



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division - Lobbyist Section

Alan N. Cote
Director

Marie D. Marra
Supervisor, Lobbyist Section

October 14, 2009

Mr. Carl Valvo, Esq.
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Boston, MA 02110-2600

Dear Attorney Valvo:

I have received your September 8, 2009 correspondence on behalf of several organizations requesting a lobbying advisory opinion. See 2009 Mass. Acts 28. Specifically, you requested guidance on the issue of whether salaried employees of organizations who participate in strategizing, planning and research activities undertaken in connection with lobbying, but who do not themselves engage in any communication with government employees, are required to register as lobbyists.

The statutory definitions of executive and legislative lobbying (hereinafter collectively "lobbying") include "strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee." See 2009 Mass. Acts 28. The statute, however, is ambiguous insofar as it concerns the issue of *who* must perform the "actual communication with a government employee." Absent further guidance from the legislature or the court, this office looks to the legislative history as a basis for its interpretation. McCarthy v. Commissioner of Revenue, 391 Mass. 630, 633 (1984).

The recommendations put forth in the Governor's Task Force on Public Integrity: Report and Recommendations, January 6, 2009 (Task Force Report) were largely heeded in House No. 4133, the bill that was ultimately enacted into law; therefore, the Task Force Report provides significant insight into the overall objectives of the ethics and lobbying reform. Based on an analysis of the aforementioned, it is evident that the legislature intended to promote transparency and accountability and to ensure increased reporting of behind the scenes, lobbying-related acts. See Governor's Task Force on Public Integrity, *Report and Recommendations*, 16 (January 6, 2009). The Task Force Report notes, "Lobbyists often report only money paid for time spent in direct contact with public officials, *omitting the significant time spent on strategizing and other related*

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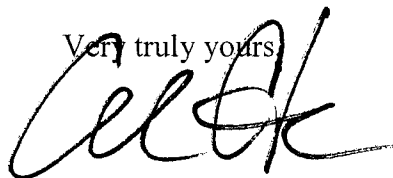
activity.” Id. (Emphasis added). In revising the definitions of legislative and executive lobbying to include behind the scenes acts of strategizing, planning, and research, the legislature clearly aimed to close the reporting loopholes caused by the disclosure of only direct contact with government officials.

In addition to reversing the trend of “unusually permissive” lobbying reporting prevalent within the Commonwealth as noted by the Task Force, the legislation was intended to cast a wider net on those required to register and report. See Governor’s Task Force on Public Integrity, *Report and Recommendations*, 16-17, 19 (January 6, 2009). This broadening of the criteria that triggers registration is evident not only with the inclusion of the behind the scenes acts in the revised definitions of lobbying, but also with the reduction of the incidental lobbying standards and the inclusion of municipal lobbying in the new legislation. Id.

Given the legislative intent to reverse lenient past practices, increase reporting accuracy, and increase disclosure of behind the scenes activity, it is the opinion of this office that those who participate in lobbying-related strategizing, planning, and research activities that are performed in connection with or for use in communication with a government employee are in fact lobbying, regardless of whether the individual strategizing, planning, or researching himself partakes in the communication.

Accordingly, such individuals who fall within the above-referenced definition of lobbying and who meet the criteria of being an executive agent, a legislative agent, or both as set forth in Chapter 28 of the Acts of 2009 are required to register with the Lobbyist Section.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alan N. Cote', written over the typed name below.

Alan N. Cote
Supervisor of Records