

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

September 4, 1984

Richard D. McLellan
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. McLellan:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the Act), 1978 PA 472, to Floyd L. Costerisan and other members of his accounting firm.

At the time of your inquiry, Mr. Costerisan was a member of the State Board of Accountancy and a public official for purposes of the Act. Mr. Costerisan, other members of his firm, and the firm itself intended to register as lobbyist agents under the Act. You ask the Secretary of State to interpret the Act in a manner consistent with three "statement[s] of legal issue[s]." For purposes of discussion, these statements are rephrased as questions and answered below.

You first ask whether the accounting firm, as a lobbyist agent, is required to report the total compensation it pays to Mr. Costerisan as a financial transaction. As stated in the attached letter to Mr. Peter H. Ellsworth, dated July 20, 1984, the ordinary course of business exemption found in section 8(1)(c) of the Act (MCL 4.415) clearly applies only to lobbyists. Therefore, if a professional corporation is registered as a lobbyist agent, compensation "having value of at least \$500.00" which the corporation pays to a member who is a public official must be reported under the Act.

Your second question is whether the accounting firm is required to report "incidental meals provided for Mr. Costerisan in the course of his employment . . . when such meals are unrelated to his service as a member of the State Board of Accounting." Responding to a similar question from Consumers Power Company, the Department stated in a February 22, 1984, letter to Mr. George F. Hill:

"Section 8(1)(b)(i) and rule 56, 1981 AACS R4.456, require a lobbyist to report expenditures for food and beverages provided for public officials. There is no exemption for food and beverage expenditures incurred in the ordinary course of business or for non-lobbying purposes. The reason for this approach, as explained by the Court of Appeals in its discussion of financial transactions in Pletz v Secretary of State, 125 Mich App 335 (1983), is that food and beverage expenditures even where unrelated to a particular policy issue, may

affect the recipient's inclination on matters of interest to the lobbyist.'

This rationale does not apply to an employer/lobbyist who provides food and beverage to an employee while 'conducting company business.' Payment or reimbursement of meal expenses is part of the employee's ordinary compensation and does not increase the likelihood that the employee, when acting as a public official, will promote the employer/lobbyist's interests. Thus, the legislature's purpose is not served by requiring an employer, who happens to be a lobbyist, to account for food and beverages provided to its employees. Consumers Power Company is therefore not required to report food and beverage expenditures for an employee who is a public official, provided the expenditures are for food and beverage consumed by the employee in the course or scope of employment."

Section 8(1)(b)(i) and rule 56 apply equally to lobbyist agents. Consequently, any food and beverage expenditures made to Mr. Costerisan in the ordinary course or scope of his employment are not reportable by the accounting firm.

Your final question is whether "informal, reciprocal payment for recreational activities between colleagues" is prohibited under the Act. Specifically, you ask whether another member of the firm who is a lobbyist agent may pay "greens fees exceeding \$25 in a month on behalf of Mr. Costerisan."

Section 11(2) of the Act (MCL 4.421) and rule 71, 1981 AACS R4.471, prohibit a lobbyist or lobbyist agent from giving a gift to a public official. "Gift" is defined in section 4(1) (MCL 4.414) as "a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds \$25.00 in any 1-month period, unless consideration of equal or greater value is received therefor." Significantly, the legislature chose to exempt five specific items from this definition but did not exclude payment for recreational activities between business associates. Therefore, a colleague who is a lobbyist agent may not pay greens fees for Mr. Costerisan which exceed more than \$25.00 in a one month period without running afoul of the Act.

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The Department of Licensing and Regulation has advised this Department that subsequent to your inquiry Mr. Costerisan resigned from the Board of Accountancy. As such, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw