



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

Laurie Flynn
Chief Legal Counsel

July 9, 2012

LAO/12-40

[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 seeking clarification regarding the use of "compensation or reward" within the definitions of executive agent and legislative agent in G.L. c. 3, § 39 with respect to lobbyist registration, and the singular use of the word "compensation" in G.L. c. 3, § 43 with respect to lobbyist disclosure reporting.

In order to require registration with the Secretary of the Commonwealth, Lobbyist Division, an individual must first engage in activities that would meet the definition of either executive lobbying or legislative lobbying. See G.L. c. 3, § 39. To the extent that the individual engages in activities that satisfy either definition, then that individual is considered to be lobbying. Second, an individual must meet the criteria of being an executive and/or legislative agent in order to trigger the registration requirement.

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 (emphasis added).

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 or 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).

Where an individual engages in activities that fall within either the executive lobbying or legislative lobbying definition, and the individual meets the criteria of being an executive or legislative agent by engaging in lobbying activity for compensation or reward, then registration with the Lobbyist Division as a lobbyist is required. See G.L. c.3, §§ 39, 41.

In your request, you stated that lobbyist disclosure reporting requirements mandate that a lobbyist include “compensation” received with respect to lobbying services provided. Specifically, a lobbyist is required to include within a disclosure statement “the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services...” G.L. c. 3, § 43. You noted the requirement for a lobbyist to report “compensation” with respect to disclosure reporting, yet lobbyist registration is triggered by an individual who for “compensation or reward” engages in lobbying activity. See G.L. c.3, §§ 39, 41.

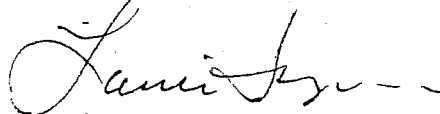
Although Section 43 requires that a lobbyist report the amount of “compensation” received for providing lobbying services, this office interprets that section in such a way as to require a lobbyist to report all compensation received, collectively meaning both compensation and reward. The reported compensation should include both monetary value received as well as all other “fringe benefit” type of compensation regardless of whether it might be classified as compensation or reward.

This office recognizes the distinction between the use of “compensation or reward” in Section 39 and the use of “compensation” in Section 43, as noted within your advisory opinion request. However, to provide a lobbyist receiving non-monetary rewards or benefits in exchange for lobbying services provided, with the authority to withhold that information from disclosure,

would create significant inconsistencies with respect to the oversight and enforcement of all lobbying activity.

Furthermore, the general public is entitled to a full and fair evaluation of all lobbying services provided and the compensation received in exchange for those services. Any disclosure limitation of the total compensation and reward received by a lobbyist in exchange for lobbying services provided would jeopardize the efforts of this office to achieve full and fair transparency with respect to the reporting of all lobbying activity.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Laurie Flynn", followed by a horizontal line.

Laurie Flynn
Chief Legal Counsel