



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

Alan N. Cote
Director

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December 24, 2010
LAO/10-30

Mr. Daniel Haley, Esq.
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Dear Attorney Haley:

I have received your request for an advisory opinion with regard to lobbying in Massachusetts. See G.L. c. 3, § 41. Specifically, you present multiple detailed scenarios concerning so-called "back room" lobbying activities and inquire whether formal registration is required with regard to each scenario.

By definition, advisory opinions are non-binding. They are intended to provide general guidance to the audience using broad concepts and theories. The audience must then apply these concepts to their specific situations and act accordingly. To provide specific detailed opinions to specific detailed scenarios is to undermine the basic principle of advisory opinions which is to provide basic information to the general public.

With that in mind, this opinion hopes to provide you with helpful information for your individual situations. Your first scenario describes a corporate executive engaged in "planning and strategizing," but without direct, personal communication with a covered official. As set forth in Lobbyist Advisory Opinion **LAO/10-6**, dated January 21, 2010, absent a direct, personal communication by the individual with a covered legislative or executive official, by any means of communication, the participation of that individual in strategizing, planning and research activities does not trigger a registration requirement.

You then modify the scenario by having the executive later express an opinion to a state legislator on a piece of pending legislation unrelated to his planning and strategizing work. Whereas this secondary communication is unrelated to the planning and strategizing activities, it does not appear that the communication would trigger a formal lobbyist registration.

A subject matter nexus between the “back room” lobbying activity (e.g., strategizing, planning and research) and the direct communication made must exist to trigger a registration requirement.

This also applies to the two similar scenarios further outlined in your request; 1) the mid-level manager who does business with the Commonwealth and who engages in planning and strategizing in connection with lobbying efforts undertaken by another individual on behalf of the company but who does not have any direct, personal communication with a covered official regarding the relevant subject matter and; 2) the internal general counsel who has business dealings with the Commonwealth and who is involved in public policy discussions, including legal interpretations but who does not have any direct, personal communication with a covered official regarding the relevant subject matter or legal analysis provided.

Your next scenario involves a mid-level executive who has business with the Commonwealth and who represents her company on the board of a non-profit industry advocacy group. The individual is not compensated by the non-profit, but a portion of her salary from the company is allocated for her participation on the non-profit board. You ask whether this individual must register as a lobbyist. As set forth in Lobbyist Advisory Opinion LAO/10-11, dated February 24, 2010, an individual who does not receive compensation or reward for lobbying efforts conducted on behalf of a non-profit board does not fall within the definition of an executive or legislative agent. However, in your scenario, the executive receives a salary from her company which is at least partially allocated based on her participation on the board of the non-profit group. Whereas the executive is compensated by the company and whereas her duties include lobbying activities, it appears that she would fall within the definition of an executive or legislative agent and may be required to register as a lobbyist. See G.L. c. 3, s. 39.

Additionally, you inquire about the definition of the term “compelled,” as it relates to situations in which communication with a covered official is initially deemed to be discretionary, but is later conducted pursuant to statutory or regulatory procedure. As noted in Lobbyist Advisory Opinion LAO/09-3, dated December 29, 2009, “an act compelled by statute or regulation does not constitute an act to communicate directly with a covered official.” See also G.L. c. 3, § 39.

Under your scenario, it appears that communications by company employees relating to a rate increase or denial of a rate increase were not compelled by any act, request, or petition, but were discretionary. Therefore the communications were conducted “to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority... where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or

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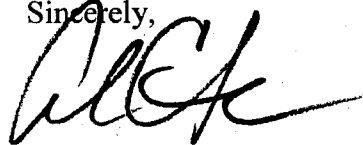
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regulation... or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement..." See G.L. c. 3, § 39 (Emphasis added). Accordingly, the communications made by management company employees would trigger a registration requirement.

In modifying the scenario further, you state that management employees then engage state officials to adopt a company's policy or appeal a conclusion or state ruling. These activities (appealing a ruling or seeking to persuade an official) do not appear to be lobbying communications. That is, the communications are not acts "to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority... where such decision concerns legislation or the adoption, defeat or postponement of a **standard, rate, rule or regulation**... or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement..." See G.L. c. 3, § 39. While the communications conducted by company employees were intended to influence a certain course of action, the action sought to be influenced did not relate to the specific statutory items of standard, rate, rule or regulation. Accordingly, communications described in this last modified scenario do not appear to constitute acts for which registration is required.

Please note that this opinion is based on the limited facts presented in your scenarios and is not intended to be a final determination of the registration questions presented. I urge you to review the statutory language as well as the legislative intent in making your final decisions.

Sincerely,



Alan N. Cote
Director