



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

Laurie Flynn
Chief Legal Counsel

March 6, 2013
LAO/13-41

[REDACTED]

Re: Request for Advisory Opinion

Dear [REDACTED]

I have received your February 7, 2013 request for a lobbying advisory opinion. See G.L. c.3 § 41. Specifically, you inquired whether you must register as a lobbyist in connection with certain lobbying activities that you will conduct on behalf of labor unions in connection with legislation relative to retiree healthcare and other post-employment benefits. You noted that in [REDACTED] you were appointed by Governor Patrick to the Special Commission to Study Retiree Healthcare and Other Post-Employment Benefits. During your nine-month tenure on the Commission, you spent approximately 100 hours directly with Commission members and another 100 hours preparing for Commission meetings. On December 12, 2012 the Special Commission issued its final report to the Governor, which contained a series of recommendations to change public retiree benefits. You further indicate that once the Governor prepares legislation incorporating the Commission's findings, you expect to be called in as labor's subject expert to work with legislators throughout the process. Finally, you indicate that your "every day role" outside the Commission is as a field representative for the [REDACTED]. In this role you do not participate in 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.

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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).

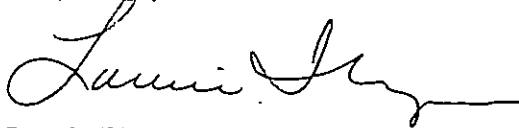
The definitions of both an executive and legislative agent exempt incidental lobbying, or lobbying that is incidental to the regular and usual business or professional activities engaged in by the individual. Lobbying activity is considered incidental if an individual engages in lobbying for twenty-five hours or less and if the individual receives less than \$2,500 during any reporting period. Id. Both criteria must be satisfied in order for lobbying activity to be considered "incidental."

Also, G.L. c.3 § 50, in pertinent part, contains an exemption from the lobbying laws for any person requested to appear before any commission or committee of the general court by a majority of members of such committee or commission, provided that the person performs no other act to influence legislation and further that the name of the person is recorded in the official records of such a committee or commission.

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, and is not exempt pursuant to section 50, registration with the Lobbyist Section is required. See G.L. c.3 §§ 39, 41.

Please be advised that an individual who registers with this office must submit all required disclosure reporting forms in the manner and time prescribed by statute. See 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. See G.L. c.3 § 47.

Very truly yours,

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

Laurie Flynn