

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: David Cotter, Division of Legislative Services

DATE: April 26, 2016

RE: Formal Advisory Opinion 2016-F-008 § 30-103.1 & 30-111 Legislative organization conferences

QUESTION: Members of the General Assembly frequently attend meetings or conferences held by legislative organizations, such as the National Conference for State Legislatures or the American Legislative Exchange Council. The travel-related expenses of a member's attendance at such a meeting or conference may be paid by the Commonwealth, the legislative organization, or any combination thereof. Members also attend meetings or conferences for which the member's travel-related expenses are paid by a lobbyist or lobbyist's principal. Under what circumstances may a member accept the payment of such expenses and, if accepted, how are such payments disclosed by the member?

ANSWER: A member who attends a meeting or conference of a legislative organization shall disclose any travel-related expenses paid (i) by the Commonwealth on Schedule D-2 of the disclosure form and (ii) by the organization, provided that the member's attendance was related to his official duties, on Schedule D-1 of the disclosure form. In neither case is the member required to obtain approval from the Council for the acceptance of the payment of such travel-related expenses.

A member is required to obtain approval from the Council for the acceptance of a gift of travel, i.e., payment for the member's travel-related expenses of attendance, from a lobbyist or lobbyist's principal. As the Council only approves travel related to the official duties of a member, the acceptance of any gift of travel approved by the Council shall be disclosed on Schedule D-1 of the disclosure form.

APPLICABLE LAW AND DISCUSSION¹:

I. Meetings of Legislative Organizations

A. Travel Paid by the Commonwealth

¹ For purposes of this discussion, it will be assumed that the requisite threshold amounts for disclosure set forth in Va. Code § 30-111 have been met.

If, in his capacity as a legislator, a member of the General Assembly attends a meeting of a legislative organization and the member's expenses related to his attendance, including transportation, lodging, or any other thing of value, were paid by the Commonwealth, including expenses for which the Commonwealth reimbursed the member, the member must disclose these payments on Schedule D-2 of the disclosure form contained in Va. Code § 30-111.² Such disclosure is only required if the meeting is held outside the Commonwealth; Schedule D-2 specifically provides that payments by the Commonwealth for meetings or travel within the Commonwealth need not be disclosed.³

The member is not required to obtain approval of the Virginia Conflict of Interest and Ethics Advisory Council (the Council) before attending the meeting. A member is required to seek approval of travel from the Council only if the member, or a member of his immediate family, is prohibited under Va. Code § 30-103.1 from accepting gifts in excess of \$100 per calendar year from the person or entity paying for or providing the travel.⁴ This gift cap applies only to a registered lobbyist or a lobbyist's principal.⁵ The Commonwealth, obviously, falls into neither category.

As the member's expenses would be paid by the Commonwealth, the member is required to obtain approval of such expenses from the member's respective house through the processes established by such house for authorizing such payment.

B. Travel Paid by the Legislative Organization

If the member's travel-related expenses of attendance at a meeting of a legislative organization are paid by the legislative organization itself, these payments must also be disclosed by the member and, under most circumstances, would be disclosed on Schedule D-1 of the disclosure form.

Schedule D-1 is designed for the disclosure of payments received by a member for lodging, transportation, money, or any other thing of value in connection with a meeting or other event that is related to the member's duties as a legislator.⁶ Schedule D-1 sets forth three criteria for determining

² Schedule D-2 provides as follows:

List each meeting for which the Commonwealth provided payments or reimbursements during the past six months to you for lodging, transportation, money, or any other thing of value with a combined value exceeding \$100 for your participation in your capacity as a legislator. Do not list payments or reimbursements by the Commonwealth for meetings or travel within the Commonwealth.

Va. Code § 30-111(Schedule D-2).

³ *Id.*

⁴ Va. Code § 30-103.1(F).

⁵ Va. Code § 30-103.1(B).

