

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

48918-2110

July 29, 1992

Karen Holcomb-Merrill  
 Executive Director  
 Common Cause in Michigan  
 109 East Oakland  
 Lansing, Michigan 48906

Dear Ms. Holcomb-Merrill:

This is in response to your inquiry regarding the application of the lobby act (the Act), 1978 PA 472, as amended, to lobbyists and lobbyist agents who provide public officials with tickets and transportation to sporting events. Specifically, you indicate the following:

"Common Cause has knowledge and belief that a number of associations and corporations, which are lobbyists under the Michigan Law, own or lease boxes at the Palace of Auburn Hills, the site of Detroit Piston basketball games.

It is our understanding that public officials in Michigan have accepted invitations to attend sporting events, like Detroit Piston basketball games, as the guests of lobbyist agents employed by either corporations, associations or multi-client lobbying firms."

You ask how a ticket admitting a public official to a private box at a stadium or arena should be valued "since an individual ticket to a private box is not sold to the general public at the box office." You also ask how transportation should be valued if a lobbyist agent transports one or more public officials in a chartered limousine or bus or in the lobbyist agent's private vehicle.

The value of the ticket and transportation is significant because section 11(2) of the Act (MCL 4.421) prohibits a lobbyist or lobbyist agent from giving a gift to an official in the legislative or executive branch of state government. Pursuant to sections 4(1) and 19a of the Act (MCL 4.414(1); MCL 4.429a), "gift" means anything having a value which exceeds \$36.00 in any one month period.

The preliminary issue raised by your inquiry is whether the value of the ticket and transportation should be combined when calculating whether the monetary threshold established by sections 4(1) and 19a has been met. This issue has not been previously addressed. However, with respect to financial

Karen Holcomb-Merrill  
Page 2

transactions, the Department has consistently stated that certain expenditures must be combined to determine whether a particular exchange is a reportable financial transaction.

"Financial transaction" is defined in section 3(3) of the Act (MCL 4.413) as a "loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value." Pursuant to section 8(1)(c) (MCL 4.418) and section 19a, any financial transaction having a value of at least \$725 between a lobbyist or lobbyist agent and a public official or a member of the public official's immediate family must be reported.

The Department has indicated that when a lobbyist or lobbyist agent pays an honorarium and travel costs for a public official to participate in an event, the cost of the honorarium, travel and lodging must be combined to determine if the financial transaction reporting threshold has been met. (Interpretive statements issued to John Cavanagh, March 8, 1990; then Representative Vernon Ehlers, January 27, 1984; and former Speaker Gary Owen, February 7, 1984.) In an interpretive statement issued to you on September 24, 1991, the Department indicated that travel costs paid by a lobbyist or lobbyist agent on behalf of a member of the public official's immediate family who accompanies the official to a speaking engagement or similar event must be included in this calculation. The interpretive statement explains that the Act does not provide for separate reporting thresholds:

"The Legislature clearly determined that any financial transaction of \$700.00 [in 1991] or more between a lobbyist or lobbyist agent and a public official's immediate family member could potentially influence the public official and must therefore be reported. The intent to fully disclose such potential influence would be seriously undermined if a lobbyist could avoid reporting travel and accommodation costs by creating an artificial distinction between travel costs paid for a public official and travel costs paid so that the official's family could accompany the official to the same event. Therefore, in answer to your question, the travel and accommodation costs paid by a lobbyist or lobbyist agent for a public official and members of the public official's immediate family must be combined when determining whether the \$700.00 threshold for reporting a financial transaction has been met."

Unlike financial transactions, which are permissible but must be reported, gifts from lobbyists and lobbyist agents to public officials are prohibited and subject to criminal penalties. This prohibition cannot be avoided by attempting to create a similar artificial distinction between the cost of a ticket and the cost of transportation to the same event. Therefore, a lobbyist or lobbyist agent may not provide a ticket and transportation to an event if the combined value of the ticket and transportation exceeds \$36.00.

Turning to your questions, you first ask how the value of a ticket admitting a person to a private stadium or arena box should be determined. The Department has been unable to obtain information regarding the value of tickets assigned to owners of suites in the Palace of Auburn Hills. However, the value of a

Karen Holcomb-Merrill

Page 3

ticket admitting a person to a private suite is clearly greater than a ticket available to the public.

A ticket sold to the public simply admits the ticket holder to the event. A person holding a ticket to a private suite is not only admitted to the event, but the ticket holder has exclusive access to a private area of the arena. The private ticket holder then enjoys amenities not available to others in the arena. Therefore, absent specific information regarding the value of tickets assigned to suite holders, a ticket to a suite should be assigned the ticket price of the most expensive ticket available to the public.

Your second question is whether the value of a ticket given to a public official by a lobbyist agent can be allocated to the number of lobbyists the agent is representing. Section 11(2) prohibits both lobbyists and lobbyist agents (or anyone acting on their behalf) from giving a gift to a public official. It does not matter who paid for the gift; a lobbyist agent may not give anything valued in excess of \$36.00 to a public official. Therefore, the value of an item cannot be allocated between the lobbyists or clients a lobbyist agent represents.

Allocation of an item's value is permissible, however, when the same item is given to two or more individuals. As explained in an interpretive statement issued to Speaker Owen on February 7, 1984:

"Where a gift is given to more than one person which includes a public official, i.e., a public official and spouse, then the gift will be deemed to be shared equally among all members of the group and the 'share' of the public official must not be of value exceeding [\$36.00] in any 1-month period."

This principle also applies to an item given to two or more public officials. Therefore, in answer to your third question, if a lobbyist agent charters a limousine or bus, the cost of the limousine or bus is allocated to the number of public officials transported to the event. If the value of each public official's allocated share of the transportation cost is more than \$36.00, the provision of transportation is prohibited.

Finally, you ask how the value of transportation should be determined if the lobbyist agent uses his or her own vehicle. If the lobbyist agent is reimbursed for the trip, the actual amount of the reimbursement is allocated to the number of officials for whom transportation is provided. If there is no reimbursement, it is reasonable to use the Internal Revenue Service standard mileage rate for business deductions (currently 27.5 cents per mile) to ascertain the value of this transportation and divide that total by the number of officials transported to the event.

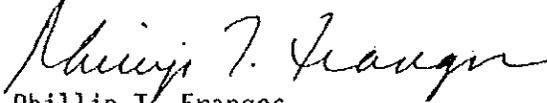
It should be noted that if one or more items are provided to a single public official, the total value of the exchange may not be allocated if the public official directs or controls the subsequent disposition of the item. For example, if four \$10.00 tickets are given to a single public official and the official controls the subsequent use of the tickets, the benefit and thus

Karen Holcomb-Merrill  
Page 4

value of the item given to the official is \$40.00. In these circumstances, the cost of the tickets cannot be allocated to other persons, and a lobbyist or lobbyist agent is prohibited from giving the tickets to the public official.

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

Very truly yours,



Phillip T. Frangos  
Deputy Secretary of State  
State Services