

Commonwealth of Virginia

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Virginia Conflict of Interest and Ethics Advisory Council

MEMORANDUM

TO: Virginia Conflict of Interest and Ethics Advisory Council

FROM: Rebekah Stefanski, Attorney

DATE: April 26, 2016

RE: Formal Advisory Opinion 2016-F-005 § 30-103.1 Lobbyist friends

QUESTIONS:

1. May an item given by a lobbyist to an individual who is required to file a Statement of Economic Interests ("a filer") be excluded from the definition of a gift pursuant to the personal friend exemption listed in clause (xiv) of the definition in §§ 2.2-3101 and 30-101?
2. Under what circumstances is a gift from a lobbyist to a filer excluded from the \$100 gift cap established in §§ 2.2-3103.1 and 30-103.1?
3. Under what circumstances is a filer required to report a gift from a lobbyist on his Statement of Economic Interests?

ANSWERS:

1. No. An item given by a lobbyist can never be excluded from the definition of a gift under the personal friend exemption.
2. A gift given by a lobbyist to a filer is not subject to the \$100 gift cap if the gift was given on the basis of a personal friendship, as determined by consideration of the factors set out in §§ 2.2-3103.1 and 30-103.1.
3. If a gift from a lobbyist meets certain reporting thresholds, the filer must disclose such gift on his Statement of Economic Interests.

APPLICABLE CODE:

§ 2.2-3101. Definitions.

As used in this chapter, unless the context requires a different meaning:

...

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. “Gift” does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, “relative” means the donee’s spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee’s or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee’s brother's or sister's spouse. For the purpose of this definition, “personal friend” does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist’s principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, “person,

organization, or business” includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

...

§ 2.2-3103.1. Certain gifts prohibited.

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F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of \$100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or 30-111.

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§ 2.2-3117. Disclosure form.

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STATEMENT OF ECONOMIC INTERESTS.

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SCHEDULE E - GIFTS.

List each business, governmental entity, or individual that, during the past six months, (i) furnished you or a member of your immediate family with any gift or entertainment at a single event, and the value received exceeded \$50 or (ii) furnished you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded \$50, and for which you or the member of your immediate family neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded \$50. Do not list business entertainment related to the private profession or occupation of you or the member of your immediate family who received such business entertainment. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2 of the Code of Virginia.

...

§ 30-101. Definitions.

As used in this chapter, unless the context requires a different meaning:

...

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. “Gift” does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of a legislator or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, “relative” means the donee’s spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee’s or his spouse’s parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee’s brother’s or sister’s spouse. For the purpose of this definition, “personal friend” does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 or (b) a lobbyist’s principal as defined in § 2.2-419.

...

§ 30-103.1. Certain gifts prohibited.

...

B. No legislator or candidate for the General Assembly required to file the disclosure form prescribed in § 30-111 or a member of his immediate family shall solicit, accept, or

receive any single gift for himself or a member of his immediate family 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 (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 or (ii) a lobbyist's principal as defined in § 2.2-419. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

...

E. Notwithstanding the provisions of subsection B, a legislator or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of \$100 from a person listed in subsection B if such gift was provided to the legislator or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B may be a personal friend of the legislator or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or §30-111.

...

§ 30-111. Disclosure form.

...

STATEMENT OF ECONOMIC INTERESTS.

...

SCHEDULE E - GIFTS.

List each business, governmental entity, or individual that, during the past six months, (i) furnished you or a member of your immediate family with any gift or entertainment at a single event, and the value received exceeded \$50 or (ii) furnished you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded \$50, and for which you or the member of your immediate family neither paid nor rendered services in exchange. List each such gift or event.

Do not list entertainment events unless the average value per person attending the event exceeded \$50. Do not list business entertainment related to the private profession or occupation of you or the member of your immediate family who received such business entertainment. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2 of the Code of Virginia.

...

DISCUSSION:

Question 1

As defined in §§ 2.2-3101 and 30-101, “gift” includes any “item having monetary value,” barring any of the exemptions listed in the definition. If an item given by a lobbyist has monetary value and does not fall into any of the exemptions to the definition of a gift, then it is a gift.¹ One such exemption provides that items from a personal friend are excluded from the definition. However, for purposes of this definition, a lobbyist or lobbyist’s principal may not be considered a personal friend.² Therefore, items from a lobbyist who is a filer’s personal friend are not exempt from the definition of a gift under the personal friend exemption.³

Question 2

Filers are prohibited from accepting gifts with a value of more than \$100 in a year from a lobbyist or lobbyist’s principal.⁴ However, a gift from a lobbyist who is a personal friend is exempt from the \$100 gift cap.⁵ In order to determine if a lobbyist qualifies as a personal friend for this exemption, the filer must consider several factors. These include:

- “(i) the circumstances under which the gift was offered;
- (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them;
- (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and
- (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or §30-111.”⁶

If the filer determines that his relationship with the lobbyist and the situation in which the gift is given qualifies the gift as from a personal friend, then the gift does not count toward the filer’s \$100 cap on gifts from that lobbyist.⁷

Question 3

Schedule E of the Statement of Economic Interests in §§ 2.2- 3117 and 30-111 requires a filer to “list each business, governmental entity, or individual” that gives him a gift with a value exceeding \$50 or a combination of gifts with a value exceeding \$50.⁸ The disclosure requirements of Schedule E direct filers to exclude gifts received from personal friends.⁹ While a lobbyist may be considered a personal friend for the purposes of the \$100 gift cap, he is not considered a personal friend for purposes of the definition

¹ §§ 2.2-3101 & 30-101

² §§ 2.2-3101 & 30-101

³ §§ 2.2-3101 & 30-101

⁴ §§ 2.2-3103.1 & 30-103.1

⁵ §§ 2.2-3103.1 & 30-103.1

⁶ §§ 2.2-3103.1 & 30-103.1

⁷ §§ 2.2-3103.1 & 30-103.1

⁸ §§ 2.2-3117 & 30-111

⁹ §§ 2.2-3117 & 30-111

of a gift.¹⁰ Accordingly, a filer must report gifts received from a lobbyist who is a personal friend if such gifts meet the monetary reporting threshold.

This analysis applies only to the stated facts. If the facts differ, the analysis will change.

¹⁰ §§ 2.2-3101, 2.2-3103.1, 30-101 & 30-103.1