbor to the individual or individuals covered by the opinion, are not binding on other individuals or entities or on other situations. However, advisory opinions do provide useful guidance because they indicate how the Board might handle a particular situation.

While there is no enforcement mechanism mentioned in Minnesota Statutes § 10.071, the Board is authorized to investigate any alleged violation of this chapter 10A, including the gift ban. Minn. Stat. § 10A.022. A violation of chapter 10A is not a crime unless otherwise provided. Minn. Stat. § 10A.34, subd. 3. There is no provision that makes a violation of the gift ban a crime. There is no civil fine or penalty for violating the gift ban, but the board or a county attorney may seek an injunction in the district court to restrain its violation. Minn. Stat. § 10A.34, subd. 2; Eth. Prac. Bd. Op. No. 217 (1995).

### IV. Who is Covered?

#### A. Operative Language

The operative language of the gift ban is very simple: “A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.” Minn. Stat. § 10A.071, subd. 2.

#### B. Givers

##### 1. Lobbyists

The prohibition is limited to gifts given to officials by lobbyists and principals (defined below). A lobbyist is defined as “an individual (1) engaged for pay or other consideration of more than

\$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or (2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.” Minn. Stat. § 10A.01, subd. 21. The definition of lobbyist provides a list of types of individuals that are not considered lobbyists for purposes of the law, such as public officials, elected local officials, and state employees. Lobbyists must register annually with the Board and make annual reports to the Board. Minnesota Statutes §§ 10A.03 and 10A.04.

## 2. Principals

A principal is defined as “an individual or association that: (1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or (2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.” Minn. Stat. § 10A.01, subd. 33. Principals must report annually to the Board. Minn. Stat. § 10A.04, subd. 6.

The Board has held that the following entities are not principals: the University of Minnesota, Eth. Prac. Bd. Op. No. 224 (1996); political subdivisions, Camp. Fin. Bd. Op. No. 297 (1998); and the Minnesota Zoo, Camp. Fin. Bd. Op. 441 (2016). Therefore, the gift ban does not apply to these entities.

If a lobbyist is an employee of a political subdivision and purchases food or beverages for an official of the same political subdivision, it is not a gift if the lobbyist is reimbursed by the political subdivision. Camp. Fin. Bd. Op. No. 402 (2009).

An individual who is not a lobbyist or a principal, but who is a member of an association that is a principal, may make a gift to an official from the individual's own funds, but not from the funds of the association. Eth. Prac. Bd. Op. No. 177 (1994). The gift from the individual's own funds must not be requested or reimbursed by the association. Eth. Prac. Bd. Op. No. 201 (1995).

An association is not made a principal simply by virtue of the fact that some of its members may themselves be principals. Eth. Prac. Bd. Op. Nos. 180 (1994) and 220 (1995).

## 3. Third Parties

A lobbyist or principal may not request another to give a gift to an official. Minn. Stat. § 10A.071, subd. 2. An official may not accept a gift given as the result of a request by a lobbyist or principal. Minn. Rules, part 4512.0200. A gift is considered to have been requested by a lobbyist or principal if the gift is “the direct result of a request, suggestion, or other affirmative effort by the lobbyist or lobbyist or principal.” Minn. Rules, part 4512.0500.



If a trade association that is a principal invites legislators to a reception, the legislators may not be given free food and beverages, even if the food and beverages are paid for by individual members of the trade association who are not lobbyists or principals or by a nonprofit foundation that is not a lobbyist or principal. Eth. Prac. Bd. Op. No. 197 (1995). Note that the situation in the opinion did not meet any exception relating to giving food or beverage.

A lobbyist or principal may not request others to donate money or services to a legal defense fund established for the benefit of public officials. Eth. Prac. Bd. Op. No. 242 (1996).

An association that is not a principal may not host an event for officials that is paid for by a businessperson who is not a lobbyist or principal if the association was requested to do so by a lobbyist. Eth. Prac. Bd. Op. No. 212 (1995).

Requesting another to make a donation to a retirement party for an official is a gift. Camp. Fin. Bd. Op. No. 309 (1999).

An association that is not a principal or a lobbyist may give copies of its information and referral directory to legislators. Eth. Prac. Bd. Op. No. 205 (1995).

## C. Recipients

### 1. Officials

For purposes of the gift ban, an “official” is “a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.” Minn. Stat. § 10A.071, subd. 1(c). Public officials include legislators, constitutional officers, agency heads and deputy heads, judges, various other officials in the executive branch of state government, and various officials of the metropolitan boards and commissions. Minn. Stat. § 10A.01, subd. 35. Section 10A.071 does not prohibit gifts to executive branch employees who are not within the definition of “public official;” gifts to those officials are governed by Minn. Stat. § 43A.38. Camp. Fin. Bd. Op. No. 316 (1999).

