



MEMORANDUM F

To: Virginia Conflict of Interest and Ethics Advisory Council

From: Rebekah Stefanski, Attorney

Date: November 21, 2016

Re: Formal Advisory Opinion 2016-F-014 Food received at an event while performing official duties § 2.2-3101

ISSUES PRESENTED:

You state that a state employee who is required to file a Statement of Economic Interests (the filer) is provided a meal, the value of which exceeds \$20, during a meeting with an entity with which his state agency has a contract. You also state that the purpose of the meeting is to discuss matters that relate to the activities of the filer's state agency that are within the scope of his job duties. Finally, you note that other individuals, including interested parties who are not employees of the state agency or the entity, attend the meeting.

You then pose two questions based on slight variations in this scenario. First, you ask if it is permissible under the State and Local Government Conflict of Interests Act (the Act) for the filer to accept the meal if fewer than 25 persons are present for the meeting.

Second, you ask if it is permissible under the Act for the filer to accept the meal if at least 25 persons are present for the meeting.

DISCUSSION:

Meals are included in the definition of a gift in § 2.2-3101 of the Code of Virginia.¹ However, "food or beverages consumed while attending an event at which [a] filer is performing official duties related to his public service" are specifically excluded from that definition.²

In the scenario you've described, you state that the filer is attending the meeting at which the meal is served to "discuss matters that relate to . . . his job duties." Based on the facts you've provided, it appears that attendance at the meeting in question is necessary for the filer to adequately perform essential requirements of his job at his state agency. Therefore, the meal that the filer receives at the meeting is not a gift.

¹ VA. CODE ANN. § 2.2-3101.

² *Id.*

Because the meal is not a gift, the \$100 gift cap established in § 2.2-3103.1 of the Code of Virginia does not apply, and it is not necessary to apply any exceptions to that cap. Therefore, the number of persons invited to or expected to attend the meeting has no effect on this analysis.

CONCLUSION:

Meals received at an event at which a filer is performing official duties related to his public service are not gifts. At such an event, the number of persons invited or expected to attend has no effect on whether or not such items qualify as a gift.

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