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Honorable Art Miller, Jr.
State Senator
The Capitol
Lansing, Michigan

Dear Senator Miller:

You have asked two questions, which will be answered separately:

1. Can a registered lobbyist be appointed to a state commission?

The people, in adopting the Constitution of 1963, and the Legislature, acting pursuant to the legislative authority given to them by the People in that Constitution, have created numerous boards and commissions, ranging from constitutionally established bodies which control universities and head up major departments of state government, to regulatory commissions and advisory boards. However, while the Constitution and statutory provisions establishing such bodies often include affirmative qualifications required for appointment to such commissions, neither the People in the Constitution of 1963 nor the Legislature has seen fit to prohibit the appointment of a person to a state commission because of an individual's employment as a registered lobbyist.

In particular, MCL 4.421(4); MSA 4.1704(11)(4), which provides that a public official¹ shall not accept compensation or reimbursement, other than from the state, for personally engaging in lobbying, specifically excludes from that prohibi-

¹Many commission and board members are covered under the definition of "public official" as that term is used in this section. See MCL 4.415(9) and 4.416(2); MSA 4.1704(5)(9) and 4.1704(6)(2).

tion "an individual who is appointed or elected to a board or commission and is not an ex officio member or prohibited by law from having other employment."

It is my opinion, therefore, in response to your first question, that Michigan law does not prohibit the appointment of a registered lobbyist to serve on a state commission.

2. "May that same individual continue to lobby for a client as long as he refrains from lobbying before the Commission and/or the Department and abstains from all voting pertaining to, or affecting his client?"

While the Executive Organization Act of 1965, § 8(b), MCL 16.108(b); MSA 3.29(8)(b), prohibits directors of departments, commissions, and boards from engaging in "any business, vocation or employment other than their office," it expressly provides that "[m]embers of boards and commissions may so engage unless specifically prohibited by law." Neither the People in the Constitution of 1963 nor the Legislature has prohibited members of all state commissions from engaging in lobbying activities, whether on behalf of their commissions or on behalf of private clients. However, depending upon the nature and circumstances of the lobbying activities and, in some cases, upon the identity of the particular commission involved, various statutes may be applicable and may prohibit or at least restrict lobbying activities by members of state boards and commissions.

For example, members of certain boards and commissions may be prohibited from engaging in outside employment or may be subject to specific restrictions by virtue of the constitutional or statutory provisions governing their commission. By way of illustration, each member of the Public Service Commission is required to "devote his entire time to the performance of the duties of his office," MCL 460.3; MSA 22.13(3), and is specifically prohibited, during his term, from engaging in certain outside activities including the practice of law. MCL 460.1; MSA 22.13(1). The existence of such restrictions will, of course, vary from commission to commission.

In addition, at least some lobbying activities by members of state commissions may be prohibited by the various constitutional and statutory provisions prohibiting state officers and public servants from having an economic interest in contracts with the state. See, e.g., Const 1963, art 4,

§ 10. See also, MCL 15.301 et seq; MSA 4.1700(21) et seq, and MCL 15.321 et seq; MSA 4.1700(51) et seq. Even if these constitutional and statutory provisions are inapplicable, it may still be appropriate to look to the common law regarding conflict of interest of public officials. See, in this regard, OAG, 1981-1982, No 5916, p 218 (June 8, 1981) (member of township board may not vote on an industrial facility tax exemption for an agricultural cooperative of which he or she is a member), OAG, 1981-1982, No 6005, p 439 (November 2, 1981) (members of a quasi-judicial body may not act upon matters submitted by corporation employing members), and authorities cited therein.

Also relevant are the provisions of the state ethics act, MCL 15.341 et seq; MSA 4.1700(71) et seq. Section 2 of that Act, MCL 15.342; MSA 4.1700(72), provides, in pertinent part:

"(5) A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. ...

"(6) Except as provided in section 2a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

"(7) Except as provided in section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest."

The term "public officer," as used in this Act, is defined so as to include "a person appointed by the governor or another

executive department official." MCL 15.341(c); MSA 4.1700(71)(c). The Act is, accordingly, applicable to members of state boards and commissions. While it does not expressly prohibit lobbying activities by public officers, it is apparent that it may be very difficult for a commission member to engage in such activities without violating one or more of the Act's provisions. Compliance with the Act will require particular care if the commission member is a part of a larger lobbying firm. In that situation, even if the commission member does not directly engage in lobbying activities, he or she must be aware of possible violations which may occur through contacts with other members of the firm.

It is noted, pursuant to MCL 15.345(1)(e); MSA 4.1700(75)(1)(e), the Board of Ethics is authorized to "[i]ssue and publish advisory opinions upon request from a public officer ... relating to matters affecting ethical conduct of a public officer" Any member of the state board or commission who proposes to continue to engage in lobbying activities on behalf of private clients, or who proposes to continue his involvement in or contact with a lobbying firm, may wish to solicit such an opinion from the Board of Ethics addressing the propriety of such continued activity under the particular circumstances proposed.

It is my opinion, in response to your second question, that Michigan law does not impose a general prohibition against lobbying by members of state boards and commissions, but the legality or propriety of any such lobbying will depend upon the particular board or commission involved and upon the specific surrounding circumstances.

Very truly yours,

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