

**State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

THIS ADVISORY OPINION IS PUBLIC DATA PURSUANT TO A  
CONSENT FOR RELEASE OF INFORMATION SIGNED BY THE REQUESTER

Issued to:

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**ADVISORY OPINION 407**

**SUMMARY**

A lobbyist principal's providing officials with an opportunity to purchase tickets to an entertainment event through a process not available to the general public is a prohibited gift under Minnesota Statutes, section 10A.071.

**FACTS**

As legal counsel for the Hennepin County Board of Commissioners ("the County Board"), you ask the Campaign Finance and Public Disclosure Board, ("the Board"), for an advisory opinion on behalf of the County Board based on the following facts:

1. The County Board is the governing body of Hennepin County. All of the members of the County Board are "officials" under Minnesota Statutes, Section 10A.071, Subd. 1(c). Certain employees of Hennepin County are also the subject of this advisory opinion. Those employees are local officials of a metropolitan governmental unit and, thus, are "officials" under Minnesota Statutes, Section 10A.071, Subd. 1(c). Together these individuals are referred to as the Hennepin County officials.
2. The Minnesota Twins have leased Target Field for use as its home baseball stadium. The Minnesota Twins organization is a "principal", also referred to as a "lobbyist principal", under Minnesota Statutes, Section 10A.01, Subd. 33.
3. The Hennepin County officials have expended, in the requester's terms, "countless hours" related to developing the ballpark project and bringing the purpose of the ballpark legislation to a successful completion.
4. On April 12, 2010, the Twins will play the first regular season baseball game at Target Field ("Opening Day"). There will be formal opening ceremonies for Target Field immediately prior to the game that will involve local and national leaders. Opening Day is being designed as a community celebration of the new ballpark, the improvements to the surrounding area and the other benefits, tangible and intangible, that accrue to the state and the region from having a new venue for major league baseball. Hennepin County leaders, and other leaders and individuals, will be formally recognized during this event and several Hennepin County Commissioners will have speaking roles and other

formal roles in the public ceremonies immediately prior to the game.

5. As part of the Opening Day ceremonies, there will be formal recognition of some of the Hennepin County officials as well as other officials from Minnesota, Iowa, and North and South Dakota, and other local and national officials immediately prior to the game as part of a formal program. It is anticipated that some of these officials will be on the field, while others will be in several different seating sections.
6. It is anticipated that all tickets to the Opening Day game are going to be sold, such that the game will be a sell-out. Individuals will be able to obtain tickets to the game in one of the following ways. First, season ticket holders will be provided a ticket as part of their season tickets. Second, non-season ticket holders will be able to purchase tickets to the game through a lottery the Twins are holding. Winners of the lottery will be able to purchase tickets to the Opening Day game at face value. Third, individuals who do not obtain tickets directly from the Twins will be able to purchase tickets in the after-sale market.
7. In addition to providing tickets to season ticket holders and non-season ticket holders via the lottery, the Twins have set aside a total of 1,000 tickets to be sold at face value to individuals that the Twins are planning to invite to the game, so these individuals can be recognized. Specifically, the Twins have set aside a total of 1,000 tickets for entities that worked on Target Field ("Project Principals"). Among others, blocks of tickets are being provided to the primary construction company, a variety of sub-contractors, equipment vendors, architects, and, if legal, Hennepin County officials. These entities or their employees will pay the Twins contemporaneously the face-value price for these tickets.
8. The Twins have asked the Hennepin County officials to attend the Opening Day ceremonies and to participate in the program. It is the policy of the Minnesota Twins that a ticket is needed to enter Target Field on Opening Day. Accordingly, assuming it is legal, the Twins would like to set aside a block of tickets for Hennepin County Commissioners and employees, so they can purchase tickets and participate in the pre-game program and the events during the game. Several County Commissioners will have formal roles in the pre-game program, other Commissioners and Hennepin County officials will be recognized prior to the game and perhaps during the game on the scoreboard and other places, but will not have a formal role in the pre-game program. The tickets set aside for this purpose will be equivalent to those the public will be able to purchase through the lottery and equivalent to those the Twins are reserving for other entities that worked on Target Field. In other words, they are not premium seats, seats in a suite, or seats held by individuals with season tickets.
9. The Twins are planning on having some project participants, including some Hennepin County officials, participate in various pre-game and in some in-game activities, possibly including the seventh-inning stretch. More specifically, it is expected that four County Commissioners will be on the field before the opening day game. One Commissioner will speak and the others will participate in the opening flag ceremony. Other officials will be in the stands and will be recognized or referenced by speakers and on the scoreboard.

## **Issue**

Would an offer by the Minnesota Twins to allow Hennepin County officials the right to purchase a ticket to the Minnesota Twins opening game from a pool of tickets reserved for people directly and substantially involved in bringing the ballpark project to successful completion be a prohibited gift under Minnesota Statutes, Section 10A.071?

## **Opinion**

### **Existence of a covered gift**

Based on the stated facts, the individuals subject to this opinion who would be allowed to purchase tickets under the proposed plan are “officials” subject to the gift prohibitions of §10A.071. The Minnesota Twins organization, the entity making the offer, is a lobbyist principal, also subject to §10A.071.

Because the individuals purchasing tickets under the proposed plan will pay the full regular price for those tickets, the potential gift under consideration is not the gift of a free or discounted ticket. Rather, the gift is the right to purchase tickets from a pool under terms that guarantee the purchaser successful completion of the transaction at face value when that same right is not available to members of the public.

The Board has examined the concept of preferential treatment for ticket purchases in previously issued advisory opinions, always concluding that such treatment was prohibited by §10A.071. In Advisory Opinion 178, issued in 1994 shortly after Section 10A.071 was enacted, the Board was asked whether an event promoter could offer single-event tickets to public officials prior to the time those same tickets were offered to the general public. The Board viewed the transaction as a service and concluded that the gift of the service of providing officials with a purchasing opportunity not available to the public was prohibited.

Subsequent to the issuance of Advisory Opinion 178, the Board adopted Administrative Rule 4512.0100, Subp. 3(c) which includes in the definition of a gift under §10A.071, “giving preferential treatment for purchases”.

In Advisory Opinion 287, issued after the adoption Rule 4512.0100, the Board considered the request of a lobbyist principal to allow officials to use the principal’s box seats at an event. Use of a box seat required the principal to pay a premium for the box itself and also to purchase 24 tickets to the event. The principal proposed allowing the official to use the box if the official paid the face value for one of the tickets. The Board concluded that the value of sitting in a box seat exceeded the face value of the ticket. Thus, the transaction would result in a prohibited gift. If there was an after-market to establish the value of the seat and the right to use the box, the official could pay that value and the transaction would not be a gift. If there was no after-market for similar seats, the gift was completely prohibited.

In the first of these two opinions, the Board considered the preferential treatment to be a prohibited service. In the second opinion, the emphasis was on the value of the difference in price between the price offered to the official and the price which a member of the public would be required to pay. In the latter analysis, the transaction was discussed as a gift of entertainment at less than market value. In the present matter, it is not necessary to re-examine whether a gift of preferential treatment for purchases is a service of a gift of entertainment at

less than market value. Rule 4512.0100, Subp. 3(c), makes it clear that if a preference in a sales transaction is offered, a gift results.

It is clear that the proposed method of providing tickets to the Hennepin County officials results in preferred treatment for those officials compared to members of the general public. Board research shows that as of February 19, 2010, the lottery method of obtaining tickets to the opening day game was no longer available<sup>1</sup>; the lottery being closed. As of that same date, tickets were available in the after-market, a market commonly operated by ticket brokers, for prices beginning at \$170.<sup>2</sup> Board research suggests that tickets priced at the \$170 after-market level ("field view" tickets) sell at a single-ticket face value price of \$11 to \$16.<sup>3</sup>

Requester suggests that this event should be treated similarly to events such as interest group dinners to which officials are invited but the general public is not. In the case of such events the Board has opined that an official may pay the value of food, beverages, and entertainment provided at the event and no gift will result.

It is not necessary for the Board to re-examine its position with respect to interest group dinners. That question is not before the Board in this matter. More importantly, the opening day game is easily distinguishable from those events. The general public is invited to the opening day game. Anyone who desires to attend can obtain a ticket, though at a high price in the after-market. Certain officials, on the other hand would be able to purchase their tickets at face value through a pool not available to the general public.

Having concluded that the proposed transaction constitutes a gift that is governed by §10A.071, the Board turns to an examination of whether the gift is nevertheless permitted under an exception to the general prohibition.

### **Membership in a group**

Section 10A.071 provides for certain exceptions to the general prohibition of gifts to officials. One such exception is for gifts to members of a group. Specifically, the statute provides that:

"The prohibitions in this section 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 . . ."

The Board has addressed the requirements of this exception in several advisory opinions and has concluded that to qualify for the exception a group must have a formal organization and purpose and a membership that is well-defined and not self-selecting. See, e.g., Advisory Opinions 220, 273, 335, 361, and 393. Groups which have met the requirements to qualify for this exception have included national membership organizations; the American Automobile Association, a paid membership organization; and members of the Minnesota delegation to a political party convention.

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<sup>1</sup> Source: [http://minnesota.twins.mlb.com/min/ticketing/ticket\\_opportunity.jsp](http://minnesota.twins.mlb.com/min/ticketing/ticket_opportunity.jsp). Visited February 19, 2010.

<sup>2</sup> Source: <http://www.ticketkingonline.com/ResultsTicket.aspx?evtid=1186439&event=Minnesota+Twins+vs.+Boston+Red+Sox>; Viewed February 19, 2010.

<sup>3</sup> Source: [http://minnesota.twins.mlb.com/min/ticketing/singlegame\\_pricing.jsp](http://minnesota.twins.mlb.com/min/ticketing/singlegame_pricing.jsp). Visited February 19, 2010.

The Board has concluded that to qualify for the exception, a certain level of formality in both the element of membership and the definition of the group are required.

The “group” involved in the immediate advisory opinion request has no concept of membership in the ordinary sense of the word. The scope of the group is solely in the discretion of the lobbyist principal, who selects people to be “members”. There is no concept of joining the group or becoming a member since there is no membership process or criteria other than selection by the principal.

The fact that the individuals selected by the lobbyist principal had significant involvement in the development of the stadium project is not sufficient to define them as a group for §10A.071 purposes. In addition to lacking a concept of “membership, the “group” itself is not one that can be recognized under §10A.071. The group has no purpose other than to identify persons who will be allowed to purchase tickets under the proposed program. The group does not exist outside the ticket purchase program and will not continue to exist after the opening day game is over.

The proposed ticket plan does not qualify for the exception to the gift prohibition based on a recipient’s membership in a group.

**Services to assist an official in the performance of official duties.**

Section 10A.071, subd. 3(a)(2) provides an exception to the gift prohibition 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”.

In order to determine whether the above exception might apply, the Board must examine in more detail the exact scope of the proposed participation of Hennepin County officials in the opening day ceremonies.

Based on the facts it appears that there are two distinct groups of Hennepin County officials involved. The first group, consisting of four Commissioners, will participate on the field during the opening ceremonies. The second group will be in the stands and may be recognized or referenced by speakers and also on the scoreboard. The second group will merely be present for their recognition. This presence is not required for the recognition to be given and is not an official duty of the official. Thus, the exception can have no application to this second group.

With respect to the first group, selected County Commissioners, the Board considers attendance at major public events as representatives of the County to be a part of their official duties. However, the participation of these officials at this particular event is primarily, if not exclusively, limited to opening ceremonies that will take place before the baseball game. While etiquette may demand that an invited speaker be permitted to attend the entertainment following the speech, it is not possible to extend that concept to create a new exception to the gift prohibition of §10A.071.

While the Minnesota Twins state that everyone entering Target Field on opening game day must have a ticket, this appears to be an internal policy which could be changed or suspended at the organization's discretion. It does not provide support for the position that an official may not enter the stadium for a ceremony without being allowed to purchase a ticket under the proposed plan. Certainly there will be groups of individuals entering Target Field under some credentialing system not involving holding a ticket. Likely among these groups are team members, coaches and coaching staff, umpires, and members of the media.

Presumably, the Hennepin County officials who are to participate in opening ceremonies could be credentialed in a way to allow them into the stadium for the ceremony without the need for a ticket to stay for the opening day game.

The facts provided by requester are unclear about the extent of Hennepin County officials' direct participation in ceremonies or activities after the opening ceremonies are completed. The facts state: "The twins are planning on having some project participants, including some Hennepin County officials, participate in various pre-game and in some in-game activities, possibly including the seventh-inning stretch."

It is clear that the formal official ceremonies on opening day will occur prior to the baseball game. To the extent that in-game activities in which Hennepin County officials will participate are undertaken, these activities do not appear to be sufficiently related to the performance of official duties to permit application of the exception.

The Board wishes to make it clear that it has not reached the question of whether providing tickets to the baseball game would *ever* fall into the exception for services to assist an official in the performance of official duties. Providing access to entertainment has not previously been considered to be among the type of services that may be provided.

The Board does not reach this question because it has concluded that facilitating the purchase of a ticket to the opening day baseball game is not necessary to assist the officials in the performance of their duties.

### **Conclusion**

The Board does not have the authority to create new exceptions to Minnesota's prohibition of gifts from lobbyist principals to officials. Neither does it have the authority to determine that the prohibition should not be applied because its presumed purposes are not violated by a particular gift under consideration. The Board is bound to apply the statute as written.

The Board is also governed by Minnesota Statutes §645.16, which states that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." The Board recognizes that Section 10A.071 is a broad and strict prohibition on most gifts from lobbyist principals to officials. The exceptions to the prohibition are specific and limited. In interpreting Minnesota's gift prohibition, the Board construes the prohibition broadly and the exceptions narrowly.

Based on the facts and its analysis described above, the Board concludes that providing Hennepin County officials with the opportunity to purchase opening day baseball game tickets under the proposed plan would result in a prohibited gift to any official purchasing those tickets.

Issued March 2, 2010

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Bob Milbert, Chair  
Campaign Finance and Public Disclosure Board

## Statutory Citations

### 10A.01 DEFINITIONS.

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#### **Subd. 22. Local official.**

"Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

. . .

#### **Subd. 33. Principal.**

"Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

### 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED.

#### **Subdivision 1. Definitions.**

(a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

#### **Subd. 2. Prohibition.**

A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

#### **Subd. 3. Exceptions.**

(a) The prohibitions in this section do not apply if the gift is:

. . .

(2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

. . .

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group. . .



**State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

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

**ADVISORY OPINION 408**

**SUMMARY**

Use of a motor vehicle as an advertising device for a principal campaign committee may result in an in-kind contribution from the vehicle owner to the committee even when the vehicle is not being used specifically for campaign activities.

**FACTS**

As treasurer of a candidate's principal campaign committee, ("the Committee"), you ask the Campaign Finance and Public Disclosure Board, ("the Board"), for an advisory opinion based on the following facts:

1. The candidate's family's motor vehicle is used when the candidate does door-knocking, puts up signs, attends meetings and engages in other campaign-related activities.
2. The candidate and the candidate's family also use the family vehicle for normal family activities.
3. In the past the Committee has placed bumper stickers and magnetic signs on the vehicle promoting the candidate's election.
4. As treasurer, you assume that placement of bumper stickers, magnetic signs, or even signs mounted to the roof of the vehicle would not result in a recognizable in-kind contribution from the candidate to the Committee except when the vehicle is used specifically for campaign purposes and the \$20 per day threshold for disclosure of vehicle use has been met. In other words, you assume that there is no recognizable value in having various signs on the vehicle when it is parked or used for family activities.
5. You also assume that if the vehicle needed re-painting, you could paint it at your own expense and select a design or color scheme that would draw more attention to the vehicle and, thus, to the campaign signs it carried. You assume that this painting would be a personal expense and would not be recognizable as a contribution to the Committee.
6. Based on your assumptions, you ask whether having the vehicle "wrapped" in a professionally produced vehicle wrap that incorporates the campaign signs and bumper stickers would be treated differently for campaign finance purposes.

7. In the alternative, you ask whether you could wrap the vehicle in a patriotic motif and then attach the signs and bumper stickers and not report the cost of the wrap or use of the vehicle as a campaign expenditure.
8. In the event that you do wrap the vehicle and intend to leave the wrap on after the election, you ask whether the cost of the wrap would be a personal or a campaign expense.

### **Issue**

Does the use of a motor vehicle for advertising purposes result in a recognizable campaign finance transaction even if the vehicle is not being used for transportation directly related to campaign activities?

### **Opinion**

The “Facts” section of this opinion includes not only facts, but a statement of some assumptions made by the requester. These assumptions are included for completeness and because the Board believes that some of the assumptions may not reflect an accurate understanding of the requirements of Minnesota’s campaign finance laws.

A campaign expenditure is an expenditure that is made for the purpose of “influencing the nomination or election of a candidate . . .”. When examining the “purpose” of an expenditure, the Board will review the facts surrounding the matter. The Board is not necessarily bound by an individual’s statement of his or her purpose when the facts suggest some other purpose.

Thus, the Committee’s assumption that painting the family vehicle in a way that would make it stand out would be a personal expense is not necessarily correct. The Board might take notice of the fact that very few people ever have a vehicle repainted and that even fewer people would select a color or design scheme to make the vehicle stand out. The Board might conclude that the actual purpose of the painting was to influence the nomination or election of the candidate and, thus, that the expense is a campaign expenditure.

The Board has not issued an advisory opinion on the extent to which a vehicle may be adorned with signs and stickers before the use of the vehicle itself becomes a recognizable advertising expense even when the vehicle is not being driven for a political activity. If bumper stickers are one end of the vehicle advertising spectrum, the Committee’s request presents the other end of that spectrum.

If use of a motor vehicle automobile for advertising purposes is an in-kind contribution from the owner to the Committee, the use is to be reported at fair market value. Minnesota Rules, Part 4501.0100, subp. 3a, defines “fair market value” as “the amount that an individual would pay to purchase the same or similar service or item in the open market.”

Board staff completed research regarding the use of motor vehicles as advertising media. In particular staff looked at the concept of designing a plastic advertising wrap for application to a motor vehicle and the cost of the advertising itself.

The concept of vehicle wrapping for advertising purposes is not limited to busses and light rail trains. In fact, there is at least one Minnesota company that sells advertising wrapped onto taxicabs in the Twin Cities. Staff research disclosed that in addition to the cost of production and application of the advertising material, there is a "media cost", which is the advertising value of the vehicle driving around with the wrap on it. For a taxi, the cost for wrapped doors is \$375 per side per month. The cost of a wrapped hood is \$350 per month. According to the owner of the company in an interview with Board staff, the cost of an entirely wrapped vehicle would be \$1,200 - \$1,500 per month.

In some cities, there is a market for drivers who are willing to have their vehicles wrapped as advertising. Board staff spoke with a representative of a firm that operates a vehicle wrapped advertising business in limited markets, not including Minnesota. The representative informed staff that the monthly cost to a client for advertising with a wrapped automobile is \$1,000, plus production costs. Drivers are paid varying amounts depending on a number of factors.

When a vehicle's appearance is modified by signs, bumper stickers, paint, or other means to call attention to it, there will be a line beyond which the value of the use of the vehicle for advertising purposes is a recognizable campaign expenditure aside from the mileage used for campaign purposes. In the case of a specially painted or wrapped vehicle, that line has been crossed and a reportable transaction arises.

There is some difficulty in valuing an in-kind contribution such as the one the Committee describes. The applicable standard is to determine the fair market value of the transaction. The period of valuation should be reasonable and consistent with industry or other standards if they exist. In the case of valuation of an advertising vehicle, a one-month period would be reasonable.

The Committee must use a reasonable method to determine fair market value of the advertising. A method is reasonable if it takes into account markets and other relevant factors. A committee valuing a transaction must be able to explain its method of valuation and show why the method was reasonable. It is not sufficient to merely pick a number and apply it.

The Board recognizes that while the Committee states that the candidate will use the vehicle for routine family business, it is not possible in an advisory opinion to specifically address every possible use of a vehicle for advertising. For example, the Committee could park the vehicle at strategic locations during the day, incurring no mileage cost, but gaining from the advertising. The Committee could use several vehicles for the same purpose. If the advertising value of the vehicle is not recognizable for campaign finance purposes, the Committee could wrap the vehicles of its most active volunteers and have a fleet of advertising vehicles driving around without incurring any campaign expenditure above the production cost for the wrap.

Depending on the actual use of a wrapped advertising vehicle, the Board anticipates that a committee may conclude that the reasonable value of a wrapped personal motor vehicle is between \$750 and \$1,000 per month. However, each determination is up to the individual committee and will depend on factors unique to that committee.

Issued May 4, 2010

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Bob Milbert, Chair  
Campaign Finance and Public Disclosure Board

### Statutory Citations

#### 10A.01 DEFINITIONS.

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Subd. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

. . .

#### 10A.20 CAMPAIGN REPORTS.

. . .

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions . . . A donation in-kind must be disclosed at its fair market value. . . .

#### Minnesota Rules

##### 4503.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A. The definitions in chapter 4501 and Minnesota Statutes, chapter 10A, also apply to this chapter.

. . .

Subp. 3a. **Fair market value.** "Fair market value" means the amount that an individual would pay to purchase the same or similar service or item on the open market.