

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 19, 1984

David LaLumia
Michigan Association of Community
Mental Health Boards
P.O. Box 10081
Lansing, Michigan 48901

Dear Mr. LaLumia:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to executive directors of county community mental health boards. Specifically, you ask whether a community mental health (CMH) director is a public official who is exempt from the Act's registration and reporting requirements.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.425) 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."

A board member, employee or any other person who lobbies on behalf of the board is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act are identified in section 5(7), which provides in relevant part:

"Sec. 5. (7) 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 the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(ii) Employees of townships, villages, cities, counties or school boards."

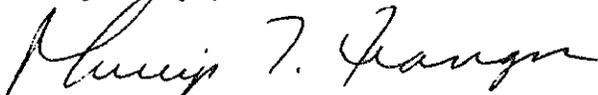
A CMH board is established under the authority of the Mental Health Code, 1974 PA 258, as amended. Each board appoints an executive director whose terms and conditions of employment "including tenure of service, shall be mutually agreed to by the board and the county director and shall be specified in writing." You indicate that unlike other CMH staff, the director of the board is generally not considered to be a county employee. Therefore, you suggest that a CMH director is not brought back into the Act by section 5(7)(c)(ii), but rather is an appointed public official of local government who is exempt from the Act pursuant to section 5(7)(b).

In the attached letters to Mr. Don M. Schmidt and Mr. Kenneth F. Light, dated January 13, 1984, and January 24, 1984, respectively, the Department indicated the exemption found in section 5(7)(b) applies only to elected or appointed officials who serve in autonomous, policymaking capacities. As stated in a December 7, 1983, letter to Senator Ed Fredricks, a person serves in a policymaking capacity if the person's responsibilities are of broad scope and not clearly defined. On the other hand, an individual who operates at the direction or control of another or within specified boundaries does not serve in a policymaking position and is not a public official for purposes of the Act.

The Mental Health Code indicates that a CMH director is not responsible for a broad range of duties but operates within boundaries specified by the CMH board. That is, the director's responsibilities are limited to administering the program and policies established by the CMH board. Thus, a CMH director does not serve in an autonomous, policymaking capacity and does not qualify for the public official exemption found in section 5(7)(b). The director must therefore register as a lobbyist agent upon receiving more than \$250 in a 12 month period for lobbying.

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