



VIRGINIA

CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

2019

Annual Report

Pete W. Stout, III
Chair

G. Stewart Petoe
Executive Director



Pocahontas Building
900 E. Main St., 8th Floor
Richmond, VA 23219
(Phone) 804-698-1810
ethics@dls.virginia.gov

November 19, 2019

TO: The Honorable Ralph Northam, Governor of Virginia
Members of the General Assembly of Virginia

Pursuant to the provisions of § 30-356 of the *Code of Virginia*, establishing the powers and duties of the Virginia Conflict of Interest and Ethics Advisory Council, and as specifically mandated by subdivision 13 of that section, I have the honor of submitting herewith the Council's annual report.

Very truly yours,

The Honorable Pete W. Stout, III, Judge (Ret.), Chair

ANNUAL REPORT

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Authority of the Virginia Conflict of Interest and Ethics Advisory Council

Established in 2015, the Virginia Conflict of Interest and Ethics Advisory Council (the Council) was created as “an advisory council in the legislative branch to encourage and facilitate compliance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) (hereafter the Acts) and the lobbying laws in Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 (hereafter Article 3).”¹ Pursuant to § 30-356 of the *Code of Virginia*, the Council is tasked with furnishing formal advisory opinions or guidelines and other appropriate information, including informal advice, as well as conducting training on the laws under its purview and establishing a method for the filing of disclosure forms.

The Council is composed of the following nine members: two delegates and a former judge of a court of record appointed by the Speaker of the House of Delegates; two senators and a former judge of a court of record appointed by the Senate Committee on Rules, and three gubernatorial appointees, one of whom is a current or former executive branch employee, one of whom is selected from a list of three nominees submitted by the Virginia Association of Counties, and one of whom is selected from a list of three nominees submitted by the Virginia Municipal League. In the appointment of both the delegates and the senators, “equal representation shall be given to each of the political parties having the highest and next highest number of members elected to their respective body.”² All of the Council members “are subject to confirmation by the General Assembly by a majority vote in each house of (i) the members present of the majority party and (ii) the members present of the minority party.”³

¹ Subsection A of Va. Code § 30-355.

² Subsection B of Va. Code § 30-355.

³ *Id.*

Members of the Virginia Conflict of Interest and Ethics Advisory Council

The Speaker of the House of Delegates Appointees

The Honorable C. Todd Gilbert

Senate Committee on Rules Appointees

The Honorable Pete W. Stout, III, Chair

The Honorable Janet D. Howell

The Honorable Thomas K. Norment, Jr.

The Governor's Appointees

Walter C. Erwin

Bernard L. Henderson, Jr.

Sharon E. Pandak

Council Staff

G. Stewart Petoe, Executive Director

Rebekah Stefanski, Attorney

Elizabeth Sundberg, Filing Coordinator

Valerie Mizzell, Assistant

2019 Summary of Activities

Meetings

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) met on November 19, 2019.

At this meeting, the Council approved two new official procedures related to the destruction of disclosure forms filed with the Council. **[This description is subject to change based upon the Council's final deliberations on the subject]**. All forms will be kept for five years and will then be destroyed on or as soon as practicable after the Council publishes the current year's annual filings. In this way, all forms scheduled for deletion will be destroyed at one time, and the public will know that after a certain date, forms older than five years will no longer be available.

The second official procedure concerns disclosure forms that are erroneously filed with the Council. **[This description is subject to change based upon the Council's final deliberations on the subject]**. If the official or employee's agency contacts the Council in writing before the form is published, stating that the official or employee should not have filed a disclosure form, then the form will not be published and immediately will be deleted. However, if notification from the agency is received after the form has been published, the form will be subject to the standard five year destruction schedule for all regularly filed forms.

Finally, pursuant to the directives of subdivision 13 of § 30-356, the Council considered two proposals for legislative changes that were presented by staff. After deliberation, the Council voted to **[recommend/reject]** the proposals. The proposals are provided on page 8 of this report.

