



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

September 8, 2006

Robert S. LaBrant, Senior Vice President and General Counsel
Michigan Chamber of Commerce
600 South Walnut Street
Lansing, Michigan 48933

Richard Robinson, Executive Director
Michigan Campaign Finance Network
200 Museum Drive
Lansing, Michigan 48933

Dear Mr. LaBrant and Mr. Robinson:

In correspondence dated March 22, 2006, you submitted a request to the Department of State (Department), asking it to issue a declaratory ruling or interpretive statement pursuant to the Michigan Lobby Act, MCL 4.411 *et seq.*, to resolve the question of whether two lobbyist agents may allocate the value of a gift between them. A copy of your request was publicized on the Department's website beginning March 23, 2006, yet no public comments were submitted to the Department.

The Administrative Procedures Act, MCL 24.263, and rules promulgated pursuant to the Lobby Act, Mich. Admin. Code R 4.413, authorize the Department to issue a declaratory ruling in limited circumstances. A person who submits a request for a declaratory ruling must qualify as an interested party, recite a clear, concise, and complete statement of actual facts, provide a succinct statement of the legal question presented, and put forth the request in a signed writing. MCL 24.263, Mich. Admin. Code R 4.413(1), (2). The Department has carefully reviewed your letter and determined that it satisfies the prerequisite conditions for the issuance of a declaratory ruling. This declaratory ruling "is binding on the agency and the person requesting it", and is subject to judicial review in any court. MCL 24.263.

Mr. LaBrant and Mr. Robinson are employed as lobbyist agents by the Michigan Chamber of Commerce and Michigan Campaign Finance Network, respectively. These organizations are registered as lobbyists and operate independently of one another. You propose to share equally the cost of providing greens fees and golf cart rental for a round of 18 holes of golf to a state legislator at the Eagle Eye Golf Course in Bath, Michigan, which charges \$85.00 for this activity.

You submit the following question for the Department's consideration:

"Are lobbyist agents LaBrant and Robinson, who each represent no common lobbyist, permitted to split the total value of a gift (18 holes of golf and a cart) provided to a public official as long as the total value of the gift allocated to each lobbyist agent is \$51.00 or less?"

The Lobby Act defines the word "gift" to include "a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds \$25.00 in any 1-month period, unless consideration of equal or greater value is received therefor." MCL 4.414(1). As required by law, the Department adjusts the gift threshold each year according to the Detroit Consumer Price Index. MCL 4.429a(2). For 2006, the Department has determined that the applicable gift threshold is \$51.00. With few exceptions, none of which are relevant to the question you pose, the Lobby Act prohibits a lobbyist or lobbyist agent or a person acting on their behalf from giving a gift to a public official. MCL 4.421(2), Mich. Admin. Code R 4.471. An individual who violates this provision is guilty of a misdemeanor offense punishable by a term of imprisonment not to exceed 90 days or a maximum fine of \$5,000.00, or both, if the value of the gift is \$3,000.00 or less. MCL 4.421(2).

The payment of greens fees and cart rental that exceed the threshold provided by law constitutes a "gift" within the meaning of the Lobby Act. See, e.g., Interpretive Statement issued to Samuel Brunelli (July 16, 1990), 2-90-LI; Interpretive Statement issued to Richard McLellan (September 4, 1984), 35-84-LI. Furthermore, a state legislator is a "public official" for purposes of the Lobby Act. MCL 4.416(2), 4.415(10). Certainly, the Lobby Act governs the proposed course of conduct described in your correspondence. One question remains: when the cost of a single gift exceeds the monetary threshold established by the Lobby Act, may two lobbyist agents "split the total value of a gift" and allocate the cost thereof to avoid a violation of the statutory ban on conveying a gift to a public official?

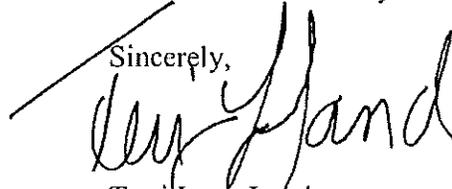
It is indisputable that an individual lobbyist agent who gives a gift to a public official, the value of which exceeds the current pecuniary limit, acts in violation of the Lobby Act. In a previous Interpretive Statement, the Department concluded that a single lobbyist agent is prohibited from apportioning among his or her numerous lobbyist clients the cost of providing one indivisible 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 [the applicable monetary threshold] to a public official. Therefore, the value of an item cannot be allocated between the lobbyists or clients a lobbyist agent represents." Interpretive Statement issued to Karen Holcomb Merrill (July 29, 1992), 1-92-LI. The conclusion in the *Holcomb Merrill* Interpretive Statement reinforces the principle that a lobbyist agent having two or more lobbyist clients cannot circumvent the gift ban by artificially apportioning the cost of one gift among several lobbyists.

Similarly, any construction of the Lobby Act that allows two lobbyist agents to disguise the transfer of a single gift to a public official – by "split[ting] the total value" of the gift and apportioning the cost of that item – would frustrate the purpose of the Lobby Act. No statutory provision or administrative rule allows lobbyist agents to share and apportion the cost of a gift given to a public official. Had the Legislature contemplated such an exception, it could have enacted a provision specifically authorizing lobbyists or lobbyist agents to "split the total value of a gift" without running afoul of the gift ban. Notably, it did not. The Department cannot construe the statute to allow two lobbyist agents to artificially divide a single gift between them in circumvention of the gift ban.

The Department acknowledges that a slight variation in the factual statement presented may produce the opposite response. If, for example, each lobbyist agent separately paid for 9 holes of golf at a cost available to the public that is less than the \$51.00 gift threshold, there would be no violation of the Lobby Act. However, splitting and allocating the cost of a single gift between two lobbyist agents, as you propose to do, differs considerably from two lobbyist agents who separately purchase and convey two separate gifts to a public official. This absurd result could be avoided if the Legislature amended the Lobby Act to strengthen the gift ban provision or further clarify the manner in which this ban should be applied and enforced.

To summarize, in response to your question, may two lobbyist agents "split the total value of a gift ... as long as the total value of the gift allocated to each lobbyist agent is \$51.00 or less", the Department concludes that the Lobby Act prohibits lobbyist agents LaBrant and Robinson from sharing the cost of providing greens fees and cart rental for 18 holes of golf for a state legislator at the Eagle Eye Golf Club. This letter constitutes a declaratory ruling concerning the applicability of the Lobby Act to the statement of facts set forth in your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri Lynn Land". The signature is written in a cursive, flowing style with some loops and flourishes.

Terri Lynn Land
Secretary of State