

# 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-004 § 2.2-419 PACs associated with a lobbyist's principal

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**QUESTION:** A lobbyist's principal is affiliated with a political action committee (PAC). The PAC has its own tax identification number and files a tax return separate from that of the lobbyist's principal organization. May the PAC pay for individuals required to file a Statement of Economic Interests ("filers") to attend certain events or pay for filers' trips without violating the \$100 gift cap established in §§ 2.2-3103.1 and 30-103.1? The PAC does not employ any lobbyists, nor does it have any contracts with the filer's agency.

**ANSWER:** A PAC is its own entity, even if affiliated with an organization that is a lobbyist's principal. Therefore, if the PAC is not a 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, any gifts the PAC gives to a filer do not count towards the filer's \$100 gift cap.

**APPLICABLE CODE:**

**§ 2.2-419. Definitions.**

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

...

"Lobbyist's principal" or "principal" means the entity on whose behalf the lobbyist influences or attempts to influence executive or legislative action. An organization whose employees conduct lobbying activities on its behalf is both a principal and an employer of the lobbyists. In the case of a coalition or association that employs or retains others to conduct lobbying activities on behalf of its membership, the principal is the coalition or association and not its individual members.

...

**§ 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.

...

#### **§ 24.2-945.1. Definitions.**

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

...

"Political action committee" means any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate. The term shall not include a campaign committee, federal political action committee, out-of-state political committee, political party committee, referendum committee, or inaugural committee.

...

#### **§ 24.2-949.2. Statement of organization for a political action committee.**

A. Except as provided in subsection B or C, each political action committee that anticipates receiving contributions or making expenditures in excess of \$200 in a calendar year shall file with the State Board a statement of organization within 10 days after its organization, or if later, within 10 days after the date on which it has information that causes the committee to anticipate it will receive contributions or make expenditures in excess of \$200 or on which it otherwise becomes subject to the provisions of this chapter. Any change in information previously submitted in a statement of organization shall be reported to the State Board within 10 days following the change.

...

#### **§ 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.

...

#### **DISCUSSION:**

State and local officers and employees and legislators are prohibited from accepting a gift with a value or gifts with an aggregate value in excess of \$100 from a lobbyist or lobbyist's principal in a calendar year.<sup>1</sup> Additionally, state and local officers and employees are prohibited from accepting a gift with a value or gifts with an aggregate value in excess of \$100 from an entity that is a party to or is seeking to become a party to a contract with the filer's agency.<sup>2</sup> If a filer receives a gift or gifts valued 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 or 30-103.1.

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<sup>1</sup> §§ 2.2-3103.1 and 30-103.1

<sup>2</sup> § 2.2-3103.1

A PAC is defined as “any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.”<sup>3</sup> A PAC is required to file a statement of organization with the State Corporation Commission, file its own annual income tax returns, and have its own employer identification number.<sup>4</sup> Therefore, as evidenced by its structural requirements, a PAC is its own legal entity even if closely associated with another organization.

A lobbyist’s principal is defined as an “entity on whose behalf [a] lobbyist influences or attempts to influence executive or legislative action.”<sup>5</sup> If a PAC does not employ its own lobbyists, then it does not qualify as a lobbyist’s principal.<sup>6</sup> If a PAC is neither a lobbyist’s principal nor a party to or seeking to become a party to a contract with the filer’s agency, then the \$100 gift caps established in §§ 2.2-3103.1 and 30-103.1 do not apply. In that case, the PAC may pay for a filer to attend certain events or for a filer’s trip without violating either §§ 2.2-3103.1 or 30-103.1.

This analysis is in reference only to the \$100 gift cap, not to the reporting requirements. The filer must report any gifts from the PAC valued over \$50 or any combination of gifts from the PAC with an aggregate value over \$50 on his Statement of Economic Interests.

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

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<sup>3</sup> § 24.2-945.1

<sup>4</sup> § 24.2-949.2, see generally <https://www.irs.gov/Charities-&-Non-Profits/Political-Organizations/Filing-Requirements-1>

<sup>5</sup> § 2.2-419

<sup>6</sup> § 2.2-419