



February 3, 1984

Joseph P. Bianco, Jr.
Vice President
Hudson's
1206 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Bianco:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to certain activities of Hudson's employees.

You indicate many of Hudson's officers and managers serve as officers or directors of community organizations such as The Economic Alliance of Michigan, Detroit Renaissance Corporation, New Detroit, Inc., United Foundation, and Detroit Institute of Art. Hudson's apparently encourages this type of community involvement and allows its officers and managers to work on behalf of community organizations during business hours and to use Hudson's research and secretarial staff, telephones, copy machines, etc. You ask how Hudson's and its officers and managers are subject to the Act when this time and effort results in lobbying on behalf of the community organizations.

The Act regulates all direct communication with officials in the executive and legislative branches of state government for the purpose of influencing legislative or administrative action. According to section 8(1)(b) of the Act, MCL 4.418, a lobbyist, such as Hudson's, must report:

1. Expenditures for food and beverages provided for public officials as specified in section 8(2).
2. All advertising and mass mailing expenses directly related to lobbying.
3. All other expenditures for lobbying.

It should be noted rule 56, 1981 AACS R4.456, requires that the food and beverage classification include all food and beverages provided public officials. In addition, the itemized information required by section 8(2) is to be reported when applicable. There is no purpose test for food and beverage; all must be reported, not just the food and beverages related to lobbying. The other two classifications apply only to lobbying expenses.

Hudson's encourages its officers and managers to be involved in the community organizations you have listed as part of Hudson's effort to be a good corporate

citizen of metropolitan Detroit. The economic connection between Hudson's business as a retailer and the charitable and booster activities of these organizations is so indirect the Legislature could not have intended that these pro bono activities be lobbying. This intention is supported by the fact that making these activities lobbying would discourage corporate participation on behalf of community organizations, an effect the Legislature would not seek. When the economic connection is merely tangential there is no lobbying because Hudson's is not paying the employee to lobby; it is paying the employee to assist the community organization. The Court in Pletz v Secretary of State, 125 Mich App 335 (1983), favorably quoted from a New Jersey case which defined the phrase "to influence legislation" as consisting of:

" . . . direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals." 125 Mich App 335, 350

Under the circumstances you have raised, Hudson's is not directly, expressly, and intentionally communicating with public officials. Of course, should the lobbying efforts of one of these community organizations have a direct effect upon Hudson's economic interests, for example, lobbying for unemployment compensation reform, Hudson's would be compensating its employee for lobbying. If you have a situation where the community organization is going beyond traditional charitable and booster activity, it is suggested you request an interpretation concerning those specific facts.

As pointed out above, a lobbyist must report food and beverages provided public officials regardless of the purpose for providing the food and beverages. If a Hudson's employee buys lunch for a public official and Hudson's reimburses the employee for the lunch, the cost of the public official's lunch must be reported by Hudson's. This is true even if the entire lunch was spent discussing the legislative needs of a community organization or if there was no lobbying during the lunch.

A Hudson's employee who is lobbying on behalf of a community organization similar to the ones listed above is a lobbyist agent for that organization, if the employee is compensated or reimbursed by the organization and crosses the monetary threshold. Any compensation or reimbursement from Hudson's for lobbying on behalf of the organization is not reportable by Hudson's, the employee, or the organization and is not counted toward the threshold of \$250.00 which makes a person a lobbyist agent. The employee is a lobbyist agent only if the total compensation and reimbursement received in a twelve month period from Hudson's for lobbying on behalf of Hudson's and from community organizations for lobbying on behalf of the organizations is more than \$250.00. Once a person crosses this threshold and becomes a lobbyist agent, the person must report all compensation and reimbursement received for lobbying from an entity on whose behalf the person was lobbying. Perhaps this can best be described with a few examples:

A. Employee A does no lobbying except as an officer in New Detroit. Some of the lobbying is done on Hudson's time and using Hudson's

materials and staff. New Detroit does not compensate or reimburse A except for travel expenses (which are excluded from the Act). Neither Hudson's nor New Detroit has made any reportable expenditures. Employee A has received no compensation or reimbursement which counts toward a lobbyist agent threshold.

B. Employee B has been compensated \$200.00 lobbying for Hudson's and reimbursed \$100.00 for non-travel lobbying expenses by New Detroit. Employee B is a lobbyist agent who must register as such. Hudson's must report the \$200.00 and New Detroit must report the \$100.00 as lobbyists, unless they have not yet reached the lobbyist thresholds, in which case the dollar amounts are counted toward the thresholds.

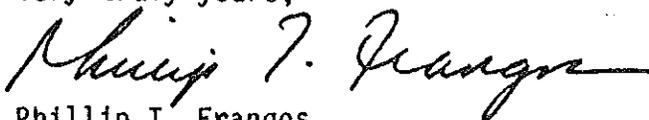
C. Employee C is a lobbyist agent for Hudson's. Hudson's and New Detroit are both lobbyists. Employee C spends three hours of Hudson's work time at \$25.00 per hour writing a letter to be sent to every legislator lobbying on behalf of New Detroit. The letter is copied and addressed by Hudson's at a cost of \$50.00. Employee C buys \$39.60 in stamps and is reimbursed that amount by New Detroit. Hudson's reports no expenditures; New Detroit reports expenditures of \$39.60; and Employee C reports expenditures of \$39.60.

You also ask whether Hudson's must account for its costs to analyze proposed legislation and administrative regulations. If Hudson's has not decided to lobby on a bill, any analysis done for the purposes of assisting the decision-maker in deciding whether to lobby is not counted. Once Hudson's has decided to lobby for or against a bill, the cost of preparing analysis and data summaries which are directly communicated to a legislator are reported. For instance, if you spend five hours researching and writing a memorandum to the person or committee who decides Hudson's official position on legislative bills suggesting Hudson's should support a bill, Hudson's decision is to support the bill, and your memo is retyped as a letter to the sponsor of the bill, then only the cost of retyping and mailing the letter are reported under the Act.

Finally, you ask whether you must report the cost of employee benefits when an employee's time is used for lobbying. Only the salary or wages of an employee are reported. Benefits, such as insurance, vacation pay, holiday pay, and retirement, are not included in the cost of the employee's time for the purposes of the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw