



## MEMORANDUM A

**To: Virginia Conflict of Interest and Ethics Advisory Council**

**From: Rebekah Stefanski, Attorney**

**Date: November 21, 2016**

**Re: Formal Advisory Opinion 2016-F-009 Employer gifts § 2.2-3101**

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### ISSUES PRESENTED:

You ask about a state employee who is required to file the Statement of Economic Interests (the filer) and who attends an event held by an organization with which his state agency has a contract. You state that an admission fee for the event is charged by the organization. The filer is representing the state agency at the event, but attendance at the event is not part of the employee's official duties listed in his job description.<sup>1</sup> The event is not a widely attended event as defined in the State and Local Government Conflict of Interests Act (the Act). You further state that the value of the filer's attendance, which includes food, beverages, and entertainment, exceeds \$20.

With these bases of fact, you first ask, if the state agency is a financial sponsor of the event and as a sponsor the state agency is entitled to have a number of its employees attend the event without payment of the admission fee, is the filer's attendance at the event a gift?

Next, you ask, if the state agency is a member of the organization and as a member the state agency is entitled to have a number of its employees attend the event without payment of the admission fee, is the filer's attendance at the event a gift?

### DISCUSSION:

In both situations presented, it is the filer's employer giving the employee entry to the event. Food, beverages, and entertainment are included in the definition of a "gift."<sup>2</sup> However, gifts "related to the private profession or occupation of an officer or employee" are excluded from that definition.<sup>3</sup> Therefore, attendance at such an event is not a gift.

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<sup>1</sup> You state that the filer's attendance at the event is not part of his official job duties. It is assumed that payment for the filer to attend the event by his agency is not a violation of Va. Code § 18.2-112.1, which prohibits the use of public assets for "purposes unrelated to the duties and office" of any officer, agent, or employee of the Commonwealth.

<sup>2</sup> VA. CODE ANN. § 2.2-3101. "'Gift' means any . . . entertainment . . . It includes . . . meals . . ."

<sup>3</sup> *Id.*

**CONCLUSION:**

Because entry to the event is offered by the filer's employer, the employee's attendance at such an event is not a gift because it is related to his private occupation or profession.

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