



February 3, 1984

Hannes Meyers, Jr.
Roper, Meyers, Knoll & Joupfi
11 East Main
Zeeland, Michigan 49464

Dear Mr. Meyers:

This is in response to your inquiries concerning applicability of the lobby act (the "Act"), 1978 PA 472, to cities, city attorneys and city clerks.

Your letter of December 5, 1983, states as follows:

"With respect to myself as City Attorney, I am appointed by the City Council or City Commission in accordance with the Cities Home Rule Charter. I do not have a formal written contract, I serve at the pleasure of the Council or Commission. My work is compensated for on an hourly basis and the hourly rate is set by the Council or Commission.

With respect to the Clerks of the municipalities I represent, all are appointed by the Council or the Commission in accordance with the Cities Home Rule Charter. All are compensated by a salary, the amount of which is set by the Council or Commission.

The usual scenario for contact with a State Senator or State Representative goes something like this: The Council or Commission receives notice of proposed legislation that has or might have an impact on the City, for example, a bill allowing a school district to collect summer real estate taxes that involves the City or City Treasurer.

The City Council or City Commission may take a formal position on such a bill and instruct the City Clerk or the City Attorney to correspond with its State Senator or State Representative and urge adoption or rejection of the proposed bill."

You conclude by asking whether this activity subjects the city, city attorney and/or city clerk to the requirements of the Act.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." Pursuant to section 5(1), "legislative action" includes the "introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay or an official action" by a legislator on any pending or proposed matter. Thus, when a city directs its attorney or clerk to contact a state senator or representative and urge the adoption or rejection of a proposed bill, both the city and the individual are engaged in lobbying.

Persons who expend or are compensated a certain amount for lobbying are required to register with the Secretary of State as lobbyists or lobbyist agents. "Lobbyist" and lobbyist agent" are defined in subsections (4) and (5) of section 5 as follows:

"(4) 'Lobbyist' means any of the following:

(a) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period.

(b) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official.

(c) For the purpose of subdivisions (a) and (b), groups of 25 or more people shall not have their personal expenditures for food, travel, and beverage included, providing those expenditures are not reimbursed by a lobbyist or lobbyist agent.

(d) The state or a political subdivision which contracts for a lobbyist agent.

(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount of \$250.00 in any 12-month period for lobbying."

Pursuant to section 6(1) of the Act (MCL 4.416), a "person" is an individual, a business or any "organization or group of persons acting jointly, including a state agency or a political subdivision of the state." According to sections 2(4) and 3(2) (MCL 4.412 and 4.413) and rules 21 and 22, 1981 AACS R4.421 and R4.422, compensation paid or payable to employees for that portion of their time devoted to lobbying and all other payments related to lobbying, except travel expenses, are combined when calculating the threshold amounts established in sections 5(4) and (5). Therefore, if a city, in any 12 month period, pays its attorney and/or clerk a combined amount of more than \$1,000 for lobbying or more than \$250 on lobbying a single public official, the city must register as a lobbyist and file periodic reports. If either the city attorney or city clerk receives more than \$250 in salary for lobbying and/or reimbursement for lobbying expenses the attorney or clerk will also have to register as a lobbyist agent, unless otherwise provided by the Act.

Persons who are exempt from the Act's registration and reporting requirements are identified in section 5(7), which states in relevant part:

"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(ii) Employees of townships, villages, cities, counties or school boards."

In the attached letters to Mr. Don M. Schmidt and Mr. Kenneth F. Light, dated January 13, 1984, and January 24, 1984, respectively, the Department indicated the exemption found in section 5(7)(b) applies only to elected or appointed public officials who serve in autonomous, policymaking capacities. According to your letter, both the city attorney and city clerk operate under the direction or control of the city council or commission. Consequently, the city attorney and city clerk are not exempt public officials but are city employees who are subject to the Act's provisions pursuant to section 5(7)(c)(ii).

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.