

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 3, 1984

Mr. William F. Harsen, M.P.H.
Executive Vice President
United Health Organization
777 Livernois
Ferndale, Michigan 48220

Dear Mr. Harsen:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472. I understand that United Health Organization ("U.H.O.") is a non-profit Michigan corporation which engages in "two principal activities: disease detection and community health education." In this latter work you print and distribute 5 newsletters per year to a list of some 500 persons, "some of whom may be public officials." Your specific question is:

"If we write articles in this letter about current pending health legislation and said articles reflect a position on this legislation, is this activity considered lobbying as defined in the . . . Act?"

"Lobbying", as that term is used in the Act, is defined as:

" . . . communicating directly with an official in the executive . . . or . . . legislative branch of state government for the purpose of influencing legislative or administrative action" (MCL 4.415(2))

"Influencing" means "promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies or analysis." (MCL 4.415(3)) (emphasis added)

You advise that your newsletter is sent to persons who "may be public officials." You should be aware that the term "public official" has a specific meaning when used in the context of the Act. MCL 4.416(2) defines "public official" as "an official in the executive or legislative branch of state government," and "official in the executive branch" includes "governor, lieutenant governor, secretary of state, attorney general, member of any state board or commission, or an individual who is in the executive branch of state government and not under civil service . . . (and) includes an individual who is elected or appointed and has not yet taken, or . . . who is nominated for appointment to, any of the offices" set forth above. "An official in the execu-

tive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity" (MCL 4.415(9)).

An "official in the legislative branch" includes ". . . a member of the legislature, a member of an official body established by and responsible to the legislature or either house thereof, or employee of same other than an individual employed by the state in a clerical or nonpolicymaking capacity." (MCL 4.415(10))

The Michigan Court of Appeals in Pletz v Austin, 125 Mich App 355 (1983), in discussing section 5(7)(a) of the Act, analyzed the press exemption as follows:

"We believe that the Legislature intended that communications with public officials for purposes of gathering and disseminating news to be outside of the act's coverage

* * *

The press exemption properly excludes the acts of talking and writing to public officials for purposes of gathering news and information for dissemination.

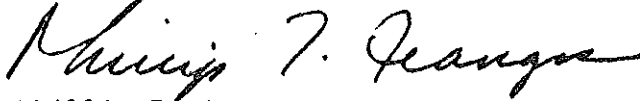
The crucial element . . . is that communications to public officials were not made 'for the purpose of influencing official action.'"
125 Mich App 355, 361-362

In the light of this determination by the Court of Appeals, it is the Department's position that gathering and assembling of news is not lobbying, nor is talking or writing to public officials to gather news and data for dissemination. Also, the publication of news, including editorial comment and the distribution of the publication to a public official is not lobbying unless the sole purpose of the publication is lobbying. In other words, even though a public official receives a publication because he or she is a subscriber, a member of the organization that publishes the publication, or a recipient of a complimentary copy, the publication costs are not lobbying expenses because there is no "lobbying."

William F. Harsen
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Because you failed to adequately describe the publication about which you are concerned, it is impossible to specifically answer your question. Therefore 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