



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

August 8, 2024

Dominick Pallone
Executive Director
Michigan Association of Health Plans
dpallone@mahp.org

Dear Mr. Pallone:

The Department of State (Department) acknowledges receipt of your letter received May 16, 2024, in which you sought a declaratory ruling or interpretive statement under the Michigan Lobby Registration Act (Lobby Act or Act), 1978 PA 472, MCL 4.411, *et seq.*

In accordance with publication and public comment period requirements, the Department posted your request on its website and informed email subscribers of the deadline to file written comments. MCL 169.215(2). The Department did not receive any public comments during the initial public comment period.

The Department issued its preliminary response on July 26, 2024, and posted it for public comment in accordance with requirements in the Lobby Act and the Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.* The Department also notified email subscribers of the preliminary response and the deadline to file public comments. No public comments were received within 5 business days after the preliminary response was made available to the public. MCL 4.429. Given that no public comments were received, the Department's preliminary response is provided as its final interpretive statement regarding your question.

The Act 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).

In your request, you ask whether a lobbyist or lobbyist agent is permitted under the Lobby Act to "provide complimentary admission to an educational conference for a lawmaker to attend as part of his/her duties as a public official for an appearance at an event." Specifically, you request guidance on whether a registration over the current gift limit, in this case "roughly \$1,000.00" would qualify as a gift. As the factual statement provided in your letter is insufficient to support

the issuance of a declaratory ruling, the Department issues this interpretive statement in response to your request.

As is customary, the Department starts with the plain language of the Act. In interpreting a statute, the goal is to “ascertain and give effect to the intent of the Legislature.” *People v Gardner*, 482 Mich 41, 50 (2008), quoting *People v Pasha*, 466 Mich 378, 382 (2002). “To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature’s intent is clear and judicial construction is neither necessary nor permitted.” *Odom v Wayne County*, 482 Mich 459, 467 (2008), quoting *Lash v Traverse City*, 479 Mich 180, 187 (2007).

The Michigan Lobby Act defines a “gift” as a “payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds \$25.00¹, as adjusted under section 19a, in any 1-month period, unless consideration of equal or greater value is received therefor.” MCL 4.414(1). The Act then prohibits a lobbyist or lobbyist agent from giving a gift to a public official as defined in the act. MCL 4.421(2).

To determine whether an item is an allowable gift under the Act, the Department turns to a plain language analysis of the Act. Within the definition, the Act provides a gift shall be considered a gift: “*unless consideration of equal or greater value is received therefor*” (emphasis added). MCL 4.414(1). Once such consideration is received, the transaction is no longer controlled by the Act. In determining whether consideration of equal or greater value has been received, the Department has previously found value shall be determined by the value of the proposed gift on the open market, rather than by the face value of the item. *Interpretive Statement to Mickelson, 1984; Interpretive Statement to Hallan, 1984*. When analyzing this question as it relates to honoraria, the payment from 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.” R 4.473. While the situation presented here is not an honorarium, the same question must be answered: is it clear from the surrounding circumstances that the services provided represent an equal or greater value than the payment received?

In the scenario you present, two factors must be known to determine whether the conference registration is considered a gift under the Act – the value of the complementary conference admission and the value of the public official’s appearance at the conference. In your request you state the conference admission costs “roughly \$1,000.00” and that a public official would be attending as part of “his/her duties.” You make no reference to what these duties entail or what one might expect to pay to secure the services on the open market. Using the framework established above, it is not clear that the services offered by the public official are greater than or

¹ As required by law, the Department adjusts the gift threshold each year according to the Detroit Consumer Price Index. MCL 4.429a(2). For 2024, the Department has determined that the applicable gift threshold is \$76.00.

equal to the conference admission². As such, the proposed complimentary admission would be considered a gift under the Act and impermissible.

The foregoing constitutes an interpretive statement with respect to the question presented in your letter received May 16, 2024.

Sincerely,

s/ Christina Hildreth Anderson

Christina Hildreth Anderson
Chief of Staff

² While you highlight the educational benefits of a public official attending the conference, the Act does not currently provide an exception or separate analysis for such a situation and thus the Department must apply the standard gift analysis.