The gift ban does not prohibit a gift to the spouse of an official. Eth. Prac. Bd. Op. No. 206 (1995).

A gift to the Commissioner of Health as agent for the State is not a gift to a public official. In this particular situation, the Commissioner had a statutory authority to accept gifts for “public health purposes.” The gift was for this purpose and not for influencing official action. Camp. Fin. Bd. Op. No. 283 (1997).

### 2. Employees of the Legislature

Certain employees of the Legislature are public officials, including the Secretary of the Senate; the Chief Clerk of the House of Representatives; the Revisor of Statutes; the Legislative Auditor; and researchers, legislative analysts, fiscal analysts, and attorneys in the Office of Senate Counsel, Research, and Fiscal Analysis, House Research, or the House Fiscal Analysis Department. The remaining legislative employees are covered by the reference to “an employee of the legislature.”

### 3. Local Officials of a Metropolitan Governmental Unit

Local officials of a metropolitan government unit are subject to the gift ban. A “local official” for purposes of chapter 10A is a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, recommend, or vote on (as a member of the governing body) major decisions regarding the expenditure or investment of public money. Minn. Stat. § 10A.01, subd. 22.

“Metropolitan governmental unit” means the Metropolitan Council, a metropolitan agency, any of the seven counties in the metropolitan area, a regional railroad authority established by a metropolitan county, and a city in the metropolitan area with a population of over 50,000 (Blaine, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, Eagan, Eden Prairie, Lakeville, Maple Grove, Minnetonka, Minneapolis, Plymouth, Saint Paul, and Woodbury). Minn. Stat. § 10A.01, subd. 24.

In a court of appeals opinion, the court considered a gift given to a metropolitan city. In that case, the mayor accepted a trip that was given to the city by a principal. Neither the mayor nor the city paid for any part of the trip. The trip was to attend a professional sports game in another city in which a Minnesota team participated. After returning from the trip, the city council passed a resolution to accept the gift of the trip on behalf of the city, pursuant to Minn. Stat. § 465.03. The court determined that the gift was made to the city and accepted by the city, even though it was the mayor that went on the trip. The court held that the mayor did not violate the gift ban in accepting and participating in the trip. *Kelly v. Campaign Fin. & Pub. Disclosure Bd.*, 679 N.W.2d 178, 182 (Minn. Ct. App. 2004).

In a similar situation that occurred after the acceptance of the gift described in *Kelly* and before the court ruled, the Board opined that the governing body of a metropolitan governmental unit may not accept a gift directed to a specific local official of the metropolitan governmental unit, particularly after the official has finished using the gift. *Camp. Fin. Bd. Op. No. 348* (2003).

Later, the Board adopted rules on a variety of subjects, including one on the timing of acceptance of gifts by a metropolitan governmental unit. An official may not use a gift given by a lobbyist or principal to a metropolitan unit of government until the gift has been formally accepted by an official action of the governing body. Minn. Rule 4512.0200, subp. 2.

### 4. Third Parties

On several occasions, the Board has considered the propriety of a gift to a nonprofit corporation solicited by an official on behalf of the corporation. The Board’s opinions have gone back and forth over whether such a gift is prohibited. On the first occasion, the Board found that contributions to a charitable event sponsored by an official that were transferred directly to the nonprofit corporation were gifts to the corporation and not a prohibited gift to the official. *Eth. Prac. Bd. Op. No. 161* (1994). A year later, the Board found that a gift to a charitable organization was prohibited because it was personally solicited by an official. *Eth. Prac. Bd. Op. No. 214* (1995). The next year, the Board considered the conflict between the two opinions and found that it had been correct the first time, holding that a gift to a nonprofit corporation

personally solicited by an official was not prohibited, provided that the official did not directly and personally benefit from the gift and that no part of the gift would be transferred to the official. Eth. Prac. Bd. Op. No. 234 (1996).

## V. What is a Gift?

### A. Operative Language

A “gift” is “money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.” Minn. Stat. § 10A.071, subd. 1 (b). The following are also defined as a gift: meals and entertainment; loans of personal property for less than payment of fair market value; giving preferential treatment for purchases; honoraria; and payment of loans or other obligations. Minn. Rule. 4512.0100, subp. 3.

The Board has determined that the following items are gifts: an opportunity for public officials to purchase athletic tickets in advance of their sale to the general public, Eth. Prac. Bd. Op. No. 178 (1994); offering an official the right to sit in a private box at an athletic event, even though the official must also buy a ticket to the event, Camp. Fin. Bd. Op. No. 287 (1998); the opportunity to purchase tickets to a baseball game through a process not available to the general public, Camp. Fin. Bd. Op. No. 407 (2010); a loan of a picture to be hung in a legislator’s office, Eth. Prac. Bd. Op. No. 181 (1994); and a wedding present, Eth. Prac. Bd. Op. No. 217 (1995).

