

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



28-84-LI

LANSING
MICHIGAN 48918

June 19, 1984

Charles E. Cribley, Executive Secretary
State Fire Safety Board
7150 Harris Drive
Lansing, Michigan 48913

Dear Mr. Cribley:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the following state of facts:

"As a result of numerous activities in a variety of areas, an incorporated hospital qualifies under the act and has registered as a lobbyist. In an ongoing business setting, the hospital utilizes the services of an architectural firm. A partner of the architectural firm, who has a pecuniary interest in all business of the firm, is also a public official by virtue of his membership on the State Fire Safety Board."

In a recent telephone conversation, you explained the transactions between the hospital and the architectural firm are directly related to the continual expansion, renovation or improvement of the hospital's facilities. You ask whether the hospital, as a lobbyist, is required to report transactions with the architectural firm which are unrelated to the partner's status as a public official.

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist must file reports on January 31 and August 31 of each year. In addition to other information required by this section, each report must contain the following:

"Sec. 8. (1)(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."

"Financial transaction" is defined in section 3(3) of the Act (MCL 4.413) as a "loan, purchase, sale or other type of transfer or exchange of money, goods, other property, or services for value." For purposes of discussion, it is assumed the transactions between the hospital and architectural firm fall within this definition and involve goods or services of at least \$500 in value.

Section 8(1)(c) indicates that any financial transaction of \$500 or more between a lobbyist and a business with which a public official is associated must be disclosed by the lobbyist in its semi-annual reports regardless of the transaction's purpose. However, if the lobbyist's primary business is not lobbying, a financial transaction which is in the lobbyist's ordinary course of business is exempt from disclosure, provided the lobbyist receives "consideration of equal or greater value." In addition, a lobbyist is not required to report "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."

A transaction is "in the ordinary course of business" if it is a normal, usual or customary aspect of that business. In the case of a hospital, this includes normal or usual matters relating to the provision of health care services, such as the purchase of pharmaceuticals. However, it does not appear that transactions between a hospital and a group of architects are a part of the hospital's ordinary business. Consequently, the financial transactions referred to in your letter do not qualify for the first exemption found in section 8(1)(c) because they are not "in the ordinary course of the business of the lobbyist."

On the other hand, the transactions between the hospital and Safety Board member's architectural firm are directly related to maintaining or improving the hospital's facilities. For example, the hospital may consult the firm when renovating a ward or constructing a new wing. While such transactions are not, strictly speaking, a part of the hospital's ordinary business, they are essential if the hospital is to provide quality health care services.

Given the integral relationship between the services provided by the architectural firm and the hospital's primary business, it must be concluded the transactions between the hospital and firm are "undertaken" in furtherance of the hospital's ordinary business. As noted previously, the last sentence of section 8(1)(c) exempts financial transactions "undertaken" in the ordinary course of a lobbyist's business in which fair market value is given or received for a benefit conferred. Therefore, if the financial transactions between the hospital and public official's business are at fair market value, they are exempt from disclosure under the Act. This exemption does not apply, however, to transac-

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tions which are for the purpose of influencing the member of the architectural firm when acting as a public official.

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