



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth

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Chief Legal Counsel

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LAO/12-39

[REDACTED]

I have received your request for an advisory opinion with regard to lobbying in Massachusetts. See G.L. c. 3, § 41. Specifically, you requested an opinion as to whether sales representatives representing your firm may be required to register with this office as lobbyists pursuant to Section 41. In your request, you stated that the sales representatives are responsible for marketing various products to public pensions, endowments, foundations, and corporations.

In order to require registration with the Secretary of the Commonwealth, Lobbyist Division, an individual must first engage in activities that 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 (emphasis added).

The term procurement is defined as:

the buying, purchasing, renting, leasing or otherwise acquiring or disposing, by contract or otherwise, of supplies, services or construction or the acquisition or disposition of real property or an interest therein, including, but not limited to, the purchase, lease or rental of any such real property or the granting of easements or rights of way therein; but not including any item of expenditure the value of which is twenty-five thousand dollars or less.

G.L. c. 3, § 39.

To the extent that an individual engages in activities involving the direct communication with a covered official to influence a decision concerning policy or procurement, and those activities satisfy the definition of procurement as stated in Section 39, then that individual, with limited exceptions, is considered to be engaged in executive lobbying activities.

The Massachusetts Lobbying Law provides for limited exceptions with respect to an individual engaged in "an act to communicate directly with a covered official to influence a decision concerning policy or procurement." One exception includes: "a response to a request for proposals or similar invitation by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, for information relevant to a contract." Id.

If an individual simply responds to a request for proposal (RFP) or similar invitation from a government entity or official, such communication does not fall within the purview or definition of executive lobbying. Accordingly, registration with this office would not be required in this specific instance. However, an individual who engages in a direct communication that does not constitute an RFP response, or in a direct communication subsequent to the submission of an RFP response, and does so in order to influence a decision concerning policy or procurement, would be engaged in executive lobbying activity.

To the extent that an individual engages in activities that satisfy the definition of executive lobbying, without exception, then that individual is considered to be lobbying. However, in order to trigger registration with the Lobbyist Division, an individual must also meet the criteria of being an executive 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 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

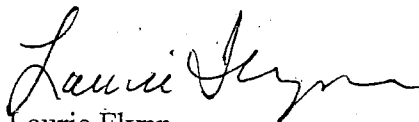
G.L. c. 3, § 39.

In order for an individual to satisfy the definition of an executive agent or legislative agent, the individual must be compensated or rewarded for his or her lobbying activities. 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).

Where an individual engages in activities that fall within the executive lobbying definition that do not fall within the cited exception, and the individual meets the criteria of being an executive agent, then registration with the Lobbyist Division as a lobbyist is required. See G.L. c.3, §§ 39, 41. Accordingly, a sales representative who engages in activities that meet the executive lobbying definition, including decisions concerning procurement, while also satisfying the executive agent definition, must register as a lobbyist with this office.

Please be advised that an individual who registers with this office is also responsible for submitting all required disclosure reporting forms in the manner and time prescribed by statute. See G.L. c.3, § 43. The Secretary of the Commonwealth shall assess a penalty for any disclosure report that is submitted after the prescribed date. See G.L. c.3, § 47.

Very truly yours,



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