

STATE OF MICHIGAN

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CONST 1963, ART 4, § 10:                      Constitutionality of certain  
PUBLIC OFFICERS FINANCIAL               disclosures under 2023 PA 281, which  
DISCLOSURE ACT, MCL 15.701 *et*       implements article 4, § 10 of the  
*seq.*:    Michigan Constitution.

The Secretary of State may require public officers to provide an address or other identifying information when an officer reports “sources of unearned income” as required by article 4, § 10(2)(a) of the Michigan Constitution and § 7(1)(g) of the Public Officers Financial Disclosure Act, MCL 15.707(1)(g).

The Secretary of State may require public officers to provide descriptive information such as an address, location, or other identifying information when reporting “stocks, bonds, or other forms of securities” of a certain value as required by § 7(1)(i), of the Public Officers Financial Disclosure Act, MCL 15.707(1)(i).

Article 4, § 10(2)(f) and (g) of the Michigan Constitution and § 7(1)(m) and (n) of the Public Officers Financial Disclosure Act, MCL 15.707(1)(m) and (n), require public officers to disclose any gifts, travel payments, and travel reimbursements received from a lobbyist or lobbyist agent that are required to be reported under state law — regardless of whether the lobbyist or lobbyist agent actually reported the gift, travel payment, or travel reimbursement.

Article 4, § 10(2)(h) of the Michigan Constitution and § 7(1)(n) of the Public Officers Financial Disclosure Act, MCL 15.707(1)(n), require public officers to disclose all payments of any value made by a lobbyist or lobbyist agent to a charity in lieu of honoraria, regardless of whether the lobbyist or lobbyist agent actually reported the payment.

Under article 4, § 10(2)(f)–(h) of the Michigan Constitution and § 7(1)(l)–(n) of the Public Officers Financial Disclosure Act, MCL 15.707(1)(l)–(n), the Secretary of State may require public officers to provide factual information such as the date of a gift, travel payment, travel reimbursement, or payment to charity in lieu of honoraria made by a lobbyist or lobbyist agent, along with the name and identification number of the lobbyist from whom the gift or payment was received.

The Honorable Jocelyn Benson  
Michigan Secretary of State  
430 W. Allegan Street  
Richard H. Austin Building, 4<sup>th</sup> Fl.  
Lansing, MI 48918

You have asked several questions relating to the Public Officers Financial Disclosure Act, 2023 PA 281, MCL 15.701 *et seq.*, which implements newly enacted article 4, § 10 of the Michigan Constitution, requiring financial disclosures by certain public officers.<sup>1</sup>

### **BACKGROUND**

Article 12, § 1 of the Michigan Constitution permits the Legislature, by a two-thirds vote in each house, to propose amendments to the Constitution for approval by the voters. Const 1963, art 12, § 1. In 2022, the Legislature passed House Joint Resolution R, a proposed amendment to add § 10 to article 4 to require certain public officers to make yearly financial disclosures.<sup>2</sup> House Joint Resolution R was designated to appear on the November 8, 2022, general election ballot as Proposal

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<sup>1</sup> Your request also asks a question about the declaratory ruling process as it relates to the Public Officers Financial Disclosure Act, but you have since decided that the question need not be answered in this opinion.

<sup>2</sup> The legislative history for House Joint Resolution R of 2022 is available online at [House Joint Resolution R of 2022 - Michigan Legislature](#).(last accessed June 4, 2024)

22-1.<sup>3</sup> Michigan voters enacted the proposal by a wide margin, with over 66% of voters voting in favor and approximately 33% voting against.<sup>4</sup>

As enacted, article 4, § 10 of the Constitution provides, in relevant part:

(1) No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest.

(2) By April 15, 2024, and by a date each year thereafter as prescribed by state law, each member of the legislature, the governor, the lieutenant governor, the secretary of state, and the attorney general shall electronically file an annual financial disclosure report with the department of state that complies with this section. A report required to be filed under this section must include information regarding all of the following:

(a) Description of assets and sources of unearned income.

(b) Sources of earned income.

(c) Description of liabilities.

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(f) Gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(g) Travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(h) Payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.

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<sup>3</sup> See Board of State Canvassers, meeting minutes, August 19, 2022, available at [Aug 19 2022 BSC Meeting Minutes \(michigan.gov\)](#). (last accessed June 4, 2024)

<sup>4</sup> The results of the November 2022 general election are available at [2022 Michigan Official General Election Results - 11/08/2022 \(mielections.us\)](#). (last accessed June 4, 2024)

(3) The financial disclosure report required under subsection (2) must be filed with the department of state in a form and manner prescribed by state law. The department of state shall make the report available to the public online.

(4) *The legislature shall further implement this section by appropriate legislation. Legislation implementing this section must not limit or restrict the application of subsections (2) and (3).* . . . [Const 1963, art 4, § 10 (emphasis added).]

Pursuant to this mandate, the Legislature implemented article 4, § 10 through enactment of the Public Officers Financial Disclosure Act (PFDA), 2023 PA 281, MCL 15.701 *et seq.*<sup>5</sup>

### **LEGAL PRINCIPLES**

In interpreting constitutional provisions, the primary duty “is to ascertain the purpose and intent as expressed in the constitutional . . . provision in question.” *Adair v Michigan*, 486 Mich 468, 477 (2010) (cleaned up). In doing so, “the interpretation given the provision should be the sense most obvious to the common understanding and one that reasonable minds, the great mass of the people themselves, would give it.” *Id.* (cleaned up).

“The primary goal of statutory interpretation is to give effect to the intent of the Legislature. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.”

*Mich Head & Spine Institute, PC v Mich Assigned Claims Plan*, 331 Mich App 262,

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<sup>5</sup> Although not required by article 4, § 10, the Legislature also adopted a reporting requirement for candidates in the Candidate for Office Financial Disclosure Act, 2023 PA 282, MCL 169.301 *et seq.* Related amendments were adopted in Public Acts 283, 284, and 267 of 2023.

272 (2020) (cleaned up). A statute is “presumed to be constitutional,” and there is a “duty to construe [the] statute as constitutional unless its unconstitutionality is clearly apparent.” *Taylor v SmithKline Beecham Corp*, 468 Mich 1, 6 (2003) (citations omitted). “[I]t is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution” that the statute’s validity will not be sustained. *Phillips v Mirac, Inc*, 470 Mich 415, 423 (2004) (quotation marks and citations omitted).

## ANALYSIS OF QUESTIONS

### **Reporting Unearned Income, Securities, and Investments**

You first ask whether public officers can be required to provide an address or location associated with sources of unearned income and securities or investments they must report under the PFDA.

The PFDA requires the Secretary of State to create a standard reporting form and to implement an electronic, internet-accessible system to receive the financial reports. MCL 15.711, MCL 15.713(1)(b). As far as information required to be reported, § 7(1) of the PFDA provides, in part:

(1) A report required under section 5 must include a *complete statement* of all of the following:

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(g) . . . a list of each asset, excluding a business asset, held for investment or production of income with a fair market value of \$1,000.00 or more during the reporting period and any *sources of unearned income* that exceed \$200.00 during the reporting period.

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(i) . . . a *list of any stocks, bonds, or other forms of securities* held by the public officer or held jointly with the public officer’s spouse during the reporting period, if the security has a total aggregate fair market value of \$1,000.00 or more. . . . [MCL 15.707(1). Emphases added.]

