



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

May 18, 2010
LAO/10-14

[REDACTED]

Dear [REDACTED]:

I have received your February 23, 2010 request for an advisory opinion regarding registration requirements of the new lobbying law effective January 1, 2010. See G.L. c. 3, § 41 (2008 ed.). Specifically, you inquired whether a state employee who advocates on behalf of his agency must register as a lobbyist. The individual is employed as an attorney and performs as a government affairs liaison on various issues.

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

G.L. c. 3, § 39 (2008 ed.).

Similarly, the definition of legislative lobbying includes, "any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor's approval or veto thereof..." Id. To the extent that an individual meets either or both of the above-referenced definitions, he is lobbying. However, in order to trigger registration with the Lobbyist Section, the individual must also meet the criteria of being an executive and/or legislative agent.

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.

G.L. c. 3, § 39 (2008 ed.).

A legislative agent includes "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..." Id.

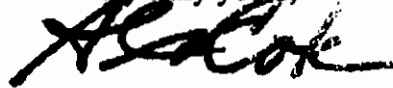
Though the individual may fall within the above-referenced definition of lobbying and meet the criteria of being an executive agent and/or a legislative agent, he is a state employee. Therefore, G.L. c. 3, § 50 merits consideration. It provides:

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...

G.L. c. 3, § 50 (2008 ed.).

Though there are lobbying activity and expenditures occurring which are of public interest, the plain language of the statute suggests that employees or agents of the Commonwealth, who act in their capacity as such, are exempt from G.L. c. 3, §§ 39 – 49. Absent further guidance from the legislature or the court, it is the opinion of this office that a Commonwealth employee meeting the requirements of G.L. c. 3, § 50 need not register with this office at this time.

Very truly yours,

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

Alan N. Cote
Director