

THE STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT

Presentation to Visitors of Virginia Public Universities and Colleges
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“Honesty is the first chapter in the book of wisdom.”

- Thomas Jefferson

I. PURPOSE OF THE ACT. “[O]ur system of representative government is dependent in part upon citizen legislative members representing fully the public in the legislative process and its citizens maintaining the highest trust in their public officers and employees [C]itizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. . . . This chapter shall be liberally construed to accomplish its purpose.” VA. CODE ANN. § 2.2-3100.

II. APPLICATION OF THE ACT. “ ‘Officer’ means any person appointed or elected to any governmental or advisory agency . . . whether or not he receives compensation or other emolument of office.” VA. CODE ANN. § 2.2-3101. As a Visitor, each of you is an “officer” under the Act, and thus you are subject to the requirements and prohibitions of the Act.

III. GENERALLY PROHIBITED AND UNLAWFUL CONDUCT. "No officer or employee of a state or local government or advisory agency shall:

- Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
- Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
- Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
- Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
- Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties.

- Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
- Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor.
- Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain.
- Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law . . .” VA. CODE ANN. § 2.2-3103.

IV. LIMITATION ON GIFTS TO LONG-FORM FILERS.

A. An annual disclosure form listing gifts and other interests is required. VA. CODE ANN. § 2.2-3114(A) and (B). Certain officers specified by the statute or by the Governor must file a long form referred to in § 2.2-3117, whereas nonsalaried citizen members of policy and supervisory boards, commissions and councils generally file a shorter form referred to in VA. CODE ANN. § 2.2-3118. The Virginia Conflict of Interests and Ethics Advisory Council mails the appropriate forms to officials each year, but if there is any question about which form to file, contact the Secretary of the Commonwealth’s Office.¹

B. “No officer or employee of a state governmental or advisory agency . . . required to file the disclosure form prescribed in § 2.2-3117 [the long form] or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is a lobbyist . . . a lobbyist's principal . . . or a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.” VA. CODE ANN. § 2.2-3103.1(C).

V. PROHIBITED CONDUCT RELATING TO CONTRACTS.

A. No officer or employee of any governmental agency of state government . . . shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment. VA. CODE ANN. § 2.2-3106(A).

¹ See Executive Order 33 (2014, updated 2015), Section 2.

B. No officer or employee of any governmental agency of state government shall have a personal interest in a contract with any other governmental agency of state government unless the contract is awarded as a result of competitive sealed bidding or competitive negotiation or after a written finding by the administrative head of the other agency that these methods are contrary to the public's best interest. VA. CODE ANN. § 2.2-3106(B).

C. A personal interest in a contract exists when the officer or employee is a party to the contract or has a personal interest in a business that is a party to the contract. VA. CODE ANN. § 2.2-3101.

D. An officer or employee has a personal interest in a business if he or a member of his immediate family (1) receives or expects annual income exceeding \$5,000 from the business, or (2) owns (or has an option to acquire) more than 3% of the equity in the business, or (3) has assumed liability on behalf of the business totaling more than 3% of the asset value of the business. VA. CODE ANN. § 2.2-3101.

E. Exceptions to this prohibition exist. Many have detailed requirements and are specific to institutions of higher education. VA. CODE ANN. §§ 2.2-3106(C)-(D) (Eastern Virginia Medical School), 2.2-3109.1 (hospital authorities), and 2.2-3110(A)(5) (for an institution of higher education, an otherwise prohibited contract may be permitted if certain conditions are met, including disqualification of the official as a matter of public record, non-participation in the contract, and a written finding as a matter of public record by the president of the institution that the contract is in the best interests of the institution.) An advisory opinion process is available for guidance. *See* VIII(B), below.

VI. PROHIBITED CONDUCT RELATING TO TRANSACTIONS.

A. A transaction is any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated. VA. CODE ANN. § 2.2-3101.

B. An officer or employee has a personal interest in a transaction if the action being considered will apply to (or if it may produce a reasonably foreseeable financial impact on) the officer, employee, any member of his immediate family, or any individual, business, or property in which any of them have a personal interest or to which they provide services. *Id.*

C. If an official has a personal interest in a transaction, and if no exception applies, he shall disqualify himself from participating in the transaction. He must disclose on the record that he is disqualifying himself, and why. VA. CODE ANN. § 2.2-3112(A)(1). The specific content of the required disclosure is listed in VA. CODE ANN. § 2.2-3114(E).

D. Disqualification means that the official may not vote, may not act in any manner on behalf of his agency in the transaction, may not attend a closed session discussion of the matter, and may not discuss the matter with other governmental officers or employees at any time. VA. CODE ANN. § 2.2-3112(A)(1).

E. If the transaction affects a group of three or more of which the official is a member, and he believes he is able to participate in the transaction fairly, objectively, and in the public interest, then he may participate in the transaction, but only after disclosing his interest on the record. VA. CODE ANN. § 2.2-3112(A)(2). The specific content of the required disclosure is listed in VA. CODE ANN. § 2.2-3114(F).

F. If the transaction affects a party that is a client of the official's firm but the official does not personally represent or provide services to the client and he believes he is able to participate in the transaction fairly, objectively, and in the public interest, then he may participate in the transaction, but only after disclosing his interest on the record. VA. CODE ANN. § 2.2-3112(A)(3). The specific content of the required disclosure is listed in VA. CODE ANN. § 2.2-3114(G).

G. If the transaction affects the public generally, the official may participate without disclosure, if his personal interest is simply because he is a member of the public. VA. CODE ANN. § 2.2-3112(A)(4).

H. If an official is disqualified, he may still represent himself or a member of his immediate family, provided he does not receive compensation and makes all required disclosures. VA. CODE ANN. § 2.2-3112 (B).

VII. REGULAR DISCLOSURE. The Act requires certain officers and employees to file a disclosure of their financial interests as a condition to assuming office and regularly thereafter. VA. CODE ANN. § 2.2-3114(A) and (B). Officers and employees required to file either the long form or short form will be sent a copy of the required form by the Virginia Conflict of Interest and Ethics Advisory Council thirty days prior to the filing deadline. VA. CODE ANN. § 2.2-3114(C). The next filing deadline is January 15, 2016.

VIII. ENFORCEMENT.

A. A knowing violation of the Act is a Class 1 misdemeanor (subject to certain exceptions). VA. CODE ANN. § 2.2-3120. The officer may also be subject to forfeiture of office and a civil penalty "in an amount equal to the amount of money or thing of value received as a result of such violation." VA. CODE ANN. §§ 2.2-3122 and 2.2-3124. Enforcement against state officials shall be by the Attorney General. VA. CODE ANN. § 2.2-3126(A).

B. A state officer shall not be prosecuted if he acted in good faith reliance on an Opinion of the Attorney General or the Virginia Conflict of Interest and Ethics Advisory Council, and if the opinion was based on a written request with full disclosure of the facts. VA. CODE ANN. § 2.2-3121.

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