The Board has determined that the following items are not gifts: purchase of services from an official’s commercial business at current prices, Eth. Prac. Bd. Op. No. 213 (1995); and referral from a client of an attorney who is a lobbyist to an attorney who is an official, Camp. Fin. Bd. Op. No. 289 (1998).

### B. Determining Value

Determining the value of the gift depends on the type of gift. The value of plaques and informational material is the resale value, while the value of a trinket or memento is the cost the giver paid for the item. Minn. Stat. § 10A.071, subd. 3. The value of transportation in a corporation’s aircraft is the amount the official would have to pay to obtain equivalent commercial air transportation, not the cost to the corporation of operating the aircraft. Eth. Prac. Bd. Op. No. 188 (1994). The value of food and lodging provided by a principal to public officials on a tour of a construction site is the cost to obtain similar services from a commercial establishment, not necessarily the cost charged by the tour operator to the private party. Camp. Fin. Bd. Op. No. 276 (1997).

A public official may attend a party paid for by a principal without violating the gift ban if the public official either: 1) directly reimburses the principal for the official’s fair share of the expenses for the party, or 2) contributes something to the party that has a value that is equal to or greater than the official’s fair share of the expenses for the party. The Board suggests the following method to determine the fair market value of goods and services provided to an official: add the cost of the food, beverage, entertainment, decoration, and wait staffing provided by the lobbyist or principal and divide the total by the number of individuals that attended the

party. Camp. Fin. Bd. Op. No. 330 (2001). Where a gift is given to a group of officials, the value of the gift to each official is the total value divided by the number of officials to whom the gift was given. Eth. Prac. Bd. Op. No. 160 (1994). Reimbursement must be made to the lobbyist or principal at the time the meal is provided in order not to be an illegal gift. Eth. Prac. Bd. Op. No. 159 (1994). Accord, Eth. Prac. Bd. Op. Nos. 169, (1994), 171 (1996).

Where the cost of goods or services provided to an official has been paid partly with contributions from a lobbyist or other interested person and partly from other sources, the official must contemporaneously reimburse a lobbyist or principal for the fair market value of any part of a gift paid for by the lobbyist or principal. Minn. Rule 4512.0400.

## C. Transaction Problems

### 1. Consideration in Return

To be a gift, the item of value must be “given and received without the giver receiving consideration of equal or greater value in return.” Minn. Stat. § 10A.071, subd. 1 (b). The term “consideration” is not defined in this statute, but according to Black’s Law Dictionary, consideration is defined as “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act.” Consideration and its value cannot always be subject to mathematical calculations and intangible benefits can, under some situations, constitute consideration. Camp. Fin. Bd. Op. No. 394 (2007).

Payment of the regular price for goods or services provided by an official or an official's business is not a gift to the official. Minn. Rules 4512.0600, subp 1.

If a meal is provided to officials registered at a conference sponsored by a principal, but the meal is paid for by the registration fee charged to attend the conference, the meal is not a gift. Eth. Prac. Bd. Op. No. 186 (1994). If public officials reimburse a principal for the value of food and lodging provided to them on a tour of a construction site, the food and lodging is not a gift. Camp. Fin. Bd. Op. No. 276 (1997).

Requiring attendees to make a minimum donation to a charitable fund is not consideration, and the gift of food and beverages to the attendees is prohibited. Eth. Prac. Bd. Op. No. 191 (1994).

Reimbursement of expenses incurred by an official who is a member of the board of directors of a corporation that is a principal is not a gift, since the corporation receives the services of the official as consideration for the expense reimbursement. Eth. Prac. Bd. Op. No. 234 (1996).

Payment for speeches may or may not be a gift, depending on the circumstances. Honoraria are covered by the term “money.” Minn. Rules, part 4512.0100, subp. 3(D). However, not every fee received for making a speech is an honorarium. An honorarium is “A payment given to a professional person for services for which fees are not legally or traditionally required.” American Heritage Dictionary of the English Language, 5<sup>th</sup> edition (2015). If the speaking fee is legally required, as part of a contractual arrangement with the speaker in advance, it is neither an honorarium nor a gift and is not prohibited.

Similarly, payment for travel, lodging, and food may or may not be a gift, depending on the circumstances. In one situation considered by the Board, the governor was asked to appear in television or radio advocacy messages produced by a lobbyist or principal. The lobbyist or principal would pay the costs of reasonable travel, lodging, and meals for the governor related to his participation in the television or radio message. The governor is not paid for his appearance. In this situation, the payment for travel, lodging, and food is not considered a gift because consideration is exchanged between the two parties. The governor receives free travel, lodging, and food directly related to his appearance in the message, but in return the lobbyist or principal receives the value of the right to use the governor's image, voice, and reputation in the message. Camp. Fin. Bd. Op. No. 394 (2007).

## 2. Employees

A promise of future employment is a prohibited gift. However, that does not mean that all employment related raises, promotions, or offers of employment are prohibited. A salary increase, promotion, or change from part-time to full-time status for an official who is an employee is not a gift to the official. Minn. Rules, 4512.0600, subpart 2; Eth. Prac. Bd. Op. No. 215 (1995). A contract for services is not a "promise of future employment" and payments for services provided under a bona fide contract are not gifts. Eth. Prac. Bd. Op. No. 231 (1996). Bona fide employment search activities, including making and accepting offers of employment, are not prohibited. Eth. Prac. Bd. Op. No. 236 (1996).

An expense-paid trip for two given to an employee of a principal for outstanding performance as a salesperson is a form of in-kind compensation to the employee, not a gift. The employee is not prohibited from sharing the trip with the employee's spouse who is an official. Eth. Prac. Bd. Op. No. 229 (1996).

There is no exception for a gift by a principal to an official simply because the gift is unrelated to the official's position. Even when the gift clearly relates to the needs of the private employer of the official, Eth. Prac. Bd. Op. No. 174 (1994), or the private employer of the official's spouse, Eth. Prac. Bd. Op. No. 164 (1994), the official must pay for any benefits received from a principal.

## 3. Social Gifts

A lobbyist may not host a baby shower for an official, since that would involve the lobbyist giving the official refreshments and a gift for the baby and asking those attending the shower to give the official gifts for the baby. Eth. Prac. Bd. Op. No. 232 (1996).

## 4. Indirect Gifts

Gifts that are not given directly from a lobbyist or other interested person to an official, but rather are passed through an intermediary with an express or implied condition or understanding that they will be given to an official, are subject to the gift ban. A gift is considered to be given by the individual or association that pays for the gift or reimburses another for the gift. Minn. Rule 4512.0300.

For example, the Minnesota Association of County Officers requested an opinion on whether it could continue to accept contributions from lobbyists or lobbyists' principals to help defray the

costs of group breakfasts, hospitality rooms, snacks, and refreshments. The Board advised that the Association could not accept those contributions, unless the officials reimbursed the lobbyists or lobbyists' principals for the value of the benefits received. Eth. Prac. Bd. Op. No. 142 (1994). The ban applies whether the contributions are given to the organization itself or to a private nonprofit charitable organization that hosts an event on behalf of the organization. Eth. Prac. Bd. Op. No. 163 (1994). A gift of travel and lodging from a principal to a public official is prohibited, even if the gift is passed through an entity that is not a lobbyist or principal. Camp. Fin. Bd. Op. No. 277 (1997).

On the other hand, where a principal helped to underwrite the cost of a theatrical production by a nonprofit organization that presented performances that were free and open to the public, without any express or implied condition or understanding that the performances would be for the particular benefit of an official or group of officials, officials were not prohibited from attending the performances. Eth. Prac. Bd. Op. No. 227 (1996). Where a principal made a gift of airline tickets to a nonprofit corporation that was not a principal without an expectation that the tickets might be given to an official, a gift of the tickets from the nonprofit corporation to an official was not prohibited. Eth. Prac. Bd. Op. No. 268 (1997).

Gifts given by a principal to an official who acts as its agent for distribution of the gifts to foreign visitors are not within any exception to the gift ban. Eth. Prac. Bd. Op. No. 176 (1994).

#### 5. Accounting for Gifts

Some problems with gifts could be solved by better accounting for receipts and disbursements. Where an organization plans to host an event with money received from various sources, some of which may come from lobbyists or other interested persons, the organization may wish to segregate the receipts and make sure that none of the money from lobbyists or interested persons is used to provide a gift to covered officials. If the receipts are properly segregated, a gift from nonlobbyist donor is not prohibited. Eth. Prac. Bd. Op. No. 168 (1994).

#### 6. Gifts Given Outside the State

The ban on gifts to officials applies to Minnesota officials even when the gift is given outside the state of Minnesota. Eth. Prac. Bd. Op. No. 160 (1994).

## VI. Exceptions

There are several exceptions to the gift ban, found in Minnesota Statutes §10A.071, subd. 3. Each exception is discussed in detail below.

### A. Campaign Contributions

The gift ban does not apply to campaign contributions under Minn. Stat. § 10A.01, subd. 11. This is because the campaign contributions are limited in amount under Minn. Stat. § 10A.27, and must be reported under Minn. Stat. § 10A.20. A donation of volunteer services to a candidate's principal campaign committee is not a gift to the candidate. Camp. Fin. Bd. Op. No. 282 (1997).



## B. Services to Assist in the Performance of Official Duties

Services to assist an official in their performance of official duties are not considered a gift. At the time the gift ban was first considered, lobbyists were concerned that a ban on donating services to an official would prohibit them from providing information and contacting key people to assist a legislator in passing legislation. The Senate Committee on Ethics and Campaign Reform responded by creating an exception for “services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents.” Minn. Stat. § 10A.071, subd. 3(a) (2).

The Board has advised that the following gifts fall within this exception: attendance at a symposium without paying the registration fee if the subject of the program will assist the legislators in performing their official duties, Camp. Fin. Bd. Op. No. 380 (2006); sponsoring educational sessions for legislators, Camp. Fin. Bd. Op. No. 364 (2005); providing training in the use of specialized equipment, Camp. Fin. Bd. Op. No. 372 (2005); providing legislators with copies of their home newspapers during the legislative session, Eth. Prac. Bd. Op. No. 143 (1994); providing legislators with copies of their home district telephone directories, Camp. Fin. Bd. Op. No. 280 (1997); providing officials with a periodical publication on public policy issues related to transportation, Eth. Prac. Bd. Op. No. 156 (1994); providing legislators with a brochure about the legislative priorities of an organization, Eth. Prac. Bd. Op. No. 193 (1994); providing legislators with research and analysis materials relating to pending or recommended areas of legislation, Eth. Prac. Bd. Op. No. 234 (1996); providing legislators with copies of the annual membership directory of the Minnesota Broadcasters Association, Eth. Prac. Bd. Op. No. 204 (1995); providing legislators with copies of “Politics in Minnesota: The Directory,” Eth. Prac. Bd. Op. No. 246 (1996); training legislators in the operation of computer systems, Eth. Prac. Bd. Op. No. 157 (1994); and educating legislators at an issues forum sponsored by the American Legislative Exchange Council (ALEC), provided that the officials pay for the meals provided at the issues forum, Eth. Prac. Bd. Op. No. 202 (1995).

The Board has found the following services are not exempt: educational programs that do not have a direct bearing on issues currently under consideration by an official, but that expand the official’s general knowledge of the subject matter, Eth. Prac. Bd. Op. No. 162 (1994); a bipartisan seminar to educate and inform officials about significant public policy, even when the lobbyist contributions are paid to a governmental body that controls the format and content of the seminar, Eth. Prac. Bd. Op. No. 172 (1994); services and educational programs sponsored by the Minnesota Coalition of Family Organizations, Eth. Prac. Bd. Op. No. 180 (1994); transportation to enable an official to travel and promote business for the state, Eth. Prac. Bd. Op. No. 206 (1995); transportation to travel on governmental business and promote a metropolitan governmental unit, Camp. Fin. Bd. Op. No. 348 (2003); and purchasing a commercial documentary DVD to give to an official in which the lobbyist or principal had no significant role in creating, developing, or producing, Camp. Fin. Bd. Op. No. 396 (2008).

### C. Services of Insignificant Monetary Value

Services of insignificant monetary value are an exception to the gift ban. Originally, the bill as introduced had included “a favor” in the definition of “gift,” because of the concern that a ban on favors went too far, both because it seemed unsociable to prohibit people from doing small favors for public officials and because it seemed impractical to try to enforce a ban on common courtesy. So the bill was amended to delete the ban on favors and to specifically exempt “services of insignificant monetary value.” Minn. Stat. § 10A.071, subd. 3(a) (3). Professional consultation services are not exempt. Eth. Prac. Bd. Op. No. 250 (1996).

### D. Plaques

Plaques with a resale value of \$5 or less are also exempted from the gift ban. The original language which provided an exception for “a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause,” Minn. Stat. § 10A.071, subd. 3(a) (4) was taken directly from the Code of Ethics for Employees in the Executive Branch, Minn. Stat. § 43A.38, subd. 2 (b). In 2008, this was amended to read “a plaque with a resale value of \$5 or less.” A “plaque or similar memento” means “a decorative item with an inscription recognizing an individual for an accomplishment.” Minn. Rules, part 4512.0100, subp. 5.

Since the addition of the \$5 limitation in law, the Board has found that a decorative axe plaque with a resale value of \$5 or less is not a gift. Camp. Fin. Bd. Op. No. 414 (2010).

Before the addition of the \$5 limitation in 2008, the Board issued several opinions on this issue. An award consisting of a printed certificate inserted in an inexpensive frame costing approximately \$2.99 has been found exempt. Eth. Prac. Bd. Op. No. 165 (1994). A scenic photograph with an inscription plate recognizing an official’s service to the Sierra Club, a principal, is exempt. Eth. Prac. Bd. Op. No. 198 (1995). A plaque with a decorative axe and a medallion representing the four fire services, costing between \$150 and \$200, awarded by a principal to a legislator for individual fire service, is exempt. Eth. Prac. Bd. Op. No. 245 (1996). A plaque recognizing a legislator’s voting record is not exempt. Eth. Prac. Bd. Op. No. 218 (1995). Accord, Eth. Prac. Bd. Op. No. 238 (1996). The Board includes a cover letter for each of these advisory opinions that says these opinions are “obsolete” because of the change of language that permits most gifts of plaques.

### E. Trinkets or Mementos

Trinkets or mementos costing \$5 or less are exempted. The original language was an exception for “a trinket or memento of insignificant value,” and was a product of committee discussion in the Senate, designed to save the pins, pens, cups, and calendars frequently given to members of the legislature. Minn. Stat. § 10A.071, subd. 3(a)(5). The \$5 limitation was added in 2005. Since this change was made in 2005, there have been no advisory opinions on this point.

Before the addition of the \$5 limitation in law, the Board interpreted this exemption to cover the following: a computer mouse pad imprinted with a lobbyist’s name, address, phone number, and other promotional information, with a retail value of \$3 to \$6, Eth. Prac. Bd. Op. No. 235(1997); and a coffee mug inscribed with the principal’s logo and Web site address that cost about \$4.75 to produce and retails for \$4 to \$6, Camp. Fin. Bd. Op. No. 337 (2002). An earlier opinion of the



Board had denied an exemption to a ceramic coffee cup with the logo of the Minnesota Medical Association printed on it. Eth. Prac. Bd. Op. No. 167 (1994). The Board's new opinion did not overrule, or even mention, the earlier one.

Before the addition of the \$5 limitation in law, the Board determined that the following items were not within the exemption: a leatherette pocket calendar and insert, valued at just over \$11, or a \$2 pocket calendar, both of which the Teamsters political committee wanted to give elected officials after the 1994 election, Eth. Prac. Bd. Op. No. 141 (1994); and the annual calendar book from the Minnesota State Fire Department Association, Eth. Prac. Bd. Op. No. 189 (1994).

#### F. Informational Material

Informational material with a resale value of less than \$5 is exempt. The original exception language was for "informational material of unexceptional value," and was designed to save papers, pamphlets, and brochures, but not to permit gifts of expensive books. Minn. Stat. § 10A.071, subd. 3(a) (6). The \$5 limitation was added in 2010. Since this change was made in 2010, there have been no advisory opinions on this point.

Before the addition of the \$5 limitation in law, gifts of the following items were found by the Board to fall within the exception for informational material of unexceptional value: a periodical publication on public policy issues related to transportation (also within the exception for services to assist an official in the performance of official duties), Eth. Prac. Bd. Op. No. 156 (1994); the annual membership directory of the Minnesota Broadcasters Association, Eth. Prac. Bd. Op. No. 204 (1995); a black and white calendar containing informational material and selling for \$5, Eth. Prac. Bd. Op. No. 226 (1996); an audio tape costing \$1.50 to produce and available to the public for \$4 to \$6, Eth. Prac. Bd. Op. No. 269 (1997); an informational booklet costing \$4.60 to produce and intended to be available to the public in limited quantities without charge, Camp. Fin. Bd. Op. No. 286 (1998); and a book summarizing the history of a corporation and its contributions to the growth of Minnesota that is distributed free to the public, Camp. Fin. Bd. Op. No. 317 (1999).

Before the addition of the \$5 limitation in law, gifts of the following informational materials were found by the Board to not be exempt from the gift ban: copies of the Minnesota Medical Association's monthly journal and twice-monthly newsletter, Eth. Prac. Bd. Op. No. 167 (1994); a book, intended to give legislators information about forthcoming legislative proposals on family law, Eth. Prac. Bd. Op. No. 200 (1995); a tax guide for legislators that was intended to help legislators compile their own income taxes, Eth. Prac. Bd. Op. No. 203 (1995); and a commercial documentary DVD with a retail cost of approximately \$19, Camp. Fin. Bd. Op. No. 396 (2008).

#### G. Food or Beverages

There are two exceptions that may apply when food or beverages given at a reception, meal, or meeting. The first exception applies to a gift of food or beverage if the reception, meal, or meeting is held away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program. The second exception applies to a gift of food or beverage to a member or employee of the legislature if an

invitation to attend the reception, meal, or meeting was provided to all members of the legislature at least five days prior to the date of the event. There have been no Board advisory opinions on this second exception, which was added in 2013.

Before the second exception was enacted in 2013, the Board issued several opinions on whether food or beverage was an allowable gift based on particular circumstances. The outcome of similar situations may now be different if all members of the legislature have been invited to attend the event in advance.

Complimentary breakfasts given to legislators who appear at the Twin West Chamber of Commerce meetings to speak or respond to questions as part of a program have been approved. Eth. Prac. Bd. Op. No. 153 (1994).

The Board has found the following not exempt from the gift ban: meals and lodging provided to officials who participate in workshops where all participants provide each other with advice, consultation, and information, and answer each other's questions, Eth. Prac. Bd. Op. No. 155 (1994); food and beverages provided as part of a program where legislators simply mingle with their constituents and respond to their questions, Eth. Prac. Bd. Op. No. 167 (1994); a dinner where an official sits with the official's constituents during dinner to talk about the official's views but there is no formal presentation, Eth. Prac. Bd. Op. No. 185 (1994); a dinner where legislators answer the questions of others at their table before dinner, Eth. Prac. Bd. Op. No. 252 (1996); legislators making comments and answering questions using a microphone passed around the room at a dinner, Eth. Prac. Bd. Op. No. 259 (1997); an event where legislators are given an opportunity to share issues of importance to their districts at dinner, Camp. Fin. Bd. Op. No. 278 (1997); merely offering legislators an opportunity to make statements or answer questions, Cam. Fin. Bd. Op. No. 364 (2005); complimentary breakfasts in conjunction with a trade show, where officials do not make a speech or answer questions as part of a program, Eth. Prac. Bd. Op. No. 183 (1994); and a meal provided while an organization distributes a brochure and explains its legislative priorities, Eth. Prac. Bd. Op. No. 193 (1994).

If another exception to the gift ban applies, that does not mean that food and beverages may be provided on the basis of that exception. The Board has held that educational sessions, conferences, and trainings may be exceptions to the gift ban, but that does not allow the lobbyist or principal to provide food unless the food exemptions are also met. Camp. Fin. Bd. Op. Nos. 364 (2005) and 372 (2005).

## VII. Situations where the gift ban does not apply

### A. Gifts to Groups of Nonofficials

The prohibitions of the gift ban do not apply if the gift is given "because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group." Minn. Stat. § 10A.071, subd. 3(b) (1). This is an attempt to provide an exemption for gifts that are not related to the recipient's position as a public official but given for some other reason. The requirements for membership in a group of nonofficials and for an equivalent gift to be given to those other members of the group are attempts to provide proof that the gift was not related to the official's public position. It is

sufficient to make a gift available to all members of a group; it is not necessary that all members accept the gift. Camp. Fin. Bd. Op. Nos. 393 (2007) and 273 (1997).

Groups of nonofficials that the Board has found to fall within this exception include the following: the board of directors of a local credit union that provides free travel, lodging, and meals to those board members who attend board meetings, Eth. Prac. Bd. Op. No. 190 (1994); an advisory council to Blue Cross Blue Shield of Minnesota that provides meals and reimburses travel costs to its members, Eth. Prac. Bd. Op. No. 210 (1995); a lobbying organization that reimburses members of its board of directors for their expenses incurred on behalf of the organization, Eth. Prac. Bd. Op. No. 234 (1996); the Minnesota Chiefs of Police Association, which provides entertainment and mementos to members attending its annual meeting, Eth. Prac. Bd. Op. No. 258 (1997); five Minnesota-based associations to whose members AAA Minnesota/Iowa gives a free one-year AAA membership worth \$55, Camp. Fin. Bd. Op. No. 335 (2001); a delegation to a major party national convention, Camp. Fin. Bd. Op. No. 361 (2004); and a member of a group entering a random drawing sponsored by a principal at an annual conference for the group, Camp. Fin. Bd. Op. No. 393 (2007)

Because the gift ban uses an objective test, rather than a subjective one, it is necessary to meet the objective requirement of membership in a group, rather than showing subjective evidence of the giver's intent. A "group" must have certain incidents of formality or organization, such as a name, an organizational structure, meetings, and business to conduct. Eth. Prac. Bd. Op. No. 220 (1995). Being a former member of a law firm does not constitute membership in a "group." Eth. Prac. Bd. Op. No. 220 (1995).

### 1. National Conferences

An issue may arise when state-level officials from Minnesota attend a national meeting with their counterparts from other states. At that kind of meeting, although it is related to the official's public position, a majority of the group will usually not be "officials" within the meaning of the law. This is because the definition of "official" in § 10A.071, subd. 2(c), refers to specific Minnesota offices, not to official positions generally. So a gift to all attendees at the meeting, even one from a corporation listed as a principal in Minnesota, will be to a group, "a majority of whose members are not officials," and thus within the letter of this exemption.

The Board, however, first advised to the contrary. It found that the Executive Committee of the National Conference of State Legislatures (NCSL) was not a "group" within the meaning of the statute, and that any food and beverages given to its members by Minnesota principals had to be paid for by any Minnesota officials who accepted them. Eth. Prac. Bd. Op. No. 173 (1994). Minnesota officials were permitted to attend the dinners, but were required to pay for any food and beverages donated by corporations that lobbied in Minnesota. The Board also advised that, where the registration fee for the annual meeting of the Midwestern Legislative Conference of the Council of State Governments (CSG) was subsidized by contributions from Minnesota principals, Minnesota registrants could not accept this "gift" of a reduced registration fee. Eth. Prac. Bd. Op. Nos. 175 (1994) and 179 (1994).

The Board later reversed itself and found that the types of gifts that were prohibited in Advisory Opinions Nos. 173 and 175 should have been permitted. Camp. Fin. Bd. Op. No. 273 (1997). It found that both NCSL and CSG were groups whose membership was sufficiently formal to meet the requirement of “membership in a group” and that a majority of the members of each consisted of persons who were not Minnesota “officials.” So, when lobbyists or principals make gifts to NCSL that NCSL provides to all attendees at a conference, Minnesota officials may accept them. When lobbyists or principals make gifts to CSG that CSG uses to subsidize a lower registration fee, Minnesota officials may pay the same fee as officials from other states. Minnesota officials who are members of the meeting organizing committee may solicit lobbyists and principals for contributions to the organization to subsidize costs of a meeting. Camp. Fin. Bd. Op. No. 315 (1999).

## 2. Gifts Available to the Public Generally

Simply making a gift available to the public generally may not avoid the gift ban. In one situation, the Minnesota Medical Association asked the Board about making health screenings available in the Capitol to anyone who appears. Because the Minnesota Medical Association is a principal and no exception applies, this was a prohibited gift. Eth. Prac. Bd. Op. No. 167 (1994).

On the other hand, where a principal helped to underwrite the cost of a theatrical production by a nonprofit organization that presented it in performances that were free and open to the public, without any express or implied condition or understanding that the performances would be for the particular benefit of an official or group of officials, officials were not prohibited from attending the performances. Eth. Prac. Bd. Op. No. 227 (1996).

## B. Gifts by Family Members

The gift ban is not applicable to gifts given “by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.” Minn. Stat. §§ 10A.071, subd. 3(b) (2). This is designed to address the problem of a public official whose spouse is a lobbyist and to permit the spouse to give the public official normal family gifts. “Family” is not defined in the law and the Board has not yet defined the term in an advisory opinion or by rule.

# VIII. Gift Ban for Local Officials

The gift ban in chapter 10A, discussed in detail earlier in this memo, does not apply to most local officials. Instead, local officials are subject to the gift ban found in Minn. Stat. § 471.895.

## A. Operative Language

“An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.” Minn. Stat. § 471.895, subd. 2. A gift is defined the same as it is in the state gift ban: “money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.”

## B. Interested Person

Unlike lobbyists and principles at the state level who are required to report to the Board, there is no similar requirement for persons who lobby at the local level. Instead, the gift ban for local officials uses the term “interested person.” An interested person is defined as “a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.” Minn. Stat. § 471.895, subd. 1(c). There is no definition of what constitutes a “direct financial interest.”

## C. Local Official

A local official is defined as “(1) an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city; and (2) an elected or appointed member of a school board, a school superintendent, a school principal, or a district school officer of any independent school district.” Town officials are not subject to the gift ban.

## D. Exceptions

Like the gift ban in chapter 10A, the gift ban for local officials also has several exceptions. Minn. Stat. § 471.895, subd. 3. The exceptions are:

- Contributions given to local officials. A contribution is defined as “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.” A contribution “does not include a service provided without compensation by an individual.”
- Services to assist a local official in the performance of his or her official duties. This includes “providing advice, consultation, information, and communication in connection with legislation, and services to constituents.”
- Services of insignificant monetary value.
- A plaque or similar memento that recognizes individual services in a field of specialty or to a charitable cause. Note that there is no dollar amount limitation.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value. Again, note that there is no dollar amount limitation.
- Food or beverage given at a reception, meal, or meeting away from the recipient’s place of work, if the recipient appears to make a speech or answer questions as part of a program.

The gift ban does not apply if the gift is given in any of the following situations:

- 1) When the recipient is a member of a group, a majority of the members are not local officials, and an equivalent gift is given or offered to other members of the group;
- 2) When the gift is given by an interested person who is a family member of the recipient, unless the gift is given on behalf of someone who is not a family member; or
- 3) When the gift is given by a national or multistate organization of governmental organizations or public officials to attendees at a conference sponsored by that organization, if the gift is food

or a beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees; a majority of the dues paid to the organization must be from public funds.

Gifts to a local government are allowed. “Any city, county, school district or town may accept a grant or devise of real or personal property and maintain such property for the benefit of its citizens in accordance with the terms prescribed by the donor. Nothing herein shall authorize such acceptance or use for religious or sectarian purposes. Every such acceptance shall be by resolution of the governing body adopted by a two-thirds majority of its members, expressing such terms in full.” Minn. Stat. § 465.03.

#### **E. Enforcement**

The jurisdiction of the Board does not extend beyond chapter 10A, so the Board does not issue advisory opinions or enforce provisions of § 471.895. The enforcement mechanism is general criminal law. “When the performance of any act is prohibited by a statute, and no penalty for the violation of the same shall be imposed in any statute, the doing of such an act shall be a petty misdemeanor.” Minn. Stat. § 645.241. Within incorporated municipalities in the larger counties, prosecution of misdemeanors is normally handled by the city attorney. In other areas, it is done by the county attorney.