

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-002 §§ 2.2-3114, 2.2-3115 & 2.2-3116
Departure filing

QUESTION: Are state and local filers who resign or vacate their position during a reporting period or prior to a filing deadline required to file a disclosure statement for the final reporting period during which they served?

ANSWER: No. The State and Local Government Conflict of Interests Act (the Act) applies only to current state and local officers and employees and certain constitutional officers.

APPLICABLE CODE:

§ 2.2-3114. Disclosure by state officers and employees.

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Virginia Alcoholic Beverage Control Board, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the Virginia Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is

specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before December 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § 2.2-3118.

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§ 2.2-3115. Disclosure by local government officers and employees.

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before December 15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117 semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before December 15.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

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§ 2.2-3116. (Effective from January 1, 2016, until July 1, 2016) Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. Candidates shall file statements as required by § 24.2-502. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

§ 2.2-3116. (Effective July 1, 2016) Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April. Candidates shall file statements as required by § 24.2-502. Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

DISCUSSION:

State officers and employees, local government officers and employees, and certain constitutional officers are required to file various disclosure statements pursuant to §§ 2.2-3114, 2.2-3115, and 2.2-3116. The filing deadlines for these forms vary depending on the applicable reporting period and which form the officer or employee is required to file.¹

Sections 2.2-3114, 2.2-3115, and 2.2-3116 all address state and local officers and employees. If an individual no longer holds his office or employment, then he is no longer an officer or employee. There is no mention in the Act of any requirements for former or retired officers or employees to file a disclosure statement.² Accordingly, the plain language of the Act does not apply to former or retired officers or employees.³ Therefore, if an individual is no longer an officer or employee at the time of the filing deadline, the reporting requirement no longer applies to him, and he is not required to file a disclosure statement.

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

¹ As of January 1, 2016

² It is evident that the General Assembly knows how to include such a requirement. See § 24.2-948.2 of the Campaign Finance Disclosure Act of 2006, which specifically requires a final report.

³ Virginia courts have held numerous times that the reader should not stray from the plain meaning of a statute unless such an interpretation would lead to an absurd result or there is ambiguity in the wording. See *Winston v. City of Richmond*, 196 Va. 403, 407 (1954); *Covel v. Town of Vienna*, 280 Va. 151, 158 (2010); *Bd. of Supervisors of Fauquier Cnty. v. Machnick*, 242 Va. 452, 456 (1991); *Lovisi v. Commonwealth of Virginia*, 212 Va. 848, 850 (1972); *Wright v. Commonwealth of Virginia*, 278 VA. 754, 759 (2009).