

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

Rev. Stanley Carter
Liberty Christian Chapel of Ypsilanti
6130 South Miami
Ypsilanti, Michigan 48197

Dear Reverend Carter:

This is in response to your letter concerning Michigan's new Lobbyist Registration and Reporting Act, 1978 PA 472 ("the Act"), and the proposed administrative rules developed to implement the Act.

In your letter, you questioned whether the Act's prohibition against the giving of gifts would prevent a lobbyist agent from giving a paperback book to a legislative aide. Section 4(1) of the Act defines "gift" to mean anything of value, the value of which exceeds \$25.00 in any one-month period. Thus, if the lobbyist agent gives a single book valued at less than \$25.00 to an aide, and gives nothing else within the next one-month (30-day) period, the agent will not fall within the proscription of the Act.

You also inquire as to whether alcohol (cocktails, beer, and wine) provided to a number of public officials at a "get acquainted" party constituted a gift. I would again draw your attention to section 4(1) of the Act which states that:

"Gift does not include:

* * *

"(d) A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption."

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There may, however, be reporting implications stemming from such activities. Section 8(2) of the Act provides that:

"(2) Expenditures for food and beverage provided a public official shall be reported if the expenditures for that public official exceed \$25.00 in any month covered by the report or \$150.00 during that calendar year from January 1 through the month covered by the report. The report shall include the name and the title or office of the public official and the expenditures on that public official for the months covered by the report and for the year. Where more than 1 public official is provided food and beverage and a single check is rendered, the report may reflect the average amount of the check for each public official. If the expenditures are as a result of an event at which more than 25 public officials were in attendance, or, are a result of an event to which an entire standing committee of the legislature has been invited in writing to be informed concerning a bill which has been assigned to that standing committee, a lobbyist or a lobbyist agent shall report the total amount expended on the public officials in attendance for food and beverage and shall not be required to list individually. In reporting those amounts, the lobbyist or lobbyist agent shall file a statement providing a description by category of the persons in attendance and the nature of each event or function held during the preceding reporting period."

You stated in addition, that there appears to be no provision in the rules which require that a lobbyist be notified when a complaint has been filed against him or her. While it is true that the rules themselves contain no such requirement, the Act provides in section 14(2) that:

"Notice shall be given to a person within 5 days after a sworn complaint is filed against a person. Notice shall include a copy of the sworn complaint."

You also asked why registration forms and reporting statements have not yet been provided to lobbyists by the Department of State. Please be advised that the Act, although signed by the Governor, is not yet fully operational. The registration and reporting provisions will be effective only after administrative rules have been formally promulgated. The Department is and has been for some time deeply involved in the rule promulgation process. However, in all likelihood, the Act will not take effect until sometime early next year.

You lastly inquired as to the reporting obligations of lobbyists with "meagre means." The Legislature in the Act anticipated the problems of small and part-time lobbyists and provided an exemption for them. Section 5(4) and


Rev. Stanley Carter
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5(5) of the Act indicate that a lobbyist is a person whose expenditures for lobbying exceed \$1,000.00 a year, or \$250.00 a year if expended on a single public official. The Act also provides that a lobbyist agent is a person who receives compensation or expense reimbursement in excess of \$250.00 in any one-year period. These provisions, when read together, will result in a determination that a number of lobbyists with limited finances do not fall within the purview of the Act.

A copy of this Act is enclosed for your use.

Please note that this response is for informational purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cw

Enc.

cc: Richard H. Austin

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

April 1, 1981

Mr. Lawson E. Becker
Warner, Norcross & Judd
900 Old Kent Building
One Vandenburg Center
Grand Rapids, Michigan 49053

Dear Mr. Becker:

This is in response to your request for an interpretation of the act which regulates lobbyists ("the Act"), 1978 PA 472, as amended, with respect to when the requirements of the Act must be met by lobbyists and lobbyist agents.

Section 20 fo the Act (MCL 4.430) provides that sections 7 through 13 and 21 do not take effect "before 6 months after the promulgation of a rule, as defined in section 5(6)" of the Administrative Procedures Act ("the APA"), 1969 PA 306. "Promulgation of a rule" is defined in section 5(6) of the APA (MCL 24.205) as:

"(T)hat step in the processing of a rule consisting of the filing of a rule with the Secretary of State."

The promulgation of the Department of State's Lobbyists Registration Rules ("the Rules"), 1980 AACS R4.411--R4.473, occurred when the rules were filed with the Secretary of State on December 16, 1980. Therefore the sections indicated above take effect on June 17, 1981. A person who is a lobbyist on that date must file a registration form with the Secretary of State within 15 days, or not later than July 2, 1981, to avoid a late registration fee required by section 7(3) of the Act (MCL 4.417). Similarly, a person who is a lobbyist agent on that date must file a registration form within 3 days, or not later than June 20, 1981, to avoid the late registration fee.

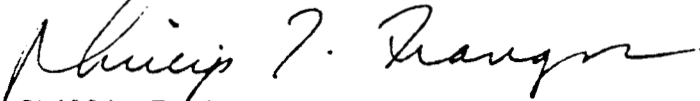
You have asked when the first semi-annual report required by section 8 of the Act (MCL 4.418) must be filed and what period of time is to be covered by that report. Since section 8 takes effect on June 17, 1981, the first report filed pursuant to that section is due on August 31, 1981 and covers the period June 17, 1981 to July 31, 1981, inclusive. The January 31, 1982 report covers the period August 1, 1981 to December 31, 1981, inclusive, with cumulative totals covering June 17, 1981 through December 31, 1981, inclusive.

Mr. Lawson E. Becker
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You have also asked what date people must begin keeping the records required to be obtained and preserved pursuant to section 9 of the Act (MCL 4.419). Like section 8, section 9 does not take effect until June 17, 1981. All transactions which occur on or after June 17, 1981 are subject to the requirements of section 9.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 27, 1981

Honorable Thomas J. Anderson
House of Representatives
State Capitol Building
Lansing, Michigan 48909

Dear Representative Anderson:

Your request for a declaratory ruling regarding the lobbyist reporting act ("the Act"), 1978 PA 472, has been referred to me for a response.

In your letter you indicate you are the current Chairman of the Michigan Energy and Resource Research Association (MERRA), an association "dedicated to the business of bringing energy and resource research dollars to Michigan." The association is made up of industrial and utility corporations as well as universities and government agencies. You have stated your question as follows:

"A question arises, under the new lobbyist law rules to become effective June 18, 1981, as to whether a corporation representative sitting on the MERRA Board of Trustees or any similar board, on which legislators or government representatives sit, can do so without registering as a lobby agent, since the board's activities would place him in contact with legislator(s) or other government official(s)."

To answer your question it is necessary to review the activities which are covered by the Act. In pertinent part, section 5(2) of the Act defines lobbying as follows:

"(2) 'Lobbying' means communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." (emphasis added)

Section 5(3) defines the term "influencing" as follows:

"(3) 'Influencing' means promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies, or analysis."

Not every contact or communication between a public official and another is lobbying which would come within the coverage of the Act. When a person makes expenditures in excess of the threshold amounts for direct communication with an official in the executive or legislative branch of state government for the purpose of influencing official action, the provisions of the Act and rules regarding registration and reporting begin.

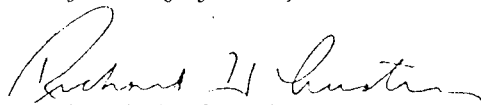
If the other members of MERRA communicate with you or other public officials for the purpose of formulating MERRA policies, there is no "lobbying." The Act does not require registration and reporting merely because a person is in proximity to or communicates with a public official. On the other hand, if another board member encourages you to vote for or against a bill or to introduce a bill or asks you to intervene on his behalf with an administrative agency, the board member would be "lobbying" you. The board member's expenditures for that communication must be counted when determining if the member is a lobbyist or lobbyist agent or if the company which employs the member is a lobbyist.

In addition, MERRA itself could become a lobbyist if it makes expenditures in excess of the threshold amount for the purpose of influencing legislative or administrative action. Expenditures by the organization after a decision to lobby is made would then result in registration and reporting requirements for both the lobbying organization and any lobbyist agents which it compensates or reimburses.

At the present time the Secretary of State is enjoined from implementing the Act pursuant to an order of the Circuit Court for Ingham County. When that litigation is concluded the Secretary of State will take whatever action has been deemed proper by the judicial system.

This response is a declaratory ruling pursuant to rule 4 of the rules promulgated to implement the Act (1980 AACRS R4.414).

Very truly yours,


Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 3, 1981

Mr. Kurt Schindler, County Planner
Manistee County Planning Commission
Manistee Courthouse Building
Manistee, Michigan 49660

Dear Mr. Schindler:

This is in response to your request for an interpretation of the act which regulates lobbyists ("the Act"), 1978 PA 472, with respect to the activities of the Manistee County Planning Commission.

You indicate the County Planning Act, 1945 PA 282, as amended, evidences a legislative intent to allow planning commissions to communicate with various branches of state and local governments. You feel application of the Act to the Manistee County Planning Commission would violate the spirit of the Planning Commission's enabling legislation.

