



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

March 4, 2010
LAO/10-12

[REDACTED]

Dear [REDACTED]

I have received your February 9, 2010 request for an advisory opinion regarding registration requirements of the new lobbying legislation effective January 1, 2010. See G.L. c. 3, § 41 (2008 ed.).

Your first inquiry concerns whether a business owner must register as a lobbyist if he attends a state legislator fundraiser at which he inquires of the legislator the status of specific legislation of interest to his business. The following analysis regarding registration is also applicable to your second inquiry in which a business owner provides testimony at a legislative or regulatory agency hearing.

The relevant definition, as amended, defines legislative lobbying as:

[a]ny 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...

G.L. c. 3, § 39 (2008 ed.).

To the extent that an in-person communication about the status of legislation or testimony at a hearing is an attempt to "promote, oppose, influence, or attempt to influence legislation," the business owner is engaging in lobbying. However, in order to trigger registration with the Lobbyist Section, the individual must also meet the criteria of being a legislative and/or executive agent. The amended definition of a legislative agent is as follows:

March 4, 2010

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. The term "legislative agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to be engaged legislative lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in legislative lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for legislative lobbying.

G.L. c. 3, § 39 (2008 ed.).

In order for an individual to fall within the definition of legislative and/or executive agent, a basic premise is that he must be compensated or rewarded for his lobbying efforts. Id. While "compensation" refers to monetary value received, it is the opinion of this office that "reward" is much broader and can encompass a variety of benefits in exchange for ones lobbying efforts, including but not limited to, an equity interest in an organization, health insurance, pension contributions, life insurance, commuter benefits, and the like. Assuming the individual in your scenario is compensated or rewarded for his lobbying efforts, he falls within the definition of legislative agent.

It should be noted that the definition of legislative agent includes one who engages in legislative lobbying as part of his regular and usual business activities whether or not any compensation in addition to the salary for such activities is received: however, the definition of legislative agent, as amended, exempts incidental lobbying, or lobbying that is incidental to ones usual business activities if he engages in lobbying for twenty-five hours or less and if he receives less than \$2,500 during any reporting period. Both criteria must be satisfied in order for lobbying activity to qualify as "incidental." Id.

Thus, if the business owner in each scenario will spend twenty-five hours or less each reporting period in his lobbying efforts, then he would meet the first criteria of the incidental lobbying exception of lobbying for twenty-five hours or less. If he will also receive less than \$2,500 for his lobbying efforts during a reporting period, he would meet the second criteria of the incidental lobbying exception, and therefore, would not need to register with the Lobbyist Section. The business owner is strongly encouraged, however,

to register as a lobbyist as a precautionary measure, and then if he qualifies for the exception at the end of the reporting period, his appropriate disclosure reporting forms contain the necessary exception language for him to bypass the required reporting information and claim an exception.

Please be advised that registration is effective for one calendar year and is due not later than December 15 of the year preceding the registration year. See G.L. c. 3, § 41 (2008 ed.). If at anytime during the registration year one overcomes the incidental lobbying threshold and has not previously registered, he should register for that year immediately with the Lobbyist Section.

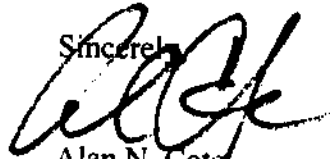
Finally, you also inquired whether a local or state government employee, whose job is not directly related to government relations advocacy and who is asked by a special interest group to testify at a hearing on an issue indirectly related to his employment must register as a lobbyist. Given this scenario, G.L. c. 3, § 50 merits consideration. It provides:

Sections thirty-nine to forty-nine, inclusive, shall not apply to employees or agents of the commonwealth or of a city, town, district or regional school district who are acting in their capacity as such employees or agents... 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 (2008 ed.).

Thus, to the extent that a Commonwealth employee acting in his capacity as such meets the criteria of Section 50, he shall not be subject to sections thirty-nine to forty-nine of the lobbying statute. Id. However, if the government employee does not satisfy the criteria in G.L. c. 3, § 50, registration with the Lobbyist Section may be appropriate if the individual engages in executive and/or legislative lobbying and meets the criteria of being an executive and/or legislative agent as set forth in G.L. c. 3, § 39.

Sincerely,



Alan N. Cote
Director