

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

November 2, 1984

Mr. Steve Jackson
 Assistant Supervisor, Accounting
 Delta Dental Plan of Michigan, Inc.
 P.O. Box 30416
 Lansing, Michigan 48909

Dear Mr. Jackson:

This is in response to your letter requesting an interpretation of the lobby act, 1978 PA 472 (the "Act").

The issue which concerns you is whether the Act is applicable to direct communications with public officials by persons attempting to sell services or supplies to state agencies. If the Act is applicable then some vendors or potential vendors will be required to register and report pursuant to the Act. In addition, section 11(1) of the Act (MCL 4.421) makes it a crime for a person to be compensated for lobbying when the compensation is contingent on the outcome of administrative or legislative action.

The Department is unable to provide a specific answer to your question without additional information. However, the following discussion is provided for your guidance.

Pursuant to section 5(2) of the Act (MCL 4.415), "lobbying" includes "communicating directly with an official in the executive branch of state government . . . for the purpose of influencing . . . administrative action." Thus, two matters must be considered to determine whether lobbying occurs: who is the object and what is the subject of the communication. Your question indicates the object of the vendor's communications concerning the sale of its product or services is an "official in the executive branch." Therefore, lobbying takes place only if the decision to purchase a specific product or service is an "administrative action."

According to section 5(9) of the Act, "official in the executive branch" means an elected state officeholder, a member of any state board or commission, or an unclassified employee serving in a policymaking capacity. "Administrative action", as defined in section 2(1) (MCL 4.412), includes only "nonministerial

Mr. Steve Jackson

Page 2

action." "Nonministerial action" in turn is defined in section 6(3) (MCL 4.416) as action taken "without the exercise of personal judgment regarding whether to take the action."

The Secretary of State and the Attorney General argued in their successful defense of the statute in Pletz v Secretary of State, 125 Mich App 335 (1983), that given the above definitions, the lobby act applies only to communications with policymakers which are intended to influence policy matters. Therefore, if the decision to purchase specific products or services requires the formation of policy or a judgment concerning the manner in which a particular policy should be applied, communications regarding these potential purchases are lobbying and subject to the Act. However, if no policy decision is required, communications concerning purchase are not lobbying and do not qualify a vendor as a lobbyist.

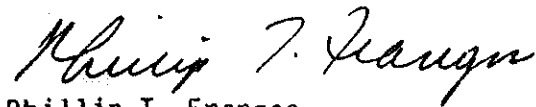
The State of Michigan has, through the years, developed a system of centralized purchasing for most supplies, equipment, and services. This system is provided for in various statutes. It is elaborated in a publication by the Department of Management and Budget known as the Administrative Manual. It is a comprehensive scheme which is designed to limit the discretion of those charged with purchasing for the State.

Selling to the State is usually a matter of fitting one's prices, products and services to the specifications, rather than an effort at persuading a public official to take an administrative action or make a policy decision. A vendor's communications with a public official under these circumstances would not constitute lobbying under the Act.

In those cases where communications with a policymaker are aimed at influencing nonministerial action, section 11(1) makes the payment of a commission unlawful because it is "compensation contingent . . . upon the outcome of an administrative or legislative action." Violation of this provision is punishable as a felony.

This letter is an interpretative statement and not a declaratory ruling because no clear, concise statement of the facts surrounding the communication has been provided.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw