



**REPORT OF THE VIRGINIA CONFLICT OF INTEREST
AND ETHICS ADVISORY COUNCIL**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

COMMONWEALTH OF VIRGINIA
DECEMBER 2015

**MEMBERS OF THE VIRGINIA CONFLICT OF INTEREST
AND ETHICS ADVISORY COUNCIL**

Judge Patricia Lee West, Interim Chair
Senator Thomas K. Norment, Jr.
Senator Janet D. Howell
Delegate C. Todd Gilbert
Delegate Jennifer L. McClellan
Bernard L. Henderson, Jr.
Walter C. Erwin
Sharon E. Pandak
Senate Rules Former Judge Appointee, Vacant

Staff

Chris Piper, Executive Director
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REPORT OF THE VIRGINIA CONFLICT OF INTEREST AND ETHICS ADVISORY COUNCIL

To: The Honorable Terence R. McAuliffe, Governor of Virginia
and the General Assembly of Virginia

Richmond, VA
December 2015

INTRODUCTION

Established by the 2014 Session of the General Assembly¹ and amended by the 2015 Session of the General Assembly², the Virginia Conflict of Interest and Ethics Advisory Council (Council) was created as an advisory council in the legislative branch to encourage and facilitate compliance with the Registration of Lobbyists Act (§ 2.2-418 et seq.), referred to as Article 3, and the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and the General Assembly Conflicts of Interests Act (§ 30-100 et seq.), referred to as the Acts. Pursuant to § 30-356, the Council is tasked with furnishing formal advisory opinions and informal advice, conducting training on the laws under its purview, and establishing a method for the filing of disclosure of conflict reports. The Council is also required to submit to the Governor and the General Assembly an annual report on its activities and findings regarding the laws under its purview, including recommendations for changes to the law.

The Council is composed of the following nine members: two Senators and two Delegates; two former judges, one appointed by the Senate Rules Committee and one appointed by the Speaker of the House; and three gubernatorial appointees, one from a list of nominees submitted by the Virginia Association of Counties, one from a list of nominees submitted by the Virginia Municipal League, and one former or current executive branch employee.

EXECUTIVE SUMMARY

Initial Meeting

The Council's inaugural members were appointed over the summer of 2015 and held their first meeting on September 28, 2015, which was largely an organizational meeting. At the meeting, the Council reviewed the powers and duties assigned to it by § 30-356 and other portions of the Code of Virginia, and the Council delegated a number of those duties to staff.

¹ Chapters 792 and 972.

² Chapters 763 and 777.

The Council made the following determinations with regard to the delegation of its duties:

1. Review all disclosure forms required to be filed with the Council. The Council may review disclosure forms for completeness, including comparing lobbyist reports with other reports filed by the Council. If a disclosure form is incomplete, the Council shall notify the filer and direct the filer in writing to file a completed form within a prescribed period of time.

Council Determination: Delegate to staff with standards and procedures to be approved by the Council.

2. Provide software or electronic method for filers to submit the required disclosure forms. The Council prescribes the method of execution and certification of electronically filed forms.

Council Determination: Delegate to staff with standards and procedures to be approved by the Council.

3. Accept and review any statement received from a filer disputing the receipt by such filer of a gift that has been disclosed on the form filed by a lobbyist.

Council Determination: Delegate to staff with standards and procedures to be approved by the Council.

4. Establish and maintain a searchable database comprising filed disclosure forms.

Council Determination: Delegate to staff.

5. Furnish guidance to filers, both formal advisory opinions and informal advice, and to the public.

Council Determination for formal advisory opinions: Maintain authority as required by law.

Council Determination for furnishing informal advice: Delegate to staff with standards and procedures to be approved by the Council.

6. Conduct training seminars and educational programs and publish educational materials for all persons required to comply with Article 3 and the Acts, including orientation sessions for legislators.

Council Determination: Delegate to staff.

7. Approve orientation courses conducted by state agencies and review, upon request, educational materials and training courses conducted for state and local government officers and employees.

Council Determination: Delegate to staff.

8. Review actions taken in the General Assembly with respect to the discipline of its members for the purpose of offering nonbinding advice.

Council Determination: The Council to maintain this authority.

9. Request assistance, services, and information from any agency in order to effectively carry out the Council's responsibilities.

Council Determination: Delegate to staff.

10. Redact personal information from any form prior to making the form available to the public.

Council Determination: Delegate to staff.

11. Report on or before December 1 of each year by submitting to the Governor and the General Assembly an annual report on the Council's activities and its findings regarding the laws under its purview, including recommendations for changes to the laws. The chairman is required to submit the report pursuant to the Division of Legislative Automated Systems procedures for legislative documents.

Council Determination: The Council to maintain this authority (staff will draft report for Council approval).

12. Submit complaints against incumbent legislators to the appropriate ethics panel. (§ 30-114)

Council Determination: Delegate to staff.

13. Approve disclosure forms that substantially comply with the forms in §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111.

Council Determination: The Council to maintain this authority (staff will draft forms for Council approval).

14. Provide disclosure forms to appropriate clerks at least 30 days prior to the filing deadline. (§ 2.2-3114)

Council Determination: Delegate to staff.

15. Notify the Secretary of the Commonwealth and the Attorney General concerning late or failure-to-file penalties. (§ 2.2-431, GA, S&L)

Council Determination: Delegate to staff.

16. Receive and review requests for approval of travel submitted by state and local officials and members of the General Assembly. (§ 30-356.1)

Deadline for approval or denial of the request.

- Approval or denial must be provided by the Council within five business days unless the Council requests additional information. If additional information is requested, the Council shall approve or deny the request within five days of receipt of the requested information.
- Failure to provide approval or denial of the request within specified time periods shall be deemed approval by the Council.

Council Determination: Delegate to staff with standards and procedures to be approved by the Council.

17. Per Delegate Gilbert's motion, the Council delegates any duties not contained in this document to the staff until the next meeting of the Council.

The Council also delegated to the Executive Director oversight of daily operations and maintenance of the Council's website. The Council further approved the forms to be used by filers going forward and the procedures for submitting paper and electronic disclosures and requesting formal advisory opinions and informal advice.

At the first meeting, the Council appointed Judge Walter Felton to Chair and Judge Patricia Lee West as Vice-chair. Judge Felton resigned from the Council on October 29, 2015 due to his status as a Senior Judge on the Court of Appeals, and Judge West immediately took over as Interim Chair.

Electronic Filing Disclosure System

On November 1, 2015, the Council began accepting lobbyist and conflict of interests disclosure forms from required filers on paper and through its electronic filing system. The e-filing system was inherited from the system developed by the Secretary of the Commonwealth's office with minor modifications to the system. At the time of this report, the transition from the Secretary's office to the Council's office has been relatively smooth, with filers reporting ease of use.

Training

The Council's statutory duties include providing training to all parties required to comply with the lobbyist and conflict of interests laws and publishing educational materials.

On November 12, 2015, the Council staff provided training to lobbyists on how to properly complete an online lobbyist disclosure. More than 80 individuals attended the training.

Staff also provided training on the General Assembly Conflict of Interests law to the House Democratic Caucus (upon invitation). Staff is scheduled to provide new member orientation to newly elected Senators and Delegates.

Staff is in the process of developing online training accessible to all members of the General Assembly in order to fulfill their bi-annual training required in § 30-129.1, as well as for state and local government employees. Training will be accessible online where individuals will register and, upon completion of the training, will be provided a certificate of completion.

Staff is also developing for lobbyists online training on complying with the law, anticipated to be available by the end of the year.

Educational materials are being developed by staff and it is anticipated that these materials will be reviewed and approved by the Council in 2016. It is also anticipated that other materials will be released prior to the beginning of the 2016 Session of the General Assembly, including short flow charts designed to assist lobbyists and legislators with navigating the new \$100 gift cap and reporting laws effective January 1, 2016.

Formal Advisory Opinions and Informal Advice

The Council is charged with providing formal advisory opinions and informal advice. The Council is required to approve formal advisory opinions prior to their release. At the time of this report, the Council has not yet approved any formal advisory opinions. The Council is scheduled to consider four draft formal advisory opinions at the December 10, 2015, meeting.

The Council staff is tracking informal advice provided to those required to file disclosure forms under the law. At the time of this report, the Council staff had issued 175 pieces of informal advice via email and telephone.

Conclusion

The Council's initial few months have seen many positive developments. The mission of the Council is to provide timely and accurate advice to those individuals required to comply with the Lobbyist Registration Act, the State and Local Government Conflict of Interests Act, and the General Assembly Conflicts of Interests Act, and to provide comprehensive data on the disclosures to the general public.

While in its infant stages, the Council is working hard to incorporate its many duties with the goals of encouraging and facilitating compliance with disclosure laws by providing training and guidance. The Council would like to express its gratitude to all who participated in the work of the Council for their hard work and dedication.

Respectfully Submitted,

Judge Patricia Lee West, Interim Chair
Senator Thomas K. Norment, Jr.
Senator Janet D. Howell
Delegate C. Todd Gilbert
Delegate Jennifer L. McClellan
Bernard L. Henderson, Jr.
Walter C. Erwin
Sharon E. Pandak

APPENDIX A: Suggested Legislation

Technical Amendments Legislation

Summary

Virginia Conflict of Interest and Ethics Advisory Council. Makes technical amendments to reflect the change in filing cycles and the role of the Council in receiving certain disclosures and to clarify the time period for aggregation for purposes of the prohibited gift cap.

Discussion

In the Lobbyist Registration Act, changes "from" to "to" in the definition of "Gift" because the existing language exempts gifts from the official to their relatives and it should exempt gifts from relatives to the official.

Clarifies that lobbying disclosures are open for inspection in the offices of the Council and that reports are deemed to have been filed when received by the Council. Existing language keeps these matters with the Secretary of the Commonwealth.

Changes calendar year to reporting year (November 1 through October 31). This lines up gift aggregations with the reporting dates rather than the calendar year, which makes it easier for the Council, the filer, and the public to determine whether a filer has eclipsed gift cap limits.

Makes a technical update in the Freedom of Information Act because the statute still stated "annual" disclosures, but the law has been updated to include semi-annual disclosures.

Updates the elections law so that candidates for the General Assembly file their disclosures with the Council rather than the clerk, (ii) ensures the Council transmits to the State Board of Elections the names of those candidates who have filed with the Council, and (iii) updates language to reflect the change from annual disclosures to semi-annual disclosures.

Updates § 30-356.1(A)(3) to include "or the committee's chair" to allow for instances where the committee's chair approves travel for legislators attending a legislative committee or commission or a national conference rather than the entire House or Senate Committee on Rules.

Provides language allowing local employees and officials filing the Statement of Economic Interests form to submit only one disclosure to satisfy all public positions which require a disclosure. The law currently only extends this privilege to the General Assembly and state employees and officials.

Forms Update Legislation

Discussion

The Council feels strongly that the disclosure forms included in the Code prohibit the effective implementation of the law. The current version of the forms are in direct conflict with the law and cause confusion among filers and the public. Changes to the forms require legislation that can slow down effective disclosures from being realized. The Council has been charged with providing the forms and reviewing the submitted forms and the Council believes it could carry out these duties more effectively if it could make updates to the forms as needed.

Extension of the Filing Deadlines in Certain Situations

Discussion

The Council is concerned that the Acts do not allow for the extension of the filing deadline in circumstances where the filer is unable to meet the deadline due to circumstances beyond their control. The suggested language is similar to the language found in the Campaign Finance Disclosure Act of 2006 (§ 24.2-946.4). The Council feels strongly that the filers need this legislation in order to provide shelter from civil penalties if circumstances beyond their control prevent them from filing their disclosure in a timely manner.