



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

2020
Annual Report

Wilford Taylor, Jr., Chair
G. Stewart Petoe, Executive Director



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

November 18, 2020

TO: The Honorable Ralph Northam, 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,

Wilford Taylor, Jr., Chair

ANNUAL REPORT

TABLE OF CONTENTS

Authority of the Virginia Conflict of Interest and Ethics Advisory Council	2
Members of the Virginia Conflict of Interest and Ethics Advisory Council and Council Staff	3
2018 Summary of Activities	4
Meetings	
Formal Opinions and Informal Advice	
Training Seminars and Educational Programs	
Disclosure and Registration Filings	
Travel Waivers	
Recommendations for Changes in the Laws	8
Conclusion	8

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.*

Members of the Virginia Conflict of Interest and Ethics Advisory Council

Speaker of the House of Delegates Appointees

The Honorable C. Todd Gilbert*
The Honorable M. Keith Hodges
The Honorable Vivian E. Watts

Senate Committee on Rules Appointees

The Honorable Janet D. Howell**
The Honorable Jennifer L. McClellan
The Honorable Thomas K. Norment, Jr.
The Honorable Wilford Taylor, Jr.

Governor's Appointees

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

Council Staff

G. Stewart Petoe, Executive Director
Valerie Mizzell, Assistant Filing Coordinator
Rebekah Stefanski, Staff Attorney
Elizabeth Sundberg, Filing Coordinator

*Succeeded by the Honorable Vivian E. Watts

**Succeeded by the Honorable Jennifer L. McClellan

2020 Summary of Activities

Meetings

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) met on November 18, 2020.

At this meeting, the Council carried out its statutory duty, pursuant to subsection I of § 2.2-3103.1 and subsection G of § 30-103.1, to increase the \$100 gift cap limitation imposed by those sections. Every five years, the Council is mandated to increase the gift cap “in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.” In accordance with these instructions, the Council has increased the gift cap limitation to \$108. This increase is retroactive back to January 1, 2020, and applies to this calendar year and the next four calendar years. The gift cap limitation will next be increased in the year 2025.

The Council also approved a new official procedure related to the destruction of lobbyist’s disclosure reports filed with the Council. All of these reports will be kept for five years and will then be destroyed on or as soon as practicable after July 1 of the next calendar year. In this way, all lobbyists’ disclosure reports scheduled for deletion will be destroyed at one time, and the public will know that after July 1 of each year, forms older than five years will no longer be available. The length of time these reports are kept and their destruction schedule mirror the retention time and destruction schedule for the Statements of Economic Interests and Financial Disclosure Statements that also are filed with the Council.

The Council considered and voted to approve the following Formal Advisory Opinion:

- *2020-F-001 Applicability of Restrictions on Gifts Made by a Locality That Is a Lobbyist’s Principal to Members of the Governing Body*

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

And, pursuant to the study request sent by the Chair of the Senate Committee on Local Government, the Council reviewed Senate Bill 383 from the 2020 Regular Session of the General Assembly. Upon deliberation, the Council decided that staff should work on drafting some possible legislation to accomplish the general aims of Senate Bill 383, namely, requiring compensated individuals who engage in lobbying type activities at the local level to provide public notice that they are being paid for their efforts. The Council will review this possible legislation in 2021.

Formal Opinions and Informal Advice

In 2020, as noted above, the Council received one request for a Formal Advisory Opinion. Also, throughout the course of the year, Council staff answered 1,650 phone calls and responded to more than 7,200 email inquiries for informal advice or other help. By comparison, in 2019, the Council received approximately 2,813 phone calls and responded to approximately 5,800 emails; in 2018, the Council received approximately 3,200 phone calls and responded to more than 5,800 email inquiries. The noticeable increase in email counts and the decrease in phone calls this year is likely due to the current COVID-19 pandemic and its impact on many state and local agencies and boards. It is expected that as Virginia recovers from the pandemic over the next year, the number of inquiries made to the Council will return to previous levels.

Requests for informal guidance and assistance included the following subject areas: acknowledgement of emails and receipt of lobbyist registrations and disclosures; help with filling out disclosure forms; guidance as to whether certain activities constituted lobbying, such that registration as a lobbyist would be required; guidance as to whether particular gifts could be lawfully accepted and how they should be reported; and answers to conflict of interest questions, such as whether it would be lawful for a person to vote on a particular matter, whether a family member could have a contract with a particular agency, or whether a local government officer could apply for a CARES Act grant for his local business. 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 educational 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. Much of the Council's efforts this past year have involved training on the subject of the State and Local Government Conflict of Interests Act (COIA).

In 2019, the General Assembly enacted § 2.2-3132, which mandates that all local elected officials must receive training on COIA. This training must be provided by the Council and must be completed within two months of assuming office. In 2020, the General Assembly added all members and executive directors of industrial development authorities and economic development authorities to the statute. Those development authority officers and executive directors who hold their positions on July 1, 2020, must complete COIA training by December 31, 2020. All officers and executive directors who assume their positions after July 1, 2020, must complete the training within two months. After initial training, every member and executive director of a development authority must receive another COIA training provided by the Council every two years. These are the training requirements and deadlines that apply to other state and local officials and employees who are required to file a Statement of Economic Interests.

Online Training

In response to the large number of officials throughout Virginia who are now required to receive training on COIA provided by the Council, new online training modules have been posted on the Council's website. These new modules, which were developed in 2019 and the earlier part of this year, represented a new approach to the Council's online training.

Council staff's largest initiative of 2019 and 2020 was the redesign of the online COIA training modules. The modules were completely rewritten and were designed to be more interactive. The

content was created with an eye to making the covered topics easier to follow and comprehend. More real-life examples focusing on practical applications are now included.

