

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING  
MICHIGAN 48918

September 27, 1984

Honorable William A. Sederburg  
805 Farnum Building  
Lansing, Michigan 48909

Dear Senator Sederburg:

This is in response to your request for a declaratory ruling concerning the applicability of the lobby act (the Act), 1978 PA 472, to persons from whom you regularly seek advice.

Specifically, you indicate:

"In my role as State Senator for the Twenty-fourth District, I have often called upon respected members of the community to serve on advisory committees to provide me with advice and assistance in their areas of expertise. I currently seek advice from the advisory groups covering the following areas, all of which were set up at my instigation and meet at my request: the arts; Michigan State University; agriculture; and K-12 education. The membership of these groups includes individuals who are employed by lobbyists (i.e. MSU) but are not compensated or reimbursed for any activities relating to lobbying. I also at times have sought advice from personal friends who happen to be employed by a lobbyist - such as MSU professors - in less formal settings such as individual lunch meetings, some of which meals were paid for by my companions." (Emphasis in original)

You ask whether in these circumstances your friends and advisers are "representative[s] of the lobbyist" whose expenditures must be reported by their lobbyist/employers. While not specifically stated, it is assumed your acquaintances are communicating with you for the purpose of influencing your actions as a legislator.

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist must file reports on January 31 and August 31 of each year. With the exception of food and beverage expenditures, which are discussed below, section 8(1)(b) requires the lobbyist to disclose any expenditures which are "for" or "directly related" to lobbying, including those made by a "representative of the lobbyist." According to sec-

tion 5(6)(a) of the Act (MCL 4.415), "representative of the lobbyist" includes an employee of the lobbyist or lobbyist agent.

The issue raised by your inquiry is whether your friends' and advisers' expenditures can be attributed to their employers as expenditures for lobbying.

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

The Department has previously indicated in a letter to Mr. Rossi Ray Taylor, dated July 13, 1984, that an employer is not engaged in direct, express and intentional communications which are specifically intended to influence a public official's actions unless the employer directs or controls its employee's lobbying activity. The Department concluded that where direction or control is absent, the employer is not required to report compensation or reimbursement paid to an employee for time spent lobbying on behalf of an independent association or organization.

This rationale is even more compelling when determining whether the literal construction of sections 8(1)(b) and 5(6)(a) should prevail. If interpreted narrowly, these sections would require an employer to account for any expenditures made by an employee, or "representative of the lobbyist," regardless of the circumstances. Such an interpretation would lead to an absurd and unjust result, for the employer would be obligated to report expenditures by an employee which are totally unrelated to the employer's interests or concerns. Even if desirable, the employer would be unable to meet this burden because the

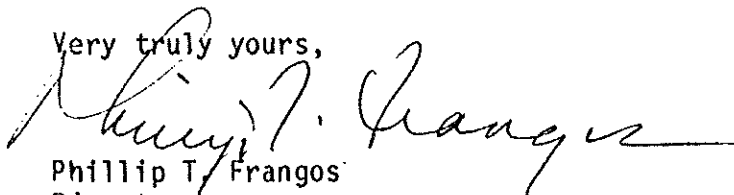
Act does not require an employee who is not compensated or reimbursed for lobbying to report his or her expenditures to the employer. Therefore, it must be concluded that an employee who makes expenditures while communicating with a public official cannot be a "representative of the lobbyist" whose expenditures must be attributed to and reported by his or her employer unless the employer directs or controls the employee's activity.

Whether the employer exercises direction or control depends upon a variety of factors. For example, if a person merely responds to your questions or generally represents his or her views as a member of a profession or institution, it is unlikely that the person is directed or controlled by the employer. On the other hand, if the person represents the employer's position on an issue, the employer may be directing or controlling the person's activity and closer scrutiny is required. A final determination can be made only on a case by case basis.

It should be pointed out, however, that food and beverage expenditures are treated somewhat differently under the Act. Unlike other reportable expenditures, subsections (1)(b) and (2) of section 8 require an employer/lobbyist to report any expenditure for food and beverage provided for a public official, regardless of the expenditure's purpose, if "the expenditure for that public official exceeds \$25.00 in any month covered by the report or \$150.00 during the calendar year from January 1 through the month covered by the report." Thus, if a friend or adviser is reimbursed by an employer for food and beverage expenditures made on your behalf, the employee is a "representative of the lobbyist" even though the initial expenditure was not directed or controlled by the employer. In these circumstances, the employer must report the reimbursement as an "other expenditure for lobbying."

This response is informational only and does not constitute a declaratory ruling because a complete statement of facts was not provided as required by rule 3(2), 1981 AACRS R4.413.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw