



LAO/09.5

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

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Director

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December 29, 2009

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I have received your December 9, 2009 email correspondence requesting a lobbying advisory opinion on behalf of the [REDACTED]. 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

[REDACTED]
[REDACTED]
[REDACTED]

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.

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."

If you believe that you will spend twenty-five hours or less lobbying in a reporting period, you meet the first criteria of the incidental lobbying exception. If you also receive less than \$2,500 for your lobbying efforts during 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

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[REDACTED]
[REDACTED]

exception language for you to bypass the required reporting information and claim an exception.

Your second inquiry concerns how you should register. You indicate that you are a lobbyist for the [REDACTED]. Should you also meet the criteria of being a lobbyist on behalf of [REDACTED], you would no longer be considered an individual lobbyist. That is, you would no longer be an individual serving only one client in the capacity of a lobbyist. In such an instance, registration as a lobbyist entity would be appropriate as you would be providing lobbying-type services to more than one client. See G.L. c. 3, § 39 (2008 ed.).

Very truly yours,



Alan N. Cote
Director