

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



10-84-LD

LANSING
MICHIGAN 48918

September 20, 1984

T. E. Metevier
Chrysler Corporation
Office of Government Affairs
P.O. Box 1919
Detroit, Michigan 48288

Dear Mr. Metevier:

This is in response to your questions concerning applicability of the lobby act (the "Act"), 1978 PA 472, to certain business practices of Chrysler Corporation. A third question relating to statutorily required permits is addressed in a separate letter.

You indicate that as a matter of policy Chrysler Corporation makes demonstration vehicles available on a "short term courtesy loan basis to a number of people who will give the product high visibility." The vehicles are generally loaned without charge to a diverse group of people, including persons who are public officials as defined in section 6(2) of the Act (MCL 4.416). The market value of each loan is "invariably in excess of \$25." You ask whether loaning a vehicle to a public official under a program conducted in the ordinary course of business is prohibited under the Act.

In addition, Chrysler Corporation occasionally arranges for a dealer to sell vehicles at discounted prices to "Certain Designated Individuals" (CDI), who it is believed will "provide Chrysler with high product visibility and . . . benefit our sales promotion and advertising efforts." The discounted price is determined by a formula which is the same for all individuals in the CDI class. The class includes vendors, community and civic leaders, charitable or educational institution leaders, and public officials as defined in section 6(2). Your second question is whether the Act prohibits "a CDI sale to a 'public official' made in the ordinary operation of the CDI program."

Section 11(2) of the Act (MCL 4.422), and rule 71, 1981 AACS R4.471, indicate that a lobbyist or lobbyist agent may not give a gift or loan to a public official. Specifically, section 11(2) states:

"Sec. 11. (2) A lobbyist or lobbyist agent or anyone acting on behalf

of a lobbyist or lobbyist agent shall not give a gift or loan, other than a loan made in the normal course of business by an institution as defined in section 5 of Act No. 319 of the Public Acts of 1969, as amended, a national bank, a branch bank, an insurance company issuing a loan or receiving a mortgage in the normal course of business, a premium finance company, a mortgage company, a small loan company, a state or federal credit union, a savings and loan association chartered by this state or the federal government, or a licensee as defined by Act No. 27 of the Public Acts of the Extra Session of 1950, as amended. For the purpose of this section, a preferential interest rate shall not be given solely on the basis of the credit applicant being a public official or a member of the public official's immediate family. A person who gives a gift in violation of this subsection is guilty of a misdemeanor if the value of the gift is \$3,000.00 or less, and shall be punished by a fine of not more than \$5,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than \$10,000.00. A person who knowingly gives a gift in violation of this subsection and the value of the gift is more than \$3,000.00 is guilty of a felony and if the person is an individual shall be punished by a fine of not more than \$10,000.00, or imprisoned for not more than 3 years, or both, and if the person is other than an individual shall be punished by a fine or not more than \$25,000.00."

"Gift" is defined in section 4(1) of the Act (MCL 4.114) as anything valued at more than \$25.00 in a one month period, unless consideration of equal or greater value is received therefor. Pursuant to section 4(1)(b), "gift" does not include a "loan made in the normal course of business" by those lending institutions identified in section 11(2). According to section 4(3), a "loan" is a transfer of "anything of ascertainable value in exchange for an obligation, conditional or not, to repay in whole or in part."

The above provisions indicate that a lobbyist or lobbyist agent is completely prohibited from giving a gift or loan to a public official, unless the lobbyist or lobbyist agent is a bank, savings and loan association, or other lending institution making a loan in the normal course of business. There is no "ordinary course of business" exception for lobbyists or lobbyist agents who are not in the business of lending money to creditworthy applicants. Chrysler Corporation, as a manufacturer of motor vehicles, does not fall within the narrow exception created by section 11(2). Therefore, Chrysler Corporation may not give a gift or loan to an official in the legislative or executive branch of state government, even though it is in the ordinary course of Chrysler's business.

According to the facts you have provided, Chrysler Corporation routinely loans vehicles without charge to public officials on a short term basis. In addition, Chrysler occasionally arranges to sell a vehicle to a public official at a discounted price. If, as you indicate, the value of the loan or discount

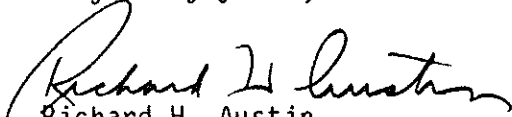
T. E. Metevier
Page 3

exceeds \$25.00 in a one month period, the loan or discount is a gift which is prohibited under the Act. Thus, Chrysler Corporation, even though acting in the ordinary course of its business, may not loan a vehicle to a public official under the circumstances you have described or arrange to sell a car to a public official at a discounted price not available to the general public.

It should be noted, however, that the prohibition found in section 11(2) applies only to gifts or loans made to public officials. There is nothing in the Act which prevents Chrysler Corporation from giving or loaning a vehicle to the State itself or to another governmental unit.

This response is a declaratory ruling relating to the specific facts and questions you have presented.

Very truly yours,


Richard H. Austin
Secretary of State -

RHA/cw