



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/10-16

[REDACTED]

Dear [REDACTED]:

I have received your February 17, 2010 request for an advisory opinion regarding certain requirements of the new lobbying legislation effective January 1, 2010. See G.L. c. 3, § 41 (2008 ed.).

Your first inquiry concerns whether the monetary value of employee benefits is encompassed in the calculation for the \$2,500 portion of the incidental lobbying exception. 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 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.

While the statute is silent on the issue of how the \$2,500 is calculated, the definitions of legislative and executive lobbying continue to include individuals who for "compensation or reward" engage in lobbying, recognizing that one who so engages may receive benefits beyond monetary compensation. See G.L. c. 3, § 39 (2008 ed.) (Emphasis added). In addition and perhaps most significantly, the new legislation reduced the previous incidental lobbying standards, so as to cast a wider net on those required to register and report. See Governor's Task Force on Public Integrity. *Report and Recommendations*, 19 (January 6, 2009).

Given the above, and absent further guidance from the legislature or the court, it is the opinion of this office that the \$2,500 referenced in the incidental lobbying exception includes not only monetary compensation, but also any additional employee benefits in exchange for ones lobbying efforts and apportionable thereto, such as an equity interest in an organization, health insurance, pension contributions, life insurance, commuter benefits, and the like. To limit the calculation of the \$2,500 incidental lobbying exception to monetary compensation is contrary to the statutory intent to promote disclosure, in that it would potentially allow for one who is not compensated but who receives employee benefits with monetary value to forego registration and reporting requirements.

Your second inquiry concerns G.L. c. 3, § 44, which provides:

[A]ny group or organization, however constituted, not employing an executive or legislative agent which as part of an organized effort, expends in excess of two hundred and fifty dollars during any calendar year to promote, oppose, or influence legislation, or the governor's veto or approval thereof, or 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 pursuant thereto, or to do any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement shall register with the state secretary....

G.L. c. 3, § 44 (2008 ed.).

Specifically, you seek clarification of the term "organized effort" within that section. It is the opinion of this office that in the context of Section 44, the term "organized effort" refers to two or more persons engaged in coordinated conduct for the purpose of achieving a common goal. Absent further guidance from the legislature or the court, it is additionally the opinion of this office that the \$250.00 expenditure threshold includes in-kind contributions of time, materials, or the like and should be counted toward this amount. Thus, to the extent that any group falls within this definition and the criteria set forth in Section 44, it should file a Form 44 with the Lobbyist Section.

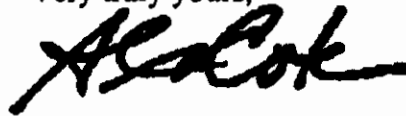
Finally, you inquire whether reporting a potential violation of a statute to an executive agency is encompassed in the definition of an "act to communicate directly with a covered executive official to influence a decision concerning policy" under G.L. c.

LAO/10-16

Page Three
May 18, 2010

3, § 39. As the plain language of the statute suggests, the act to communicate must relate *to a decision concerning policy or procurement*. G.L. c. 3, § 39 (2008 ed.). Thus, to the extent that the reporting of a statutory violation is not undertaken as an act or an attempt *to influence a decision concerning policy or procurement*, it is the opinion of this office that such reporting, in and of itself, does not constitute lobbying.

Very truly yours,

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

Alan N. Cote
Director