

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



5-84-LD

LANSING
MICHIGAN 48918

March 16, 1984

Ms. Sharon L. Kellogg
Chairperson
Michigan Information and Research Service, Inc.
410 Michigan National Tower
P.O. Box 1087
Lansing, Michigan 48901

Dear Ms. Kellogg:

This is in response to your request for a declaratory ruling concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to Michigan Information and Research Service, Inc. ("MIRS"). The specific facts and questions you raise are set out and answered below.

You indicate MIRS collects, reviews, indexes, and summarizes all pending and proposed action in the Michigan Legislature for the purpose of providing legislative information to its subscribers and clients. MIRS publishes the MIRS Legislative Report on a daily basis and makes available to its subscribers copies of bills, journals, analyses, and public acts. MIRS provides a complimentary copy of each issue of MIRS Legislative Report to each Legislator. MIRS occasionally purchases food and beverage for public officials "in the course of acquiring information for dissemination to its subscribers."

In addition, you indicate MIRS conducts research projects involving legislative matters on a contractual basis. These projects are prepared for clients and MIRS has no knowledge of whether the product delivered to the client will be used to influence legislative or administrative action.

"1. Are MIRS officers and staff members considered working members of the press, as described in Section 5(7)(a), while engaged in collecting and disseminating news of legislative activities to the MIRS subscribers in the ordinary course of business?"

The Court of Appeals stated in Pletz v Secretary of State, 125 Mich App 335 (1983):

"While the term 'working member' is a rather new expression, it seems clear that the Legislature intended to exempt the news media while disseminating news or editorial comment to the general public in the ordinary course of business." 125 Mich App 335, 362

MIRS employees are clearly working members of the press and MIRS is a publisher.

"2. Is MIRS a lobbyist or lobbyist agent as those terms are defined in Section 5 of the Act?"

Section 5(7)(a) of the Act (MCL 4.415) expressly states: "Lobbyist or lobbyist agent does not include a publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business." (emphasis added) To the extent MIRS is disseminating news or editorial comment it is not a lobbyist or lobbyist agent. In addition, the Court in Pletz stated:

"We believe that the Legislature intended communications with public officials for purposes of gathering and disseminating news be outside 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. Such communications fall outside the purview of the statute, since they are not made to influence administrative or legislative action." 125 Mich App 335, 361-362

Therefore, MIRS is not a lobbyist or lobbyist agent as a result of its direct communications with public officials when the purpose of the communication is to gather information.

In addition to the facts you provided which are summarized above, you indicated the following:

"In the course of acquiring information for dissemination to subscribers, MIRS may communicate directly with officials in the legislative branch of state government and attempt to influence officials in the executive branch of state government with respect to (a) access to information or news and (b) equal treatment of MIRS staff as compared with other working members of the press.

* * *

MIRS does not now, and does not contemplate, communicating directly with public officials for the purpose of influencing legislative or administrative action on behalf of itself or its clients or subscri-

bers except insofar as the communications are directly related to the activities of MIRS in collecting news and information for dissemination to its subscribers in the ordinary course of business."

To the extent MIRS communicates directly with officials in the executive and legislative branches for the purpose of influencing legislative or executive action (as opposed to gathering information), MIRS is lobbying. However, seeking equal access to legislative press facilities would not be a lobbying activity because that is so intimately intertwined with MIRS's efforts to gather and disseminate news that it falls within the press exception. Should MIRS spend \$1,000 communicating directly with public officials for the purpose of influencing administrative or legislative action, MIRS would become a lobbyist and would be required to be registered. MIRS would also become a lobbyist if it meets the \$250 threshold for lobbying a single public official.

"3. Are the costs of a subscription to MIRS, which may exceed \$1,000 per year, counted in determining whether a person meets the statutory threshold of lobbyist or lobbyist agent as provided in Section 5 of the Act?"

Section 5(4) indicates a lobbyist is a person whose "expenditures for lobbying" exceed a certain threshold. Lobbyist agent is defined in section 5(5) as a person who "receives compensation or reimbursement of actual expenses . . . for lobbying " in excess of \$250 in a 12 month period. " Expenditures for lobbying" is defined in rule 1(d) (1981 AACS R4.411) to include:

"(iv) An expenditure for providing or using information, statistics, studies, or analyses in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

If the information contained in the MIRS Legislative Report would not have been purchased but for the direct communication, the cost of subscription would be counted toward the statutory thresholds. It is unlikely the purchase of a subscription to MIRS Legislative Report would meet the "but for" test as most subscribers would purchase the Report for activities not covered by the Act, such as being informed about what the Legislature is doing or gaining information which will help the subscriber decide whether to lobby.

However, the contractual work which MIRS performs may meet this test. For example, where a lobbyist or lobbyist agent desires to support a piece of legislation and contracts with MIRS for the purpose of compiling information to be used to bolster its position, the cost of the MIRS contract is an expenditure for lobbying which must be included in a report filed by the lobbyist or lobbyist agent or counted toward the threshold of a person who is not yet a lobbyist or lobbyist agent. Of course, MIRS does not become a lobbyist because it provides this information; if MIRS is already a lobbyist, the amount received for such a report would not be reported by MIRS.

"4. Is a lobbyist or lobbyist agent who subscribes to MIRS required to report the cost of the subscription in the lobbyist's or lobbyist agent's twice yearly report?"

As with the previous question, a subscription probably would not be purchased as a part of the specific direct communication which the lobbyist or lobbyist agent is making. Only if this expenditure does meet the "but for" test, would the lobbyist or lobbyist agent include the cost of the subscription in its bi-annual report.

"5. Is the value of compensation paid to a lobbyist agent for reading the MIRS Legislative Report required to be reported as a lobbying expenditure by the lobbyist employing the lobbyist agent?"

Normally, this compensation would not be considered an expenditure for lobbying. The lobbyist agent who reads MIRS Legislative Report on a regular basis, such as upon opening each day's mail, is not required to report this time.

However, where the lobbyist agent is reading the report as part of the agent's drafting of a letter to a public official or a paper which will be presented to a public official, then the compensation will be reported by both the lobbyist and the lobbyist agent. An example of this reportable time is where the lobbyist agent is going through back issues to find a quote by a public official or to determine how a Legislator voted on a bill so the Legislator can be reminded of his or her past position in a letter designed to influence future action. Again, the compensation is for lobbying only if it meets the "but for" test discussed above.

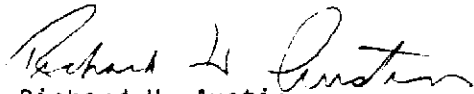
"6. Are expenditures for food and beverage for public officials which are incurred in the course of collecting information and news on legislative activities required to be reported?"

The Act requires lobbyists and lobbyist agents to report certain items pursuant to section 8 of the Act (MCL 4.418). Lobbyists and lobbyist agents must report "expenditures for food and beverage provided for public officials as specified in subsection (2)." There is no purpose test for this food and beverage report--it does not matter whether the expenditure for food and beverage was for the purpose of lobbying or for some other purpose. However, these food and beverage expenditures are only reported by lobbyists and lobbyist agents. Unless MIRS is a lobbyist or lobbyist agent, it would never need to report anything under the Act. Should MIRS's expenditures for lobbying exceed the \$250 or \$1,000 thresholds as discussed in the answer to question 2, MIRS would be a lobbyist and would report expenditures for food and beverage provided public officials even though the purpose of the meal was for MIRS to collect information as a member of the press.

Sharon L. Kellogg
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This response is a declaratory ruling relating to the specific facts and questions you have raised.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard H. Austin".

Richard H. Austin
Secretary of State

RHA/cw