

## STATE OF MICHIGAN



CANDICE S. MILLER, Secretary of State  
 MICHIGAN DEPARTMENT OF STATE  
 TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

May 22, 1995

Honorable Paul Hillegonds  
 Speaker of the House  
 Michigan House of Representatives  
 515 Olds Plaza Building  
 Lansing, Michigan 48909

Honorable Curtis Hertel  
 Minority Leader  
 Michigan House of Representatives  
 167 Capitol Building  
 Lansing, Michigan 48909

Honorable Dick Posthumus  
 Majority Leader  
 Michigan Senate  
 520 Farnum Building  
 Lansing, Michigan 48909

Honorable Arthur Miller, Jr.  
 Minority Leader  
 Michigan Senate  
 S-105 Capitol Building  
 Lansing, Michigan 48909

Dear Sirs:

This is in response to your request for an interpretive statement concerning the provision of travel and lodging to legislators. Specifically, you ask whether a lobbyist or lobbyist agent may provide travel and lodging expenses to a legislator if the travel and lodging are not connected to the payment and receipt of an honorarium.

The Department of State concludes:

A lobbyist or lobbyist agent may provide travel and lodging to a public official, including a legislator, if the public official provides consideration of equal or greater value. The consideration may be an appearance, speech, article, participation in a panel or seminar, or a similar activity that is connected to public business or the performance of official duties. The payment and receipt of an honorarium are not required.

#### Discussion

Section 11(2) of the Lobby Act, 1978-PA 472, (MCL 4.411 to 4.431) prohibits a lobbyist or lobbyist agent from giving a gift to a public official. "Gift" is defined, in pertinent part:

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Sec. 4. (1) "Gift" means a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds [\$39.00] in any 1-month period, unless consideration of equal or greater value is received therefor.

The Department of State has previously issued interpretive statements to John Cavanagh (March 8, 1990) and Karen Holcomb-Merrill (September 24, 1991) indicating that travel and lodging costs that are unconnected to the receipt of an honorarium could not be provided by a lobbyist or lobbyist agent, if the value of the travel and lodging exceeded the gift threshold. However, these interpretive statements were based upon administrative rules promulgated before the enactment of the legislative amendments discussed below.

In 1994, the Legislature created a special Joint Legislative Ethics Commission. The Joint Commission was charged with the task of making recommendations to the Legislature concerning the conduct of members of the House of Representatives and the Senate. The Joint Commission was specifically directed to make recommendations concerning the treatment of honoraria and the reporting of gifts, entertainment, food and lodging.

The Joint Commission issued a report in May, 1994. The report suggested a ban on legislators' acceptance of cash honoraria. The report also recommended that lobbyists and lobbyist agents report travel and lodging expenses that are paid for or reimbursed to public officials.

The Legislature responded to these recommendations by enacting 1994 PA 385 and 1994 PA 412. Act 385 amends the Michigan Campaign Finance Act to prohibit a legislator from accepting an honorarium. However, "honorarium" is defined to exclude travel and lodging. Act 412 amends the Lobby Act to require a lobbyist or lobbyist agent to report travel and lodging expenses in excess of \$500.00 that are paid for or reimbursed to a public official in connection with public business.

Acts 385 and 412 are in conflict with the Department's previous interpretation of the Lobby Act and rules. The amendatory acts suggest that a lobbyist or lobbyist agent may provide travel and lodging to a public official without the payment of an honorarium. On the other hand, the rules require the payment of an honorarium as a condition of accepting travel and lodging.

Ordinarily, a legislative amendment would supersede a conflicting administrative rule. However, the ban on accepting honoraria applies only to legislators. This suggests that the rule still applies to public officials who are not legislators. The resulting confusion could have been avoided by amending the definition of "gift" to exclude payments for travel and lodging provided in

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connection with public business. Absent clarifying legislation, the statutes and rules must be read together to determine their effect upon the provision of travel and lodging.

It is clear that the amendatory acts were intended to provide for disclosure, rather than the outright ban, of lobbyist paid travel and lodging. Act 385 and Act 412 both allow a legislator to receive payments for travel and lodging if the legislator provides a service in exchange for the transportation and accommodations. The same principle is embraced in the definition of "gift": an item of value provided by a lobbyist is not a gift when consideration of equal or greater value is provided by the public official.

Acts 385 and 412 establish that "consideration of equal or greater value" may be an appearance, speech, article or similar service provided by a legislator in connection with public business or the performance of legislative duties. Therefore, in answer to your question, a lobbyist or lobbyist agent may pay for a legislator's travel and lodging if the legislator provides a service of equal or greater value in exchange. The travel and lodging does not have to be provided in connection with an honorarium.

Although your question was limited to travel and lodging provided to legislators, the same analysis would apply to travel and lodging provided to other public officials.

