

LAO/10-6

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

Alan N. Coe
Director

Marie D. Marra
Supervisor, Lobbyist Section

January 21, 2010

Mr. Roger Donoghue, Esq.
Donoghue Barrett & Singal, P.C.
One Beacon Street
Boston, MA 02108

Dear Attorney Donoghue:

I have received your January 5, 2010 email request for a lobbying advisory opinion. See G.L. c. 3, § 41 (2008 ed.). Specifically, you inquired whether those who overcome the incidental lobbying threshold by engaging in acts of strategizing, planning, and/or researching, but who do not themselves have a direct communication with a covered executive or legislative official, are required to register with the Lobbyist Section.

Please recall that in an advisory opinion dated October 14, 2009 from this office and dealing with this specific question, I wrote that those who participate in strategizing, planning, and research are in fact lobbying, regardless of whether they themselves partake in the actual communication. Since the date of that Opinion, Attorney Ben Clements, then Chief Legal Counsel to Governor Deval Patrick and Chair of the Governor's Task Force on Public Integrity, appeared alongside me at a public forum at Suffolk Law School entitled "Understanding How the New Ethics Law Affects Your Clients, Your Firm and You." In his prepared comments and in response to direct questions, Attorney Clements stated unequivocally that the trigger to registration as a lobbyist falls squarely on whether the person makes "personal contact" with a covered official involving lobbying. I find Attorney Clements' first hand, direct testimony of his experience of the legislative process credible and convincing that the intent of the legislation with regard to your registration question was that a person must make a personal communication in order to trigger the registration requirement. See also Julia Reischel, *Lobbying Against Change*, Massachusetts Lawyers Weekly, October 5, 2009 at 38 MLW 268.

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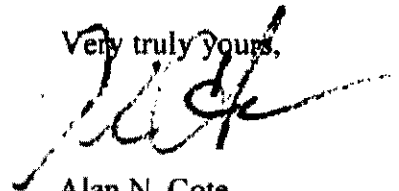
Therefore, this office shall rely on the representations of and guidance provided by Attorney Clements, and now finds that absent a direct, personal communication with a covered legislative or executive official by an individual, the participation of that individual in strategizing, planning and research activities does not trigger registration.

You additionally inquired whether a member of a non-profit board must register as a lobbyist. The board member, who is a salaried employee of a corporation separate from the board, lobbies on the board's behalf but is not compensated by the board for his efforts.

Whereas the above-referenced individual is not compensated for his efforts and has no ownership interest in the non-profit board, he does not fall within the definition of executive or legislative agent. See G.L. c. 3, s. 39 (2008 ed.). That is, he is not one who for "compensation or reward" engages in lobbying. Id. However, there is lobbying activity occurring from which the non-profit board aims to benefit. Therefore, there is a public interest in ascertaining what lobbying efforts are made and what expenditures are incurred in connection therewith. As such, the legislature enacted G.L. c. 3, s. 44, which mandates that any organization that does not employ lobbyists but expends in excess of two hundred and fifty dollars (\$250.00) during a calendar year on lobbying efforts register with the Lobbyist Section by filing the appropriate reporting statements. See G.L. c. 3, s. 44 (2008 ed.). While there are exceptions to Section 44, it should be noted that a group or organization must meet all criteria in order to be exempted from registering under this section. Id.

In conclusion, even if an uncompensated individual who lobbies on behalf of a non-profit may not meet the criteria of being a legislative or executive agent, if the board in question spends more than two hundred and fifty dollars (\$250.00) during a calendar year on lobbying efforts, then accordingly, the non-profit board may be required to register with the Lobbyist Section pursuant to G.L. c. 3, s. 44 (2008 ed.).

Very truly yours,



Alan N. Cote
Director