



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

Laurie Flynn
Chief Legal Counsel

January 25, 2012

LAO/11-38

[REDACTED]
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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 as to whether a company (Company) providing real estate services and business solutions to clients as it relates to the application and receipt of local and state tax incentives, may constitute executive lobbying as defined by G.L. c. 3, § 39.

In your request, you stated that the Company engages in various activities on behalf of its clients with respect to economic development incentives available under various local and state tax incentive plans, including the Massachusetts Economic Development Incentives Program (EDIP). As a result, you have questioned whether these activities would meet the definition of executive 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.

In your request, you stated that the EDIP application process is controlled and governed by statutes, regulations, and guidelines issued by the Economic Assistance Coordinating Council (EACC). As services provided to its clients, the Company may work directly with the Massachusetts Office of Business Development (MOBD) throughout every aspect of the EDIP application process, which may include; introducing the proposed project to a municipality, submitting an EDIP Preliminary Application on behalf of its clients, submitting local approvals and agreements to the MOBD Regional Director, and attending EACC meetings to present project details and request project certification. You further stated in the request that the Company may engage in communications with various local and state officials regarding a proposed project and its eligibility for EDIP tax incentive benefits.

While the Company may engage in certain activities and communicate with local and state officials regarding an EDIP eligible project, these activities in which the Company acts on behalf of its clients would not meet the statutory definition of executive lobbying. Based on the information provided to this office, the Company's activities appear to consist solely of those conducted within the confines and regulations of a statutorily defined program designed to promote business growth and economic development, and not within the parameters of the executive lobbying definition.

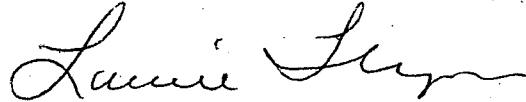
The Company's efforts on behalf of its clients are not acts "to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority... where such decision concerns legislation or the adoption, defeat or postponement of a **standard, rate, rule or regulation**... or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement..." See G.L. c. 3, § 39. The Company may advocate on behalf of its clients with respect to tax incentive eligibility, represent its clients before local and state officials, and advocate for the merits of a proposed project. Yet, these activities engaged in by the Company as presented to this office do not concern legislation, nor do they relate to any proposed action on a standard, rate, rule or regulation. Furthermore, these activities do not relate to any type of executive branch policy or procurement decision. The Company's activities relate to economic development initiatives conducted within the set of rules and regulations enacted to support an existing executive branch policy.

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The Company's various activities as conducted on behalf of its clients with respect to local and state tax incentive plans, including those outlined within the request as part of the EDIP program, are not activities that meet the statutory definition of executive lobbying pursuant to G.L. c. 3, § 39. Accordingly, these activities do not constitute acts of executive lobbying and the Company is not required to register with this office with respect to these specific activities.

The Company is advised that this opinion is applicable only to the tax incentive-related activities engaged in by the Company on behalf of its clients. The Company is advised to seek further guidance from this office with respect to any additional activities not detailed within your request to this office for an advisory opinion.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Laurie Flynn", written in dark ink.

Laurie Flynn
Chief Legal Counsel