This response is an interpretive statement and is not a declaratory ruling.

Sincerely,



Candice S. Miller  
Secretary of State

CSM:rlp

Bureau of Elections  
P.O. Box 20126  
Lansing, Michigan 48901-0726

STATE OF MICHIGAN



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Campaign Finance: (517) 373-8558  
Lobby Registration: (517) 373-8558

CANDICE S. MILLER, Secretary of State  
MICHIGAN DEPARTMENT OF STATE

DATE: June 23, 1995  
TO: Registrants Under Lobby Registration Act  
FROM: Michigan Department of State, Bureau of Elections  
SUBJECT: New Legislation

THE FOLLOWING AMENDMENTS TO THE LOBBY REGISTRATION ACT AND THE CAMPAIGN FINANCE ACT AFFECT THE REGISTRATION, DISCLOSURE AND RECORDKEEPING REQUIREMENTS FOR LOBBYISTS AND LOBBYIST AGENTS AND PROHIBIT THE PAYMENT OF HONORARIA TO LEGISLATORS. THESE AMENDMENTS BECAME EFFECTIVE ON JANUARY 1, 1995. ACTIVITY TAKING PLACE BETWEEN JANUARY 1, 1995 AND JULY 31, 1995 WILL BE DISCLOSED ON THE 1995 SUMMER FINANCIAL REPORT WHICH WILL BE DUE IN THIS OFFICE ON AUGUST 31, 1995

Public Act 385 - Ban on legislators accepting honoraria

This act amends the Campaign Finance Act to prohibit a state senator or state representative from accepting payment for an appearance, a speech, an article, or any activity related to or associated with the performance of duties as an elected official. A payment of this type is defined as an honorarium under this new legislation.

The definition of an honorarium does not include reimbursement for the cost of transportation, accommodations, or meals provided to a person. Also excluded are any wages, salaries or other employee compensation or expenses authorized to be paid by this state or a political subdivision of this state to a person holding elective office. Awards such as plaques, trophies, certificates, busts, ceremonial gavels or mementos are also excluded from the definition of an honorarium.

A state senator or state representative is not prohibited from accepting reimbursement for the cost of transportation, accommodations, or meals provided as a consideration for an appearance, a speech, an article, or any activity related to or associated with the performance of their duties as an elected official. A lobbyist or lobbyist agent may provide reimbursement for transportation and accommodations as indicated above, if the value is not greater than the value of the service provided. Anything of value provided to any public official in excess of the gift threshold would constitute a prohibited gift as defined under the Lobby Registration Act. Any payment or reimbursement for travel and lodging provided to a public official in excess of \$500.00 must be disclosed as required under Public Act 412.

This restriction does not prohibit the acceptance of honoraria by public officials who are not state senators or state representatives.

Public Act 412 - Reporting travel and lodging for public officials

This act amends the Lobby Registration Act to include a new reporting provision which requires lobbyists and lobbyist agents to report any travel or lodging expenses paid for or reimbursed to a public official, in connection with public business by that public official, which are in excess of \$500.00. Under this provision, the names of the parties involved, a description of the transaction, the amount spent and the date of transaction must be disclosed as a separate line item on the Financial Report Summary form.

Expenditures reported under this new requirement must also be included when determining if a reportable financial transaction of \$775.00 or more has occurred. For example, if a lobbyist or lobbyist agent provides a public official with a \$500.00 honorarium (assuming the public official is not a state senator or state representative prohibited from accepting an honorarium) and \$550.00 worth of travel and lodging in exchange for a speech provided by the public official at an event, the total \$1050.00 expenditure would be reported as a financial transaction as it exceeds the \$775.00 reporting threshold involved. Since the expenditure for the travel and lodging component of the financial transaction exceeds the new \$500.00 travel and lodging reporting threshold, the \$550.00 paid for the travel and lodging must also be reported a second time as a separate line item on the reporting forms provided by the Secretary of State. The reporting forms will be sent to current registrants one month prior to the August 31, 1995 filing deadline for the 1995 Summer Financial Report Summary.

This act also contains a provision which requires registrants reporting the payment or reimbursement of any travel or lodging expenses to a state senator or state representative, in excess of \$500.00, to send a document disclosing the expenditures to the affected state senator or state representative simultaneously with the filing of the report with the Secretary of State.

Public Act 383 - Ban on lobbying by state senators or state representatives that leave office prior to end of their term of office

This act amends the Lobby Act to prohibit state senators and state representatives who leave office prior to the end of their term of office from making expenditures for lobbying or from receiving compensation or reimbursement for lobbying for the remainder of the term of the office from which they resigned. This restriction does not apply to other public officials.

Questions?

If you have any questions, please do not hesitate to contact this office:

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