

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING  
MICHIGAN 48918

April 6, 1984.

Mr. Conrad L. Mallett, Jr.  
 Director, Legal and Governmental Affairs  
 Mr. Brian P. Henry  
 Assistant Legal Advisor  
 Office of the Governor  
 State Capitol Building  
 Lansing, Michigan 48909

Dear Messrs. Mallet and Henry:

This is in response to your letter raising questions with respect to the application of the lobby act, 1978 PA 472 (the "Act") to the members of the Governor's Commission on Jobs and Economic Development.

The Commission was established by executive order. It has no policymaking or administrative authority. It is a private sector advisory body which reviews the recommendations of the Cabinet Council on Jobs and Economic Development. The members of the Commission are leaders associated with business and labor. Some of the members are associated with entities which have registered as lobbyists pursuant to the Act. You have raised four issues with respect to the Commission and its members which are discussed in the succeeding pages.

"1. Whether a member of the commission is a 'public official' as that term is defined in MCL 4.416(2);"

The critical element in responding to this issue is the nonpolicymaking, nonadministrative nature of the Commission's activity. The definition of public official is found in section 6(2) of the Act (MCL 4.416), which reads:

"Sec. 6. (2) 'Public official' means an official in the executive or legislative branch of state government."

The definition of "official in the executive branch" of state government set forth in section 5(9) of the Act (MCL 4.415) specifically excludes those who serve "in a clerical, nonpolicymaking, or nonadministrative capacity." The Governor's Commission on Jobs and Economic Development is an advisory body without administrative or policymaking authority. Therefore, membership on the

Commission cannot be construed to make the member a public official pursuant to the Act.

"2. Whether, if a commission member is a 'public official,' his/her lobbyist employer must include in its periodic reports food or beverage provided to the commission member at the expense of the employer or must refrain from providing the commission member entertainment or other perquisites at the expense of the employer or organization;"

As indicated in the answer to 1 above, it is clear that the members of the Commission are not public officials; thus, food and beverage provided for them are not to be reported under the Act.

"3. Whether communication between the commission or any of its members and the Governor or public officials in the executive office may be 'lobbying' as that term is defined in MCL 4.415(2);"

As an advisory body the Governor's Commission on Jobs and Economic Development is expected to review the recommendations of the Cabinet Council on Jobs and Economic Development as well as to carry out other advisory functions assigned by the Governor.

Even though the members of the Commission are unpaid they perform advisory functions similar to those of employees in the Office of the Governor. The Department of State has consistently interpreted the Act to exclude communications between employees and public officials for whom they work. Members of the Commission are not lobbying when they are carrying out their duties on the Commission.

"4. Whether the acquiescence of a commission member's employer or organization to the member's service to the commission during the member's normal working hours comprises compensation of the commission member 'for lobbying' or an expenditure by the employer or organization 'for lobbying.'"

Pursuant to the response to number 3 above compensation received while carrying out the member's Commission duties is not reportable as a lobbying expense even though the organization paying the compensation is a lobbyist. The Commission is not engaged in lobbying when advising the Governor. However, it should be noted that the Commission could become a lobbyist if it compensated or reimbursed its members or others to lobby public officials outside the Office of the Governor.

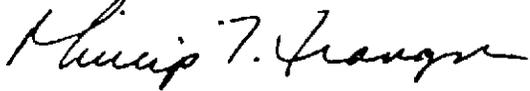
It should also be borne in mind that Commission members who use the communication opportunities afforded by membership on the Commission to attempt to influence administrative or legislative action on behalf of their employers will trigger the recordkeeping and reporting requirements of the Act if they are com-

Messrs. Mallett and Henry  
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pensated or reimbursed in excess of \$250.00 for lobbying during a 12 month period.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos".

Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw