

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN
48918-2110

September 24, 1991

Ms. Karen Holcomb-Merrill
Executive Director
Common Cause in Michigan
Capitol Hall, Suite 240
115 West Allegan Street
Lansing, Michigan 48933

Dear Ms. Holcomb-Merrill:

This is in response to your request for an interpretive statement under the lobby act (the Act), 1978 PA 472, as amended. Pursuant to rule 4 of the administrative rules promulgated to implement the Act, 1981 AACRS R 4.414, the Secretary of State is authorized to issue an interpretive statement upon the request of any person.

You have raised a number of questions concerning honoraria and lobbyist-paid travel. While your specific questions have not previously been addressed, the Department has on several occasions issued interpretive statements concerning these topics. Copies of previous statements issued to John Cavanagh, then Representative Vernon Ehlers and former House Speaker Gary Owen are enclosed for your convenience.

As the enclosed interpretive statements indicate, section 11(2) of the Act (MCL 4.421) and rule 71 of the administrative rules promulgated to implement the Act, 1981 AACRS R 4.471, prohibit a lobbyist or lobbyist agent or anyone acting on behalf of a lobbyist or lobbyist agent from giving a gift to a public official. Violation of this section is a misdemeanor if the value of the gift is \$3,000 or less and a felony if the value of the gift exceeds \$3,000.

"Gift" is defined in section 4(1) of the Act (MCL 4.411) 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 one-month period, unless consideration of equal or greater value is received therefor." When

adjusted for inflation as required by section 19a of the Act (MCL 4.429a), beginning January 1, 1991, a "gift" is anything having a value which exceeds \$35. Pursuant to this definition, a lobbyist or lobbyist agent is generally prohibited from paying for a public official's travel or accommodation costs.

However, expenditures for food and beverage provided to a public official for immediate consumption are specifically excluded from the definition of "gift" by section 4(1)(d). Similarly, rules 1(1)(e) and 73, 1981 AACS R 4.411 and R 4.473, indicate that "gift" does not include the payment of an honorarium as long as consideration of equal or greater of value is given in return. These rules state:

"Rule 1. (1) As used in the act or these rules:

(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments."

"Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

While not clearly stated, rules 1(1)(e) and 73 also allow a lobbyist or lobbyist agent to pay the travel expenses of a public official in connection with the payment of an honorarium without violating the Act's gift prohibition. However, travel and accommodations which are not directly connected with an event in which the public official actively participates and receives an honorarium are not included within the limited exception found in rule 1(1)(e) and remain subject to the Act's general prohibition against lobbyist-paid travel.

A lobbyist or lobbyist agent may also pay a public official's travel costs in a second, very limited situation. In a November 9, 1989, letter to John D. Pirich and Timothy Sawyer Knowlton, the Department interpreted the Act as permitting a lobbyist to pay the transportation costs of a public official in connection with an informative tour or fact finding mission provided the following criteria were met:

". . . First, there must be actual operations at the tour site which demonstrate unusual advanced technologies. Second, when

there are several sites where the advanced technologies can be observed, the tour site must be the location nearest to Lansing. Third, the tours must be planned so that arrival and departure schedules permit no free periods for personal or recreational activities. Fourth, the tour sponsor, rather than the public official, must select the means and times of transportation. Fifth, in accord with Rule 1(1)(d)(iv), the transportation costs would not have been incurred but for the activity of communicating directly with the public official. That is, the real purpose of the transportation costs must be to provide public officials with information in connection with direct communication and not as a subterfuge to give a gift."

In these limited circumstances, the Department concluded that the payment of transportation costs would be an expenditure for lobbying as defined in the Act and rule 1(1)(d)(iv) and not a prohibited gift. However, as pointed out in a subsequent letter to Frederick K. Lowell, dated December 21, 1989, the Pirich and Knowlton analysis was limited to the costs of transportation and did not suggest that the lobbyist could also pay for recreation, entertainment or overnight accommodations for a public official.

Turning to your questions, you first ask whether the five part test employed in the Pirich and Knowlton letter applies where a lobbyist pays an honorarium to a public official to speak at a conference. Specifically, you ask whether the lobbyist must "plan the arrival and departure schedule of a public official speaking at an in-state or out-of-state conference in such a manner so as to permit no free periods" for personal or recreational activities. In a related question, you ask whether a lobbyist is prohibited from paying for "several days of accommodations at a conference for a public official when that public official's portion on the conference program amounts only to a few hours."

Unlike an informational or fact finding tour, the travel costs paid by a lobbyist or lobbyist agent in connection with the payment of an honorarium are specifically addressed in rule 1(1)(e). As previously indicated, that rule permits a lobbyist to "pay for actual travel, meals, and necessary accommodations provided directly in connection with the event." This exception to the Act's general prohibition against lobbyist-paid travel is very limited. It does not allow a lobbyist or lobbyist agent to pay for unconnected or unnecessary travel or accommodations, nor does it allow a lobbyist or lobbyist agent to pay for a public official's personal or recreational activities if the value of those activities exceeds \$35 in a one month period.

As suggested in the March 8, 1990, letter to John Cavanagh, an impermissible gift will result if the lobbyist pays for travel and lodging costs which are not directly connected or necessary to the public official's active participation in the conference or event. Thus, if a public official is paid an honorarium to give a single speech or participate in a single panel,

several days of accommodations would be unnecessary, and a lobbyist is prohibited from paying for those accommodations by section 11(2). Pursuant to rule 1(1)(e), the lobbyist or lobbyist agent may not pay anything other than actual travel and accommodation costs which are both necessary and directly connected to the service provided by the public official.

Your final question concerns the Act's reporting requirements. Section 8(1) of the Act (MCL 4.418) states that a lobbyist or lobbyist agent must file a disclosure report on January 31 and August 31 of each year. The report must include the lobbyist or lobbyist agent's expenditures for lobbying, advertising and mass mailing expenses, expenditures for food and beverage provided to public officials, and an account of every "financial transaction" entered into during the reporting period.

The application of these reporting requirements to payments made by a lobbyist or lobbyist agent for honoraria, travel, accommodations, and food and beverage provided to a public official who participates in a meeting, conference or similar event has been explained in the interpretive statements issued to Mr. Cavanagh, Representative Ehlers and House Speaker Owen:

"A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is \$500.00 or more [\$700 in 1991], the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c) (MCL 4.418)."

You ask whether calculation of the \$700 financial transaction reporting threshold must include the cost of travel, accommodations and meals provided by a lobbyist or lobbyist agent to immediate family members who accompany the public official to the conference or event in which the public official participates. "Immediate family" is defined in section 4(2) of the Act as "a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes."

Pursuant to section 3(3) of the Act (MCL 4.413), a "financial transaction" is a "loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value." Financial transactions must be reported as required by section 8(1)(c). The pertinent provisions of this section require a disclosure report filed by a lobbyist or lobbyist agent to include the following:

"(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or

lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods and services having value of at least [\$700] are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. . . ."

The apparent purpose of section 8(1)(c) is to disclose financial connections between a lobbyist or lobbyist agent and a public official which could potentially influence the public official's actions. The financial relationship does not have to be related to lobbying in order to be reported. As the Court of Appeals stated in Pletz v Secretary of State, 125 Mich App 335, 357 (1983), when reversing a lower court's ruling that section 8(1)(c) was unconstitutionally overbroad:

"The trial court held that § 8(1)(c), which requires the reporting of financial transactions of \$500 or more between a lobbyist or lobbyist agent and a public official, was overbroad on account of the lack of necessity for the expended funds to relate to communications for the purpose of influencing governmental business. We disagree with this holding, since a transaction between lobbyists and public officials, even where unrelated to a particular policy issue, may affect the recipient's inclination on matters of interest to the lobbyist. We believe that the intent of the act would be thwarted if a transaction between a public official and a lobbyist did not require accountability as long as it supposedly related to a nonlobbying matter."

Just as the reporting requirement is not limited to financial transactions related to lobbying, there is no requirement that the financial transaction directly involve a public official. In the judgment of the Legislature, a financial transaction between a lobbyist or lobbyist agent and a member of a public official's immediate family is just as likely to affect the public official's "inclination on matters of interest to the lobbyist" and must be reported independently, without regard to the public official's actual knowledge of or benefit from the transaction.

As previously indicated, travel and lodging expenses not otherwise prohibited by section 11(2) of the Act are included within the definition of "financial transaction." Consequently, section 8(1)(c) plainly requires a lobbyist or lobbyist agent who pays the travel and accommodation costs of a member of a public official's immediate family to report those costs as a financial transaction if at least \$700 is involved. This calculation must also include the cost of food and beverage provided to the immediate family member. (If provided to a public official, expenditures for food and beverage are reported separately and not as part of the financial transaction.)

Karen Holcomb-Merrill

Page 6

The issue raised by your inquiry is whether the travel and accommodation costs paid by a lobbyist or lobbyist agent for a public official and the travel, accomodation and meal costs paid by the lobbyist or lobbyist agent for the public official's immediate family should be combined when calculating the \$700 reporting threshold, or whether there is a separate \$700 threshold for the public official and each family member.

Section 8(1)(c) requires an account of every financial transaction between a lobbyist or lobbyist agent and a "public official or a member of the public official's immediate family." While one could argue that use of the disjunctive "or" suggests separate calculations for the public official and each member of his or her family, the courts have repeatedly stated that "or" may be read as "and" in order to give effect to the Legislature's intention. Elliott Grocer Co v Field's Pure Food Market, Inc, 286 Mich 112 (1938); Aikens v Department of Conservation, 387 Mich 495 (1972).

The Legislature clearly determined that any financial transaction of \$700 or more between a lobbyist or lobbyist agent and a public official's immediate family member could potentially influence the public official and must therefore be reported. The intent to fully disclose such potential influence would be seriously undermined if a lobbyist could avoid reporting travel and accommodation costs by creating an artificial distinction between travel costs paid for a public official and travel costs paid so that the official's family could accompany the official to the same event. Therefore, in answer to your question, the travel and accomodation costs paid by a lobbyist or lobbyist agent for a public official and the travel, accomodation and meal costs paid for members of the public official's immediate family must be combined when determining whether the \$700 threshold for reporting a financial transaction has been met.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Deputy, State Services

PTF:cw
attachments

112264