

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

March 1, 1984

Senator John M. Engler
Office of the Majority Leader
State Capitol Building
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your letter regarding the way in which the lobby act, 1978 PA 472 (the "Act"), is being implemented by the Department of State.

Three areas are specifically mentioned in your letter as follows:

"It is my understanding that except for specific and narrow exemptions and exceptions, the Lobby Act was designed to regulate all attempts to influence administrative and legislative action through the use of direct communication. The Legislature and the Governor in enacting the lobbying law were well aware that a significant amount of lobbying is carried out, properly, by employees in the various departments and agencies of state government which seek to influence the policy decisions of government agencies.

With this background in mind, I request that you provide me with an explanation as to the purpose, background and reasoning behind the decision of the Department of State to impose narrowing interpretations in the following areas:

1. The exemption of non-policy making boards and commissions from the scope of the Act;
2. The exemption for intra-departmental communications designed to influence administrative action; and
3. The exemption for certain communications required by statute."

1. Non-policy making bodies.

Your letter takes exception to the language of Department of State publications which indicate that in order to be a public official a board or commission member must be on a board or commission with "policymaking authority" ("Overview of Lobby Registrations Act" p. 2").

In determining that a board or commission member may be lobbied, a determination must be made whether the individual is a "public official" pursuant to the Act. "Public official" and "official in the executive branch" are defined in sections 6(2) and 5(9) of the Act (MCL 4.416 and 4.415) as follows:

"Sec. 6. (2) 'Public official' means an official in the executive or legislative branch of state government."

"Sec. 5. (9) 'Official in the executive branch' means the 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. This includes an individual who is elected or appointed and has not yet taken, or an individual who is nominated for appointment to, any of the offices enumerated in this subsection. An official in the executive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity."

An entity with only advisory authority is "nonpolicymaking, or nonadministrative" in nature. The function of such bodies is to advise a public official of proposals or proposed actions. Lobbying under the Act consists of direct communication with a public official for the purpose of influencing legislative or administrative action (MCL 4.415). Reading the Act to include communications with advisory groups would expand the Act to encompass indirect lobbying. Such a reading would broaden the Act beyond its parameters and might subject it to a challenge on constitutional grounds.

2. Intra agency communications.

Contrary to your statement the Department has not said that all communications within a department are excluded from the definition of lobbying. The Department has stated that communications between autonomous agencies, even agencies in the same department, are lobbying if the other criteria of the Act are met. However, the Department has concluded that communications between civil service employees of an autonomous agency and the public officials charged with administering the agency are not lobbying.

The position the Department has taken on intra agency communications is consistent with both the letter and spirit of the Act. Section 6(1) of the Act defines the term "person" as follows:

"Sec. 6. (1) 'Person' means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business

trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly, including a state agency or a political subdivision of the state."
(emphasis added)

A state agency is clearly a person pursuant to section 6(1).

If the Department concluded that intra agency communications were lobbying it would be contrary to this definition because a person would have to register and report for lobbying itself.

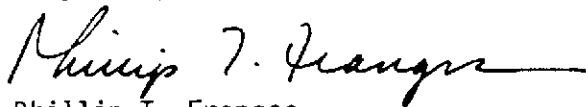
To require registration and reporting under the Act by civil service employees who communicate with the public officials who administer the employing agency would work to impede intra-agency communication. A public official is entitled to expect frank and open communication from civil servants in the agency the official administers. A reading of the Act which encompasses communications between employees and their employers goes far beyond the Act's intent. It presupposes that an executive agency is required to report expenditures made in the course of implementing statutes which it is charged with administering.

3. The formulation of the state budget.

The Department is currently formulating a comprehensive response to questions raised by the Governor's staff and various departments with respect to the formulation of the annual state budget. Rather than dealing with your general questions in this area the Department will soon be providing a detailed response with respect to the budgetary process.

This response is informational only and does not constitute a declaratory ruling as none was requested.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw