STATE OF MICHIGAN

1-96-LI

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
LANSING, MICHIGAN 48918

February 20, 1996

Mr. Jeffrey H. Miro
Miro, Miro & Weiner
500 North Woodward Avenue, Suite 100
Post Office Box 908
Bloomfield Hills, Michigan 48303-0908

Dear Mr. Miro:

This is in response to your request for a ruling concerning the applicability of the Lobby Act (the Act), 1978 PA 472, as amended, to legal services provided by a law firm which is registered as a lobbyist agent under the Act to a public official, his or her immediate family, or a business with which such person is associated.

You ask whether a law firm registered as a lobbyist agent must disclose financial transactions in the form of legal services provided to a public official, the immediate family of a public official, and a business associated with a public official or a public official's immediate family.

General Conclusion

- A law firm registered as a lobbyist agent under the Act must account for every financial transaction between the law firm and a public official, a member of the immediate family of a public official, or a business associated with a public official or a member of the immediate family of a public official, including legal services provided to such persons.

Facts

Miro, Miro & Weiner (the Law Firm) is a registered lobbyist agent under the Act. The Law Firm may provide legal services to a public official, to a member of the immediate family of a public official, or to a business associated with a public official or a member of the immediate family of a public official. The legal services would be provided in the ordinary course of business of the Law Firm, and the person would pay fair market value for the legal services rendered.

Discussion

Section 5(5) of the Act, MCL 4.415, provides:

> "(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount in excess of $250.00 in any 12-month period for lobbying."

Section 8(1) of the Act, MCL 4.418, requires lobbyists and lobbyist agents to file reports with the Secretary of State which include accounts of financial transactions involving public officials. Subsection 8(1)(c) of the Act provides in pertinent part:

> "Sec. 8. (1) A lobbyist or a lobbyist agent shall file a signed report in a form prescribed by the secretary of state under this section. . . The report . . . shall include the following information:
>
> * * *
>
> "(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated, in which goods and services having value of at least $775.00, or travel and lodging expenses paid for or reimbursed to a public official in connection with public business by that public official in excess of $500.00, are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. This subdivision does not apply to the following:
>
> "(i) A financial transaction in the ordinary course of the business of the *lobbyist*, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist.
>
> "(ii) A financial transaction undertaken in the ordinary course of the *lobbyist's* business, in which fair market value is given or received for a benefit conferred." (Emphasis and italics added.)

(A) Statutory Construction

The plain language of subsection 8(1)(c) requires both lobbyists and lobbyist agents to file lobby reports giving an account of financial transactions with public officials, their immediate family, or businesses with which they or their immediate family are associated.

Just as plainly, subdivisions (i) and (ii) of subsection 8(1)(c) exempt for the reporting requirement certain financial transactions undertaken in the ordinary course of the lobbyist's business. These two subdivisions are remarkable only in their explicit reference to the ordinary business of a lobbyist but not to the ordinary business of a lobbyist agent.

The Act distinguishes between two types of lobbying entities: a "lobbyist" and a "lobbyist agent". In the most basic sense, a "lobbyist" is a person who makes an expenditure for lobbying, i.e., an expenditure to communicate directly with a public official for the purpose of influencing legislative or administrative action, whereas, a "lobbyist agent" is a person who is compensated or reimbursed for lobbying.

You contend that the failure to explicitly include an exemption for financial transactions in the ordinary course of a lobbyist agent's business is either inadvertent or incongruous. However, a close examination of the Act and its predecessors indicates the exclusion was intentional and purposeful.

One of the main purposes of this dichotomy is to allow differentiation in regulation. Historically, the particular concern of the Legislature has vacillated between the activities of lobbyists and lobbyist agents.

The Act's progenitor was 1947 PA 214, entitled, "AN ACT to license *legislative agents*, and to regulate their activities . . ." (Italics added.) Section 1 of this act provided:

> "Sec. 1. The term "legislative agent" as used in this act shall be construed to mean a person who is employed...to engage in promoting, advocating, or opposing any matter before either house of the legislature or any committee thereof, or . . . which might legally come before either house of the legislature or any committee thereof." (Emphasis added.)

Section 7 of the progenitor lobby law was the original antecedent of section 8(1) of the Act and provided in pertinent part:

> "Sec. 7. Any legislative agent who, in his capacity as such, has any financial transaction with any member of the legislature, shall...file a sworn statement with the secretary of state giving in detail the nature of the transaction together with the name of the member of the legislature." (Emphasis added.)

Under section 7 of the progenitor lobby law, a legislative agent was not required to report a financial transaction with a legislator, if the financial transaction was not related to his

capacity as a legislative agent. This exception is the precursor of subdivisions 8(1)(c)(I) and (ii) of the Act, but applied only to a legislative agent, which was the original antecedent of "lobbyist agent" under the Act. Under the progenitor lobby law, it was the lobbyist/legislative agent which was of particular concern to the Legislature. In this regard, it is particularly noteworthy that the progenitor lobby law neither recognized nor regulated a "lobbyist".

