December 7, 2011
LAO/11-34

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Dear ███████
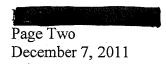
  I have received your request for an advisory opinion with regard to lobbying in Massachusetts. See G.L. c. 3, § 41. Specifically, you inquired whether activity contemplated by your organization would be considered lobbying, and if so, would registration be required with this office.

  In your request, you inquired whether activities to introduce the organization's program to members of the Massachusetts Legislature would meet the definition of lobbying. The definition of executive lobbying is stated as:

> any act to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement; provided further, that executive lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and provided further, that executive lobbying shall include strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee; and provided, further, that "executive lobbying" shall not include providing information in writing in response to a written request from an officer or employee of the executive branch or an authority for technical

advice or factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

G.L. c. 3, § 39.

Similarly, the definition of legislative lobbying is stated as, "any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor's approval or veto thereof ..." Id. To the extent that an individual in conducting these activities meets either or both of these definitions, then that individual is considered to be lobbying. However, in order to trigger registration with the Lobbyist Section, an individual must also meet the criteria of being an executive and/or legislative agent.

The definition of an executive agent is stated as:

> a person who for compensation or reward engages in executive lobbying, which includes at least 1 lobbying communication with a government employee made by said person. The term "executive agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to be engaged in executive lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in executive lobbying for not more than 25 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period for executive lobbying

G.L. c. 3, § 39.

Additionally, a legislative agent is defined as "a person who for compensation or reward engages in legislative lobbying, which includes at least 1 lobbying communication with a government employee made by said person..." Id.

In order for an individual to satisfy the definition of an executive agent or legislative agent, the individual must be compensated or rewarded for his/her lobbying efforts. As noted in Lobbyist Advisory Opinion LAO/10-12, "compensation" is defined to include monetary value received, while "reward" is more broadly defined and may encompass benefits received in exchange for lobbying efforts (e.g. equity interest in an organization, health insurance, pension contribution, life insurance, commuter benefits).

The definitions of both an executive and legislative agent exempt incidental lobbying, or lobbying that is incidental to the regular and usual business or professional activities engaged in by the individual. Lobbying activity is considered incidental if an individual engages in

lobbying for twenty-five hours or less <u>and</u> if the individual receives less than $2,500 during any reporting period. <u>Id</u>. Both criteria must be satisfied in order for lobbying activity to be considered "incidental." Those individuals who believe that they may be incidental lobbyists may still register with this office. If a registered individual qualifies as an incidental lobbyist at the end of the reporting period, their appropriate online disclosure reporting forms include an option by which the individual may bypass certain reporting information and claim the incidental lobbying exception. <u>See</u> G.L. c.3, § 41. Please be advised that a lobbyist client is not eligible to claim incidental status and bypass certain disclosure reporting requirements.

An individual who registers with this office must submit all required disclosure reporting forms in the manner and time prescribed by statute. <u>See</u> G.L. c.3, § 43. The Secretary of the Commonwealth shall assess a penalty for any disclosure report that is submitted after the prescribed date. <u>See</u> G.L. c.3, § 47.

To the extent that an individual has engaged in activities that fall within either definition of lobbying and has satisfied the criteria of being an executive or legislative agent, or both, registration with the Lobbyist Section is required. <u>See</u> G.L. c.3, §§ 39, 41. Furthermore, an organization receiving lobbying services from a registered lobbyist would be considered a client and must also register with the Lobbyist Section. <u>Id</u>.

Very truly yours,

Laurie Flynn
Chief Legal Counsel