

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE



LANSING

MICHIGAN 48918

March 1, 1984

Gregory K. Merryman
Appeals and Research Legal Staff
General Motors Building
3044 W. Grand Boulevard
Detroit, MI 48202

Dear Mr. Merryman:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to General Motors Corporation and its employees. The specific facts and questions you raise are set out and answered below.

I.

Section 3 of the Air Pollution Act, 1965 PA 348, as amended, (MCL 335.13) provides for the creation of an eleven member air pollution control commission. Two members of the commission are required to be "representatives of industrial management, 1 of whom shall be a registered professional engineer trained and experienced in matters of air pollution measurement and control."

One industry representative appointed to the Michigan Air Pollution Control Commission (MAPCC) is an employee of General Motors. As an appointed member of a state level board or commission, the employee is an official in the executive branch of state government who can be lobbied under the Act. General Motors itself is a lobbyist as defined in section 5(4).

Your first question is whether General Motors Corporation as a lobbyist is required to report the employee's salary and fringe benefits as financial transactions. In the attached letter to Mr. George F. Hill, dated February 22, 1984, the Department indicated that wages and expenses paid to an employee who is a public official are financial transactions in the ordinary course of business. As such, salary and fringe benefits paid to a General Motors employee who is an official are exempt from disclosure under section 8(1)(c) of the Act (MCL 4,418), provided the employee's salary and benefits do not exceed the consideration received by the company.

Your remaining questions concern communications between the employee/official and his co-workers. Specifically, you state:

"By design of MCLA §336.13, the employee's job involves matters relating to air pollution control. In the course of fulfilling his employment responsibilities, the employe may discuss air pollution control matters with other General Motors employes. Would such discussion constitute lobbying if they were related to issues that may be of concern to the MAPCC, but did not cover specific proposals pending before the MAPCC? Would such discussions constitute lobbying if they were part of an attempt to develop the position of General Motors on issues pending before the MAPCC?"

"Lobbying" is defined in section 5(2) of the Act as "communicating directly with an official in the executive branch of state government . . . for the purpose of influencing legislative or administrative action."

Definitions of "administrative action" and "legislative action" are found in sections 2(1) (MCL 4.412) and 5(1), respectively. These sections state, in relevant part:

"Sec. 2. (1) 'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat of a non-ministerial action or rule by an executive agency or an official in the executive branch of state government."

"Sec. 5. (1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature."

In your first hypothetical, the employee who is a public official communicates with other General Motors employees about air pollution control matters which bear no relationship to issues pending before the MAPCC. Your question, rephrased, is whether General Motors employees who communicate with the employee/official in these circumstances are engaged in lobbying.

Discussions among co-workers are lobbying if they are for the purpose of influencing administrative or legislative action the employee may take as a public official. However, where there is no relevant issue before the MAPCC, the only administrative or legislative action possible is the proposal, drafting or development of a nonministerial action or rule, or the support of or opposition to a matter pending or proposed in the legislature. Therefore, General Motors employees who communicate with the employee/official are lobbying only if the communication is for the direct and express purpose of developing or intro-

ducing an issue for the MAPCC's consideration or encouraging the employee/official to support or oppose a legislative matter.

Your second hypothetical relates to the employee/official's involvement in "an attempt to develop the position of General Motors" on matters currently before the MAPCC. If General Motors has not decided to lobby on an issue, communicating with the employee/official for the purpose of assisting the company in deciding whether to lobby is not lobbying. However, if General Motors has decided to lobby for or against a matter, discussions which include the employee/official are lobbying and must be reported by the company.

This interpretation should not be construed as affecting conflict of interest issues or other matters regulated by the State Board of Ethics.

II.

General Motors Corporation also employs individuals who serve on the governing boards of Oakland University and Michigan Technological University. You ask whether these employees are public officials and whether they are engaged in lobbying when they attend and participate in Board of Trustee meetings. (The response in part I concerning financial transactions is applicable here and will not be repeated.)

Section 6(2) of the Act (MCL 4.416) states that a "public official" is an official in the executive or legislative branch of state government. Pursuant to section 5(9), "official in the executive branch" includes a member of any state board or commission. Article 5, §2 of the Constitution of 1963 indicates the governing bodies of institutions of higher education are agencies within the executive branch. Thus, a college or university board of control is a state board within the executive branch, and members of the board are public officials for purposes of the Act.

With respect to your second question, rule 25(2), 1981 AACS R4.425, provides:

"Rule 25. (2) An appointed member of a state level board or commission is not a lobbyist agent merely because of membership on the board or commission. An appointed member of the board or commission is a lobbyist agent if the member engages in lobbying and his or her compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act."

This rule implies that communications between board members are not subject to the Act. However, if an appointed member of a state board is compensated or reimbursed by either the board or an employer for lobbying other public officials, the member may become a lobbyist agent as provided in section 5(5) of the Act, and the person compensating the board member must report the payment as an expenditure for lobbying.

III.

A General Motors employee is a member of the Governor's Executive Corps who has been assigned full time to the Department of Commerce. You ask whether this employee is a public official and whether the employee is a lobbyist agent for the company if the employee attempts to influence legislative or administrative action on behalf of the State.

Pursuant to section 5(9) of the Act, "official in the executive branch" includes an unclassified, policymaking employee but not "a person serving in a clerical, nonpolicymaking, or nonadministrative capacity." The Department of Commerce has provided the Secretary of State with the names of its policymaking employees, which are included in the list of public officials compiled by the Department of State. If General Motors' employee's name is not on the list, it is presumed the employee is not a public official because the Department of Commerce has determined the employee serves in a clerical, nonpolicymaking or nonadministrative capacity. Conversely, if the employee's name appears on the list, the employee is considered a policymaker by the Department of Commerce and therefore a public official for purposes of the Act.

Your second question is whether the employee, who is paid by General Motors, is a lobbyist agent for the company if the employee lobbies on behalf of the State. According to section 5(5) of the Act, a lobbyist agent is a person who is compensated or reimbursed for lobbying. Members of the Executive Corps are not paid by their private sector employers to lobby but to assist the State. Consequently, if your employee lobbies on behalf of the Department of Commerce or the State of Michigan, the employee is not a lobbyist agent for General Motors Corporation.

IV.

Your final questions concern General Motors employees who serve on the Governor's Commission on Jobs and Economic Development and that Commission's High Technology Task Force. Again, you ask whether these employees are public officials and whether they are engaged in lobbying when they fulfill their Commission duties.

The Commission on Jobs and Economic Development is a group created to advise the Governor of proposed actions and strategies relating to the economy. It is not empowered to take administrative action as that term is used in the Act.

In a letter to Senator John M. Engler, dated March 1, 1984, the Department indicated that commissions having only advisory authority are nonpolicymaking or nonadministrative in nature. Therefore, members of advisory groups are not public officials because they do not serve in policymaking capacities.

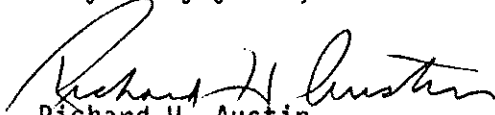
Advisory commission members are similar to other individuals employed in the Governor's office. That is, both are expected to provide information and advice

Gregory K. Merryman
Page 5

to the Governor and public officials within the Executive Office who are responsible for making policy. The Department has interpreted the Act as excluding communications between employees and the public officials for whom they work. As such, members of an advisory commission are not lobbying when they fulfill their duties as commissioners.

This response is a declaratory ruling relating to the specific facts and questions you have raised.

Very truly yours,


Richard H. Austin
Secretary of State

RHA/cw