

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



12-84-LD

LANSING
MICHIGAN 48918

November 8, 1984

Michael A. Quinn
Executive Director
Lansing Tri-County Employment
and Training Consortium
1850 W. Mt. Hope Avenue
Lansing, Michigan 48910

Dear Mr. Quinn:

This is in response to your request for a declaratory ruling concerning the applicability of the lobby act (the Act), 1978 PA 472, to the Executive Director of the Lansing Tri-County Employment and Training Consortium. Specifically, you ask whether the Director is an "elected or appointed public official" of local government who is exempt from the Act's registration and reporting requirements under section 5(7)(b) (MCL 4.415).

The Lansing Tri-County Employment and Training Consortium (the Consortium) exists under the authority of the Urban Cooperation Act, 1967 (Ex Sess) PA 7, as amended. The Consortium was established "by the mutual agreement of . . . the Cities of Lansing and East Lansing and the Counties of Ingham, Eaton and Clinton" to jointly carry out the provisions of certain job training and employment opportunity acts.

Pursuant to section 5 of its enabling statute (MCL 124.505), members of the Consortium entered into an "interlocal agreement." Under the agreement, the Consortium is governed by a twelve member Administrative Board (the Board). The Board, in turn, is authorized to hire a Director, who serves as "the executive and manager of the Administration." As stated previously, you ask whether the Director's lobbying activities are subject to the Act's provisions.

Persons who are excluded from the Act are identified in section 5(7), which states 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."

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"Elected or appointed public officials of state or local government" is defined in rule 1(1)(c), 1981 AACRS R4.411, to include officials who serve at the pleasure of their appointing authority. The Director of the Consortium, who serves at the pleasure of the Board, would at first appear to meet this definition. However, in an interpretive statement issued to Mr. Kenneth F. Light, dated January 24, 1984, the Department pointed out that rule 1(1)(c) cannot create a broader class of exempt officials than the legislature intended. Upon carefully examining the Act's provisions, the Department concluded that a person qualifies for the section 5(7)(b) exemption only if the person is an "elected or appointed public official" as defined in rule 1(1)(c) and the person serves in a policymaking capacity.

The answer to your question, then, depends upon whether the Director of the Consortium is a policymaker as contemplated by the Act. According to an interpretive statement addressed to Senator Ed Fredricks, dated December 7, 1983, a policymaker is a person whose duties are not clearly defined and include discretion or authority in matters involving the governmental agency. On the other hand, a person who operates at the direction or control of another or within specified boundaries does not serve in a policymaking capacity and is not a public official for purposes of the Act.

The duties and responsibilities of the Administration and its Director are set out in Chapter 9 of the Consortium's interlocal agreement. That chapter, in general, provides that the Director and Administration shall have duties and responsibilities "as may be required or directed by the Board." Chapter 9 further provides that the Director and Administration shall "prepare plans as directed by the Board," "develop a budget for submission to the Board," "develop and carry out a program to monitor and evaluate programs authorized by the Board," and finally, "operate all programs which are carried on under the direct authority of the Board." Consistent with these provisions, Chapter 5 of the agreement states that the Board's responsibilities shall include the "general supervision of [the] Director."

You assert that the duties and responsibilities described above place the Director in a position analogous to that of a county controller who, as indicated in a letter to Mr. James Stewart, dated June 22, 1984, is exempt from the Act's requirements. However, the office of county controller is created by statute and not by an agreement between political subdivisions. Moreover, statutory provisions relating to that office, and particularly section 13b of 1927 PA 257, as amended (MCL 46.13b), indicate that a county controller has a broad range of duties which include discretion or authority in matters involving the county.

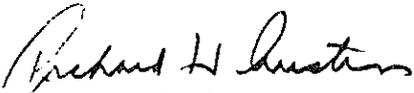
The Director of the Consortium does not enjoy such autonomous statutory authority. On the contrary, the provisions of the interlocal agreement, which is the sole authority for the position, indicate the Director operates within boundaries specified by, and at the direction or control of, the Consortium's governing board. Thus, unlike a county controller the Director does not serve in a policymaking capacity and is not a public official for purposes of the Act.

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In answer to your question, the Director of the Lansing Tri-County Employment and Training Consortium is not an elected or appointed public official of local government who is exempt from the Act under section 5(7)(b). The Director must therefore register as a lobbyist or lobbyist agent upon reaching the expenditure thresholds established in section 5(4) and 5(5) and file periodic disclosure reports as the Act requires.

This response is a declaratory ruling relating to the specific facts and question presented.

Very truly yours,



Richard H. Austin
Secretary of State

RHA/cw