After a report is filed, § 13(1)(g) of the PFDA provides that the Secretary must notify filers of “any error or omission” in their reports. MCL 15.713(1)(g). Under § 13(5), a person may file a complaint alleging a violation of the PFDA. And under § 13(8), the Secretary must investigate the alleged violations. The Secretary must endeavor to conciliate a violation, but if she cannot, she can proceed to an administrative hearing. MCL 15.713(9)–(10). Also, under § 13(12), even in the absence of a complaint, the Secretary must “review a report or statement filed under this act and may investigate an apparent violation of this act.” MCL 15.713(12).

### *Sources of Unearned Income*

Turning to your question, § 7(1)(g) of the PFDA requires an officer to report “any sources of unearned income that exceed \$200.00 during the reporting period.” MCL 15.707(1)(g). This language is consistent with the Constitution, which likewise requires reporting “sources of unearned income.” Const 1963, art 4, § 10(2)(a). The PFDA defines “unearned income” to mean “income that is not earned from employment, including, but not limited to, financial prize, unemployment benefits, annuities, stock dividends, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include “inheritance money or a familial gift.” MCL 15.703(n).

The reporting form created by the Secretary requires an address or location for the “sources” of unearned income.<sup>6</sup> You note in your request that some public officers have argued that the PFDA does not expressly require an address or location, instead requiring only that the “sources” be disclosed.

To interpret an undefined term in the Constitution or a statute, dictionary definitions may be consulted. *Citizens Protecting Michigan’s Const v Sec’y of State*, 280 Mich App 273, 295 (2008), *aff’d in part, appeal denied in part*, 482 Mich 960 (2008); *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156 (2011). Here, the word “sources” is used as a noun in both article 4, § 10(2)(a) of the Constitution and § 7(1)(g) of the PFDA, and the most relevant meaning is that of “point of origin.”<sup>7</sup> Applying this definition, simply naming the source of unearned income, such as an “annuity” or “pension,” without more, might appear sufficient to identify a “source” of unearned income. However, other provisions and the purpose of the amendment suggest that more information may be required.

The Constitution provides that “a report required to be filed under [§ 10(2)] must include *information* regarding” the items to be reported. Const 1963, art 4, § 10(2) (emphasis added). The word “information” as used here can be understood

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<sup>6</sup> You state in your request that the Secretary is requiring disclosure of only the city, state, and country of the source of unearned income and not the street address, as some have expressed concerns over fraud or identity theft. According to the information contained in your request, this level of reporting is consistent with what is required to be disclosed on federal financial disclosure forms.

<sup>7</sup> See [Source Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

to refer to “facts” or “data.”<sup>8</sup> And § 7(1) of the PFDA requires that “a complete statement” be made in every reporting category. MCL 15.707(1). Furthermore, the purpose of the amendment is to enhance public confidence in elected officers. Knowledge of public officers’ financial interests and entanglements permits the public to determine when those officers might be acting for their own gain. As the Citizens Research Council of Michigan explained in the September 2022 memorandum regarding this ballot proposal:

Sharing the details required in these reports would better equip members of the public to identify self-serving actions, but, perhaps more significantly, these ethics laws can have prophylactic effects. Financial disclosure forces government officials to share information that may be relevant in identifying votes that affect the financial wellbeing of themselves or their families from which they should be recused.<sup>9</sup>

Simply disclosing that a public officer has a “pension,” “annuity,” or “deferred compensation” plan would not advance the purpose of the amendment. Rather, the Constitution and statutes are best understood to require disclosing the specific origin of the public officer’s unearned income, such as “General Motors pension,” “Fidelity Investments annuity,” or “Michigan State University 457(b) deferred compensation plan.”

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<sup>8</sup> See [Information Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

<sup>9</sup> See Citizens Research Council of Michigan, Sept 2022, Memorandum 1170, Statewide Ballot Proposal 22-1, p 8, available at [memo1170 Proposal 22-1 Term Limits Financial Disclosure.pdf \(crcmich.org\)](#). (last accessed June 4, 2024)



Whether a specific address, location, or other identifying information may be required by the Department of State as part of disclosing a source of unearned income is a separate question.

Neither the Constitution nor the PFDA specifically requires the reporting of an address, location, or other identifying information as part of disclosing a source of unearned income. The Constitution, however, generally requires “information” regarding sources of unearned income, and “information” means “facts” or “data.” Const 1963, art 4, § 10(2).

As mentioned, a purpose of art 4, § 10(2) is to require a public officer to disclose potential financial entanglements when it comes to the sources of their unearned income. As noted above, under the PFDA, the Secretary has an independent duty to review a report, and she may investigate an apparent violation. MCL 15.713(12). She also has a duty to investigate and conciliate complaints alleging violations. MCL 15.713(5)–(10). Requiring public officers to include the address or other identifying information of a source of unearned income may assist the Secretary in performing these duties. For example, simply disclosing the origin of a source of unearned income, on its face, may appear innocuous, but also disclosing the address or other identifying information of a particular source of unearned income could reveal a financial entanglement between the public officer and a source of unearned income that was not otherwise apparent.

Similarly, under the Constitution and the PFDA, the reports must be made available to the public. Const 1963, art 4, § 10(3), MCL 15.713(1)(f). Presumably, the reason for that is so members of the public can review the reports and come to their own determination as to the significance of an officer's disclosures or the existence of a potential financial entanglement based on knowledge they may have.

Thus, the Secretary's reporting form that requires including an address, location, or other identifying information as part of disclosing a source of unearned income is consistent with article 4, § 10(2)(a) of the Constitution and § 7(1)(g) of the PFDA. *Cf. Blank v Dep't of Corr*, 462 Mich 103, 126 (2000) (“[T]he constitution does not require the enabling act to specify in great detail the standards that an executive branch agency must follow in promulgating rules.”) (Citation omitted).

It is my opinion, therefore, that the Secretary of State may require public officers to provide an address or other identifying information when an officer reports “sources of unearned income” as required by article 4, § 10(2)(a) of the Constitution and § 7(1)(g) of the PFDA, MCL 15.707(1)(g).<sup>10</sup>

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<sup>10</sup> Determining all possible information that the Secretary may and may not require is beyond the scope of this opinion. Instead, this opinion is limited to determining the constitutionality of the Secretary requiring the specific information asked about in this request.

## *Securities and Investments*

You ask a similar question concerning the disclosure of securities or other investments under § 7(1)(i) of the PFDA, which, unless an exception applies, requires that a public officer disclose,

*a list of any stocks, bonds, or other forms of securities held by the public officer or held jointly with the public officer's spouse during the reporting period, if the security has a total aggregate fair market value of \$1,000.00 or more. . . . [MCL 15.707(1)(i) (emphasis added).]*

Looking to article 4, § 10 of the Constitution, that section does not specifically refer to the disclosure of “stocks, bonds, or other forms of securities.” But it does require a “[d]escription of assets[.]” Const 1963, art 4, § 10(2)(a). Neither the Constitution nor the PFDA defines the term “assets.” Turning again to a dictionary definition, the term “assets,” in this context, may be understood to mean “the entire property of a person . . . applicable or subject to the payment of debts,” and/or “an item of value owned.”<sup>11</sup> These are very broad definitions, which plainly include “stocks, bonds, or other forms of securities[.]” MCL 15.707(1)(i). So, in requiring the disclosure of “stocks, bonds, or other forms of securities” of a certain value, § 7(1)(i) of the PFDA is requiring the disclosure of a particular form of “assets” as contemplated by article 4, § 10(2)(a) of the Constitution.

In making such a disclosure, the Constitution requires a “description” of the asset. Const 1963, art 4, § 10(2)(a). The PFDA, however, provides that a public

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<sup>11</sup> See [Asset Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

officer need disclose only a “list” of the assets; i.e., “stocks, bonds, or other forms of securities[.]” MCL 15.707(1)(i). Again, consulting dictionary definitions, the word “description” can best be understood in this context as meaning “a statement or account giving the *characteristics* of someone or something.”<sup>12</sup> On the other hand, the word “list” can best be understood as meaning “a simple series of words or numerals (such as the names or persons or objects).”<sup>13</sup> These definitions reveal that the term “list” generally has a more limited meaning than the word “description.”<sup>14</sup>

Applying these definitions, the Constitution requires more than simply a list of assets; it requires a description of assets. The Legislature cannot “limit” or “restrict” the requirements in the Constitution. Const 1963, art 4, § 10(4) (“Legislation implementing this section must not limit or restrict the application of subsections (2) and (3)”). Therefore, to preserve the constitutionality of the statutory language, the term “list” as used in § 7(1)(i) of the PFDA must be construed as requiring a list of assets that includes a description of each asset reported; otherwise, the statute is unconstitutional. See *Taylor v Gate Pharm*, 468 Mich 1, 6 (2003) (“Statutes are presumed to be constitutional, and courts have a

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<sup>12</sup> See [Description Definition & Meaning - Merriam-Webster \(emphasis added\)](#). (last accessed June 4, 2024)

<sup>13</sup> See [List Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

<sup>14</sup> Read as a whole, art 4, § 10(2)(a) of the Constitution, requires “information” regarding a “description” of the asset. But a “description” is simply a type of “information.” Accordingly, something that satisfies the definition of “description,” also satisfies the definition of “information.” As a result, the analysis in this section focuses on the word “description.”

duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.”).<sup>15</sup>

The “description” of an asset may include an address for, or the location of, the asset as a characteristic of that asset. Thus, the Secretary’s reporting form that requires including the address or location of the stocks, bonds, or other securities held by a public officer is consistent with § 7(1)(i) of the PFDA and article 4, § 10(2)(a) of the Constitution. Cf. *Blank*, 462 Mich at 126.

It is my opinion, therefore, that the Secretary of State may require public officers to provide descriptive information such as an address, location, or other identifying information when reporting “stocks, bonds, or other forms of securities” of a certain value as required by § 7(1)(i) of the PFDA.

### **Reporting Gifts, Travel Payments, and Charitable Donations From Lobbyists and Lobbyist Agents**

Turning to your second question, you ask whether the PFDA can be construed to require a public officer to report all gifts received, all travel payments received, and all payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria, or rather, only those items that have been actually reported by a lobbyist or lobbyist agent. You further ask whether § 7(1)(l) and (m) of the PFDA,

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<sup>15</sup> The same analysis would apply to § 7(1)(g) of the PFDA because that subsection only requires a “list of each asset” where the Constitution requires a “description of assets,” art 4, § 10(1)(a). The same problem also appears in § 7(1)(h), which requires a “list of all liabilities,” where the Constitution requires a “description of liabilities,” art 4, § 10(2)(c). Again, the Legislature cannot limit or restrict the Constitution through its implementing legislation. Const 1963, art 4, § 10(4).

can be construed to require a public officer to report the name of the lobbyist or lobbyist agent from whom the officer received a gift or travel payment and the date on which the gift or payment was received.

The Constitution requires that a public officer report:

(f) Gifts received and *required to be reported* by a lobbyist or lobbyist agent, as prescribed by state law.

(g) Travel payments and reimbursements received and *required to be reported* by a lobbyist or lobbyist agent, as prescribed by state law. [Const 1963, art 4, § 10(2)(f)–(g) (emphases added).]

Sections 7(1)(l) and (m) of the PFDA provide that a public officer must report the following:

(l) A *list* of all gifts<sup>[16]</sup> received and *reported by* a lobbyist or lobbyist agent under state law.

(m) A *list* of all travel payments<sup>[17]</sup> received and *reported by* a lobbyist or lobbyist agent under state law. [MCL 15.707(1)(l)–(m) (emphases added).]