While the Act does regulate certain types of lobbying activities, it is primarily a reporting act and it does not prohibit any verbal or written communication. As you indicate, the Planning Commission normally spends in excess of \$250 per public official and \$1,000 per year on lobbying activities. If so, the county of Manistee will be a lobbyist as defined in section 5(4) of the Act (MCL 4.415). Every person who receives compensation or reimbursement of actual expenses in excess of \$250 in a twelve month period for lobbying on behalf of the county will be a lobbyist agent. This includes employees of the county or any of the county's commissions or subdivisions. However, section 5(7) of the Act expressly states that a lobbyist or lobbyist agent does not include:

"(b) All elected or appointed public officials of state or local government who are acting in the course or scope of that office for no compensation, other than that provided by law for the office."

This means the elected or appointed members of the Commission may lobby without becoming lobbyist agents for the county and without having their salaries included within the amount reported by the county as lobbying expenditures. On the other hand, an employee of the Commission will become a lobbyist agent if the \$250 threshold is met. This is because an employee of a county does not come within the elected or appointed public official exemption (see section 5(7)(c)(ii)).

Mr. Kurt Schindler
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September 3, 1981

Regardless of whether the employee meets the threshold, the county becomes a lobbyist if all its expenditures for lobbying meet the thresholds set forth in the Act and it must report all the compensation and reimbursements paid to the employee for lobbying. Perhaps this can best be illustrated by an example:

Suppose the Commission employs a planner earning \$24,000 per year. Assume twenty percent of the planner's time (\$4,800) is spent lobbying (writing letters, talking on the telephone, and talking personally to public officials in the executive or legislative branches of state government in an effort to influence their administrative or legislative action) and thirty percent of the planner's time (\$7,200) is spent preparing to lobby (drafting speeches to give to legislative committees, compiling data to be used when lobbying, researching the law in other states to find support for a position the Commission has decided it wants to advocate to a public official, etc.).

The planner is a lobbyist agent because of receiving more than \$250 compensation for lobbying, but the planner would file semi-annual reports which indicate no expenditures (\$0.00) made for lobbying. The planner received compensation but made no expenditures.

The county would be a lobbyist and would report \$12,000 (\$4,800 + \$7,200) plus any other expenditures made for lobbying, such as, computer time and programming required to assemble data for the planner to use when preparing to lobby and bills for long distance telephone calls to public officials. An expenditure may or may not be reportable depending on when the decision to lobby is made. If the Commission takes aerial photographs, compiles data, or researches the law in other states before it decides whether or not to lobby, there would be no expenditure for lobbying to report. After a decision to lobby is made there may be expenditures for reproducing the photograph or putting the data into a more suitable form for presentation to the public official, but the initial cost of the photographs or data is still not reportable as lobbying expenditures.

In light of your comment regarding the cost of travel from Manistee to Lansing, it should be pointed out that travel expenses to visit and return from visiting a public official are expressly not "expenditures" as defined in section 3(2) of the Act (MCL 2.413).

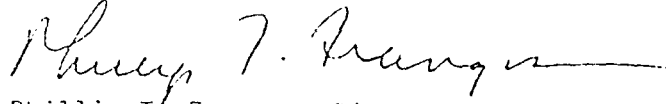
In conclusion, the Act does encompass the lobbying activities of counties, county planning commissions, and employees of counties and commissions.

Mr. Kurt Schindler
page three
September 3, 1981

Those entities and individuals who exceed the thresholds must register as lobbyists and lobbyist agents and file semi-annual reports.

This response is informational and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos", with a long horizontal flourish extending to the right.

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



3-81-LI

LANSING

MICHIGAN 48918

September 4, 1981

John T. Morberg, Director
House Fiscal Agency
Roosevelt Building, 3rd Floor
222 Seymour
Lansing, Michigan 48901

Dear Mr. Morberg:

Your letter asking for a confirmation of your conclusion that staff members of the House Fiscal Agency are not required to register and report pursuant to the lobby act (the "Act"), 1978 PA 472, has been referred to me for a response.

In your letter you set forth the statutory authority of the House Fiscal Agency. You also indicate that the Governing Board of the House Fiscal Agency has approved a policy and procedure manual which specifies the functions of the agency as:

1. providing service to the House Appropriations Committee regarding all legislative fiscal matters, and
2. providing service regarding fiscal information to all members of the House of Representatives.

You also state that:

"The staff, on behalf of the Agency or the committee, cannot originate or implement policy."

Based on the above you conclude that the staff of the House Fiscal Agency is not required to register and report pursuant to the Act because they function in a "nonpolicymaking capacity."

John T. Morberg
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Section 5(10) of the Act (MCL 4.415) defines the term "Official in the legislative branch" as follows:

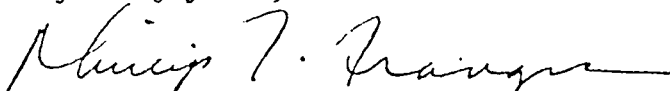
"(10) 'Official in the legislative branch' means a member of the legislature, a member of an official body established by and responsible to the legislature or either house thereof, or employee of same other than an individual employed by the state in a clerical or nonpolicy-making capacity."

This definition is used in the Act to delineate persons with whom direct communication for the purpose of influencing official action may result in an expenditure to be reported. A determination that an employee of the House Fiscal Agency acts in a "nonpolicy-making capacity" simply means that a lobbyist or lobbyist agent is not required to report expenditures made in communicating directly with the staff member.

The Secretary of State in the course of preparing for the implementation of the Act has asked the members and various official bodies established by the Legislature to forward the names of policymaking employees. This was done so that a list could be prepared that would notify the lobbying community which legislative employees act in a policymaking capacity. Based on your response employees of the House Fiscal Agency will not be included on the list of policymaking legislative employees.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 7, 1983

Honorable Ed Fredricks
Michigan State Senate
State Capitol
Lansing, MI 48909

Dear Senator Fredricks:

This is in response to your request for an interpretation of the lobby act (the "Act"), 1978 PA 472, as it relates to employees of the legislature who serve in non-clerical or policy-making capacities.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Pursuant to section 5(10), "official in the legislative branch" includes both state legislators and certain legislative employees. Specifically, section 5(10) provides:

"Sec. 5(10) 'Official in the legislative branch' means a member of the legislature, a member of an official body established by and responsible to the legislature or either house thereof, or employee of same other than an individual employed by the state in a clerical or nonpolicy-making capacity." (emphasis added)

Thus, employees of the legislature or an official body established by the legislature, who do not function in clerical or nonpolicy-making roles, are officials in the legislative branch capable of being lobbied.

In order to identify these and other officials, the Department of State is compiling a list of persons who can be lobbied under the Act. To assist in this endeavor, the Department has asked each member of the legislature to provide the names of employees serving on his or her staff who function in non-clerical, policy-making roles. Before responding, you have asked for clarification of the distinction between "policy-making" and "nonpolicy-making capacities."

The United States Supreme Court, in declaring unconstitutional the dismissal of nonpolicy-making government employees based upon their political affiliation, made the following relevant observation:

"No clear line can be drawn between policy-making and nonpolicy-making positions. While nonpolicy-making individuals usually have limited responsibility, that is not to say that one with a number of responsibilities is necessarily in a policy-making position. The nature of the responsibilities is critical. Employee supervisors, for example, may have many responsibilities but those responsibilities may have only limited and well-defined objectives. An employee with responsibilities that are not well defined or are of broad scope more likely functions in a policy-making position. In determining whether an employee occupies a policy-making position, consideration should also be given to whether the employee acts as an adviser or formulates plans for the implementation of broad goals." Elrod v Burns, 427 US 347, 367-368; 96 S Ct 2673, 2687; 49 L Ed 2d 547, 562 (1976)

While the line may be difficult to draw, it is clear the distinction between policy-making and nonpolicy-making employees depends upon the nature of the employee's duties. For purposes of the Act, the employee's responsibilities must also be examined with reference to the type of action which, if lobbied for or against, subjects a lobbyist or lobbyist agent to the Act's restrictions.

As noted previously, lobbying includes direct communication with an official in the legislature, including a non-clerical, policy-making employee, for the purpose of influencing legislative action. "Legislative action" is defined in section 5(1) of the Act as follows:

"Sec. 5.(1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature. Legislative action does not include the representation of a person who has been subpoenaed to appear before the legislature or an agency of the legislature."

When read together, subsections (1) and (10) of section 5 indicate that a legislative employee serves in a policy-making capacity if the employee's responsibilities include discretion or authority in matters involving legislative action. For example, if an aide has authority to commit a legislator to sponsor a bill or engage in a particular course of legislative action, the aide would be a policy-making employee and thus an official in the legislative branch capable of being lobbied. However, the drafting by an aide, at the direction of the legislator, of amendatory language for a bill under consideration, does not of itself constitute policy-making by the aide.

Honorable Ed Fredricks
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To summarize, the distinction between an employee who serves in a policy-making capacity and one who functions in a nonpolicy-making role depends upon the nature of the employee's duties and responsibilities. If those duties are without specified boundaries and include discretion or authority in matters involving legislative action as defined in the Act, the employee serves in a policy-making capacity. On the other hand, if an individual's responsibilities are limited or involve discretion in matters not related to legislative action, the individual is a nonpolicy-making employee for purposes of the Act.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos".

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/jep