

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



33-84-LI

LANSING
MICHIGAN 48918

July 20, 1984

Mr. Peter H. Ellsworth
Dickinson, Wright, Moon, VanDusen and Freeman
121 East Allegan Street
Lansing, Michigan 48933

Dear Mr. Ellsworth:

This is in response to your letter requesting a declaratory ruling with respect to the reporting of certain financial transactions pursuant to the lobby act, 1978 PA 472 (the "Act").

You want the Secretary of State to interpret section 8(1)(c) (MCL 4.418) which provides for the reporting of certain financial transactions involving public officials. Section 8(1)(c) provides for reporting the following information:

"(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods and services having value of at least \$500.00 are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred." (emphasis added)

In your letter you urge the Department of State to adopt an interpretation which would apply the exception set forth in the underlined language to lobbyist agents as well as lobbyists. Based on research your firm has conducted you have concluded that the Legislature could not have intended to exclude lobbyist agent from this exception. Additionally, you argue that limiting the exception to lobbyists only renders this portion of the Act unconstitutional.

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While the arguments you set forth are interesting, the Department cannot agree with them. The language appears to be very clear in excepting only those transactions of a lobbyist in the ordinary course of business if the lobbyist's primary business is other than lobbying.

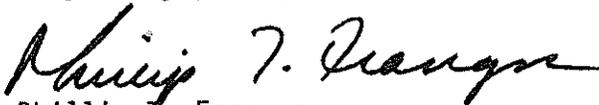
Drafters of legislation reflect known factual situations in their legislative product. At the time the Act and its predecessor legislation were considered by the Legislature, large professional law and accounting firms were just beginning to engage in lobbying on a large scale at the state level in Michigan. Greater awareness of the growth of such involvement might very well have resulted in the inclusion of lobbyist agents in the exception to section 8(1)(c). The Legislature could, of course, modify the exception along the lines you have suggested.

As you know, the Act has been the subject of a vigorous challenge in the courts. The language of 8(1)(c) has withstood that challenge without further judicial elaboration. Since the language of the exception is clear there appears to be no room for expansion of the exception by the Department of State.

Based on the above, the Department of State declines to issue the declaratory ruling you seek.

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