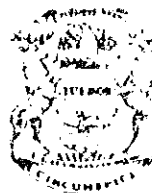


MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



35-84-11

LANSING

MICHIGAN 48916

September 12, 1984

Mr. Ivan E. Estes  
Personnel Director  
Department of Mental Health  
Lewis Cass Building  
Lansing, Michigan 48926

Dear Mr. Estes:

This is in response to your request for an interpretation of the applicability of the lobby act (the "Act"), 1978 PA 472, to your contacts with certain public officials.

As Personnel Director of the Department of Mental Health ("DMH") you are a classified civil servant who communicates directly with the Civil Service Commissioners and the Director of the Office of the State Employer. You indicate you appear before the Civil Service Commission representing DMH at grievance hearings and at public meetings discussing Civil Service rule changes.

As it relates to your situation, lobbying is defined in the Act as communicating directly with a public official for the purpose of influencing administrative action (section 5(2), MCL 4.415). Administrative action is defined in section 2(1) of the Act (MCL 4.412) as meaning:

"the proposal, drafting, development, consideration, amendment, enactment, or defeat of a nonministerial action or rule by an executive agency or an official in the executive branch of state government. Administrative action does not include a quasi-judicial determination as authorized by law."

Grievance hearings before the Civil Service Commission are quasi-judicial proceedings specifically excluded from the definition of administrative action. Thus you are not lobbying when you represent DMH at grievance hearings.

Rulemaking is expressly included within the definition of administrative action. All your direct communication with public officials in another state agency concerning the adoption, defeat, or repeal of a rule or concerning what should or should not be included in a rule is lobbying. Should you be compensated or

Mr. Ivan E. Estes  
Page 2

reimbursed in excess of \$250.00 for lobbying, you will become a lobbyist agent and must register with the Department of State.

You indicate your communications with John Bruff, the Director of the Office of the State Employer, relate to "matters of labor relations such as negotiations, contract interpretations, etc." Since the Department cannot anticipate what is covered by "etc.", this response will only consider your communications with Mr. Bruff on labor negotiations and contract interpretations.

The Office of the State Employer is a part of the Department of Management and Budget. Executive Orders 1979-5 and 1981-3 create that Office and give its director considerable employment relation duties, including:

- 1) Representing departments and agencies before the Civil Service Compensation Hearings Panel.
- 2) Determining which matters are subject to meet and confer negotiations.
- 3) Representing the employer in primary negotiations.
- 4) Determining which issues are the subject of primary negotiations and which are the subject of secondary negotiations.
- 5) Representing the employer in dispute resolution.

Civil Service rule 6-2.1(21) when read with the executive orders indicates Mr. Bruff represents the principal departments in collective bargaining. Civil Service rule 6-4.2 further clarifies that Mr. Bruff has primary responsibility for developing management's employment policies.

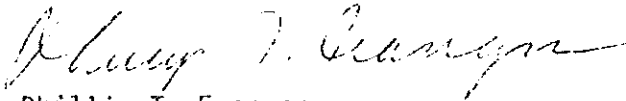
In the area of labor negotiations and contract interpretations the personnel divisions of the principal departments and the Office of the State Employer work together as a team. Both you and Mr. Bruff represent management. You develop your positions and strategies together. In these areas of concern your division and the Office of the State Employer are really one entity. Your relationship to Mr. Bruff is similar to your relationship to the Director of Mental Health. Your communications with Mr. Bruff concerning labor negotiations and contract interpretations cannot be lobbying because a department or an entity cannot lobby itself. Therefore, your communications with Mr. Bruff on those subjects are not covered by the Act.

In conclusion, of the types of communication about which you have specifically inquired, only commenting on rules is lobbying which must be reported under the Act.

Mr. Ivan E. Estes  
Page 3

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos".

Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw