



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

April 16, 2019

Tim Greimel
1034 North Washington Avenue
Lansing, Michigan 48906

Dear Mr. Greimel:

The Michigan Department of State (Department) acknowledges receipt of your email sent January 18, 2019, which requests the issuance of a declaratory ruling or interpretative statement regarding the Department's interpretation of the Michigan Lobby Registration Act (Lobby Law or Act), 1978 PA 472, MCL 4.411, *et seq.* On January 21, 2019, the Department published a copy of your request on its website and invited public comments regarding your request, but none were received until the publication of the Department's preliminary response on March 26, 2019.

The Lobby Law and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, require the Department to issue a declaratory ruling if an interested person submits a written request that presents a question of law and a reasonably complete statement of facts. MCL 4.429, 24.263. If the Department declines to issue a declaratory ruling, it must instead offer an interpretive statement "providing an informational response to the question presented [.]" MCL 4.429(1).

According to your submission, you are currently employed as the Legislative Director for AFSCME Council 25, a registered lobbyist,¹ and after commencing employment, you became a member of AFSCME Local 411. You also provided, at the Department's request, a copy of your position description as an employee of AFSCME Council 25.² Your position description indicates that your duties as Legislative Director include:

"Monitoring state legislation and policies affecting AFSCME Council 25 members; Advocating for the interests of AFSCME Council 25 members in respect to state legislation and policies; Summarization of state bills, public policies and some litigation; Reporting to AFSCME Council 25 leadership and members about those matters."

¹ Lobby Id. No. 009068.

² The Act authorizes the requestor to submit supplemental information with the permission of the Secretary of State. MCL 4.429(1).

You asked whether you are required to register as a lobbyist agent for AFSCME Council 25,³ or if you are exempt from registration as “a member of a lobbyist” under MCL 4.415(7)(d) due to your membership in Local 411. A lobbyist agent is one who “receives compensation or reimbursement of actual expenses, or both, in a combined amount in excess of [\$625.00⁴] in any 12-month period for lobbying[,]” and “lobbying” is defined as “communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action.” MCL 4.415(2), (5).

By “[a]dvocating for the interests of AFSCME Council 25 members in respect to state legislation and policies,” your position description strongly suggests that your duties include lobbying on behalf of AFSCME Council 25. Assuming your advocacy includes direct communications with legislative or executive branch officials, is made for the purpose of influencing official government action, and your compensation for lobbying exceeds \$625.00, you must register as a lobbyist agent and file financial reports in accordance with the Act. MCL 4.417(2), 4.418(1).

A limited exemption from the Act’s registration and reporting requirements is provided for, “[a] member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4).” MCL 4.415(7)(d). The Department issued three interpretive statements in 1984.

In all three interpretive statements, the questions presented concerned individual members of organizations who may have engaged in lobbying only incidentally; i.e., who on their own time or of their own volition may have lobbied on an issue of common interest to the member and the membership organization. The example presented in *Boyden* is illustrative: The Department concluded that the individual members of the State Bar of Michigan, who worked as lawyers for a variety of employers and “voluntarily engage[d] in lobbying on behalf of” the State Bar, were shielded from the Act’s registration requirement by virtue of the membership exemption. *Interpretive Statement to Joel Boyden*, September 12, 1984. Similarly, the Department found that individual members and officers of the Michigan Paralyzed Veterans of America were not required to register as lobbyist agents, “unless they separately qualify as lobbyists under subsection (4).” *Interpretive Statement to John Etherton*, October 3, 1984. Holding that “[m]embership alone does not trigger the Act’s reporting requirements[,]” the Department cautioned that an individual “member may also become a lobbyist agent if the member receives more than [\$625.00⁵] in compensation or reimbursement for lobbying from a source other than” the membership organization to which the individual belongs. *Interpretive Statement to Mark Bertler*, August 29, 1984.

Importantly, none of the prior interpretive statements resolved the question you now present: May a membership organization’s Legislative Director, whose employment duties seemingly include lobbying, avoid registration as a lobbyist agent by virtue of the membership exemption?

³ The Department notes that the individual who previously served as AFSCME Council 25’s Legislative Director was registered as a lobbyist agent from 2003-2019.

⁴ Monetary thresholds established in the Lobby Law are adjusted annually based on the change in the Detroit consumer price index. MCL 4.429a. In 2019, the compensation threshold applicable to lobbyist agents is \$625.00 in any 12-month period.

⁵ See footnote 4.

