

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING  
MICHIGAN 48918

October 3, 1984

John W. Etherton, Executive Director  
Michigan Paralyzed Veterans of America  
30406 Ford Road  
Garden City, Michigan 48135

Dear Mr. Etherton:

This is in response to your inquiry concerning applicability of the lobby act, 1973 PA 472 (the "Act"), to the Michigan Paralyzed Veterans of America. Before discussing the issues you raise, a few definitions should be reviewed.

"Lobbyist" is defined at section 5(4) of the Act (MCL 4.415) as meaning:

"(a) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period.

(b) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official."

The definition of "person" is found at section 6(1) of the Act (MCL 4.416) and includes ". . . a business, individual . . . firm . . . corporation . . . association . . . or any other organization or group of persons acting jointly," while "lobbying" is defined at section 5(2) of the Act:

"'Lobbying' means communicating directly with an official in the executive branch . . . or . . . legislative branch of state government for the purpose of influencing legislative or administrative action."

It would appear you are concerned about two categories of individuals who may be involved in direct communications: first, paid employees become involved in activities which might be classified as lobbying "when testimony is requested by the state legislature on specific issues which may affect our membership or the handicapped community in general," and second, "volunteers or chapter officers (who) are only reimbursed for out of pocket expenses." You asked whether either of these groups are affected by the Act.

The first classification of employee about which you indicate concern are those paid employees whose "testimony is requested by the state legislature on specific issues which may affect (y)our membership or the handicapped community in general." With respect to this group, you should be aware of the exception in section 5(2) from the definition of "lobbying" quoted above:

" . . . Lobbying does not include the providing of technical information by a person other than a person . . . or an employee of a person as defined in subsection (5) when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, 'technical information' means empirically verifiable data provided by a person recognized as an expert on the subject area. . . ."

If your paid employees meet the requirements of this section, they are not lobbying. This would seem to mean that such employees must be "recognized as expert(s) in the subject area" and must be providing "empirically verifiable data" to an "officially convened legislative committee or executive department hearing panel." However, a recent opinion of the Attorney General (#6231, 6/15/84) expresses the opinion that an employee of a state executive department who appears before a legislative committee or subcommittee at its request to provide information or answer questions is not required to register as a lobbyist or keep records and file reports because the employee is not influencing or lobbying the committee or subcommittee. The essence of this opinion is that while the legislature intended such employees to fall within the definition of "lobbyist agent," this will occur only when their actions are "lobbying." The opinion emphasizes that one does not, solely because of employment by a state executive department, become a lobbyist or lobbyist agent:

"Only if that person communicates with officials in the executive or legislative branch 'for the purpose of influencing legislation' is he or she engaged in 'lobbying' and thus subject to the requirements of the Act."

The Attorney General also points out that the employee need not be subpoenaed before the committee, but may simply appear "at its request," since the employee is "only responding to the needs of the committee and is not promoting and supporting (a) bill." The opinion goes on:

" . . . 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 . . . . A state employee does not take on the character of a lobbyist . . . simply because the employee is cooperative, rather than requiring service of a legislative subpoena."

Because this opinion is limited by the Attorney General "to the situation where a legislative committee has requested the appearance of a State executive department employee" rather than to the paid employees of an organization such as yours, its application to your situation is unclear. We have therefore referred this question to the Attorney General for a formal opinion, and will advise you upon receiving same.

The second group you describe are "volunteers or chapter officers (who) are only reimbursed for out of pocket expenses." Section 5(7)(d) exempts from the definition of lobbyist or lobbyist agent "A member of a lobbyist if the lobbyist is

John W. Etherton

Page 3

a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)." Assuming that the "volunteers or chapter officers" are members of your organization, and assuming that the Michigan Paralyzed Veterans of America is a membership organization or association which is a lobbyist (i.e., meets the requirements of section 5(4) of the Act), the "volunteers or chapter officers" are exempt from the requirements of the Act, except as noted below, unless they separately qualify as lobbyists under subsection (4) (i.e., make expenditures for lobbying of more than \$1,000 in value in any 12 month period or more than \$250 in a 12 month period if expended in lobbying a single public official.)

You should be advised that section 5(6)(b) defines "representative of the lobbyist" for purposes of sections 8(1)(b)(i) and 9(1)(b) (MCL 4.418 and 4.419) as:

" . . . a member of the lobbyist or employee of a member of the lobbyist, when the lobbyist is a membership organization or association, and when the lobbyist agent or an employee of the lobbyist or lobbyist agent is present during any part of the period during which the purchased food or beverage is consumed."

Sections 8(1)(b)(i) and 9(1)(b) require the reporting of food and beverage provided for public officials. Therefore, a membership organization which is registered as a lobbyist must report any expenditures its members make for food and beverage, and for which it reimburses them, as specified in section 8(2).

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