

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



16-84-LI

LANSING

MICHIGAN 48918

April 4, 1984

Ms. Susan A. Rourke, ACSW
Executive Director
Citizens for Better Care
1553 Woodward Avenue, Ste 525
Detroit, Michigan 48226

Dear Ms. Rourke:

This is in response to your inquiry concerning the lobby act (the "Act"), 1978 PA 472. I understand that you were sent information on January 25, 1984, concerning your first question so I will not further discuss the definition of lobbyist and lobbyist agent except as necessary to answer your other questions, which will be discussed below.

1. As part of the activities of your organization, and "as a matter of process, formal hearings on complaints are requested of the Director of MDPH or MDSS." Are such requests lobbying?

2. "Is picketing of the state offices or legislature considered lobbying?"

3. "Is attendance at meetings of public bodies considered lobbying? When such a meeting is attended and a statement made, is only the time making the statement counted as lobbying, or the full time of attendance?"

"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." As was pointed out in the "Overview" sent to you earlier, many of the terms used in section 5(2) are also specifically defined for the purposes of the Act.

Generally, formal hearings before the Director of the Michigan Department of Public Health or the Michigan Department of Social Services are administrative proceedings which are governed by 1969 PA 306 - the Administrative Procedures Act. Such actions may seem to be included in the above definition as a type of action which may be influenced; however, section 2(1) of the Act (MCL

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4.412(1)) provides that "Administrative action does not include a quasi-judicial determination as authorized by law." The Michigan Court of Appeals in Pletz v Secretary of State, 125 Mich App 335 (1983) discussed this exemption at page 352, stating:

"We consider that the exemption removes contested matters before administrative officers, such as referees, hearing officers and commissioners, from the scope of the lobby law."

"Quasi-judicial" has been held to mean:

"A term applied to the action, discretion, etc. of public administrative officers, who are required to investigate facts or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Black's Law Dictionary (4th Ed.) p 1411 (1968)

The Court in Pletz also cited with approval the following definition from People ex rel Clardy v Balch, 268 Mich 196, 200 (1934):

"When the power is conferred by statute upon a commission such as the public utilities, or a board such as the department of labor and industry, to ascertain facts and make orders founded therein, they are at times referred to as quasi judicial bodies, but their members are in no sense judicial officers within the meaning of that term as used in the exception in the constitutional provision" (emphasis added)

From a communication on March 5, 1984, with staff, I understand that you are concerned about "formal hearings on complaints" as well as appeals which go directly to the directors of the departments you mentioned. It is the Department's position that whenever an adversarial administrative matter has commenced and the controversy is slated for resolution through the administrative hearing process, the exemption found in section 2(1) applies. While there may be some question about specifically where that exemption commences, (that is, the minimum contact required to trigger the exemption) it is the Department's position that the exemption clearly applies to the "Mary Rogers" conference (or "compliance conference" or "informal conference" or "opportunity to show compliance conference", however it may be designated by a particular entity) required by the Court of Appeals in Rogers v State Board of Cosmetology, 68 Mich App 751 (1976). The appeal you describe would appear to fall within the above exemption; whether or not the exemption applies earlier is not being answered at this time, but will be discussed on a case by case basis.

Your second question concerns "picketing of the state offices or legislature." Such picketing has consistently been viewed by the Courts as symbolic speech and the Department will do nothing to require reporting or limit it unless it falls clearly within the activities captured by the statutory definition of

"lobbying." That is, the only time picketing will be considered lobbying is when it constitutes "communicating directly with an official in the executive branch . . . or . . . the legislative branch of state government for the purpose of influencing legislative or administrative action" The phrase "to influence legislation" was defined in New Jersey State Chamber of Commerce v N.J. Election Law Enforcement Commission, 82 NJ 57, 79; 411 A 2d 168 (1980) (quoted with approval in Pletz v SOS, 125 Mich App at 350):

"Accordingly, we conclude that the meaning to be ascribed to this terminology is activity which consists of direct, express and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals."

In short, only when picketing falls within this narrowly defined area will it constitute lobbying and be subject to the Act.

Because you failed to specifically describe the nature of the "picketing of the state offices and legislature" about which you inquired, it is difficult to be more specific. You indicated in a telephone conversation that the type of picketing you have in mind includes picketing to support or oppose specific legislation or more general topics and that the picketing may be done either by paid employees or volunteers or a combination, may be directed at a group (i.e., the legislature, one house or a committee) or at an individual and may take the form of (for example) a march in front of the Capitol. Based upon this general description it is difficult to conceive of any way those types of picketing could ever fall within the regulatory scheme of the Act. Only when the picketing clearly consists of "communicating directly with an official in the executive branch . . . or . . . legislative branch of state government for the purpose of influencing legislative or administrative action," as defined in the Act, will it be caught up in the requirements of the Act.

You should also be advised that even when the activity falls within the purview of the Act, many expenditures are still exempt from the reporting requirements of the Act. For example, travel, food and beverage, and uncompensated, unreimbursed volunteer efforts are all excluded from the Act.

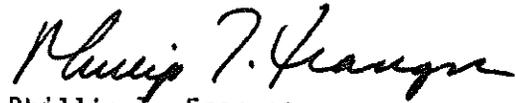
Your final question concerns meetings of public bodies, and you wonder if attendance at such meetings is considered lobbying. Simply monitoring legislation is not lobbying; hence, attending the meeting of a public body to observe the proceedings is not lobbying. However, when a person makes a direct communication intended to influence legislative or administrative action to a group which includes one or more public officials, the compensation paid or received for the time spent in attendance is an expenditure for lobbying or compensation received for lobbying. In other words, not only must the time spent actually speaking be counted, but also the time during which the speaker is in attendance and the public body is discussing the issue which the speaker addressed. For example,

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assume you are a lobbyist agent and are compensated to attend a two hour legislative committee meeting. Assume further the committee spends one and a half hours discussing bills you are not interested in and thirty minutes discussing the bill which interests you. If you speak on your bill before the committee during a portion of the thirty minute period, you must report your compensation for thirty minutes.

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