MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 15, 1985

Fred R. Parks
Executive Director
Michigan Corrections Organization
Local 526M
Service Employees International Union
Michigan State AFL-CIO Building, Suite 303
419 South Washington Avenue
Lansing, Michigan 48933-2172

Dear Mr. Parks:

This is in response to your request for an interpretation concerning the applicability of the lobby act ("the Act"), 1978 PA 472, to certain labor relations functions of a union representing state employees.

You state that you are employed by the Michigan Corrections Organization ("the Union"), SEIU Local 526M, AFL-CIO, which is a labor union representing employees in the state classified civil service working in Michigan's prisons. Further, you state that the Union is registered as a lobbyist under the Act, and you are registered as a lobbyist agent. Moreover, you state that you engage in various labor relations activities with the director of a principal state department; the State Employer, who is an agent of the governor, or a state commission or board. You list the labor relations functions in which you engage as follows: (1) collective bargaining; (2) labor/management meetings; (3) unfair labor practice hearings, and (4) grievance administration and arbitration.

You ask whether you are required to report these specific labor relations activities as lobbying under the Act.

The Michigan Civil Service Commission ("the CSC") was first created as a constitutional body by amendment to the Constitution of 1908 (Const 1908, art 6, §22), effective January 1, 1941. The absolute power of the CSC within the scope of authority granted by this Constitutional amendment was immediately recognized by the Michigan Supreme Court in Reed v Civil Service Commission, 301 Mich 137 (1942).

The unique constitutional status of the CSC was continued by the Constitution of 1963. Const 1963, art 11, §5 describes the powers and duties of the CSC. In particular:

> "The commission shall ... make rules and regulations concerning all personnel transactions, and regulate all conditions of employment in the classified service."

Within its scope of constitutional authority, the power of the CSC is complete, absolute and unqualified. The legislature is constitutionally prohibited from infringing upon the power of the CSC.

> "Sec. 48. The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." Const 1963, art 4, §48.

The Michigan Supreme Court and the Michigan Court of Appeals have consistently held that the CSC has plenary power to regulate all conditions of employment in the state classified civil service.

The Michigan Court of Appeals in International Union of Civil Rights and Social Service Employees v Michigan Civil Service Commission, 57 Mich App 526 (1975), reiterated the line of judicial authority recognizing the plenary power of the CSC.

> "The Civil Service Commission possesses plenary power and may determine, consistent with due process, the procedures by which matters are regulated relative to employment in the state classified service. Plec v Liquor Control Commission, 322 Mich 691; 34 NW2d 524 (1948); Groehn v Corporation and Securities Commission, 350 Mich 250; 86 NW2d 291 (1957); Viculin v Department of Civil Service, 386 Mich 375; 192 NW2d 449 (1971)." Supra, p 529."

In Welfare Employees Union v Civil Service Commission, 28 Mich App 343 (1970), the Michigan Court of Appeals declared that the public employees' relation act of 1965 (MCL 423.201 et seq.) is not applicable to state employees in the state classified civil service. The Court of Appeals further stated:

> "The Michigan constitution of 1963 clearly gives the Civil Service Commission supreme power over its employees. In fact, the legislature is constitutionally precluded from enacting laws providing for the resolution of disputes concerning public employees in the classified service. Const 1963, art 4, §48. The constitutional supremacy of the Michigan Civil Service Commission with respect to state employees in the classified civil service has been consistently recognized by the Michigan Supreme Court." Supra, p 351.

Within its constitutional scope of authority, the power of the CSC extends to procedure, as well as substance. The Michigan Court of Appeals stated in Council No 11, AFSCME v Civil Service Commission, 408 Mich 385, 406 (1980):

> "The power to make 'rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service' is indeed a plenary grant of power.
>
> * * *
>
> We do not question the commission's authority to regulate employment-related activitiy involving internal matters such as job specifications, compensation, grievance procedures, discipline, collective bargaining and job performance ... This court has said as much in Viculin v Dep't of Civil Service, 386 Mich 375; 192 NW2d 449 (1971)."

In Groehn v Corporation and Securities Commission, 350 Mich 250, (1957), the Supreme Court stated:

> "The commission may, in the performance of its constitutional functions, provide for whatever assistance (hearing boards, administrative officers, and the like) it may require for the efficient performance of its duties. But the final authority and responsibility remain its own despite these delegations, and its investigative powers in aid of its final decision remain as broad as its responsibility." Supra, p 261.

Considering the applicability of an earlier administrative procedures act (1952 PA 197) to the CSC, the Supreme Court in Viculin v Department of Civil Service, 386 Mich 375, 394 (1971) stated:

> "It is plain that if the administrative procedures act was intended to apply to the resolution of disputes in the state classified civil service, it would be in violation of this provision of the constitution." (Const 1963, art 4, §48).

The Court further noted that the legislature specifically excluded the CSC from the present administrative procedures act.

> "The administrative procedures act as amended effective July 1, 1970, specifically excludes the State Civil Service Commission from its provisions. PA 1969 No 306, effective July 1, 1970 (MCLA §24.203(2)...)." Supra, fn 16, p 393.

In OAG, 1977-1978, No 5183, p 21 (March 8, 1977), the attorney general was asked:

> "In light of Const 1963, art 11, § 5, Const 1963, art 4, §48, and certain statements in the case of Viculin v Department of Civil Service, are meetings of the Michigan Civil Service Commission governed by the provisions of the Open Meetings Act?" Supra, p 30.

The attorney general responded:

> "As a result of the restriction imposed by Const 1963, art 4, §48, I am of the opinion that the Act does not apply to meetings of the Civil Service Commission in any case concerned with the resolution of classified employee disputes. This prohibition also applies to those activities of the Civil Service Commission involving a threat of impending disputes." Supra, p 31.

Considering the unique constitutional standing of the CSC and the consistent judicial declarations of its authority and supremacy regarding conditions of employment in the state classified civil service, the legislature could not have intended that the Act apply to labor relations activities within the constitutional scope of authority of the CSC.

In your letter you indicate that you engage in certain labor relations activities with the director of a principal state department; the state employer, who is an agent of the governor, or a state commission or board. Although these persons, with whom you communicate directly on these matters, may be public officials in the executive branch as that term is defined in the Act, the labor relations activities you describe are conducted under the auspices of the CSC and pursuant to its rules and regulations. The fact that communications with public officials may take place in the course of conducting such labor relations activities cannot be construed to expand the legislature's power in this constitutionally protected area.

Consequently, (1) collective bargaining, (2) labor/management meetings, (3) unfair labor practice hearings, and (4) grievance administration and arbitration proceedings, when conducted by or on behalf of employees in the state classified civil service, are all labor relations activities within the exclusive constitutional scope of authority of the CSC. Therefore, these labor relations activities are not lobbying under the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation