

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 13, 1984

Don M. Schmidt,
City Attorney
241 West South Street
Kalamazoo, Michigan 49007

Dear Mr. Schmidt:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to city officials and employees.

"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 sections 5(4) and 7(1) of the Act (MCL 4.417), a city is required to register as a lobbyist if the city contracts for a lobbyist agent or if, in any 12 month period, it expends more than \$1,000 for lobbying or more than \$250 for lobbying a single public official. In addition, a person who lobbies on behalf of the city is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act 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." (emphasis added)

You do not dispute that elected officials of local government are excluded from the Act by section 5(7)(b). However, you point out that appointed officials are frequently considered employees of their political subdivisions. Therefore, you ask whether an appointed local official, such as a city manager, who is also a government employee is deemed a public official or an employee for purposes of the Act.

"Elected or appointed public officials of state or local government" is not defined in the Act. However, rule 1(1)(c) (1981 AACS R4.411) provides:

"Rule 1. (1) As used in the act or these rules:

(c) 'Elected or appointed public officials of state or local government' means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

Research indicates that the office of city manager is prescribed by charter. A typical city charter also provides that a city manager shall not serve a fixed term of office but shall serve at the pleasure of the manager's appointing authority. City managers whose offices are established in this manner are therefore "appointed public officials of . . . local government" who are not required to register as lobbyist agents unless they are brought back into the Act as employees under section 5(7)(c)(ii).

Section 5(7)(c)(ii) creates an exception to the exemption found in section 5(7)(b). That is, subsection (7)(c)(ii) specifically states the exemption for public officials found in subsection (7)(b) does not include employees of townships, villages, cities, counties or school boards. As you point out, the effect of section 5(7)(c)(ii) on persons who are both appointed public officials and employees is unclear. This uncertainty must be resolved by examining the Act's language to ascertain the intention of the legislature.

Section 5(7)(b), in a single phrase, exempts both state and local public officials. Therefore, it appears that section 5(7)(b) was intended to exclude local public officials holding positions similar to those held by exempt state officials.

The exemption carved by section 5(7)(b) for appointed state officials who are also employees is relatively clear. Although "elected or appointed public official of state . . . government" is not itself defined in the Act, section 6(2) (MCL 4.416) provides that a "public official" is "an official in the executive or legislative branch of state government." Officials in the executive and legislative branches are defined in sections 5(9) and (10) to include elected or appointed state officeholders and employees serving in non-clerical, policy-making capacities who are not under civil service. Thus, the Act implies that policymaking employees of state government who are not under civil service are public officials and not employees for purposes of the Act. As such, they are not required to register as lobbyist agents.

Don M. Schmidt

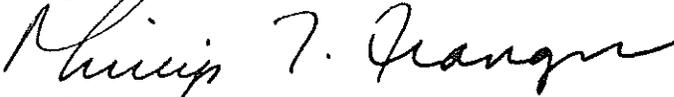
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This analysis indicates that policymaking employees of local government who are public officials as defined in rule 1(1)(c) are "elected or appointed public officials of . . . local government." However, they are excluded from the Act by section 5(7)(b). As in the case of state policymakers, they are not brought back into the Act by section 5(7)(c) because the Act does not consider them to be employees of their political subdivision.

In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action. A city manager's duties are of broad scope and include the authority to commit the city to a certain course of action. As noted previously, a city manager is also an appointed local official who, pursuant to charter, serves at the pleasure of the appointing authority. Consequently, a city manager is a public official who is not subject to the Act's registration and reporting requirements, provided the city manager receives no additional compensation for lobbying and the lobbying is in the course or scope of office.

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

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