



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

February 11, 2010
LAO/10-10

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

Dear [REDACTED]:

I have received your January 13, 2010 correspondence requesting a lobbying advisory opinion. See G.L. c. 3, § 41 (2008 ed.). Specifically, you inquired whether an agent fee program between [REDACTED] and [REDACTED] violates G.L. c. 3, § 42 (2008 ed.). [REDACTED] is an agent for [REDACTED], focused on the sale of IT products to government entities in the Commonwealth.

The relevant statute, as amended, provides:

No person shall make any agreement whereby any compensation or thing of value is to be paid to any person contingent upon a decision as described in the definition of "executive lobbying", or the passage or defeat of any legislation or the approval or veto of any legislation by the governor. No person shall agree to engage in legislative lobbying for consideration to be paid upon the contingency of the outcome of the actions described in the definition of "legislative lobbying" or that any legislation is passed or defeated.

Nothing in this section shall prohibit a person whose primary occupation is in marketing or selling a product or service for the person's company of employment from engaging in the sale of that product or service to the commonwealth for a commission or other compensation as long as the person is a full time employee for said company.

G.L. c. 3, § 42 (2008 ed.).

It is unequivocal that contingency agreements, or agreements whereby a part of performance of which is dependent on the happening of a contingency (in this context, a decision of the executive branch or an authority or the passage or defeat of legislation), are statutorily prohibited. Thus, if one is hired to influence the decision of an awarding authority or official relative to a specific proposal regarding the sale of goods or services, then his compensation cannot be based upon the success of that proposal. *Id.*

The statute clearly sets forth, however, that those who meet the criteria of being full time sales or marketing employees of their companies may engage in business on the company's behalf and receive compensation or commission pursuant to a contractual agreement. *Id.* Though the statute is silent on the issue of an agency agreement like the one in question, in any agency relationship, an agent essentially stands in the shoes of its principal. That is, the agent acts on behalf of and under the control of the principal to create legal relationships with third parties. *See Black's Law Dictionary* (6th ed., West 1990).

Whereas nothing would prohibit full time employees of [REDACTED], who as their primary occupations engage in the sale of products and services to governmental entities, from receiving commission or other compensation for such action, this office finds that nothing would prohibit its agents from same. Therefore, to the extent that full time [REDACTED] employees engage in the sale of IT products or services as their primary occupation and act within the scope of the agency relationship with [REDACTED], nothing in the lobbying statute prohibits their receipt of commission or other compensation for such action.

It should additionally be noted that nothing prohibits a response to a request for a proposal by any individual or by an agent acting on behalf of its principal. In fact, one of the exceptions to an "act to communicate directly with a covered executive official" includes:

a response to a request for proposals or similar invitation by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, for information relevant to a contract

G.L. c. 3, § 39 (2008 ed.).

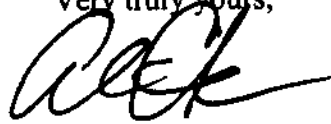
To the extent that an agent is simply responding to a request for proposal by a government entity, such communication is not within the purview of lobbying. However, where there is contact with an awarding authority or official in an attempt to influence the decision regarding a proposal, such action falls within the definition of lobbying.

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In such circumstances, if the individual who engages in lobbying also meets the criteria of being an executive agent, a legislative agent, or both, registration with the Lobbyist Section is proper. G.L. c. 3, §§ 39, 41 (2008 ed.).

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Cote', with a long, sweeping horizontal stroke extending to the right.

Alan N. Cote
Director