



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Lobbyist Division

Marie D. Marra  
Director

August 5, 2015  
LAO/15-43

[REDACTED]

Dear [REDACTED]

I have received your July 30, 2015 email request for a lobbyist advisory opinion. See G.L. c. 3 § 41. Specifically, you inquired whether attending a "welcome session" for state legislators or their staff and testifying before a legislative hearing on behalf of your new employer, [REDACTED] would violate the lobbying law in light of the fact that you are still in your "cooling-off period" after retiring from the Massachusetts Senate less than a year ago.

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 including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation; provided further, that legislative 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 legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that "legislative lobbying" shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.

G.L. c. 3 § 39.

To the extent that your attendance of or participation in your organization's "welcome session" would fulfil the above definition, then you would be considered to be conducting legislative lobbying. A determination of whether you are permitted to lobby legislators or their staff pursuant to this section would appear to be more appropriately addressed by a legal interpretation from the State Ethics Commission. Accordingly, this office will decline to further examine this issue included within your request.

Your next scenario involves testimony before a legislative hearing on behalf of [REDACTED] prior to the expiration of your one-year ban. As noted by statute, "legislative lobbying" shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter." G.L. c. 3, § 39. Furthermore, Massachusetts Lobbying Law states, "sections thirty-nine to forty-nine, inclusive, shall not apply... to any person requested to appear before any committee or commission of the general court by a majority of the members of such committee or commission; provided, that such person performs no other act to influence legislation; and provided further, that the name of such person be recorded in the official records of such committee or commission." G.L. c. 3, § 50.

To the extent that your testimony at a legislative hearing is a written response to a written request from an officer or employee of the legislative branch, or you are answering a request to appear before any committee or commission of the general court by a majority of its members, your actions would not be considered lobbying under the statute. If, however, the potential communication does not meet one of the exemption criteria, your actions would be considered legislative lobbying if they, "promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor's approval or veto thereof including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation." G.L. c. 3, § 39.

Additionally, you inquire whether you will be required to register as a lobbyist in your capacity as [REDACTED] of your organization if you contact legislators or staff regarding your organization's policy positions. Similarly to the above stated definition of legislative lobbying, 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..." G.L. c. 3, § 39. 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 Division, 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.

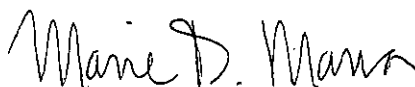
Additionally, a legislative agent is defined as "a person who for compensation or reward engages in legislative lobbying, which includes at least 1 lobbying communication with a government employee made by said person..." Id.

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 receive less than \$2,500 during any reporting period. See G.L. c. 3 § 39. Both criteria must be satisfied in order for lobbying activity to be considered "incidental."

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 Division 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,



Marie D. Marra  
Director, Lobbyist Division