

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

June 22, 1984

James Stewart
 Eaton County Controller's Office
 1045 Independence Boulevard
 Charlotte, Michigan 48813

Dear Mr. Stewart:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to persons employed by elected county officials and the county controller. Specifically, you ask whether staff members of exempt public officials are subject to the Act's requirements "while preparing resolutions passed by the Board of Commissioners to be sent to the appropriate State Legislators."

The issue you raise is based upon your understanding that the Board of Commissioners and the county controller are excluded from the operation of the Act. While it is clear that elected county officials, such as commissioners, are exempt, your assumption that the controller, who is appointed to office, is not required to register or report his or her lobbying activities must be examined before proceeding further.

Persons who are exempt from the Act are identified in section 5(7) (MCL 4.415), 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:

(ii) Employees of townships, villages, cities, counties or school boards."

The Department has previously indicated the exemption created by section 5(7)(b) applies only to officials who serve in autonomous, policymaking capacities. As stated in a December 7, 1983, letter to Senator Ed Fredricks, a person serves in a policymaking capacity if the person's responsibilities are of broad scope and not clearly defined. On the other hand, an individual who operates at the direction or control of another or within specified boundaries does not serve in a policymaking position and is not a public official for purposes of the Act.

According to section 13b of 1927 PA 257, as amended (MCL 46.13b), a county controller is the political subdivision's chief accounting officer whose broad range of duties include discretion or authority in matters involving the county. For example, the controller is the only official who may bind the county to a contract for the purchase of materials and supplies. In addition, the controller is authorized to operate, maintain and repair the county courthouse, jail, and lighting, power or heating plant, subject only to the limitation that the controller "shall not create any liability in excess of the appropriations theretofore made by the board of supervisors." It therefore appears that a county controller serves in a policymaking capacity vis-a-vis the county, and you are correct in your assumption that the controller is excluded from the Act's requirements by section 5(7)(b).

Turning to your question, section 5(7)(c) specifically provides that employees of townships, villages, cities, counties or school boards are not included within the section 5(7)(b) exemption. Thus, it is clear that a political subdivision must report expenditures it makes to employees who communicate directly with officials in the executive or legislative branch of state government for the purpose of influencing legislative or administrative action. However, the Department has not, prior to your request, thoroughly considered whether a person employed by an exempt public official is subject to the Act's requirements when the person makes no direct communication but merely assists the exempt official in his or her lobbying effort.

An elected or appointed public official who qualifies for the section 5(7)(b) exemption is not required to register as a lobbyist or lobbyist agent or file periodic disclosure reports. By never attaining the status of lobbyist or lobbyist agent, an exempt official is also absolved from the recordkeeping requirements of section 9 (MCL 4.419). It therefore appears that an elected or appointed official of state or local government acting in the course or scope of office for no additional compensation is totally excluded from the Act's requirements, unless otherwise specifically provided.

Given the complete exemption granted to qualified public officials, it must be concluded the legislature did not intend to require a political subdivision to record or report expenditures made to a person who works for an exempt public official, where the employee's participation is limited to assisting in the preparation of a communication made directly by the public official. To interpret the Act otherwise would create an unintended burden upon exempt officials by requiring them to identify for the benefit of their employees those com-

James Stewart

Page 3

munications which are intended for lobbying. Therefore, time an employee spends typing, copying, posting or otherwise assisting an exempt public official's communication for lobbying is viewed as part of the official's direct communication and does not have to be accounted for by the lobbyist.

In answer to your question, Eaton County is not required to report compensation or other expenditures paid to an employee while preparing a resolution passed by the Board of Commissioners for transmittal by the commissioners to the legislature. However, if an employee lobbies an official in the executive or legislative branch directly or assists a non-exempt person in preparing to lobby, the county must report any expenditures made, even though the employee is acting pursuant to an exempt public official's instructions.

This response is informational only and does not constitute a declaratory ruling because your request did not contain a clear, concise and complete statement of facts as required by rule 3(2), 1981 AACRS R4.413.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw