

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 21, 1989

Frederick K. Lowell
 PILLSBURY, MADISON & SUTRO
 Post Office Box 7880
 San Francisco, California 94120

Dear Mr. Lowell:

This is in response to your request for an interpretation of the Michigan Lobby Act (the Act), 1978 PA 472, as amended, to a fact finding tour proposed by your client, Chevron Chemical Company (Chevron). Specifically, you indicate that Chevron proposes to pay for the costs of a four to six day fact finding tour for Michigan legislators to collect technical information relating to a bill pending before the Michigan Legislature. You ask whether Chevron's "sponsorship" of the tour is permissible under the Act.

Section 11(2) of the Act (MCL 4.421) prohibits a lobbyist or lobbyist agent from giving a gift to a public official, including a legislator. "Gift" is defined in section 4 of the Act (MCL 4.414) as "a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value" if the value exceeds \$33.00 (\$35.00 in 1990) in a one month period. You indicate that Chevron is not presently a lobbyist as defined in section 5(4) of the statute (MCL 4.415). Therefore, your inquiry regarding the application of the Act to your client seems premature. However, the following general discussion is offered to clarify the interpretive statement issued to John D. Pirich and Timothy Sawyer Knowlton on November 9, 1989, a copy of which is attached for your convenience.

In that interpretive statement, the Department was asked whether providing transportation to public officials to enable them to attend fact finding tours is an illegal gift under the Act. The factual scenario presented by Messrs. Pirich and Knowlton indicated that the tour in question would be carefully planned "so that the public officials would not have time for personal sightseeing or other recreational activities." Further, it was anticipated that "[i]n the great majority of instances . . . a fact finding tour would be completed within a one day period so that it would be unnecessary for the public official to be away overnight." After a careful analysis and in light of these specific limitations, the Department concluded:

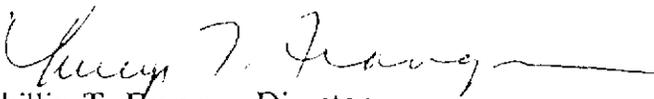
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"It therefore appears that the Act does not prohibit a lobbyist or lobbyist agent from furnishing transportation to a public official in connection with an informative tour if the surrounding circumstances indicate there is no intention to circumvent the Act and give an illegal gift. Transportation costs would appear to be an 'expenditure for lobbying,' rather than a gift, only when the following criteria are met. First, there must be actual operations at the tour site which demonstrate unusual advanced technologies. Second, when there are several sites where the advanced technologies can be observed, the tour site must be the location closest to Lansing. Third, the tours must be planned so that arrival and departure schedules permit no free periods for personal or recreational activities. Fourth, the tour sponsor, rather than the public official, must select the means and times of transportation. Fifth, in accord with Rule 1(1)(d)(iv), the transportation costs would not have been incurred but for the activity of communicating directly with the public official. That is, the real purpose of the transportation costs must be to provide public officials with information in connection with direct communication and not as a subterfuge to give a gift."

The Pirich and Knowlton letter was not intended to imply that a fact finding tour of more than one day's duration is permissible under the Act. Such an extended tour would not appear to meet the third criterion identified above because it would necessarily result in free periods of time which could be used for personal or recreational activities. It should also be noted that because the Pirich and Knowlton letter concerned a one day tour, the Department's analysis was limited to transportation costs. There is nothing in the letter which suggests that payments for recreation, entertainment or overnight accommodations made in connection with a fact finding tour are excluded from the prohibition found in section 11(2) of the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,


Phillip T. Frangos, Director
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PTF/AC/cw/rlp
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