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To: Virginia Conflict of Interest and Ethics Advisory Council

From: Rebekah Stefanski, Attorney

Date: November 21, 2016

Re: Formal Advisory Opinion 2016-F-012 Service on a private board § 2.2-3101

ISSUES PRESENTED:

You state that a state employee who is required to file a Statement of Economic Interests (the filer) serves as a member of the board of an entity with which his state agency has a contract. You further state that the entity pays for or reimburses the filer for his food, beverages, and travel in connection with the meetings of the board, the total value of which exceeds \$20.

You then pose four questions based on slight variations in this scenario. For the first case, you state that the filer's service on the board is part of his official job duties listed in his job description. You then ask if it is permissible under the State and Local Government Conflict of Interests Act (the Act) for the filer to accept the food, beverages, and travel.

For the second case, you state that the board seat is designated by the entity to be filled by an employee of the state agency. You then ask if it is permissible under the Act for the filer to accept the food, beverages, and travel.

For the third case, you state that the filer serves on the board because of his personal interest in the entity and its activities and that his service on the board is not part of his official job duties with his state agency. You then ask if it is permissible under the Act for the filer to accept the food, beverages, and travel.

For the fourth case, you state that the board is composed of at least 25 members who are invited to attend. You then ask if it is permissible under the Act to accept the food, beverages, and travel.

DISCUSSION:

In your first and second cases, you state that the filer serves on the board as a result of his employment with his agency. Travel related to an official meeting of an entity to which a filer "has been appointed or elected by virtue of his office or employment" is specifically excluded

from the definition of a gift.¹ Therefore, the travel, which includes associated food and beverages, paid by the entity for the filer's attendance at a board meeting is excluded from the definition of a gift, and nothing prohibits the filer from accepting such payments.

In your third case, you state the filer is not a member of the board due to his office or employment. As previously held by this Council, the 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. For a more in-depth analysis on gifts given to a filer due to his service on a private board, please refer to Formal Advisory Opinion 2016-F-003 issued by this Council.

Your fourth case addresses the size of the board. This information does not affect the above analysis, as your first three cases address all possible bases of the filer's service on the board.

CONCLUSION:

In summary, travel related to an official meeting of an entity of which a filer is a member due to his employment is not a gift, and a filer may accept such travel. If the filer is not a member of the board as a result of his employment position, then 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. Finally, the number of persons serving on the board has no effect on these determinations, as it is not necessary to apply the widely attended event exception to the travel that a filer receives due to his service on a private board.

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

¹ VA. CODE ANN. § 2.2-3101 “‘Gift’ does not include . . . travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment;”