

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

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July 13, 1984

Rossi Ray Taylor, Director
Legislative and Community Relations
Lansing School District
519 W. Kalamazoo Street
Lansing, Michigan 48933

Dear Mr. Taylor:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the Lansing School District and its employees.

Specifically, you indicate that certain employees are officers or members of independent educational associations and professional organizations. As officers or members, they frequently lobby on behalf of the associations and organizations. Some of the lobbying occurs on "company time," that is while the employees are compensated by the School District. You ask whether the School District, itself a lobbyist, is required to "register these individuals as lobbyist agents or to report their activity." For purposes of discussion, it is assumed the employees do not receive compensation or reimbursement for lobbying from the associations or organizations.

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist is required to report all of its "expenditures for lobbying," including compensation or reimbursement paid to its employees for that portion of time devoted to lobbying. According to sections 5(5) and 7(2) of the Act (MCL 4.415 and 4.417), an employee who is compensated or reimbursed more than \$250 in any 12 month period "for lobbying" must register as a lobbyist agent. Consequently, the School District and its employees are subject to the Act's reporting requirements only if the compensation or reimbursement paid to the employees is "for lobbying."

"Lobbying" is defined in section 5(2) of the Act 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." According to section 5(3), "influencing" includes "promoting, supporting, affecting, modifying, opposing or delaying by any means."

In Pletz v Secretary of State, 125 Mich App 335 (1983), plaintiffs argued the definitions of "lobbying" and "influencing" were unconstitutionally vague and ambiguous. The Court of Appeals, in rejecting plaintiffs' contention, suggested the key factor in determining whether a communication is for lobbying is whether the communication is "for the purpose of influencing." The Court cited with approval a New Jersey case which defined the phrase "to influence legislation":

" . . . 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." 125 Mich App at 130

Thus, "lobbying", as viewed by the Court of Appeals, consists of direct, express and intentional communications with public officials for the specific purpose of affecting legislative or administrative action.

An employer does not engage in direct, express and intentional communications which are specifically intended to influence a public official's actions simply by paying employees for time which the employees may spend lobbying on behalf of independent associations or organizations. Reportable lobbying occurs only if the employer directs or controls the employee's lobbying activity. Whether the employer exercises direction or control depends upon a variety of factors. For example, paying the employee's membership dues for an organization suggests the employer may have some control over the employee's communication for lobbying.

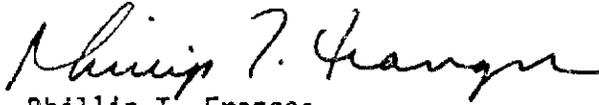
In answer to your question, the Lansing School District is not required to report compensation or reimbursement paid to an employee for time the latter spends for lobbying on behalf of an educational association or professional organization which is not affiliated with the School District. This is true provided the School District has no direction or control over the employee's lobbying effort. Similarly, an employee under these circumstances is not required to register as a lobbyist agent for the School District.

On the other hand, if the School District directs or controls its employee while lobbying for the association or organization, Lansing School District must report the compensation paid to the employee as an expenditure for lobbying. In addition, an employee who receives compensation or reimbursement in excess of \$250 in a 12 month period from the School District in this situation must register as a lobbyist agent and file periodic disclosure reports as required by the Act.

Rossi Ray Taylor
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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