

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-003 §§ 2.2-3117 & 30-111 Board of directors filers

QUESTIONS:

1. Are individuals who are required to file a Statement of Economic Interests (“filers”) and who also serve on the board of directors of a private entity (“board”) required to report the value of meals and travel received in relation to board meetings?
2. Are such filers required to report any other things of value they receive from the entity in their role as a board member? Are such filers required to report transportation, lodging, and meals for yearly retreats relating to the industry and paid by the entity the board serves?

ANSWERS:

1. No. Meals and travel related to actual attendance at a board meeting and the value of which reasonably approximates the travel and expense costs incurred are intended as expense reimbursement rather than compensation for services rendered.¹
2. Yes. Remuneration, benefits, and other things of value received from the entity in connection with the filer’s service on the board that are not based on actual attendance at meetings and the value of which do not reasonably approximate travel and expense costs incurred are compensation. The filer should carefully consult the directions of Schedule A and Schedule G-3 of the Statement of Economic Interests to ensure that his service on the board and compensation from the entity are properly disclosed.

¹ 1989 Op. Atty Gen. Va. 6

APPLICABLE CODE:

§ 2.2-3117. Disclosure form.

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STATEMENT OF ECONOMIC INTERESTS.

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SCHEDULE A - OFFICES AND DIRECTORSHIPS.

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

...

SCHEDULE G-3 - PAYMENTS FOR OTHER SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses and for which total compensation in excess of \$1,000 was received during the past six months. Services reported in this Schedule shall not include services involving the representation of businesses that are reported in Schedule G-1 or G-2 above.

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§ 30-111. Disclosure form.

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STATEMENT OF ECONOMIC INTERESTS.

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...

DISCUSSION:

Question 1

Meals and travel that are related to actual attendance at a board meeting and have a value which reasonably approximates the travel and expense costs incurred are intended as expense reimbursement rather than compensation for services rendered.² Therefore, filers who serve on boards do not have to report meals received at or travel related to board meetings.

Question 2

When a filer sits on a board, he performs a service for the entity the board serves. Any remuneration or other benefits received from the entity by the filer related to his service on the board is in exchange for services rendered and is, therefore, compensation.³ As discussed above, compensation does not include meals and travel that are related to actual attendance at a board meeting and have a value which reasonably approximates the travel and expense costs incurred.⁴ However, other benefits and things of value received from the entity by the filer in connection to his service on the board that are not based on actual attendance at meetings and the value of which does not reasonably approximate travel and expenses incurred are compensation. This includes transportation, lodging, and meals for yearly retreats related to the industry the board serves and paid for by the entity. The filer should carefully consult the directions of Schedule A and Schedule G-3 of the Statement of Economic Interests to ensure that his service on the board and compensation for that service is properly disclosed.

² 1989 Op. Atty Gen. Va. 6

³ Black's Law Dictionary 301 (8th ed. 2004).

⁴ 1989 Op. Atty Gen. Va. 6

If a filer serves as an officer on the board and receives compensation, including remuneration and other benefits and things of value, for those services, he is a paid officer and should disclose such on Schedule A.⁵

If the total compensation, including remuneration and other benefits and things of value, the filer receives for his service on the board exceeds \$1,000, such compensation should be disclosed on Schedule G-3.⁶

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

⁵ § 2.2-3117 and 30-111

⁶ § 2.2-3117 and 30-111