

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1984

Conrad L. Mallett, Jr.
Director, Legal and Governmental Affairs
Office of the Governor
State Capitol
Lansing, Michigan 48909

Dear Mr. Mallett:

This is in response to your inquiry concerning applicability of the lobby act (the Act), 1978 PA 472, to employees of the Department of Social Services in two hypothetical situations, which are set out and answered below.

- I. "Legislator A telephones county director B requesting factual information on pending legislation. The department has taken a position on the legislation. The facts given by B tend to support the department's position. Is the information provided to A . . . an activity in support of lobbying? B is not a lobbyist agent."

Pursuant to section 5(2) of the Act (MCL 4.415), "lobbying" includes "communicating directly with . . . an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." According to section 5(3), "influencing" includes "promoting, supporting, affecting, modifying, opposing or delaying by any means."

In Pletz v Secretary of State, 125 Mich App 335 (1983), plaintiffs argued the definitions of "lobbying" and "influencing" were unconstitutionally vague and ambiguous. The Court of Appeals, in rejecting plaintiffs' contention, suggested the key factor in determining whether a communication is for lobbying is whether the communication is "for the purpose of influencing." The Court cited with approval a New Jersey case which defined the phrase "to influence legislation":

" . . . we conclude that the meaning to be ascribed to this terminology is activity which consists of direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals." 125 Mich App at 130

Thus, "lobbying" as viewed by the Court of Appeals consists of direct, express and intentional communications with public officials for the specific purpose of affecting legislative or administrative action.

A state employee who is contacted by a legislator and asked to provide purely factual information on pending legislation is not directly, expressly and intentionally communicating with a public official for the purpose of influencing that official's actions. While the information provided may indirectly affect the legislator's position on an issue, the employee is not engaged in reportable lobbying activity.

However, if the employee's response includes a discussion of the Department of Social Services' position on a pending matter, the employee is communicating for the purpose of influencing legislative action. Communications of this nature are lobbying and must be accounted for by the Department and the employee as provided by the Act.

II. "Lobbyist agent A attends a legislative hearing on pending legislation. The lobbyist agent's employee, E, accompanies lobbyist agent A to the hearing. The department has taken a position on the legislation. Legislator L asks a question of A which A is unable to answer. A requests that E respond to the question. E provides purely factual information. The facts provided to L tend to support the department's position. Is this providing technical information or is it lobbying?"

In OAG No. 6231, dated June 15, 1984, the Attorney General responded to a similar question from Representative Richard A. Young. Specifically, Representative Young asked whether a state employee who appears before a legislative committee at its request in order to provide information or answer questions is engaged in reportable lobbying activity. The Attorney General concluded:

" . . . where a state executive employee appears before a legislative committee upon its request to furnish information or answer questions, such actions are not considered lobbying, since the state employee is only responding to the needs of the committee and is not promoting and supporting the bill. Although the information provided by the state employee may indirectly influence the committee, nonetheless, because the committee requested the information of the employee, the employee's actions are not 'made to influence' the committee to take a particular action on a proposed bill. (Citation omitted)

A state executive department employee appearing voluntarily at a meeting of a legislative committee, at its request, for the sole purpose of furnishing information requested by the committee or to answer questions, would be doing no more than what would be done by an employee in response to a subpoena to appear before the committee or subcommittee to provide the information needed. A state employee does not take on the character of a lobbyist, requiring registration,

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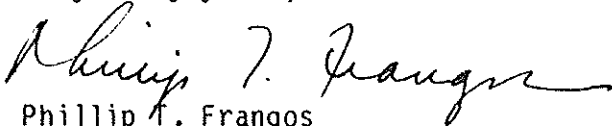
periodic reporting and record keeping, subject to criminal penalty, simply because the employee is cooperative, rather than requiring service of a legislative subpoena." (Emphasis in original)

If the employee in your hypothetical attended the hearing at the committee's request, the employee is "doing no more than what would be done . . . in response to a subpoena." That is, the employee is simply providing factual information in response to the needs of the legislature. In these circumstances, the employee is not intentionally communicating with the committee for the purpose of influencing legislative action, and neither the Department of Social Services nor the employee is required to report the activity.

If the employee did not attend at the committee's request, it should be noted that an employee who provides information to a committee may qualify for the "technical information" exemption found in section 5(2) of the Act and referred to in your letter. Section 5(2) specifically exempts "the providing of technical information" by a person recognized as an expert in the subject area "when appearing before an officially convened legislative committee or executive department hearing panel." "Technical information" is defined to mean "empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related."

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