

Gift Law Now Applicable to School District Officials

By MSBA Staff

As part of the Health Insurance Transparency Act (HITA) sponsored and supported by Education Minnesota, the 2014 Legislature made the local government "gift law" applicable to school district officials for the first time. Specifically, Minnesota Session Law Chapter 279 (HF 2180), section 13 (effective July 1, 2014) amends the definition of "local official" in M.S. 471.895, Subd. 1., to include the following: "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."

In short, the gift law, which has been in existence since 1994, provides that an "interested person" may not give a gift or request another to give a gift to a local official, and that a local official may not accept a gift from an interested person. In our effort to share common direction on this issue, MSBA staff have worked with other statewide organizations — the Minnesota Association of School Administrators, the Minnesota Association of School Business Officials, the Minnesota Elementary School Principals' Association, the Minnesota Association of Secondary School Principals, and the League of Minnesota Cities — to develop a plan to educate our respective members about this new law.

Who is an "interested person"?

An "interested person" is 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." The law does not require that a specific decision involving the interested person exist at the time of the gift. Accordingly, the law likely applies to anyone who might at some time financially benefit from a decision the school official may make. As a result, the law affects the actions of almost any vendor (attorneys, financial advisors, accountants, contractors, sale representatives, etc.) who is likely to have a contract or financial arrangement with a school district.

What is a "gift"?

A "gift" is defined to include "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." In short, a gift is almost anything of value that might be given to a local official.

Who is a "local official"?

Again, in addition to city and county officials, the law now specifically applies to the defined set of school officials mentioned above. Also important to note is that the law not only applies to the elected decision makers, but it also applies to staff who either make decisions themselves or are in a position to recommend decisions. Accordingly, the most conservative and, thereby, the safest approach in addressing this law would be to apply it to all employees, so school boards should consider adopting MSBA/MASA Model Policy 421 – Gifts to Employees.

Do exceptions to the law exist?

Yes, the law has a lengthy list of exceptions, described below:

- political contributions — given in accordance with law;
- services to assist a local 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; this exception likely permits contributions to, or sponsorship of, education conferences attended by school officials;
- services of insignificant monetary value;
- a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

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- a trinket or memento costing \$5 or less; under this exception, items valued at less than \$5 may be given away and received at vendor booths at conferences;
- informational material of unexceptional value;
- food or a beverage may be given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program; note that this exception is the only one that allows for giving of food or beverage and, likely, the \$5 "trinket or memento" exception doesn't apply to food and beverages;
- gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is given to the other members of the group;
- a gift by an interested person 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; and
- gifts given by a national or multi-state organization of governmental organizations or public officials (if a majority of the dues to the organization is paid from public funds) 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.

Also important to note is that the law prohibits gifts to school officials, not to school districts. Accordingly, no gift law problem exists if the gift is given to the school district itself.

In addition to this communication piece, MSBA is currently reviewing the "gift law" as it pertains to MSBA's events and trainings. As a final note, MSBA strongly encourages school board members to apply the most conservative interpretation of the "gift law" and simply decline personal "gifts" from "interested persons."

Other Post-Employment Benefits (OPEB) Reporting Changes

By Gary Lee, MSBA Director of Membership Services

One of the smaller effects of the 2014 legislative session is the change to the required reporting of Other Post-Employment Benefits (OPEB) trusts. Trusts created by school districts to fund the ongoing costs of OPEB will have one of three authorized trust administrators: the Public Employees Retirement Association, a bank or banking association, or an insurance company or agent.

These trust administrators have previously been required to report fiscal year activity as prescribed by the state auditor. The amended law (M.S. 471.6175) now requires that the fiscal report be electronically submitted to the state auditor (and should also be submitted to your school district) no later than October 25 following the end of the fiscal year. The amended law also provides the exact information that this report must contain.

The law is effective August 1, 2014, with the initial amended report due October 25, 2015. MSBA suggests that school districts with OPEB trusts contact the trust administrators and inform them of this new statutory requirement.



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Call on MSBA to analyze your Master Agreement

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