



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

Alan N. Cote
Director

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June 9, 2010
LAO/10-26

[REDACTED]

Dear [REDACTED]

I have received your April 6, 2010 request for an advisory opinion. See G.L. c. 3, § 41 (2008 ed.). Specifically, you inquired as to whether the various activities of the members of your board and its member associations constitute lobbying.

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.) (Emphasis added).

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...” G.L. c. 3, § 39 (2008 ed.). In any of the member activities about which you inquired—meeting with officials regarding policy, communicating with officials regarding funding, testifying at hearings, etc.— to the extent that an individual in doing such activities meets either or both of the above-referenced definitions and does not fall within the excluded activities set forth in an “act to communicate directly with a covered executive official to influence a decision concerning policy or procurement” set forth in G.L. c. 3, § 39, 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 likewise 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.

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. Id. Both criteria must be satisfied in order for lobbying activity to qualify as "incidental." Those who believe they may be incidental lobbyists must still register as lobbyists, and then if they qualify as incidental at the end of the reporting period, their appropriate online disclosure reporting forms contain an incidental lobbying exception, which they can select to bypass the required reporting information.

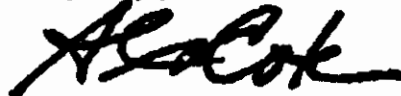
You additionally inquired how a member's status as a government official may affect his status with respect to registering as a lobbyist. The relevant statute provides:

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 or to any person requested to appear before any committee or commission of the general court by a majority of the members of such committee or commission; 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.).

Though lobbying activity and expenditures 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. If a member of your organization is not acting in his capacity as a state official, it is the opinion of this office that he is not exempt from the requirements of G.L. c. 3, §§ 39 – 49.

Very truly yours,



Alan N. Cote
Director