



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

2021
Annual Report

Wilford Taylor, Jr., Chair
Bruce D. White, Vice Chair
G. Stewart Petoe, Executive Director



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November 23, 2021

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,

A handwritten signature in black ink, appearing to read "W. Taylor, Jr.", with a stylized flourish at the end.

Wilford Taylor, Jr., Chair

The Honorable Jennifer L. McClellan
The Honorable Thomas K. Norment, Jr.
The Honorable Wilford Taylor, Jr.

The Honorable M. Keith Hodges
The Honorable Vivian E. Walls
The Honorable Bruce D. White

John C. Blair
Tracy Retchin
Sharon E. Pandak

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.) (the Acts) and the lobbying laws in Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 of the *Code of Virginia* (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 M. Keith Hodges

The Honorable Vivian E. Watts

The Honorable Bruce D. White

Senate Committee on Rules Appointees

The Honorable Jennifer L. McClellan

The Honorable Thomas K. Norment, Jr.

The Honorable Wilford Taylor, Jr.

Governor's Appointees

John C. Blair

Walter C. Erwin*

Bernard L. Henderson, Jr.**

Sharon E. Pandak

Tracy Retchin

Council Staff

G. Stewart Petoe, Executive Director

Rebekah Stefanski, Senior Staff Attorney

Elizabeth Sundberg, Filing Coordinator

Valerie Mizzell, Assistant Filing Coordinator

*Succeeded by John C. Blair

**Succeeded by Tracy Retchin

2021 Summary of Activities

Meetings

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) met on November 23, 2021.

At this meeting, the Council considered and voted to approve the following Formal Advisory Opinion:

- *2021-F-001 Personal Interest in a Transaction Exists When Officer of State Agency Provides Volunteer Services to an Organization*

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).

The Council also considered the policy of whether officers and employees who file a Statement of Economic Interests should be required to disclose in Schedule C whether they own any cryptocurrencies. After deliberation, the Council did not take any action or have any recommendations on this policy.

And, pursuant to the decision made at its last meeting, the Council considered possible legislation that would require any individual who is compensated to influence or attempt to influence certain government actions to provide public notice of this fact. After deliberation, the Council voted to recommend this legislation. A description of this proposed legislation is on page 8 of this report.

Formal Opinions and Informal Advice

In 2021, as noted above, the Council received one request for a Formal Advisory Opinion. Also, throughout the course of the year, Council staff answered 1,077 phone calls and responded to more than 7,977 email inquiries for informal advice or other help. By comparison, in 2020, Council received approximately 1,650 phone calls and responded to more than 7,200 email inquiries; 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, 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, and therefore whether 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 grant for his local business. Pursuant to subdivision 6 of § 30-356 of the *Code of Virginia*, all informal advice provided by the Council is confidential.

Training Seminars and Educational Programs

Pursuant to subdivision 7 of § 30-356 of the *Code of Virginia*, 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 passed legislation creating § 2.2-3132 of the *Code of Virginia*, 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, newly developed online training modules were posted on the Council's website in 2019 and 2020.

The following modules are available on the Council's website:

- 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.
- General Assembly – This training is for the elected members of the General Assembly.

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, and they 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.

The number of people who completed the Council's online training is as follows:

From November 1, 2020, to November 1, 2021:

- 3,528 people had taken the online training for state officials and employees;
- 1,383 people had taken the training for local officials; and
- 455 people 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, 2019, to November 1, 2020, as follows:

- 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 people 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).

As the training requirement is for every two years, it is to be expected that the number of people who access the online training modules will vary from year to year in a two-year cycle.

In-Person Training

Council staff members normally conduct between 20 and 40 live training presentations through the Commonwealth in the course of a year. This year, as in 2020, the number of live trainings was enormously reduced due to the pandemic. Staff members did participate in several organizational conferences in which COIA training was provided in virtual meetings. As Virginia recovers from the pandemic, staff anticipates the number of live training presentations offered will increase.

The groups and organizations for which training was provided in 2021 included:

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

The Virginia Department of the Treasury

The Virginia Department of Veterans Affairs

The Virginia Economic Development Partnership Board

The Virginia Department of Rail and Public Transportation

The Virginia Cannabis Public Health Advisory Council

Commissioners of the Revenue Association

The Virginia Association of Counties

The Virginia Municipal League

The Virginia School Boards Association

The Town of Bedford

The City of Hampton Council
The Williamsburg Tourism Council
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 a Statement of Economic Interests. 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, 2021, through November 1, 2021, was approximately 11,829. Of these, 9,085 were Statements of Economic Interests and 2,744 were Financial Disclosure Statements. These figures are very close to the 11,897 forms received in 2020, which included 8,780 Statements of Economic Interests and 3,117 Financial Disclosure Statements. In 2019, 11,744 forms were received in which included 8,762 Statements of Economic Interests and 2,982 Financial Disclosure Statements.

In addition, the Council also received 2,464 lobbyist registrations and approximately the same number of lobbyist disclosure reports for the previous lobbying year, which ran from May 1, 2020, to April 30, 2021. This was the first decrease in registrations after two years of increases. For the May 1, 2019, to April 30, 2020, lobbying year, 2,881 lobbyist registrations and approximately the same number of lobbyist disclosure reports were received. For the 2018–2019 lobbying year, 2,538 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 53 requests for travel waivers. There were an additional 12 requests for travel waivers that were submitted but subsequently determined to have been incorrectly filed. For these 12 requests, the person making the request was contacted and informed that a travel waiver was not needed, either because the person requesting the travel waiver was not required to submit one, the entity paying for the travel was not a prohibited donor, or the travel was actually to be paid by a Virginia state agency or locality.

This number of requests for travel waivers is higher than in 2020, when 34 requests for travel waivers were approved. The increase is likely due to the gradual lifting of pandemic-related travel restrictions, generally. Staff members anticipate that, as recovery from the pandemic continues, the number of requests for travel waivers will gradually increase to previous levels of approximately 90 per year.

Recommendations for Changes in the Laws

In 2021, the Council recommended that any individual who is compensated to influence or attempt to influence certain local government actions be required to provide public notice of this fact. The local government actions that would require this notice would be the enactment, repeal, or modification of an ordinance or resolution, including any actions related to local taxes, the budget of a locality, or a land use proceeding. These actions would not include requests for appointments, information on the status of pending actions by the locality, or other ministerial contacts that are not intended to influence a local government action. They also would not include responses to published notices soliciting public comment that are submitted to the public official designated in the notice to receive the responses. The notification requirement would not apply to any person listed in subdivisions C 1 through 5 of § 2.2-421 of the *Code of Virginia*,⁴ any local government employee or officer acting in an official capacity, or any contractor or contractor's employees performing services for a local government. Any person required to provide public notice would do so in writing within 15 days after communicating or attempting to communicate with a local government official or employee. The notice would be submitted to the clerk of the locality and would specify the name and contact information of the compensated individual and the entity providing the compensation. A fee of \$25 would be charged for each notification provided, with the money being deposited into the general fund of the locality. All notices would expire one calendar year after being provided and would be kept for a period of five years as a public record in the office of the clerk. Any individual who failed to provide notice as required would be guilty of a Class 1 misdemeanor.

Conclusion

Despite the challenges posed by the pandemic, the Council was able to continue its regular operations in 2021. As conditions improved, the number of requests for live training presentations and requests for travel waivers increased from 2020. Staff members anticipate that these numbers will continue to increase in 2022.

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 continuing pandemic, while the number of emails received increased by more than 750.

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 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.

⁴ These individuals are exempt from having to register as a lobbyist in Virginia.