



MEMORANDUM C

To: Virginia Conflict of Interest and Ethics Advisory Council

From: Rebekah Stefanski, Attorney

Date: November 21, 2016

Re: Formal Advisory Opinion 2016-F-011 Events at conferences §§ 2.2-3101 & 2.2-3103.1

ISSUES PRESENTED:

You ask about a state employee who is required to file a Statement of Economic Interests. (the filer). You state that as part of his official job duties listed in his job description, the filer attends a conference at which more than 25 individuals attend and which concerns issues of interest to the attendees. The state agency pays the registration fee for the employee's attendance at the conference. You further state that in connection with the conference, an event is held by an entity with which the filer's state agency has a contract and that no separate fee is charged for admission to the event. Finally, you state that the value of the employee's attendance at the event, which includes food, beverages, and entertainment, exceeds \$20.

You then pose five sets of questions based on slight variations in this scenario. First, you ask, if the event host is also the organizer of the conference and the event is a component of the conference and, as such, is open to all attendees at the conference, is the filer's attendance at the event a gift? If the filer's attendance is valued at over \$100, is the acceptance of such a gift permissible under the State and Local Government Conflict of Interests Act (the Act)?

Second, you ask, if the event host is not the organizer of the conference but the event is a component of the conference and, as such, is open to all attendees at the conference, is the filer's attendance at the event a gift? If the filer's attendance is valued at over \$100, is the acceptance of such a gift permissible under the Act?

Third, you ask, if the event is not a component of the conference but is open by invitation from the event host to all attendees at the conference, is the filer's attendance at the event a gift? If the filer's attendance is valued at over \$100, is the acceptance of such a gift permissible under the Act?

Fourth, you ask, if the event is not a component of the conference and attendance at the event is by invitation only from the event host to 25 or more attendees of the conference, is the

filer's attendance at the event a gift? If the employee's attendance is valued at over \$100, is the acceptance of such a gift permissible under the Act?

Lastly, you ask, if the event is not a component of the conference and attendance at the event is by invitation only from the event host to fewer than 25 attendees of the conference, is the filer's attendance at the event a gift? If the filer's attendance is valued at over \$100, is the acceptance of such a gift permissible under the Act?

DISCUSSION:

In your first set of questions, the event is a component part of the conference, for which the filer's state agency paid his attendance. For an analysis on gifts given to a state employee by his employer, please refer to Formal Advisory Opinion 2016-F-009 issued by this Council, which addresses such situations.¹

In your second set of questions, you state that the event host is not the same entity that is organizing the conference but that the event is still a component part of the conference. However, while the event may be associated with the conference, if the conference and the event are hosted by and paid for by two separate entities, they are two separate events. In such a scenario, the event cannot be a component part of the conference.

In the next three scenarios you present, you state that the event is not a component part of the conference and is therefore separate from the conference. For the purposes of this analysis, your assertion that the event is not a component part of the conference is assumed to be correct and that the event host and the organizer of the conference are not the same entity. Food, beverages, and entertainment are included in the definition of a "gift."² As you have indicated that this event includes these items, attendance at the event is a gift.

Filers are prohibited from accepting in a calendar year any gift with a value, or gifts with an aggregate value, in excess of \$100 from a lobbyist, 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 (a contractor).³ If a filer receives anything of value over \$100 from a lobbyist, lobbyist's principal, or contractor, he will be in violation of § 2.2-3103.1 of the Code of Virginia. In this case, you stated that the event host is a contractor with the filer's agency. However, food, beverages, entertainment, and the cost of admission received at a widely attended event are exempted from this \$100 cap.⁴

A widely attended event is one "at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event" and the event is open to individuals who share a common interest, are members of a public, civic, charitable, or professional organization, are from a particular industry or profession, or represent persons

¹ Additionally, Va. Code § 2.2-3103 (1) states that a state employee may not "[s]olicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee." This language leads to the conclusion that such employees are thus allowed to accept compensation, expenses, and remuneration paid for by their employers for the performance of their official duties.

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

³ VA. CODE ANN. § 2.2-3103.1.

⁴ *Id.* "[S]uch officer, employee, or candidate or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of \$100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event."

interested in a particular issue.⁵ If a reception or dinner meets this standard, then it is a widely attended event. While it cannot be assumed, it is likely that if an event is open to all individuals attending the same conference, then 25 or more persons are expected to attend and the event is one that is open to individuals who all share a common interest in the topics that are the core focus of the conference.

The definition of a widely attended event does not require an event to be open to the public in order to qualify as such.⁶ The event must simply be “open to individuals” who share a common interest, are members of a public, civic, charitable, or professional organization, are from a particular industry or profession, or represent persons interested in a particular issue.⁷ Therefore, if the event is open to individuals who fit one of those categories and it is attended or expected to be attended by at least 25 persons, then it qualifies as a widely attended event.

If an event is a widely attended event, then it is exempted from the \$100 cap of § 2.2-3103.1. Therefore, a state filer may attend such an event without the event counting toward his gift cap from the entity that is sponsoring the event.

Using these standards for determining whether an event qualifies as a widely attended event, it is likely that the third and fourth scenarios you have described would meet those standards. In both, at least 25 persons have been invited or expected to attend, and the event is open to individuals who presumably have a common interest in the subject of the conference.

In your fifth and final scenario, there are fewer than 25 persons invited to attend the event. You do not indicate if 25 persons are expected to attend the event, but this analysis assumes there are not. If an event is not attended by or expected to be attended by at least 25 persons, it cannot qualify as a widely attended event.⁸ Therefore, the exception to the \$100 gift cap would not apply. However, nothing prohibits a filer from attending such an event if the value of his attendance does not exceed \$100 worth of gifts, not exempted from the cap, received from the same entity in a year. If the value of the filer’s attendance at the event exceeds \$100, in order to comply with the gift cap, he may reimburse the event host the amount over \$100.⁹ Alternatively, the filer may reimburse the event host for the entire value of his attendance, which would negate both the application of the \$100 gift cap and the filer’s requirement to report the gift.

CONCLUSIONS:

In summary, attendance at an event given by a state employee’s employer is not a gift as it is related to his private occupation or profession. If two events are hosted and paid for by two

⁵ *Id.*

⁶ VA. CODE ANN. § 2.2-3103.1. “Widely attended event’ means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent persons interested in a particular issue.”

⁷ *Id.*

⁸ *Id.*

⁹ VA. CODE ANN. § 2.2-3103.2. “No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if . . . (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B or C of § 2.2-3103.1.”

separate entities, they are two separate events and one cannot be a component part of the other. A filer is permitted to accept a gift of attendance at a widely attended event even if the value of his attendance exceeds \$100. If a filer attends an event of an entity to which the \$100 gift cap applies and no exceptions to the definition of a gift or the \$100 gift cap apply, the filer will be in violation of the Act if the value of his attendance at that event exceeds \$100.

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