



January 13, 1984

Don R. Elliott  
Executive Director  
Michigan Association of School Administrators  
421 West Kalamazoo  
Lansing, Michigan 48933

Dear Mr. Elliott:

This is in response to your request for a declaratory ruling with respect to the application of the lobby law, 1978 PA 472 (the "Act"), to school superintendents and other school administrators.

You indicate it is your belief that school officials are exempt from the registration provisions of the Act.

Section 5(5) of the Act (MCL 4.415) defines "lobbyist agent" as follows:

"(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."

Section 5(7) exempts certain categories of individuals from the definitions of lobbyist and lobbyist agent as follows:

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

(a) A publisher, owner or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business.

(b) All elected or appointed 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:

(i) Employees of public or private colleges, community colleges, junior colleges or universities.

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

(iii) Employees of state executive departments.

(iv) Employees of the judicial branch of government.

(v) Appointed members of state level boards and commissions.

(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)."

Subsection (b) exempts elected or appointed public officials acting in the course of their office. However, subsection (c) eliminates this exemption for public officials who are identified as employees.

In the course of implementing the Act the Secretary of State promulgated administrative rules. Rule 1(1)(c) of those rules (1981 AACRS R4.411) defines the term "elected or appointed public officials of state or local government" as:

" . . . officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

There is, of course, no difficulty in determining whether an official has been elected to the official position. On the other hand, it is harder to determine which appointed officials are covered by the exemption in section 5(7)(b) and are not employees subject to registration pursuant to section 5(7)(c). These statutory provisions and rule 1(1)(c) must be read in conjunction with the various statutes governing the organization of school districts in order to resolve the issue.

The relevant statutes were enclosed with your letter. The law governing the appointment of administrators in first, second, third and fourth class school districts is found at MCL 380.132, 380.247, 380.346, and 380.471a respectively. The third and fourth class districts are required to appoint a superintendent for a contractual period of up to 5 years. First and second class districts are authorized to appoint a superintendent for a contractual term not in excess of 6 years.

All classes of districts are authorized to employ assistant superintendents, principals, assistant principals, guidance directors and other administrators for contractual periods not exceeding 3 years. In each case a notice of nonrenewal must be given prior to the end of the contract or the contract is automatically renewed for 1 year.

Each of the statutes cited above provides that an administrator, other than a superintendent, may be issued a notice of nonrenewal for reasons which are not arbitrary or capricious. This protection against arbitrary or capricious nonrenewal does not extend to a superintendent. A superintendent appears to be the only person whose contract may be not renewed without providing a reason.

Intermediate school superintendents are appointed for a period of not more than 4 years (MCL 380.623). They are assigned a number of duties by statute and non renewal may be accomplished without providing a reason.

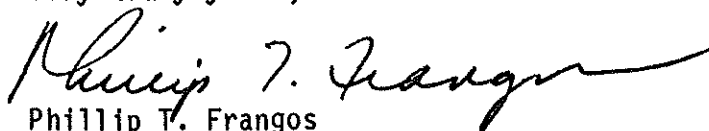
In addition, it is clear that the statutes governing the operation of school districts set forth duties for school superintendents which indicate the policy-making nature of the position. The other administrators listed perform their

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duties under the direction of the superintendent as employees of the school district rather than as officials. Among school administrators, only the superintendent appears to qualify for the exemptions set forth in section 5(7) of the Act for "elected or appointed public officials." Subsection (c) makes it clear that those who are employees can become lobbyist agents pursuant to the Act if they meet the requirements specified in section 5(5).

This letter is an interpretive statement of the provisions of the Act. A declaratory ruling has not been provided because the Michigan Association of School Administrators is not an "interested person" as prescribed in rule 3 (1981 AACS 4.413).

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw