

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-001 § 2.2-3101 Professional organization membership

QUESTIONS:

1. May an officer or employee of a state governmental or advisory agency or local governmental or advisory agency required to file a Statement of Economic Interests (“filer”) accept a complimentary annual membership in excess of \$100 in a Virginia professional or trade association that is a lobbyist’s principal, when such membership is offered only to certain filers who are members of the profession or trade represented by the association?
2. May a filer accept a discount on the annual membership fee in a Virginia professional or trade association that is also a lobbyist’s principal, when such discount is offered to all government officers and employees who are members of the profession or trade represented by the association, regardless of their office or position?

ANSWERS:

1. Complimentary membership in a professional organization offered only to certain types of filers because of their status as an officer or employee is a gift. Filers may not accept any gifts in excess of \$100 in a calendar year from a lobbyist’s principal.
2. Yes. Such a discount is related to the filer’s private occupation or profession and is therefore exempt from the definition of a gift.

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.

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§ 2.2-3103.1. Certain gifts prohibited.

...

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 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 (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 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 (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) 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.

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§ 2.2-3103.2. Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B or C of § 2.2-3103.1.

DISCUSSION:

Officers or employees of a state governmental or advisory agency or local governmental or advisory agency required to file a Statement of Economic Interests (“filers”) are prohibited from accepting in a calendar year any gift with a value, or gifts with an aggregate value, in excess of \$100 from a lobbyist, lobbyist’s principal, or an entity that is a party to or is seeking to become a party to a contract with the filer’s agency. A gift is “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”² If a filer receives anything of value over \$100 from a lobbyist, lobbyist’s principal, or an entity that is a party to or is seeking to become a party to a contract with the filer’s agency, he will be in violation of § 2.2-3103.1.

Question 1

Membership in a professional organization is an item of value and therefore qualifies as a gift.³ While membership in the organization is related to the filer’s private profession, the complimentary membership is offered to the filer because of his status as a certain officer or employee, not simply because of his private profession or occupation. Therefore, membership in such a professional organization is a gift.

If the professional organization is a registered lobbyist or lobbyist’s principal, then acceptance of a membership valued in excess of \$100 would violate § 2.2-3103.1. The filer may accept up to a \$100 discount on the membership fee (assuming he has not accepted any other gifts from the organization that count toward the monetary limit), but must pay for any value in excess of \$100.⁴

Question 2

Discounts are specifically included in the definition of a “gift.”⁵ However, gifts “related to the private profession or occupation of an officer or employee” are excluded from that definition.⁶ When such a discount is offered to all government officers and employees who are members of a profession or trade that an association represents, whether or not an individual officer or employee is a filer and regardless of the branch of government in which the officers and employees work or the capacity in which they serve, the discount is related to the individual’s private profession and not to his status as a certain officer or employee. Therefore, such discount on membership is not a gift, does not count toward the \$100 gift cap, and is not required to be reported on the filer’s Statement of Economic Interests.

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

¹ § 2.2-3103.1

² § 2.2-3101

³ § 2.2-3101

⁴ § 2.2-3103.2

⁵ 2.2-3101

⁶ 2.2-3101