

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 18, 1984

Conrad L. Mallett, Jr.
Director, Legal and Governmental Affairs
Brian P. Henry
Assistant Legal Advisor
Office of the Governor
State Capitol
Lansing, Michigan 48909

Dear Messrs. Mallett and Henry:

This is in response to your request for an interpretation of the applicability of the lobby act, 1978 PA 472 (the "Act") to the formation of the Governor's budget.

Michigan in accordance with its Constitution and statutes utilizes a centralized process for the development of an annual budget. Article 5, section 17 of the Michigan Constitution requires the governor to submit a detailed budget to the legislature for each fiscal year. In addition, the governor is required to submit appropriations bills embodying the proposed expenditures along with bills for any additional revenues necessary to cover the proposed expenditures.

MCL 21.1 *et seq.*, the State Budget Act, establishes the office and sets forth the duties of the state budget director. The budget director is required to gather information from the various state departments and establish estimates of the financial needs of the departments as well as revenue estimates. The budget act also gives the budget director the authority to mandate the attendance of state officials at budget hearings convened by the director.

The preparation of the budget entails numerous communications between and among public officials and classified employees of the Office of the Governor, the Department of Management and Budget, and all the other agencies of state government.

In your letter you focus on contacts between classified civil servants and public officials involved in the formulation of the budget. The specific questions are:

- "A. Is a classified civil service employee of a state department or a budget analyst for DMB, who communicates directly with the Budget Director for the purpose of influencing a budget recommendation, considered to be 'lobbying?'"
- B. Is a classified civil service employee of a state department or a budget analyst for DMB, who communicates directly with a department director for the purpose of influencing or justifying a management plan, considered to be 'lobbying?'"

The situations identified in your letter involve communications between classified civil servants and public officials. These communications fall into two general categories.

1. Communications between civil servants employed by the Department of Management and Budget and public officials in the Department of Management and Budget.

The Department of State has previously concluded that communications within an agency are not lobbying. This interpretation was based on section 6(1) of the Act (MCL 4.416) which defines the term "person." That definition defines a state agency as a person. The inclusion of intra-agency communications would require an agency to register and report for lobbying itself. It is clear that the legislature did not intend to require agencies to keep records, register or report under the Act for communications that take place within an autonomous state agency.

2. Communications between civil servants employed by one agency and public officials charged with administering a different agency when such communications take place in the context of preparing a management plan or the annual state budget.

The management plan and the budget recommendations are mandated by MCL 21.1 et seq. All state agencies participate in the budgetary process. The budget director is given the responsibility to draw together the necessary information and the authority to draft the budget for presentation to the governor. An agency cannot choose to submit its own budget for legislative consideration.

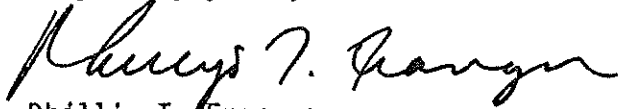
While a lobbyist or lobbyist agent may find the particular administrative proposals to be important there is no statutory requirement to lobby. Communications between administrative agency personnel made in the course of formulating the Governor's budget are the result of constitutional and statutory mandates and are not lobbying as defined in the Act.

The situations specified in your letter do not involve lobbying pursuant to the Act. The budgetary process set forth in the State Budget Act requires state agencies to participate in the process. It is distinguishable from general language contained in many statutes which directs any agency to propose or review legislation within the agency's statutory jurisdiction.

Messrs. Mallett and Henry
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The principles outlined in this letter are limited to the application of the Act to the state budgetary process.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos".

Phillip T. Frangos
Director
Office of Hearings & Legislation

PTF/cw