

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

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 inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the administrative process required to secure a permit. Your questions relating to certain Chrysler Corporation business practices are answered in a separate letter.

You indicate that Chrysler Corporation is often required to obtain a permit from a state agency or commission. The permit application submitted by Chrysler is frequently the subject of a public hearing. Your questions relating to these facts are as follows:

"Is an application for a permit 'lobbying'?"

Is the appearance of a representative at such a public hearing 'lobbying'?

- A. if the representative attends but does not speak?
- B. if the representative responds to questions asked by the hearing tribunal?
- C. if the representative presents a statement orally or in writing to the tribunal?

If any of the answers to the above is 'Yes',

- A. must all of the expenses in preparing the permit application be reported, including architectural drawings, engineering plans, research, etc.
- B. must the expenses of preparing the statement of the representative be reported as well as his compensation for the time of travel to the site of the hearing."

The Department is unable to provide specific answers to your questions without additional information. However, the following general discussion is provided for your guidance.

"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 . . . for the purpose of influencing . . . administrative action." Pursuant to section 5(9), "official in the executive branch" includes elected state officeholders, members of state boards and commissions, and unclassified employees who serve in policymaking capacities. Sections 2(1) and 6(3) of the Act (MCL 4.412 and 4.416) taken together indicate that "administrative action" is any action requiring the exercise of personal judgment. Thus, in order to lobby an administrative agency, board or commission, there must be an attempt to influence discretionary action by directly communicating with an official in the executive branch.

An application for a permit may or may not be lobbying depending on the circumstances. For example, if the application is reviewed and processed by a civil servant who makes a decision concerning issuance of the permit, no lobbying occurs. On the other hand, when granting or denying an application depends upon a policy decision by an official in the executive branch, including a board or commission member, the application is considered a communication for lobbying.

Similarly, whether communicating at a public hearing is lobbying depends upon a variety of factors. Lobbying may occur only if the hearing panel includes a public official. Assuming a public official is present, a person attending the hearing engages in reportable lobbying only if he or she communicates for the purpose of influencing administrative action. (Of course, communications by a person recognized as an expert in a particular area may qualify for the "technical information" exemption found in section 5(2).) The Act makes no distinction between communications which are solicited and those which are freely initiated. Therefore, responding to questions or making an oral or written statement are treated equally under the Act.

It should also be noted that section 2(1) of the Act exempts "quasi-judicial determinations as authorized by law" from the definition of "administrative action." Thus, if the permit application or public hearing results in a quasi-judicial determination, the application or statements made at the public hearing are not lobbying because they are not for the purpose of influencing administrative action.

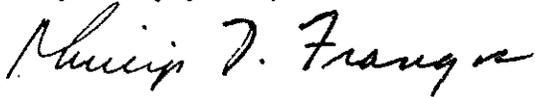
If the quasi-judicial exemption does not apply and Chrysler Corporation engages in lobbying either by applying for a permit under certain circumstances or communicating with a public official at a hearing, Chrysler is required to report all of its expenditures relating to the lobbying communication. Pursuant to rule 1(d)(iv), 1981 AACRS R4.411, this includes any expenditure "for providing or using information, statistics, studies or analysis in communicating directly

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with an official that would not have been incurred but for the activity of communicating directly." Consequently, expenditures made while preparing to lobby must be reported by the lobbyist. However, according to rule 1(1)(d)(iii) and rule 1(1)(i), the cost of travel, lodging and meals away from home are not reportable lobbying expenditures.

This response is informational only and does not constitute a declaratory ruling. A declaratory ruling will be issued upon receipt of a clear, concise and complete statement of facts as required by rule 3(2), 1981 AACSR4.413.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw