



April 19, 1984

Paul E. Bolek  
Administrative Counsel  
North American Benefit Association  
P.O. Box 5020  
Port Huron, Michigan 48061

Dear Mr. Bolek:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to communications with administrative agencies. The specific facts and questions you raise are set out and answered below.

1. "A written communication may sometimes be addressed to the administrative agency, such as the Insurance Bureau, without being directed to any specific person. Can such a communication ever constitute lobbying?"

The Department is unable to provide a specific answer to this question without additional information. However, the following discussion is provided for your guidance.

"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 . . . for the purpose of influencing . . . administrative action." Pursuant to section 5(9), "official in the executive branch" includes elected state officeholders, members of state boards and commissions, and unclassified employees who serve in policymaking capacities. Sections 2(1) and 6(3) of the Act (MCL 4.412 and 4.416) taken together indicate that "administrative action" is any action requiring the exercise of personal judgment.

Generally, a written communication is lobbying only if the purpose of the communication is to influence administrative action and the communication is addressed to a specific public official or group which includes public officials.

2. "Administrative agencies will invite comments regarding a proposed rule. Will a response thereto constitute lobbying?"

As previously indicated, lobbying includes any communication with an official in the executive branch for the purpose of influencing administrative action. The Act makes no distinction between communications which are in response to an invitation or request for information and those which are initiated by the communicator.

"Administrative action" is defined specifically in section 2(1) as the "proposal, drafting, development, consideration, amendment, enactment, or defeat of a nonministerial action or rule by an executive agency or an official in the executive branch of state government." (emphasis added) Thus, a person who responds to an agency's request for comments on a proposed rule is lobbying if 1) the response attempts to influence the agency's action on the rule or the rule's content, and 2) the response is directed towards a public official or a group, such as a hearing panel, which includes an official.

3. "Regulatory action and policy results from statutory mandate and authority as well as various court decisions. It is only natural that opinions differ as to the proper legal interpretation of a statute or court ruling. Would a communication with a public official in an administrative agency, such as the Insurance Bureau, discussing what the proper legal interpretation of the law or ruling is, constitute lobbying?"

Communications with an official in the executive branch which are for the purpose of influencing an agency's interpretation of a statute or court ruling generally are lobbying. However, section 2(1) of the Act indicates that persons who attempt to influence administrative action which is reached by means of a "quasi-judicial determination" are not lobbying. Therefore, communications concerning the proper construction of a statute or decision which occur in the course of an administrative hearing or other quasi-judicial proceeding are exempt from the Act's reporting requirements.

4. "Insurers are required by law to make a number of filings with the Insurance Bureau. I presume that under normal circumstances, this would not be considered lobbying."

In order to lobby an administrative agency, there must be an attempt to influence administrative action by directly communicating with an official in the executive branch. As indicated earlier, administrative action includes only nonministerial decisions. Thus, pursuant to sections 2(1) and 6(3), attempts to influence actions which are performed "in a prescribed manner under prescribed circumstances in obedience to the mandate of legal authority, without the exercise of personal judgment regarding whether to take the action" are not lobbying. Filing documents with the Insurance Bureau may or may not be lobbying. However, your question is too indefinite to provide a specific answer.

5. "Insurance agents are required by law to be licensed by the

Insurance Bureau. Can this application procedure ever become lobbying?"

Pursuant to Chapter 12 of the Insurance Code of 1956, 1956 PA 218, as amended (MCL 500.1200 et seq.), an insurance agent cannot be refused a license without a hearing. Section 91 of the Administrative Procedures Act, 1969 PA 306, as amended (MCL 24.291) provides that a licensing determination which is preceded by notice and an opportunity for hearing is a contested case and therefore governed by formal administrative hearing requirements. While the parameters of the quasi-judicial exemption discussed in the response to question 3 have not been determined, it is clear that decisions in contested cases are the result of "quasi-judicial determinations authorized by law." As such, decisions relating to an insurance agent license application are exempt from the definition of "administrative action" found in section 2(1), and communications relating to the decision are not lobbying.

6. "An insured may forward a complaint to the Insurance Bureau or other administrative agency. The agency then may require the insurer to explain its position regarding the matter. Would the response to the agency's request be considered lobbying."

Again, this question is too indefinite to provide a specific answer. Additional facts are needed to determine whether the response is lobbying.

7. "Most businesses do not hire professional lobbyists. However, an employee may be required to make a communication which meets the definition of lobbying. If such an employee is paid on a salary basis and no additional compensation is provided for the lobbying activity, must any portion of the employee's salary be considered in determining whether said employee or the employer have met the monetary threshold amounts established by the Act."

"Lobbyist" and lobbyist agent" are defined in section 5(4) and (5) as follows:

"Sec. 5. (4) 'Lobbyist' means any of the following:

(a) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period.

(b) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official.

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(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying."

The \$1,000 and \$250 thresholds are calculated pursuant to rules 21 and 22, 1981 AACR R4.421 and R4.422. These rules state:

"Rule 21. For the purpose of determining whether a person's expenditures for lobbying are more than \$1,000.00 in value in any 12-month period, or are more than \$250.00 in value in any 12-month period if expended on lobbying a single public official, the following expenditures shall be combined:

(a) Expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Expenditures, other than travel expenses, incurred at the request or suggestion of a lobbyist agent or member of a lobbyist, or furnished for the assistance or use of a lobbyist agent or member of a lobbyist while engaged in lobbying.

(c) The compensation paid or payable to lobbyist agents, employees of the lobbyist, and members of a lobbyist for that portion of their time devoted to lobbying.

Rule 22. For the purpose of determining whether a person receives compensation or reimbursement for actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying, the following compensation and reimbursement shall be combined:

(a) Reimbursement for expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Reimbursement for expenditures, other than travel expenses, made to influence legislative or administrative action.

(c) Compensation received for that portion of time devoted to lobbying." (emphasis added)

The above-quoted provisions indicate that compensation paid to an employee for lobbying must be included when calculating the thresholds established in section 5, even though the employee is hired on a salary basis to perform duties other than lobbying. If the employee receives more than \$250 in a 12 month period for time devoted to lobbying, the employee must register as a lobbyist agent. Assuming no other lobbying expenditures are made, the employer is required to register as a lobbyist if the \$250 paid to the employee is for lobbying a single public official, or if in any 12 month period the employee is paid more than \$1,000 for time spent lobbying.

8. "This question is predicated on an affirmative answer to number 6 (sic). A business may belong to a trade organization. As a member, its employee may engage in lobbying activity on behalf of the trade organization. If no compensation is received for the lobbying activity, but it is done on the member-employer's time, must any of the employee's salary be considered in relation to the threshold amounts."

Section 5(7) of the Act exempts certain persons from the definitions of "lobbyist" and "lobbyist agent." Specifically, section 5(7)(d) provides:

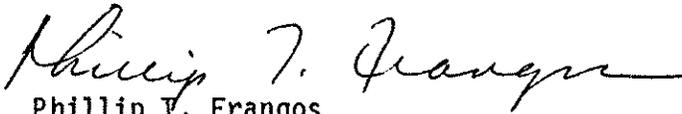
"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(d) A member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)."

If the trade organization in your example is a lobbyist, section 5(7)(d) indicates the member-employer does not become a lobbyist or lobbyist agent unless the employer separately qualifies as a lobbyist. In order to qualify as a lobbyist under section 5(4), the employer must make expenditures of more than \$1,000 in a 12 month period for lobbying or more than \$250 on lobbying a single public official. As indicated in the response to question 7 (and not to question 6), the salary paid to an employee for time devoted to lobbying is an expenditure for lobbying. Therefore, the exemption found in section 5(7)(d) does not apply, and compensation paid for that portion of the member-employer's time devoted to lobbying must be counted towards the Act's thresholds.

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

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

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