

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



3-84-LI

LANSING

MICHIGAN 48918

January 24, 1984

Kenneth F. Light, President  
Lake Superior State College  
Sault Ste. Marie, Michigan 49783

Dear Mr. Light:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to colleges and college officials.

"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."

Pursuant to sections 5(4) and 7(1) of the Act (MCL 4.417), a college or university is required to register as a lobbyist if, in any 12 month period, it expends more than \$1,000 for lobbying or more than \$250 for lobbying a single public official. In addition, a person who lobbies on behalf of the school 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's requirements 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:  
(i) Employees of public or private colleges, community colleges, junior colleges or universities.

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

Your letter suggests that members of the Lake Superior State College Board of

Control are "elected or appointed public officials of state or local government" who are exempt from registration under the Act. However, Article 8 of the Constitution of 1963 provides that members of the controlling boards of institutions having authority to grant baccalaureate degrees, other than the boards of the University of Michigan, Michigan State University, and Wayne State University, shall be appointed by the governor. Section 5(7)(c)(v) specifically states that appointed members of state level boards and commissions are not public officials who are excluded from the definition of "lobbyist" or "Lobbyist agent." Therefore, an appointed member of a college or university board who receives more than \$250 from the school in a 12 month period for lobbying is a lobbyist agent who must register and file periodic reports as required by the Act.

You also ask whether the secretary of the Board of Control is an exempt public official under the Act. The broader issue raised by your inquiry is which college or university officers are excluded from the Act and which officers are employees who may become lobbyist agents. It is in this broader context that the issue will be addressed.

"Elected or appointed public officials of state or local government"--the category of persons who are exempt under section 5(7)(b)--is not defined anywhere in the Act. However, rule 1(1)(c) provides:

"Rule 1. (1) As used in the act or these rules:

(c) 'Elected or appointed public officials of state or local government' means 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."

A review of the Constitution and the enabling statutes of the state's colleges and universities indicates that each college or university president holds an office prescribed by statute. The president is designated the principal executive officer of the institution, is ex officio a member of the board, and may be removed at the pleasure of the appointing authority. As such, a college or university president is an elected or appointed public official as defined in rule 1(1)(c). It should be noted that a college or university president is not brought back into the Act by section 5(7)(c)(v). The president is not appointed to the board of control but is made an ex officio member by the Constitution.

There are, as you note, other college officers who appear to meet the definition found in rule 1(1)(c). However, rule 1(1)(c) cannot create a broader class of exempt officials than the legislature intended. Section 5(7)(c)(i) provides that employees of colleges or universities are not exempt officials. Therefore, resolution of the issue you raise depends upon whether the secretary of the Board of Control is considered a public official or an employee for purposes of the Act.

While "elected or appointed public official of state or local government" is not itself defined in the Act, section 6(2) (MCL 4.416) provides that a "public offi-

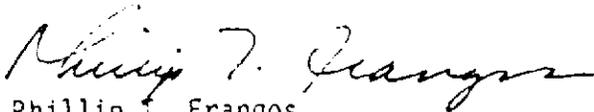
cial" is "an official in the executive branch or legislative branch of state government." Pursuant to sections 5(9) and (10), officials in the executive and legislative branches include elected or appointed officeholders and policymaking employees who are not under civil service. It appears that the legislature considered public officials to be persons who occupy policymaking positions. In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action.

With respect to colleges or universities, the president appears to be the only individual whose wide range of duties include the exercise of discretion or authority in matters involving the school. The secretary of the board and other officers have no autonomous authority but operate under the direction or control of the president and/or the board of control. As such, a college or university president is the only officer who is both an "elected or appointed public official" as defined by rule 1(1)(c) and a policymaker as contemplated by the Act. All other officers are considered employees who may become lobbyist agents upon meeting the requirements of section 5(5).

In conclusion, appointed members of a college or university board of control are subject to the Act's registration and reporting requirements pursuant to section 5(7)(c)(v). Similarly, the secretary of the board and other school officers are employees who, according to section 5(7)(c)(i), must register as lobbyist agents upon receiving compensation or reimbursement in excess of \$250 in a 12 month period for lobbying. A college or university president is an elected or appointed public official who is excluded from the Act by section 5(7)(b), provided the president lobbies in the course or scope of office for no additional compensation.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

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