

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

January 27, 1984

The Honorable Vernon J. Ehlers
Assistant Republican Floor Leader
House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Ehlers:

You have raised several issues and request an interpretation regarding the lobby act (the "Act"), 1978 PA 472.

Your first concern is a lobbyist might incorrectly report that you had received something which you did not actually accept. You request the Department notify all public officials once a year when their names appear on the reports of lobbyist agents. Section 8(5) of the Act, MCL 4.418, does deal with the subject matter of your concern. It states:

"(5) Within a reasonable time after receipt of a request from an elected public official in regard to a report of a lobbyist or a lobbyist agent, the secretary of state shall report to the elected public official on any reported activity by the lobbyist or lobbyist agent in that report, and shall notify the elected public official of the specific occurrence and the specific nature of the reported activity."

Under this section you or any other elected public official may request this information after each semi-annual reporting period. The statute indicates you must specify which lobbyist or lobbyist agent report(s) you want checked. Because the first report under the Act is not due to be filed until August 31, 1984, and the number of filers is still unknown, the Department has not yet determined what summaries might be compiled from the reported information. In addition, the Department does not know, at this time, how much money will be appropriated by the Legislature to enforce the Act or whether funds will be appropriated to computerize the records filed under the Act. If the records are computerized, it will be easy to create a list of all lobbyists and lobbyist agents who have reported the name of a particular public official. With a manual recordkeeping system, however, it would be very time consuming and expensive to check several thousand reports. Because it appears there will be about 1,900 public officials, your suggestion that the Department automatically notify all public officials whose names appear in lobbyist and lobbyist agent reports is not economically feasible.

Your second concern relates to the acceptance of honoraria by public officials. The definition of "gift" in section 4(1) of the Act, MCL 4.414 would include honoraria, "unless consideration of equal or greater value is received therefor." The Department's rules address honoraria in rules 1(1)(e) and 73, 1981 AACRS R4.411, R4.473:

"Rule 1(1)(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.

"Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

Section 11(2) of the Act, MCL 4.421, and rule 71, 1981 AACRS 4.471, prohibit a lobbyist or lobbyist agent from giving a gift to a public official.

You have suggested travel expenses should be deducted from honoraria and should be at the standard mileage rate paid legislators by the state. You feel meal and lodging expenses should be computed at levels allowed state employees and air travel should be limited to the tourist class airfare. Rule 1(1)(e) clearly specifies travel expenses, meals, and necessary lodging, as long as they are actual expenses, are not payments and, therefore, are not honoraria. Because the rules address this topic and do not limit these expenses to the cost of tourist class airfare or the standard meal and lodging expenses allowed state employees, the Department cannot administratively impose those limits which you suggest. All actual travel, meal, and necessary lodging expenses advanced or reimbursed by a lobbyist or lobbyist agent are excluded from honoraria.

A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is \$500.00 or more, the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c).

With respect to using a standard mileage rate for automobile travel, actual expenses are excluded. However, actual automobile expenses can be difficult to compute if insurance, depreciation, tire wear, etc. are included. Therefore, the Department will assume the mileage rate paid legislators when reimbursed

with state funds (currently \$0.295 per mile) is not more than the actual cost of automotive travel. Any greater figure must be supportable by the actual costs to operate the vehicle driven.

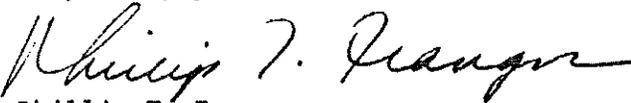
Section 11(2) and Rule 73 both indicate payment for an honorarium does not violate the Act if it does not exceed the value of the speech provided by the public official. To the extent that an honorarium exceeds the value received by a lobbyist or lobbyist agent paying the honorarium, a gift is made in violation of the Act. If the excessive honorarium is paid by a person who is not a lobbyist or lobbyist agent, the Act does not apply to the transaction, unless the excess is a payment made to influence legislative or executive action. Should the excess be paid by a non-lobbyist or non-lobbyist agent to influence legislative or executive action, the amount of the excess would be counted towards the person's \$250.00 and \$1,000.00 thresholds.

"Honorarium" is included within the definition of "expenditure" in section 3(2) of the Act, MCL 4.413. An expenditure "for lobbying made or incurred by a lobbyist, a lobbyist agent, or an employee of a lobbyist or lobbyist agent" (emphasis added) must be reported pursuant to section 8(1)(b) of the Act. Therefore, an honorarium made for lobbying must be reported by a lobbyist or lobbyist agent.

Your final concern is whether speeches given out-of-state to groups with no in-state dealings need to be reported at all. The Act makes no distinction between speeches made in Michigan and elsewhere or between groups which have dealings in Michigan and those which do not. The Act applies to any transaction between a public official and a person who meets the definition of lobbyist or lobbyist agent. If the person paying you for an out-of-state speech is not a lobbyist or lobbyist agent, that person would not be filing a report.

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