

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

September 12, 1984

Joel Boyden
Michigan Association of the Professions
230 N. Washington Square, Suite H
Lansing, Michigan 48933

Dear Mr. Boyden:

This is in response to your request for an interpretation of the lobby act (the Act), 1978 PA 472, as it applies to the lobbying activities of members of organizations which form the Michigan Association of the Professions.

The Michigan Association of the Professions (MAP) consists of eleven professional organizations including, for example, the State Bar of Michigan, the Michigan Society of Architects, and the Michigan Dental Association. Each constituent organization is composed of individuals licensed to engage in a particular profession. These individuals "are employed by a wide range of employers including corporations, non-profit organizations, educational institutions, governmental units, partnerships, professional corporations and sole proprietorships."

Many individual members voluntarily engage in lobbying on behalf of their professional organizations. Some of the lobbying occurs at times when the members are compensated by their employers and may exceed \$250 in a 12 month period. In addition, the members may be reimbursed by their professional organizations "for food and beverage provided to public officials in the course of communicating with the official with respect to pending legislative or administrative action of interest to the professional organization."

The first issue you raise in relation to these facts is whether individual members of MAP's constituent organizations who lobby on behalf of the organizations are subject to the Act's registration and reporting requirements.

"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."

Sections 5(5) and 7(2) of the Act (MCL 4.417) require any person who receives compensation or reimbursement of more than \$250 in a 12 month period for lobbying to register as a lobbyist agent. However, certain persons are exempt from this requirement. In particular, section 5(7)(d) provides:

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

(d) A member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)."

This section indicates that if the professional organizations or associations which comprise MAP are registered as lobbyists, individual members of the association who are compensated for lobbying on behalf of the organizations or associations are not required to register as lobbyist agents. However, a member who makes independent expenditures for lobbying may become a lobbyist upon meeting the spending thresholds established in section 5(4). In addition, a member who lobbies for another organization may be required to register as a lobbyist agent for that organization.

The second issue you raise is whether employers are required to report compensation paid to employees for time spent lobbying on behalf of the employee's professional organizations. In the attached letter to Mr. Rossi Ray Taylor, dated July 13, 1984, the Department responded to a similar question as follows:

"An employer does not engage in direct, express and intentional communications which are specifically intended to influence a public official's actions simply by paying employees for time which the employees may spend lobbying on behalf of independent associations or organizations. Reportable lobbying occurs only if the employer directs or controls the employee's lobbying activity. Whether the employer exercises direction or control depends upon a variety of factors. For example, paying the employee's membership dues for an organization suggests the employer may have some control over the employee's communication for lobbying."

You assert in your letter that employers of persons who belong to and lobby for MAP's constituent organizations do not direct or control their employee/members' lobbying activities. If that is the case, the employers are not required to report the compensation paid to the employee/members as expenditures for lobbying. However, you also indicate that "the participation by members in professional organizations involves various degrees of encouragement or discouragement from employers, including mere tolerance to active encouragement." There may be situations where an employer's "active encouragement" results in direction or control of the employee/member's communications for lobbying. This can only be determined on a case by case basis.

Your final question concerns the reporting obligations of the professional organizations themselves. As indicated previously, the professional organizations

Joel Boyden
Page 3

may reimburse members for food and beverage provided to public officials in the course of communicating with those officials for the purpose of influencing legislative or administrative action.

Section 8(1)(b) of the Act (MCL 4.418) provides that a lobbyist must file biannual reports which include "an account of all expenditures made by a lobbyist, lobbyist agent, or representative of a lobbyist." "Representative of a lobbyist" is defined in pertinent part as follows:

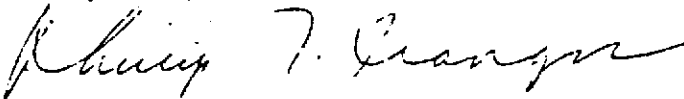
"Sec. 5. (6) 'Representative of the lobbyist' means any of the following:

(b) For the purposes of section 8(1)(b)(i) and 9(1)(b), a member of the lobbyist or employee of a member of the lobbyist, when the lobbyist is a membership organization or association, and when the lobbyist agent or an employee of the lobbyist or lobbyist agent is present during any part of the period during which the purchased food or beverage is consumer." (emphasis added)

Sections 8(1)(b)(i) and 9(1)(b) (MCL 4.419) require the disclosure of expenditures for food and beverage provided to public officials "if the expenditures for that public official exceed \$25.00 in any month covered by the report or \$150.00 during that calendar year from January 1 through the month covered by the report." Therefore, a professional organization must include reimbursement paid to its members when calculating or reporting food and beverage expenditures under the Act. In reporting such reimbursement on current forms, the lobbyist would indicate the expenditures under "all other expenses."

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

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw