



**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/10-19

[REDACTED]

Dear [REDACTED]

I have received your May 12, 2010 email request for an advisory opinion. See G.L. c. 3, § 41 (2008 ed.). Specifically, you inquired whether a paid staff member of a ballot campaign attempting to influence voters, including public officials, to oppose an initiative petition to repeal a current state law, must register and disclose.

The definition of legislative lobbying is:

any 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; provided further, that legislative 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 legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that "legislative lobbying" shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.

G.L. c. 3, § 39 (2008 ed.).

Whereas the staff member in your inquiry is compensated for his or her efforts and is taking action to influence covered officials to oppose an initiative petition to repeal a current law, it appears that the staff person is engaging in lobbying. However, in order to trigger registration with the Lobbyist Section, the staff member must also meet the criteria of being a legislative and/or executive agent. The amended definition of legislative agent is as follows:

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.).

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.

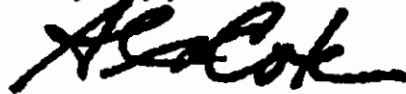
If the staff member will spend twenty-five hours or less lobbying in a reporting period, he meets the first criteria of the incidental lobbying exception. If he also receives less than \$2,500 for lobbying efforts during a reporting period, the second criteria of the incidental lobbying exception is met, and therefore, he need not register with the Lobbyist Section. However, registration as a lobbyist as a precautionary measure is strongly encouraged, and then if one who registers qualifies for the incidental exception at the end of the reporting period, the appropriate disclosure reporting forms contain the necessary exception language to bypass the required reporting information and claim an exception.

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Accordingly, such individuals who fall within the above-referenced definition of lobbying and who meet the criteria of being a legislative agent, an executive agent, or both as set forth in G.L. c. 3, § 39 are required to register and file the required disclosure statements with the Lobbyist Section.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan N. Cote", written in a cursive style.

Alan N. Cote  
Director