⁶ Schedule D-1 provides as follows:

List each source from which you received during the past six months in your capacity as a legislator lodging, transportation, money, or any other thing of value with a combined value exceeding \$100 (i) for your presentation of a single talk, participation in one meeting, or publication of a work or (ii) for your attendance at a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as a legislator, including issues faced by your constituents, or (b) enhance your knowledge and skills relative to your duties as a legislator. Any lodging, transportation, money, or other thing of value received by a legislator that does not satisfy the criteria of clause (i), (ii)(a), or (ii)(b) shall be listed as a gift on Schedule E. Do not list payments or reimbursements by the Commonwealth. (See Schedule D-2 for such payments or reimbursements.) List a payment even if you donated it to charity. Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

whether travel paid for by another relates to a member's duties as a legislator.⁷ Such payments received by a member are to be disclosed on Schedule D-1 if such payments are:

- (i) for your presentation of a single talk, participation in one meeting, or publication of a work or (ii) for your attendance at a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as a legislator, including issues faced by your constituents, or (b) enhance your knowledge and skills relative to your duties as a legislator.⁸

It is difficult to envision a scenario in which a member's attendance at a meeting of a legislative organization would not satisfy at least one of these three criteria. Even if the member is not speaking at or otherwise participating in such a meeting in his capacity as a legislator, his attendance is likely intended to educate the member on relevant issues or enhance his knowledge or skills in relation to his official duties. Thus, in almost all cases a member would disclose on Schedule D-1 payments received from a legislative organization for the member's travel-related expenses of attendance at a meeting of the legislative organization. Only if the meeting is unrelated to a member's duties would the payments received by the member from the legislative organization be listed on Schedule E.⁹

Unless the legislative organization is either a registered lobbyist or a lobbyist's principal, the member is not required to obtain the approval of the Council before attending the meeting.¹⁰ Most legislative organizations, such as NCSL, fall into neither category.

Moreover, the source of the funds used by the legislative organization to pay for a member's travel expenses, including funds received by the organization from a registered lobbyist or a lobbyist's principal, does not affect this conclusion. Council approval of travel is required only if the person or entity paying for such travel is subject to the \$100 gift cap, i.e., is a registered lobbyist or lobbyist's principal.¹¹ The gift cap set out in Va. Code § 30-103.1 applies only to the maker of the gift. In the case of travel paid for by a legislative organization, the maker of the gift is necessarily the organization. Once funds are received by a legislative organization from any source, such funds are under the dominion and control of the organization, and only the organization is capable of making a gift of such funds.

II. Travel Paid for by a Lobbyist or Lobbyist's Principal

Subject to certain exceptions, members of the General Assembly are prohibited from accepting gifts in excess of \$100 per calendar year from a registered lobbyist or a lobbyist's principal.¹² However, a member may accept gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or any other thing of value, in excess of the gift limitation that is paid for or provided by a lobbyist or a lobbyist's principal if such travel has been approved by the Council.¹³

The Council is required to approve any travel "that bears a reasonable relationship between the purpose of the travel and the official duties of the requester[.]" including travel to any meeting, conference, or other event

- (i) composed primarily of public officials, (ii) at which public policy related to the duties of the requester will be discussed in a substantial manner, (iii) reasonably expected to educate the requester on issues relevant to his official duties or to enhance the requester's knowledge and

Va. Code § 30-111(Schedule D-1).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Va. Code § 30-103.1(F).

¹¹ Va. Code § 30-103.1(B).

¹² *Id.*

¹³ Va. Code § 30-103.1(F).

skills relative to his official duties, or (iv) at which the requester has been invited to speak regarding matters reasonably related to the requester's official duties.¹⁴

Va. Code § 30-103.1(F) expressly provides that any gift of travel approved by the Council must still be disclosed by the member on his or her disclosure form, but this section does not specify where on the disclosure form such a gift of travel should be disclosed.¹⁵ However, the statutory criteria employed by the Council to determine whether to allow the acceptance of a gift of travel from a lobbyist or lobbyist's clearly indicates where such a gift of travel would be properly disclosed.

The statutory criteria in Va. Code § 30-356.1(B) is readily comparable to the criteria set forth in Schedule D-1.¹⁶ In both cases, the fundamental determination is whether the payment of the member's travel-related expenses reasonably relates to his duties as a legislator. Thus, the two sets of criteria can reasonably be said to be coextensive. Thus, if the Council has approved travel provided to a member, such travel would be disclosed on Schedule D-1 of the disclosure form, and not on Schedule E.¹⁷

¹⁴ Va. Code § 30-356.1(B).

¹⁵ Va. Code § 30-103.1(F).

¹⁶ See Part I B, *infra*.

¹⁷ Va. Code § 30-111(Schedule D-1). In the event that the Council does not approve the member's acceptance of payment for the member's travel-related expenses of attendance from a lobbyist or lobbyist's principal, such gift would be reported on Schedule E of Va. Code § 30-111 and subject to the \$100 gift cap set forth in Va. Code § 30-103.1(B).