### *Gifts and Travel Payments and Reimbursements*

In addressing your first question about whether the PFDA can be construed to require a public officer to report all gifts received from, and travel payments and

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<sup>16</sup> Section 3(e) of the PFDA incorporates the Michigan Campaign Finance Act’s definition of the term “gift,” which is defined as “a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given in exchange.” MCL 169.207(5).

<sup>17</sup> The Lobby Act requires lobbyists and lobbyist agents to report “travel and lodging expenses paid for or reimbursed to a public official in connection with public business by that public official in excess of \$500.00[.]” MCL 4.418(1)(c). The lobbyist or lobbyist agent must provide a document detailing the expenses to an “affected legislator.” MCL 4.418(1)(e).

reimbursements made by, a lobbyist or lobbyist agent, or rather, only those items that have been actually reported by a lobbyist or lobbyist agent, it should be noted that the PFDA and the Constitution use different language. The Constitution requires public officers to disclose gifts and travel payments and reimbursements “required to be reported” by a lobbyist or lobbyist agent. Const 1963, art 4, § 10(2)(f), (g). By contrast, the PFDA requires the disclosure of gifts and travel payments “reported by” a lobbyist or lobbyist agent. MCL 15.707(1)(l), (m).<sup>18</sup>

As an initial matter, the Constitution does not specify what “state law” it is referring to in § 10(2)(f) and (g). But a “lobbyist” and “lobbyist agent” are persons defined in the Lobby Act, 1978 PA 472, MCL 4.411 *et seq.*, and thus are subject to that act’s reporting requirements. See MCL 4.415(4), (5). There are no other state laws that require a lobbyist or lobbyist agent, acting in those capacities, to report gifts,<sup>19</sup> travel payments, or travel reimbursements made to lobbyable public officers,

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<sup>18</sup> The phrase “travel payments” in the PFDA must be interpreted to include travel “reimbursements.” Interpreting “travel payments” in the PFDA to not include travel reimbursements received by a public officer from a lobbyist or lobbyist agent would be inconsistent with the Constitution, which requires the reporting of “Travel payments and reimbursements received.” The Legislature cannot “limit” or “restrict” the requirements in the Constitution, Const 1963, art 4, § 10(4), and statutes must be construed to avoid such limitation or restriction, *Taylor*, 468 Mich at 6. For the sake of consistency and clarity, this section will refer to “travel payments” and “travel reimbursements.”

<sup>19</sup> It has been noted that the Lobby Act prohibits lobbyists or lobbyist agents from giving a “gift” to a lobbyable public official, MCL 4.421(2), as that term is defined in the act, see MCL 4.414(1). So, no gifts are reported under the Lobby Act since gifts cannot be given. But, for example, the Lobby Act requires lobbyists and lobbyist agents to report expenditures, including expenditures for food and beverages provided to a lobbyable public official. MCL 4.418(1)(b)(i), (2). The MCFA’s definition of “gift” includes “anything of value,” which would include the value of food or beverages provided to a lobbyable public official under the Lobby Act. See MCL 169.207(5). Since the PFDA requires a public officer to disclose a “gift” from a lobbyist or lobbyist agent that must be reported under state law, and a lobbyist or lobbyist agent must report expenditures for food and beverages under the Lobby Act, a public officer must report a gift of food or beverages received from a lobbyist or lobbyist agent under the PFDA.

who include the officers required to disclose under the Constitution and the PFDA. See Const 1963, art 4, § 10(2), MCL 15.703(k), MCL 4.415(9), (10). The PFDA, in fact, incorporates the definitions of “lobbyist” and “lobbyist agent” from the Lobby Act. MCL 15.703(h), (i).

Constitutional language must be given the “sense most obvious to the common understanding and one that reasonable minds, the great mass of the people themselves, would give it.” *Adair*, 486 Mich at 477. A natural or ordinary reading of the constitutional language is that if the gift, travel payment, or travel reimbursement is, in fact, “required to be reported” under state law, then the public officer must disclose it regardless of whether the lobbyist or lobbyist agent actually reports the gift or payment. This interpretation accords with the purpose of the amendment. If a lobbyist or lobbyist agent fails to report gifts or payments that are required to be reported, whether unintentionally or otherwise, a public officer should not be relieved of making their own disclosure. The gifts, travel payments, or travel reimbursements were still made, and it is these financial transactions that the People, by adopting the amendment, agreed must be disclosed by adopting the amendment.

The statutes, however, use the term “reported by.” MCL 15.707(1)(l), (m). This language suggests that the public officer need only disclose a gift, travel payment, or travel reimbursement if the lobbyist or lobbyist agent actually reports it. But again, the Legislature cannot “limit” or “restrict” the requirements in the Constitution. Const 1963, art 4, § 10(4). The statutes must be construed to avoid



such limitation or restriction, *Taylor*, 468 Mich at 6, meaning that public officers are not excused from disclosing reportable gifts, travel payments, or travel reimbursements that a lobbyist or lobbyist agent fails to properly disclose.<sup>20</sup>

It is my opinion, therefore, that article 4, § 10(2)(f) and (g) of the Constitution and § 7(1)(m) and (n) of the PFDA, require public officers to disclose any gifts, travel payments, and travel reimbursements received from a lobbyist or lobbyist agent that are required to be reported under state law — regardless of whether the lobbyist or lobbyist agent actually reported the gift, travel payment, or travel reimbursement.

#### *Payments to Charity in Lieu of Honoraria*

You likewise ask whether a public officer is required to report all payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria, or only those payments that are reported by the lobbyist or lobbyist agent.

The Constitution requires that a public officer report “[p]ayments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.” Const 1963, art 4, § 10(2)(h). Section 7(1)(n) of the PFDA provides that a public officer must report

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<sup>20</sup> Lobbyists and lobbyist agents file a report on January 31 covering the calendar year ending on the immediately preceding December 31. MCL 14.418(1). The PFDA requires public officers to file their reports on May 15 of each year for the preceding calendar year. MCL 15.707(2), MCL 15.703(m). Because the public officers are the later filers, they will be able to consult reports filed by lobbyists or lobbyist agents for assistance in completing their own reports.

“[a] list of each payment made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.” MCL 15.707(1)(n).<sup>21</sup>

Unlike the prior discussion of gifts, travel payments, and travel reimbursements, the language of neither the Constitution nor the PFDA ties the disclosure of payments to charities in lieu of honoraria to payments that are required to be reported by a lobbyist or lobbyist agent. Accordingly, a public officer’s duty to disclose such payments under the Constitution and the PFDA is not limited to payments that a lobbyist or lobbyist agent reports.<sup>22</sup>

Furthermore, the PFDA requires a public officer to disclose “each payment” made to a charity. MCL 15.707(1)(n). When used as an adjective, the term “each” can be understood to mean “being one of *two or more* distinct individuals having a similar relation and often constituting an *aggregate*.” (Emphases added).<sup>23</sup> In other words, “each payment” as used in the PFDA means every payment made by a lobbyist or lobbyist agent to a charity in lieu of honoraria. See, e.g., *Twp of Casco v Secretary of State*, 472 Mich 566, 594–595 (2005) (Young, J., concurring in part and dissenting in part) (discussing meaning of the word “each” and concluding that it meant “all” and “every”). And here, the statute is consistent with the Constitution. The Constitution simply uses the plural “payments,” which plainly contemplates

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<sup>21</sup> Section 3(f) of the PFDA defines the term “honorarium,” which is the singular form of honoraria, to have the same definition as that used in the MCFA, MCL 169.207(6).

<sup>22</sup> Under the Lobby Registration Act, honorarium is included within the definition of “expenditure,” MCL 4.413(2), and lobbyists and lobbyist agents must report “expenditures,” MCL 4.418. Thus, lobbyists and lobbyist agents must report payments of honoraria.

<sup>23</sup> See [Each Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

reporting more than one payment. Const 1963, art 4, § 10(2)(h). Thus, the Legislature’s requirement that “each” payment be reported appropriately implements the Constitution. Const 1963, art 4, § 10(4) (“The legislature shall further implement this section by appropriate legislation.”)

Relatedly, you ask whether all payments of *any* value made by a lobbyist or lobbyist agent to a charity in lieu of honoraria must be reported. Neither the Constitution nor the PFDA defines the term “payment,” or otherwise includes a monetary threshold for reporting a payment. In the absence of limiting language, it follows that both the Constitution and the PFDA require reporting all payments of any value made to a charity in lieu of honoraria.

It is my opinion, therefore, that article 4, § 10(2)(h) of the Constitution and § 7(1)(n) of the PFDA, require public officers to disclose all payments of any value made by a lobbyist or lobbyist agent to a charity in lieu of honoraria, regardless of whether the lobbyist or lobbyist agent actually reported the payment.

*Requiring Lobbyist or Lobbyist Agent Names or Identifying Information*

Another part of your question is whether public officers can be required to include the date and “name/ID” of the lobbyist when reporting gifts or payments made by lobbyists or lobbyist agents under article 4, § 10(2)(f)–(h) of the Constitution, and under § 7(1)(l)–(n), of the PFDA. You note that this would be consistent with how information is reported under the Lobby Registration Act, MCL 4.411 *et seq.*, and the Michigan Campaign Finance Act, MCL 169.201 *et seq.*

Looking to the Constitution, unlike the other subsections that require a “description” of assets and liabilities and the “sources” of earned and unearned income, art 4, § 10(2)(f)–(h) do not include similar language for gifts or payments made by lobbyists or lobbyist agents. But these sections are subject to the general language that “a report required to be filed under [§ 10(2)] must include *information* regarding” the items to be reported. Const 1963, art 4, § 10(2) (emphasis added). Again, the word “information” as used here can be understood to refer to “facts” or “data.”<sup>24</sup> Therefore, under the Constitution, a report must include facts or data regarding gifts, travel payments, or travel reimbursements made by lobbyists or lobbyist agents.

The PFDA requires that a report include a “list” of gifts, travel payments (which include travel reimbursements), and payments to charities in lieu of honoraria. MCL 15.707(1)(l)–(n). As discussed above, the term “list” has a limited meaning, i.e., “a simple series of words or numerals (such as the names or persons or objects).”<sup>25</sup> Here, again, the Constitution requires more than just disclosing a “list” of gifts and payments — it requires the disclosure of “information,” meaning “facts” and “data,” regarding the gifts or payments made by lobbyists or lobbyist agents. Therefore, to accord with the Constitution, the term “list” as used in § 7(1)(l)–(n) of the PFDA must be interpreted to require the public officer to disclose facts or data related to a gift or payment. With respect to your question, requiring

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<sup>24</sup> See [Information Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

<sup>25</sup> See [List Definition & Meaning - Merriam-Webster](#). (last accessed June 4, 2024)

public officers to disclose factual information such as the “date” of a gift or payment and the “name/ID” of the lobbyist is consistent with this interpretation of § 7(1)(l)–(n).

It is my opinion, therefore, that under article 4, § 10(2)(f)–(h) of the Constitution and § 7(1)(1)–(n) of the PFDA, the Secretary of State may require public officers to provide factual information such as the date of a gift, travel payment, travel reimbursement, or payment to charity in lieu of honoraria made by a lobbyist or lobbyist agent, along with the name and identification number of the lobbyist from whom the gift or payment was received.

A handwritten signature in blue ink that reads "Dana Nessel". The signature is fluid and cursive, with the first letters of "Dana" and "Nessel" being capitalized and prominent.

DANA NESSEL  
Attorney General