

Fracassi, Adam (MDOS)

From: SOS, Disclosure
Sent: Saturday, March 30, 2019 12:57 PM
To: Malerman, Melissa (MDOS); Fracassi, Adam (MDOS)
Subject: FW: Comments on Proposed Greimel Interpretive Statement

From: Bermudez, Carlos <CBermudez@uaw.net>
Sent: Friday, March 29, 2019 4:33 PM
To: SOS, Disclosure <Disclosure@michigan.gov>
Subject: Comments on Proposed Greimel Interpretive Statement

To Whom It May Concern,

The Secretary of State issued a draft interpretive statement in the Tim Greimel matter dated March 26, 2019 (herein, "Greimel Draft"). On behalf of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, I submit this comment expressing concern that the Greimel Draft applies the Michigan Lobby Registration Act ("Lobby Law") membership organization exception too narrowly. The Greimel Draft restricts the application of the membership organization exception more than is warranted by the actual statutory language. The draft would render the membership organization exception meaningless. For that reason, we request the Secretary of State to reconsider the draft in favor of a less restrictive interpretation.

The Greimel Draft determined that a member of a membership organization meets the definition of a lobbyist or lobbyist agent if he is compensated by his membership organization for lobbying, even if he exclusively lobbies for that membership organization. This interpretation ignores the Lobby Law membership organization exception. MCL 4.415, Section 5(7)(d). The exception expressly excludes a member of a membership organization from the definitions of "lobbyist" (subsection 4) or "lobbyist agent" (subsection 5).

The Lobby Law requires "lobbyist" and "lobbyist agents" to register with the state. Lobbyists is defined by subsection 4 as someone who makes expenditures above certain threshold amounts. A "lobbyist agent," according to subsection 5, is someone who receives "compensation or reimbursement of actual expense" in excess of a threshold amount during any 12-month period for lobbying. There are a few exceptions to these definitions, including the membership organization exception.

The law expressly excludes any member who lobbies on behalf of a membership organization to which she belongs from the definition of lobbyist or lobbyist agent. The term "lobbyist" or "lobbyist agent" does not include: "A member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)." MCL 4.415 Sec. 5(7)(d). Consequently, members should not have to register separately from their lobbyist membership organization, unless they independently meet the subsection 4 expenditure registration trigger. A member who makes lobbying expenditures separate from his membership organization must register because the membership organization exception does not apply in that situation.

The Greimel Draft would essentially void the membership organization exception language by adding a subsection 5 restriction into the statutory language. The Greimel Draft reasons that the membership organization exception does not apply if the member is compensated by the membership organization as a “lobbyist agent” pursuant to Section 5(5). But there is no statutory reference to subsection 5 in the membership organization exception. The reference is simply not there. The Secretary of State would be imposing a reference to subsection 5 where one does not exist. By doing so, the interpretive ruling swallows the entire exception.

The Greimel Draft attempts to distinguish past interpretive statements - *Bertler* (Aug. 1984) and *Etherton* (October 1984), reasoning that each only addresses non-compensated members who incidentally lobby on their own time. The distinction is unsatisfying, in part, because *Etherton* involves member volunteers who were reimbursed for costs by the membership organization. The definition of “lobbyist agent” makes no distinction between being compensated for lobbying or being reimbursed for lobbying. So, the *Etherton* decision is not distinguishable. *Etherton* found that reimbursed members who lobbied on behalf of their membership organization were not required to register due to the membership organization exception.

Both *Etherton* and *Bertler* correctly characterize the membership organization exception -- the exception applies unless the individual separately qualifies under subsection 4. These decisions purposefully do not elaborate or apply subsection 5 because the statutory exception does not refer to subsection 5. In fact, the *Bertler* decision takes it a step further, saying that a member of a membership organization would have to register if he meets subsection 4 requirements (independent lobbying expenditures above the trigger) or “receives more than \$250 in compensation or reimbursement for lobbying from a source other than [the membership organization of which he is a member]” [Emphasis added]. The *Bertler* holding implies that a member lobbyist is exempt if he is paid more than \$250 from the member organization to which he belongs, but he is not exempt if he receives compensation from a different source.

The draft interpretive statement justifies its narrow interpretation of the membership organization exception based on perceived risk of creating a loop hole. While we share the concern about potential under reporting of lobbyist activity, the conclusion is not entirely warranted. The Lobbying Law’s spirit of transparency is honored by the exception as written. In practice, a lobbyist membership organization must report its lobbying expenditures, including compensation and reimbursement paid to a member lobbying on its behalf. All the relevant information is reported. If the member separately lobbies beyond what the lobbyist organization reports, then the member must separately register and report those additional expenditures. In that case, the two reports complement one another. This is consistent with the statute’s language, the relevant interpretive statements cited in the draft opinion, and the spirit of the law.

For these reasons, we ask that you reconsider the Greimel Interpretive Statement.