Consistent with *Bertler*, *Boyden* and *Etherton*, the membership exemption shields an individual member who may occasionally and voluntarily engage in lobbying on behalf of the membership organization, so long as the member “does not separately qualify as a lobbyist under subsection (4).” MCL 4.415(7)(d). As none of the individual members in *Bertler*, *Boyden* and *Etherton* were hired and compensated by their membership organization for the specific purpose of lobbying, these prior holdings are distinguishable from the facts presented in your request.

The Department recognizes the importance of the membership exemption and the value of the ability of individual members of an organization or association to communicate their views to our legislative and executive bodies. Under the membership exemption, individual members of AFSCME Local 411 or AFSCME Council 25 who, of their own accord, decide to engage in lobbying on behalf of their labor union need not register as lobbyist agents as long as they do not independently qualify as lobbyists. The lobbying activities of these volunteers are understood to occur outside of their regular job duties or on an infrequent or irregular basis. In these limited circumstances the individual members of AFSCME Local 411 or Council 25 need not register as lobbyist agents.⁶

However, an individual employed by AFSCME Council 25 for the specific purpose of lobbying cannot avoid registration as a lobbyist agent. Your lobbying activities are distinct from those of other union members who may volunteer to occasionally take leave from their regular job duties to engage in communicating their views to their elected representatives. As the Legislative Director, you are employed and compensated by AFSCME Council 25 for the specific purpose of lobbying. Once your compensation or reimbursement for lobbying exceeds the monetary threshold, you are required to register as a lobbyist agent. MCL 4.417(2) (“Not less than 3 days after becoming a lobbyist agent, a lobbyist agent shall file a registration form with the secretary of state.”).

In reaction to the Department’s preliminary response, one commenter suggested that the membership exemption had been construed too narrowly, that any member is exempt from the Act’s registration requirements when lobbying on behalf of the membership organization to which he or she belongs, and that any other interpretation of the law would read the membership exemption out of existence.

⁶ It has been suggested that since Local 411 is a “member” of Council 25 that somehow the exception could still apply because Greimel is a “member” of Local 411, which is a “member” of Council 25, and Council 25 is a “lobbyist.” However, even assuming AFSCME Local 411 is a “membership association or organization,” the plain language of § 415(7)(d) does not exempt “a member of a member of a lobbyist,” and thus it does not apply to Mr. Greimel under this theory. See *Byker v Mannes*, 465 Mich 637, 646–647 (2002) (“It is a well-established rule of statutory construction that [the courts] will not read words into a statute.”). Even if this kind of indirect relationship fell within § 415(7)(d), it would not apply here because Mr. Greimel has a direct, primary relationship with Council 25 as an employee of the organization, not as a member. And as an employee of Council 25, his duties plainly appear to include activities that will constitute lobbying, thereby requiring him to register as a lobbyist agent once the monetary threshold is met. The “member of a lobbyist” exception set forth in § 415(7)(d) cannot be interpreted or applied in a way to permit persons to avoid registration. See, e.g., *Pletz v Secretary of State*, 125 Mich App 335, 361-362 (1983), lv den, 417 Mich 1100.20 (1983).

The Department respectfully disagrees. When employing the phrase, “a member of a lobbyist” to describe who would be exempt from registering as a lobbyist or lobbyist agent, the Legislature could not have intended to shield an *employee who was hired to lobby* from registering as a lobbyist agent, simply because that employee self-identified as a member or was identified by the lobbyist as a member. MCL 4.415(7)(d). If such employees were considered “members” under the terms of the Act, *any* individual paid to lobby could avoid the lobbyist agent requirements merely by becoming a “member” of his or her employer organization—however that organization defined membership.

Such a broad loophole would render the lobbyist agent rule a virtual nullity, when the requirement serves an important, independent transparency purpose. If lobbyist agents were not required to file reports, lobbyists would not have to disclose the identity of the individuals it hired to lobby on their behalf.

The Department’s interpretation recognizes the important distinction between a rank-and-file member who engages in limited lobbying activity, and a membership organization’s paid employee whose occupation involves lobbying. To be sure, some employees will also be “members” of their employer organizations, but this does not provide those employees an exemption from registration and reporting requirements designed to cover the exact type of activity they have been hired to perform.

The foregoing represents an interpretive statement concerning the applicability of the Lobby Law.

Sincerely,

A handwritten signature in black ink that reads "Hilarie Chambers". The signature is written in a cursive, flowing style.

Hilarie Chambers
Chief of Staff