



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

2017
Annual Report

Patricia L. West, Chair
Pete W. Stout, III, Vice-Chair
G. Stewart Petoe, Executive Director



General Assembly Building
900 E. Main St., 8th Floor
Richmond, VA 23219
(Phone) 804-698-1810
ethics@dls.virginia.gov

December 1, 2017

TO: The Honorable Terry McAuliffe, Governor of Virginia
Members of the General Assembly of Virginia

Pursuant to the provisions of § 30-356 of the *Code of Virginia*, establishing the powers and duties of the Virginia Conflict of Interest and Ethics Advisory Council, and as specifically mandated by subdivision 13 of that section, I have the honor of submitting herewith the Council's annual report.

Very truly yours,

The Honorable Patricia Lee West, Judge (Ret.), Chair

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ANNUAL REPORT

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Authority of the Virginia Conflict of Interest and Ethics Advisory Council

Established in 2015, the Virginia Conflict of Interest and Ethics Advisory Council (the Council) was created as “an advisory council in the legislative branch to encourage and facilitate compliance with 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.) (hereafter the Acts) and the lobbying laws in Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 (hereafter Article 3).”¹ Pursuant to § 30-356 of the *Code of Virginia*, the Council is tasked with furnishing formal advisory opinions or guidelines and other appropriate information, including informal advice, as well as conducting training on the laws under its purview and establishing a method for the filing of disclosure forms.

The Council is composed of the following nine members: two delegates and a former judge of a court of record appointed by the Speaker of the House of Delegates; two senators and a former judge of a court of record appointed by the Senate Committee on Rules, and three gubernatorial appointees, one of whom is a current or former executive branch employee, one of whom is selected from a list of three nominees submitted by the Virginia Association of Counties, and one of whom is selected from a list of three nominees submitted by the Virginia Municipal League. In the appointment of both the delegates and the senators, “equal representation shall be given to each of the political parties having the highest and next highest number of members elected to their respective body.”² All of the Council members “are subject to confirmation by the General Assembly by a majority vote in each house of (i) the members present of the majority party and (ii) the members present of the minority party.”³

¹ Subsection A of Va. Code § 30-355.

² Subsection B of Va. Code § 30-355.

³ *Id.*

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Members of the Virginia Conflict of Interest and Ethics Advisory Council

Speaker of the House of Delegates Appointees

The Honorable Patricia Lee West, Chair
The Honorable C. Todd Gilbert
The Honorable Matthew James

Senate Committee on Rules Appointees

The Honorable Pete W. Stout, III, Vice-Chair
The Honorable Janet D. Howell
The Honorable Thomas K. Norment, Jr.

Governor's Appointees

Walter C. Erwin
Bernard L. Henderson, Jr.
Sharon E. Pandak

Council Staff

G. Stewart Petoe, Executive Director
Michelle LeGates, Filing Coordinator
Valerie Mizzell, Assistant
Rebekah Stefanski, Attorney

2017 Summary of Activities

Meetings

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) held four meetings in 2017 on the following dates: April 24, July 18, October 17, and November 20.

April 24

At the April 24 meeting, the Council voted to approve the following Formal Advisory Opinion:

- *2017-F-001 Savings clause for quorums; § 2.2-3112*

Pursuant to the requirements of subdivision 6 of § 30-356 of the *Code of Virginia*, this opinion has been published on the Council's website (ethics.dls.virginia.gov).

Also at this meeting, the Council voted to amend its procedures for the issuance of Formal Advisory Opinions. It was clarified that if a requestor is asked for additional information, no opinion will be issued until the necessary information is provided. That portion of the Council's procedures that were in conflict with subdivision 6 of § 30-356, in that it provided for drafts of Formal Advisory Opinions to be released in response to a Freedom of Information Act request prior to a formal vote by the Council, was repealed. The Council also voted to amend the Lobbyist's Disclosure Statement form by adding an instruction to permit lobbyists to identify individuals listed in Schedule A as a "featured speaker, lecturer or presenter at the event," if applicable. The Council considered the subject matter of Formal Advisory Opinion 2016-F-004 § 2.2-419; PACs associated with a lobbyist's principal, but did not recommend any changes or legislative proposals.

July 18

At the July 18 meeting, the Council voted to approve the following Formal Advisory Opinion:

- *2017-F-002 Applicability of Public Procurement Act (§ 2.2-4300 et seq.) exemptions to the statutes governing personal interests in contracts in the Conflict(s) of Interests Acts; §§ 2.2-3106, 2.2-3107, 2.2-3108, 2.2-3109, & 30-105*

Pursuant to the requirements of subdivision 6 of § 30-356, this opinion has been published on the Council's website (ethics.dls.virginia.gov).

Also at this meeting, the Council considered the subject matter of Formal Advisory Opinion 2015-F-002 § 2.2-3115; Commission filers. The Council voted to withdraw that opinion and have it rewritten for consideration at the next Council meeting.

Lastly, the Council considered the issue of whether local officials who perform the duties of constitutional officers but who are not elected should file their disclosure forms with the Council or with their local clerks. The Council voted that these officials should file locally rather than with the Council.

October 18

At the October 18 meeting, the Council voted to approve the following revised Formal Advisory Opinion:

- *2015-F-002 Commission filers; § 2.2-3115*

The Council also voted to approve the following Formal Advisory Opinions:

- *2017-F-003 Purchase of real estate at tax auction by employee of the locality; §§ 2.2-3109, 2.2-3110*
- *2017-F-004 Legislator reporting of an event; § 30-111*

Pursuant to the requirements of subdivision 6 of § 30-356, these opinions have been published on the Council's website (ethics.dls.virginia.gov).

Also at this meeting, in response to a letter request from the Clerk of the Senate, the Council considered the subject matter of Senate Joint Resolution 29, which was introduced by Senator Adam P. Ebbin during the 2017 Regular Session of the General Assembly. After deliberation, the Council voted that local officials and employees should continue to file their disclosure forms locally instead of using the Council's online filing system to file directly with the Council. The Council's report on this issue has been published on the Legislative Information System website (lis.virginia.gov) under Reports to the General Assembly as "RD453 – Report on the Study of Senate Joint Resolution 289 (2017)."

November 20

At the November 20 meeting, in response to a letter request from the Governor, the Council considered whether the General Assembly Statement of Economic Interests form should be changed, so that legislators would be required to disclose all contracts with state and local agencies in which they have a personal interest. Currently, legislators disclose businesses and corporations in which they have a personal interest, but do not disclose the contracts that those entities have with state and local agencies. Another option, offered by the Governor's Office, would be that if a legislator had a personal interest in a contract with a state or local agency, and the contract were permissible under a Virginia Procurement Act (§ 2.2-4300 et seq. of the *Code of Virginia*) exception listed in § 2.2-4344, the legislator would have to disclose the name of the agency that had the contract, provided that either he or someone with whom he had a close financial relationship provided the services that were related to the contract. After discussion, no motion was made on the issue of changing the form. It was agreed that the proper approach to this topic was to have the General Assembly consider the issue in the form of legislation.

The Council also approved a change in the instructions to the Lobbyist's Disclosure Statement form, clarifying that on Schedule A, the expenses that are to be listed are those that are "provided to a legislative or executive official or a member of his immediate family," and not those that the lobbyist incurs for himself.

Pursuant to the directives of subdivision 13 of § 30-356, the Council considered five proposals for legislative changes that were presented by staff. After deliberation, the Council voted to

recommend four of them and to not recommend one of the proposals. A description of all five proposals begins on page 9 of this report.

The Council also considered two additional legislative proposals. The first was that the restriction on relatives of school board members being employed by the same school board should be identical to the restriction applicable to other local public bodies. The second was that all discussions of budget matters during the course of a fiscal year should be considered as one transaction, meaning that if an official has a personal interest in some item of the budget, he will have to make an official declaration of his personal interest only at the very first meeting where the budget is involved, not at multiple meetings throughout the year whenever the budget is discussed. The Council voted to not approve this proposal.

Lastly, the Council discussed the advisability of reviewing the Conflict(s) of Interests Acts in toto, to identify those portions of the Acts that should be substantially amended, those that should be rewritten for clarity, and those that should be retained in their present form. Recognizing that such an undertaking likely would be a two-year project and would require careful preparation, the Council voted to approve this idea as a worthwhile endeavor for the Council to undertake in the future.

Formal Advisory Opinions and Informal Advice

As noted above, in 2017 the Council formally approved four new Formal Advisory Opinions, and it withdrew and reissued a Formal Advisory Opinion from 2015. Pursuant to the requirements of subdivision 6 of § 30-356, these opinions have been published on the Council's website (ethics.dls.virginia.gov).

Throughout the course of the year, Council staff answered in excess of 3,100 phone calls and responded to more than 5,400 email inquiries for informal advice. Council staff responses included the following range of assistance: help with filling out disclosure forms, guidance as to whether particular gifts could be lawfully accepted and how they should be reported, and responses to conflict-of-interest questions, such as whether it would be lawful for a person to vote on a particular matter or for a family member to submit a bid for a particular contract. Pursuant to subdivision 6 of § 30-356, all informal advice provided by the Council is confidential.

Training Seminars and Educational Programs

Pursuant to subdivision 7 of § 30-356, the Council is directed to conduct training seminars and education programs for lobbyists, state and local government officers and employees, legislators, and other interested persons on the subject of Virginia's lobbying laws and the Conflict(s) of Interests Acts. In 2017, Council staff conducted 25 training seminars, both in Richmond and throughout the state. The groups and organizations for which training was provided included:

The Judicial Conference of Virginia for District Court Judges

The Judicial Conference of Virginia for Circuit Court Judges

Regional Seminars for Substitute Judges



The Court of Appeals and the Supreme Court of Virginia

The Virginia Sheriffs' Institute

The Virginia Economic Development Partnership Authority

The Virginia Committee on International Trade

It is anticipated that the number of trainings requested for next year will be higher, reflective of the election cycle and corresponding terms of offices in Virginia.

In addition to in-person trainings and seminars, the Council has also developed online training, accessible on the Council's website, for lobbyists, legislators, and state and local government officials and employees. The contents of the online training will be revised and updated to reflect any changes to Virginia's laws made by the General Assembly in 2018.

Disclosure and Registration Filings

The Council receives disclosure filings from all members of the General Assembly, all district and circuit court judges, the Governor, the Lieutenant Governor, the Attorney General, all constitutional officers, and all state officers and employees who are required to file. Executive branch board appointees are also required to file their Financial Disclosure Statements with the Council. The total number of individuals in Virginia who filed directly with the Council in 2017 was approximately 11,000. In addition, the Council also received 2,195 lobbyist registrations and approximately the same number of lobbyist disclosure reports. All disclosures and registrations filed with the Council are submitted electronically, using the Council's online filing system.

Travel Waivers

The Council received and approved approximately 86 requests for travel waivers in 2017, submitted pursuant to subsection G of § 2.2-3103.1, subsection F of § 30-103.1, and § 30-356.1.



Recommendations for Changes in the Laws

Pursuant to subdivision 13 of § 30-356 of the *Code of Virginia*, the Council shall, in its annual report, include “recommendations for changes in the laws.” Staff presented five possible legislative changes that could be made to enhance either the clarity or efficiency of Virginia’s Conflict(s) of Interests Acts or the operations of the Council.

Proposal 1: Amend subsection A of § 2.2-3115, so that the members of all local entities, not just those that are “authorities,” that have the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year must file, at a minimum, a Financial Disclosure Form. The amount that would trigger this automatic requirement to file a Financial Disclosure Form could be raised from the current statutory limit of \$10,000.

After consideration, the Council did not recommend Proposal 1 and voted to not amend subsection A of § 2.2-3115.

Proposal 2: Amend subdivision 6 of § 30-356, so that drafts of Formal Advisory Opinions may be released to the general public for comment, prior to the Council’s voting to approve the opinion.

After consideration, the Council voted to recommend Proposal 2.

Proposal 3: Amend § 30-356.2, so that the Council would no longer be able to grant deadline extension requests for Statements of Economic Interests that are filed by candidates for office. The State Board of Elections is given the authority to grant extensions by § 24.2-503; that authority should rest solely with the Board.

After consideration, the Council voted to recommend Proposal 3.

Proposal 4: Amend § 2.2-3114 to require the members of the Virginia College Savings Plan Board and the Investment Advisory Committee to file a Statement of Economic Interests. These officials, with the important financial decisions that they make, are analogous to the Virginia Workers’ Compensation Commission, the Board of Trustees for the Virginia Retirement System, the Virginia Lottery Board, and other officials who are required to make annual financial disclosures.

After consideration, the Council voted to recommend Proposal 4.

Proposal 5: Clarify the provisions of § 2.2-3118.1 to make clear that when a person who has already filed a financial disclosure obtains a new position or office, he must file a new disclosure, unless the reporting periods are the same.

After consideration, the Council voted to recommend Proposal 5.

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Conclusion

Throughout 2017, the Council continued to become more efficient and effective in carrying out its prescribed duties. Although the number of Formal Advisory Opinions issued by the Council was fewer than in the previous year, the number of state and local officials and employees who received informal guidance was greater. The Council also deliberated on and decided a number of important policy issues outside of requests for Formal Advisory Opinions, such as whether local officials and employees should continue to file locally with their clerks or should instead file their disclosures with the Council, and whether assuming a new job or position in the middle of the calendar year should necessitate the filing of a new disclosure statement.

The Council looks forward to continuing to serve the needs of state and local officials and employees and registered lobbyists throughout the Commonwealth for all matters related to the Conflict(s) of Interests Acts and Virginia's lobbying laws.

The Council would like to thank all who have participated in the work of the Council for their hard work and dedication throughout the year.