In the spring of 2020, the following new modules were successfully launched:

- State Officer or Employee – This training is for all filers who submit a Statement of Economic Interests using the Council’s online filing system.
- Citizen Members Appointed to a State Board – This module is for all citizens who file Financial Disclosure Statements using the Council’s online filing system.
- Local Elected Officials or EDAs/IDAs – This training satisfies the training requirement for local elected officials and executive directors and members of industrial and economic development authorities.

Each of these modules is tailored to the statutory requirements of the role in which the person serves. The response from agencies has been positive and it has been reported that trainees have found the new modules to be more engaging and informative.

The new modules also incorporate an improved ability to keep track of which officers and employees have taken the training. On the previous platform, training registrants would type in the name of their agency or locality. This resulted in a database that contained an amalgam of acronyms, abbreviations, complete agency names, partial agency names, and even erroneous entries. The new interface prevents this by eliminating the requirement that a user type in the name of his agency or locality. Instead, a drop-down menu is used to select the appropriate agency or locality. This improvement helps agency coordinators and clerks, who no longer have to search through thousands of agency names to find an individual. With all individuals being listed in neat agency “groupings,” it is easier for agency coordinators and human resource officers to readily compile all trainees’ names for aggregate reporting purposes.

Lastly, the new training modules are less expensive to maintain. The Division of Legislative Automated Systems is now able to assist with publishing and hosting the Council’s training modules; the use of an outside vendor is no longer needed due to the new format used.

A review of the data reveals more state and local officers and employees are making use of the Council’s online training system.

From November 1, 2019, to November 1, 2020:

- 5,163 people had taken the online training for state officials and employees;
- 3,088 people had taken the training for local officials; and,
- 151 had taken the new training created for citizen members who are appointed to state boards (previously these members had taken the training for state officials and employees, which contained substantial content that was extraneous for them).

These figures compare with the time period of November 1, 2018, to November 1, 2019, as follows:

- 3,033 people had taken the online training for state officials and employees; and
- 1,578 people had taken the online training for local officials.

In-Person Training

Council staff normally conducts between 20 and 40 live training presentations through the Commonwealth in the course of a year. This year, due to the pandemic and the Governor's declared state of emergency, the number of live trainings was enormously reduced. Staff did participate in several organizational conferences in which COIA training was provided in virtual meetings. As Virginia recovers from the pandemic in the next year, staff anticipates the number of live training presentations offered will increase.

The groups and organizations for which training was provided in 2020 included:

The Supreme Court of Virginia and the Court of Appeals of Virginia

The Virginia Association of Counties Supervisor's Forum

The Virginia Municipal League

The Virginia Board of Accountancy

The Virginia School Boards Association

Members of the Senate of Virginia

Members of the Virginia House of Delegates

Disclosure and Registration Filings

The Council receives disclosure filings from all members of the General Assembly, all district and circuit court judges, members of the Supreme Court of Virginia and the Court of Appeals of Virginia, 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 from January 1, 2020, through to November 1, 2020, was approximately 11,897. Of these, 8,780 were Statements of Economic Interests and 3,117 were Financial Disclosure Statements. These figures are very close to the 11,744 forms received in 2019, which included 8,762 Statements of Economic Interests and 2,982 Financial Disclosure Statements. The counts for 2018 were 12,086 forms submitted, which included 8,749 Statements of Economic Interests and 3,337 Financial Disclosure Statements.

In addition, the Council also received 2,877 lobbyist registrations and approximately the same number of lobbyist disclosure reports for the previous lobbying year, which runs from May 1, 2019, to April 30, 2020. This is a 13% increase from the 2018-19 lobbying year, when 2,537 lobbyist registrations were received, and shows a continuing trend. For the 2017-18 lobbying year, 2,366 lobbyist registrations were received. 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 34 requests for travel waivers in 2020, submitted pursuant to subsection G of § 2.2-3103.1, subsection F of § 30-103.1, and § 30-356.1. There were an additional 13 requests for travel waivers that were submitted but were subsequently determined to have been incorrectly filed. For these 13 requests, the person making the request was contacted and informed that a travel waiver was not needed, or the request was withdrawn.

This number of requests for travel waivers is noticeably fewer than in 2019, when 95 requests for waivers were received and approved, and an additional 29 requests were determined to be incorrectly filed. Staff anticipates that as Virginia recovers from the pandemic in the next year, the number of requests for travel waivers will increase to previous levels.

Recommendations for Changes in the Laws

In 2020, staff did not make any recommendations for changes to any of Virginia's Conflict(s) of Interests laws or lobbying laws. After discussion and approval of Formal Advisory Opinion 2020-F-001, the Council voted to recommend the following legislative change:

- Amend the definition of the term "gift" in the Conflict(s) of Interests Acts to exclude tickets or the registration or admission fees to an event that are provided by an agency to its own officers or employees for the purposes of performing official duties.

Conclusion

Despite the challenges posed by the pandemic, the Council was able to continue its regular operations with minimal interruptions in 2020. In accordance with the Governor's emergency order and the policies adopted by the Division of Legislative Services, staff commenced working from home at the end of March. There were no appreciable delays in staff's response times to requests for informal guidance or help with filing forms. While the number of requests for live training presentations and requests for travel waivers all decreased this year, staff anticipates these will both increase in the next year, as Virginia recovers from the pandemic.

The Council continues to be a resource for all state and local officials and employees, as well as legislators. The total number of phone inquiries received by Council staff decreased slightly from last year, possibly due to the pandemic, while the number of emails received increased by over 1400.

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 throughout the year.