



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

Laurie Flynn
Chief Legal Counsel

December 7, 2011

LAO/11-36

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

I have received your request for an advisory opinion with regard to lobbying in Massachusetts. See G.L. c. 3, § 41. Specifically, you requested an opinion concerning the applicability of G.L. c. 3, § 50 to your client, a conservation district formed pursuant to G.L. c. 21, § 21.

In the request, you stated that your organization is representing the [REDACTED]. The [REDACTED] is subject to the oversight of the Massachusetts Commission for Conservation of Soil, Water & Related Resources (Commission). See G.L. c. 21, § 20. Furthermore, you stated in the request that your organization has been asked to assist the [REDACTED] in; drafting legislation that would amend certain provisions of Chapter 21, providing advice regarding the legislative process, and developing policy arguments in support of proposed legislation.

The provisions of the Massachusetts Lobbying Law are delineated within G.L. c. 3, §§ 39-50. Section 50 states in part "Sections thirty-nine to forty-nine, inclusive, shall not apply to employees or agents of the commonwealth or of a city, town, district or regional school district who are acting in their capacity as such employees or agents..."

You have requested an opinion from this office as to whether the [REDACTED] may fall within the definition of either "commonwealth" or "district as it relates to the applicability of Section 50. Additionally, you have requested an opinion as to whether your organization may be acting as an agent for the [REDACTED] when engaged in the aforementioned activities.

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The Massachusetts Lobbying Law (G.L. c. 3, §§ 39-50) does not provide a specific definition with respect to the terms "commonwealth" or "district," despite the fact that these terms are used within the language of Section 50. As a result, this office has looked outside of the Lobbying Law for further guidance with respect to the applicability of these terms to the [REDACTED].

Pursuant to G.L. c. 29, § 1, a "state agency" is defined as a state agency, board, bureau, department, division, section, or commission of the commonwealth. Although the [REDACTED] may not meet, in the strictest sense, the definition of a state agency as a board, bureau, department, division, section or commission, the [REDACTED] does fall within the regulatory and operational auspices of the Commission.

The Commission holds the authority to; allocate appropriated funds for establishing and maintaining conservation districts, develop annual budgets for the operation and maintenance of conservation districts, and establish program priorities and advise conservation districts on the programs which contribute to the conservation and best use of the natural resources of the Commonwealth. See G.L. c. 21, § 20. Additionally, the Commission may establish a conservation district, change the boundaries of an existing district, or dissolve a district where appropriate. See G.L. c. 21, § 21. Furthermore, the Commission is required to appoint a board of district supervisors upon the establishment of a conservation district. The rate paid to district supervisors is also established by the Commission. See G.L. c. 21, § 22.

Alternatively, the district supervisors of a conservation district are comprised of individual, private land owners residing on or owning land within the conservation district. See G.L. c. 21, §§ 21-22. A conservation district may also engage in litigation matters in the name of the district rather than in the name of the Commonwealth. Furthermore, a conservation district may, much in the way a private organization might, accept contributions and appropriations not only from state or federal entities, but also from private individuals or organizations. See G.L. c. 21, § 24.

As such, this office is required to conduct a balancing of these factors in rendering a determination as to whether a conservation district, and by extension the [REDACTED], falls within the applicability of Section 50. This office certainly recognizes the fact that the [REDACTED], as a conservation district, has been granted the authority to make various decisions independent from direction by the Commission. A number of these powers have been discussed above and are not insignificant. However, the authority and independence granted to the [REDACTED] does not outweigh the Commission's overriding involvement in, and direction of, the financial and operational sustainability of the [REDACTED].

The Commission holds the ultimate authority in determining whether a conservation district is established, how a district may be comprised, and whether the district may even continue its existence. While these actions may require the receipt of a petition for such action,

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the Commission maintains the authority to render a final determination on these matters. Additionally, the Commission exerts significant control over the operation and maintenance of the [REDACTED] and other conservation districts, as it allocates funds, develops annual budgets, and establishes program priorities.

These factors carry an overriding significance in a final analysis by this office to determine the [REDACTED] status. As such, the [REDACTED] may be considered or viewed as a type of district or subdivision of the Commission, especially when the Commission's control of operational and financial functions is fully considered. Whereas the Commission satisfies the aforementioned definition of a "state agency," this definition may be reasonably extended to the [REDACTED]. Accordingly, the [REDACTED] will likely satisfy the definition of "commonwealth" regarding the applicability of Section 50. Whereas this office has determined that the definition of "commonwealth" is applicable with respect to this matter, this office will decline to analyze the term "district" and its possible applicability to the [REDACTED]

In your request, you also questioned whether your firm may be acting as an agent for the [REDACTED], within the meaning of Section 50, when engaged in certain aforementioned activities. A determination of this issue would appear to be more appropriately addressed by a legal interpretation unrelated to the Massachusetts Lobbying Law. Accordingly, this office will decline to further examine this issue included within your request.¹

Very truly yours,



Laurie Flynn
Chief Legal Counsel

¹ This document was edited to include the word "request" on September 27, 2013