



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

October 18, 2010
LAO/10-29

[REDACTED]

I have received your September 10, 2010 correspondence requesting an advisory opinion. See G.L. c. 3, § 41. Specifically, you requested an opinion as to whether the activities described in your request meet the definition of lobbying under the Massachusetts Lobbying Law (M.G.L. c. 3, §§ 39-50).

As stated in your request, [REDACTED] students will be working in your clinic on matters that involve advocacy for the passage of legislation, changes or additions to the Code of Massachusetts Regulations, and/or changes to non-regulatory policies of executive branch agencies. As an element of this work, the students are expected to meet with legislative and/or executive branch employees, some of whom may be elected members of the Legislature or covered executive officials.

In your request, you questioned whether the work conducted by these students would meet the definition of lobbying. The definition of executive lobbying is stated as:

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.

Similarly, the definition of legislative lobbying is stated as, "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 the activity of any student meets either or both of these definitions, then that student is considered to be lobbying.

Additionally, you questioned whether your activities, including regular meetings with students to supervise their work, would meet the definition of lobbying. These activities are anticipated to include strategizing, planning, and research efforts to be performed in connection with direct communications made with covered executive officials or elected members of the Legislature. To the extent that your activities meet the definition of either executive lobbying or legislative lobbying, then you would also be considered lobbying. However, in order to trigger registration with the Lobbyist Section, any individual must also meet the criteria of being an executive and/or legislative agent.

In your request, you questioned whether these students would meet the definition of an executive agent and/or legislative agent. The definition of an executive agent is stated as:

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

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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.

Additionally, a legislative agent is defined as, "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.* In order for a student to satisfy the definition of an executive agent or legislative agent, the student must be compensated or rewarded for his/her lobbying efforts. As noted in Lobbyist Advisory Opinion LAO/10-12, "compensation" is defined to include monetary value received, while "reward" is more broadly defined and may encompass benefits received in exchange for lobbying efforts (e.g. equity interest in an organization, health insurance, pension contribution, life insurance, commuter benefits).

In your request, you stated that the students will not be paid but will receive academic credit for their efforts within the clinic. Whereby the students will not be paid for their participation in the clinic, there is no apparent compensation received by the students in exchange for their lobbying activities. However, the question exists as to whether the receipt of academic credit could be considered a reward for lobbying activities.

It is generally assumed that academic credit is earned [REDACTED] by satisfying the academic requirements of the class or clinic in which the student is enrolled. The participation of these students within the clinic is simply a means by which they can earn academic credit in a non-classroom environment. Unlike the aforementioned benefits included within the definition of "reward," it appears that the receipt of academic credit for participation in the clinic provides no additional benefit to the students. A student may earn academic credit ([REDACTED]) by participating in this clinic, another clinic, or by taking another available academic class. Aside from the "real-world" experience gained by participating in this clinic, there appears to be no additional benefit gained by these students within their clinic work that is not equally available within alternative academic credit options.

Therefore, it is the opinion of the Lobbyist Section that the receipt of academic credit does not fall within the definition of "compensation or reward" required to trigger registration with this office. As such, an analysis of whether the incidental lobbying exception may be triggered for students as a result of this activity is not required.

Additionally, you questioned whether your direct student supervision within the clinic would qualify you as an executive agent and/or legislative agent. As previously

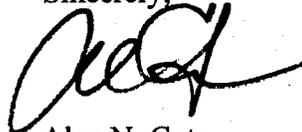
noted, the definition of either an executive agent or legislative agent is satisfied when an individual is compensated or rewarded for his/her lobbying efforts.

These definitions include individuals who engage in lobbying as part of his/her regular and usual business activities whether or not any compensation in addition to salary is received for such activities. However, the definitions do exempt incidental lobbying, or lobbying that is incidental to ones usual business activities if an individual engages in lobbying for twenty-five hours or less and receives less than \$2,500 during any reporting period. Both criteria must be satisfied in order for lobbying activity to qualify as "incidental." G.L. c. 3, § 39.

Thus, if you ultimately spend twenty-five hours or less each reporting period in lobbying efforts, then you would meet the first criteria of the incidental lobbying exception. If you also receive less than \$2,500 for lobbying efforts during a reporting period, you would also meet the second criteria of the incidental lobbying exception, and therefore, would not need to register with the Lobbyist Section. However, it is strongly encouraged that you register as a lobbyist for precautionary measures, and if you then qualify for the exception at the end of the reporting period, the appropriate disclosure reporting forms will contain the necessary exception language to bypass the required reporting information and claim an exception.

Please be advised that a 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. If at anytime during the registration year an individual overcomes the incidental lobbying threshold and has not previously registered, the individual should immediately register for that year with the Lobbyist Section.

Sincerely,



Alan N. Cote
Director