



LAO/09-4

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

Alan N. Coe
Director

Marie D. Marra
Supervisor, Lobbyist Section

December 29, 2009

[REDACTED]

I have received your email correspondence of December 9, 2009 requesting a lobbying advisory opinion. See 2009 Mass. Acts 28, Section 5. Specifically, you inquired whether an individual must register as a lobbyist during the December registration period when it is unknown whether he or she will overcome the incidental lobbying threshold. See 2009 Mass. Acts 28, Sections 2, 3.

The amended definition of executive lobbying is:

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

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factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

2009 Mass. Acts 28, Section 2.

The amended definition of executive agent is:

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.

2009 Mass. Acts 28, Section 2.

The definitions of both executive and legislative agent, as amended, exempt incidental lobbying, or lobbying that is incidental to ones usual business activities if he or she engages in lobbying for twenty-five hours or less and if he or she receives less than \$2,500 during any reporting period. Both criteria must be satisfied in order for lobbying activity to qualify as "incidental."

Whereas you do not receive funds for your lobbying efforts, you meet the criteria of the incidental lobbying exception of receiving less than \$2,500. If you also spend less than twenty-five hours lobbying in a reporting period, you would meet the second criteria of the incidental lobbying exception, and therefore, would not need to register with the Lobbyist Section of the Office of the Secretary of the Commonwealth. You are strongly encouraged, however, to register as a lobbyist as a precautionary measure, and then if you qualify for the exception at the end of the reporting period, your appropriate disclosure reporting forms contain the necessary exception language for you to bypass the required reporting information and claim an exception.

[REDACTED]
[REDACTED]
[REDACTED]

Please note that if at anytime during the registration year you overcome the incidental lobbying threshold and you had not previously registered, you should register for that year immediately with the Lobbyist Section.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan Cote". The signature is fluid and cursive, with the first name "Alan" and last name "Cote" clearly distinguishable.

Alan N. Cote
Director