The progenitor lobby law was replaced by 1975 PA 227, which defined, regulated, and distinguished between "lobbyist" and "lobbyist agent". But this act required reports to be filed only by lobbyists and not by lobbyist agents. Section 143(1)(c) of this act was the direct antecedent of subsection 8(1)(c) of the Act:

> "Sec. 143. (1) A lobbyist shall file a signed report . . . The report shall be on a prescribed form and shall include the following information:
>
> * * *
>
> "(c) An account of every financial transaction . . . between the lobbyist, or anyone acting on behalf of the lobbyist, and a public official or a member of the public official's immediate family . . . except a financial transaction in the ordinary course of the lobbyist's business where consideration of equal or greater value is received by the lobbyist. The account shall include the date and nature of the transaction, the parties thereto, and the amount and terms thereof."

[1975 PA 227 was declared unconstitutional in *Advisory Opinion 1975 PA 227*, 396 Mich 123 (1976) and later repealed by 1980 PA 180, but neither action affects this analysis.].

As shown by the foregoing, the Legislature had previous experience with regulating lobbyists and lobbyist agents prior to the Act. The progenitor lobby law regulated only legislative (lobbyist) agents and required them to report financial transactions with public officials, but only when the legislative agent engaged in the financial transaction "in his capacity as [a legislative agent]."

1975 PA 227 regulated both lobbyists and lobbyist agents, but required only lobbyist to file reports of financial transactions with public officials, "except a financial transaction in the ordinary course of the lobbyist's business where consideration of equal or greater value is received by the lobbyist".

The Act regulates both lobbyists and lobbyist agents, and requires both to report financial transactions with public officials. However, the plain language of subdivisions 8(1)(c)(I) and (ii) of the Act excepts from reporting only financial transaction "in the ordinary course of the *lobbyist's* business".

In *People v Hall*, 391 Mich 175, 190 (1974), the Supreme Court declared:

> "This Court will presume that the Legislature of this state is familiar with the principles of statutory construction."

A well-established rule of statutory construction was reiterated by the Court of Appeals in *People v Lange*, 105 Mich App 263, 266 (1981):

> "Under the doctrine of *expressio unius est exclusio alterius*, express mention in a statute of one thing implies the exclusion of similar things."

The financial transaction disclosure exceptions in subdivision 8(1)(c)(I) and (ii) expressly refer to the business of the lobbyist which implies that financial transactions in the ordinary course of the business of the lobbyist agent is excluded from the disclosure exceptions. The rules of statutory construction dictate that the "ordinary course of business' exceptions in subsection 8(1)(c) only apply to financial transactions between lobbyists and public officials and do not apply to financial transactions between lobbyist agents and public officials. Therefore, a lobbyist agent must disclose financial transactions with a public official, a member of the public official's immediate family, or a business with which a public official or a member of the public official's immediate family is associated which meet the threshold amounts prescribed in subsection 8(1)(c) of the Act.

(B) Attorney-Client Privilege

You claim, "[T]he attorney-client privilege protects information regarding legal services provided by us to our clients." You cite *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 466 (1988):

> "The purpose of the attorney-client privilege is to allow a client to confide in his or her attorney secure in the knowledge that the communication will not be disclosed. This privilege, which attaches to confidential communications made for the purpose of obtaining legal advice on some right or obligation, may be asserted by either the attorney or the client."

The Court of Appeals has also declared:

> "The scope of the attorney-client privilege is narrow. It attaches only to confidential communications by the client to his adviser which are made for the purpose of obtaining legal advice." *US Fire Ins Co v Citizens Ins Co of America*, 156 Mich App 588, 592 (1986).

Section 8(1)(c) of the Act merely requires the attorney/lobbyist agent to disclose the "date and nature of the [financial] transaction, the parties to the [financial] transaction, and the amount involved in the [financial] transaction."

In your firm's circumstance, the nature of the financial transaction is legal services. The disclosure that the financial transaction between an attorney/lobbyist agent and a public official is in the nature of legal services is not a disclosure of privileged communication, nor is the disclosure that an attorney-client relationship exists between an attorney/lobbyist agent and a public official. Certainly, the amount of the financial transaction (legal fees) is not "confidential communications made for the purpose of obtaining legal advice on some right or obligation."

Even if the disclosure of this information were within the scope of the attorney-client privilege, it must be kept in mind that the privilege is a common law privilege and, therefore, may be modified by statute. There is no question that non-attorney lobbyist agents could raise no similar claim of privileged communication. To this point, I would cite *Pletz v Secretary of State*, 125 Mich App 335, 348 (1983):

> "The act treats attorneys who lobby in an identical manner as non-lawyers."

The Rules of Professional Conduct also support disclosure under the Act. MPRC 1.6(c)(2) provides:

> "(c) A lawyer may reveal:
>
> * * *
>
> "(2) confidences or secrets when permitted or required by these rules, or when required by law or by court order; . . ."

In summary, the attorney-client privilege does not prohibit the disclosure of information regarding legal services provided by an attorney/lobbyist agent to a public official, a member or the immediate family of a public official, or a business with which either is associated.

Since your request did not include sufficient facts to form the basis of a declaratory ruling, this response is an interpretive statement and does not constitute a declaratory ruling.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State

RTS:rlp
cc: Patrick Anderson
A. Edwin Dore
Christopher Thomas
Webster Buell