



MEMORANDUM

To: Virginia Conflict of Interest and Ethics Advisory Council

From: G. Stewart Petoe, Executive Director

Date: October 17, 2017

Re: Formal Advisory Opinion 2017-F-003 Purchase of real estate at tax auction by employee of the locality §§ 2.2-3109, 2.2-3110

ISSUE PRESENTED

Your question is whether it is a violation of the State and Local Government Conflict of Interests Act for an employee of a locality to purchase real estate at a delinquent tax sale auction that is being conducted by or on behalf of the locality. You specify that the employee is neither a constitutional officer for that locality nor an elected or appointed member of the governing body of the locality. You also indicate that the auction is public and does not involve sealed bids and that the employee is not involved in the sale in any way on behalf of the locality.

DISCUSSION

The State and Local Government Conflict of Interests Act (COIA) generally prohibits any local officer or employee from having “a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.”¹ He also may not

have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.²

¹ VA. CODE § 2.2-3109(A) (2017).

² VA. CODE § 2.2-3109(B) (2017).

However, there are a number of exceptions to these prohibitions. One of them is

the sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof.³

The plain meaning of this provision is that none of the prohibitions on personal interests in contracts contained in COIA applies to “the sale, lease or exchange of real property between an officer or employee and a governmental agency...” It is significant that the real estate exception is worded as applying to sales, leases or exchanges of property *between* officers or employees and governmental agencies, and therefore is not limited to sales, leases or exchanges *by* an officer or employee *to* a governmental agency.⁴ Therefore, under COIA, it is not a violation for a local employee to purchase real estate at a delinquent tax sale auction, as you describe, provided that the employee was not involved in the sale “in any way” as an employee of, or acting on behalf of, the locality.⁵ This fact must be set forth as a matter of public record as required by statute after the employee wins the public auction.

CONCLUSION

Accordingly, it is not a violation of the State and Local Government Conflict of Interests Act for an employee of a locality to purchase real estate at a delinquent tax sale auction that is being conducted by or on behalf of the locality, provided that the requirements of § 2.2-3110(A)(1) are followed: The employee must not participate in any way as an employee of the locality in the sale or auction, and this fact is set forth as a matter of public record by the governing body of the locality or by the administrative head thereof.

³ VA. CODE § 2.2-3110(A)(1) (2017).

⁴ When statutory language is unambiguous and does not lead to absurd results, a statute may not be interpreted “in a way that effectively holds that the General Assembly did not mean what it actually expressed.” *Hicks v. Mellis*, 275 Va. 213, 218 (2008).

⁵ It should be noted that when the original Virginia Conflict of Interests Act was enacted in 1970, it was not permissible for an officer or an employee to purchase or lease real property from his own agency. *See* 1973 Op. Va. Att’y Gen. 354. However, the General Assembly has since amended COIA, making the real estate exception applicable to purchases and leases as well as sales of real estate by officers and employees and their own agencies. *Compare* VA. CODE § 2.1-349(b)(1) (1970) (exception applies only to paragraphs (1) and (2) of subsection (a) of this section), *with* VA. CODE § 2.2-3110(A)(1) (2017) (exception applies to all of the substantive provisions of Article 3 (§ 2.2-3106 et seq.) of Chapter 31 of Title 2.2 of the *Code of Virginia*).