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March 5, 2010

**TO:** Abbie Goodman  
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**FR:** Robert Ruddock  
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**RE:** Amended Lobbying Laws: Clarification: Non-profit Corporations

### Summary

The recently amended lobbying laws in Massachusetts left several unanswered questions, particularly about two key issues, “direct communications” and advocacy for a non-profit organization by volunteers. Those issues have important implications for trade and business associations, their boards of directors, and member-volunteers on topical committees for the non-profit. The two core questions in this regard are:

- Is a person who develops, plans or researches a public policy position, but who does not actually communicate the position to a government official, obligated to register as a lobbyist and provide semi-annual reports to the Secretary of State?
- Is a person, who participates on a governing board or on a topical committee of a non-profit corporation and who communicates with public officials on behalf of the non-profit, obligated to register as a lobbyist and provide semi-annual reports to the Massachusetts Secretary of State?

A very recent opinion by the Secretary of State’s Office issued January 21, has clarified both of these questions. As a result of that opinion, the short answer to both questions is “No.” That’s good news for non-profits associations and for the free flow of views and advocacy to policy makers. The opinion buttresses civic discourse by removing doubt which would have chilled such participation in our democracy.

### Discussion

In regard to the “direct communication” issue, an earlier Secretary of State opinion appeared to suggest that someone who assists in formulating a policy position on a bill, rule, rate, policy, or procurement

might have to register – assuming he or she met other provisions of the law – even if there was no one-on-one direct advocacy communication with a public official.

The January 21 opinion addresses this confusion head on. It says, “.... that absent a direct, personal communication with a ... legislative or executive official by an individual, the participation of that individual in strategizing, planning, and researching activities does not trigger registration.” (Emphasis in the original.) In other words, a direct communication is a threshold requirement that means a person cannot be considered a lobbyist, and therefore does not have to register, unless such a direct communication takes place.

In regard to a volunteer member of a non-profit board who advocates on behalf of the non-profit and its positions, the opinion is clear. The opinion states, “Whereas the ... 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 a legislative or executive agent. That is, he is not one who for ‘compensation or reward’ engages in lobbying.” (Citation omitted.) In other words, for the advocate to be considered a “lobbyist” he or she must be paid or rewarded by the entity he or she is advocating for.

Likewise, and even more clearly in my view, a volunteer on a non-profit’s committee that addresses a specific issue is further removed from any notion of reward by the non-profit or ownership of the non-profit. Such volunteers are not even in a governing position; they are purely advisory to the non-profit organization. They are volunteering their time to assist in creating credible and knowledgeable policy positions, and perhaps advancing non-profit association policy positions, for the good of the non-profit’s members, the business community in general, and the economy of the Commonwealth. They are certainly not paid, compensated, or rewarded by the non-profit.

### **Conclusion and Caution**

The January 21 opinion is helpful in solving issues and the uncertainty the amended lobbying law created within the non-profit community.

Volunteer board members and volunteer committee members of a non-profit must exercise caution, however. If a volunteer were to move from advocating the non-profit’s position and attempt to influence in a direct communication a government decision solely favorable to the volunteer’s employer, then the issue of “direct communication” and “pay/reward” may be satisfied and he or she might have to register. Specific application of the amended lobbying law in the context of such specific facts needs to be determined on a case-by-case basis with counsel.