Formal Opinions and Informal Advice

In 2019, the Council did not receive any requests for Formal Advisory Opinions. Throughout the course of the year, Council staff answered in excess of 2,813 phone calls and responded to more than 6,641 email inquiries for informal advice or other help. (By comparison, in 2018, the Council received approximately 3,200 phone calls and responded to approximately 5,800 emails; in 2017, the Council received approximately 3,100 phone calls and responded to more than 5,400 email inquiries). Council staff responses included the following subject areas: acknowledgement of emails and receipt of lobbyist registrations and disclosures; help with filling out disclosure forms; guidance as to whether certain activities constituted lobbying such that registration as a lobbyist would be required; guidance as to whether particular gifts could be lawfully accepted and how they should be reported; and answers to conflict of interest questions, such as whether it would be lawful for a person to vote on a particular matter or whether a family member could have a contract with a particular agency. Pursuant to subdivision 6 of § 30-356, all informal advice provided by the Council is confidential.

Training Seminars and Educational Programs

Pursuant to subdivision 7 of § 30-356, the Council is directed to conduct training seminars and educational programs for lobbyists, state and local government officers and employees, legislators, and other interested persons on the subject of Virginia's lobbying laws and the Conflict(s) of Interests Acts. Much of the Council's efforts this past year have involved training on the subject of the State and Local Government Conflict of Interests Act (COIA).

In 2019, the General Assembly enacted § 2.2-3132, which mandates that all local elected officials must receive training on COIA. This training must be provided by the Council. All local elected officials who are in office on July 1, 2019, must complete this training by December 31, 2019; all local elected officials who assume office after July 1, 2019, must complete the training within two months of assuming office, similar to the deadline requirement for state officials and employees. Thereafter, every local elected official must receive a training provided by the Council every two years.

Recognizing that this new requirement for local elected officials would mean the Council would be responsible for several thousand trainings between July 1 and December 31 of 2019, a new online training module specifically created for local officials was posted on the Council's website on June 30, 2019. This training followed the format of the Council's existing online modules for state officials and employees and members of the General Assembly.

As of October 28, 2019, 1,578 people had taken the Council's online training for local officials. Another 3,033 people had taken the Council's online training for state officials and employees. This compares with 2,789 people who took the Council's online training for state officials and employees in 2018, and 3,591 people who took that online training in 2017.

To help meet the new training requirements, Council staff also conducted 40 live training sessions throughout Virginia. (By way of comparison, Council staff conducted 20 live training sessions in 2018).

The groups and organizations for which training was provided in 2019 included:

- The Judicial Conference of Virginia for District Court Judges
- The Judicial Conference of Virginia for Circuit Court Judges
- The Office of the Executive Secretary of the Supreme Court of Virginia (Substitute Judges and New Judges trainings)
- The Commonwealth's Attorneys Services Council
- The Virginia Sheriffs' Association
- The Virginia Sheriffs' Institute New Sheriffs' School
- Commissioners of the Revenue Association of Virginia (regional meeting)
- The Virginia Economic Development Partnership Authority
- The Commonwealth Regional Council
- The Virginia Tourism Board
- The Virginia Association of Counties
- The Virginia Soil and Water Conservation Board
- The Colonial Heights School Board
- The City Council of Hampton
- The City Council of Petersburg
- The Virginia Association of School Boards
- The Town Council of Berryville
- The Town Council of Strasburg
- The Town Council of Bedford
- The Board of Supervisors for Floyd County
- Members of the Senate of Virginia
- Members of the Virginia House of Delegates
- Virginia Senate Legislative Assistants
- Virginia House of Delegates Legislative Assistants
- The Governor's Office

In addition, Council staff's biggest initiative in 2019 has been the development of more robust online training modules. After identifying the needs of both the Council and officials and employees throughout the state, it was determined that the following qualities were most critical for the training platform itself:

- Affordability
- Flexibility and agility
- Ease of use when making modifications
- Better customized training reports
- Continued ability of staff to maintain control over the system, rather than outsource this to a third party developer

Recognizing that the audience for these modules is quite diverse in regards to technological aptitude and access to the Internet, as well as education and understanding of legal terms, the

new modules were developed with the overall goal of making them easier to follow and understand. Adult learning strategies were implemented to enhance the education process of each module. More real-life examples are now included, better graphics are used, and parts of the training have been re-ordered so that previously covered concepts are built upon in later portions of the presentation. The new modules are more interactive and there is a greater focus on practical applications, with less emphasis on obscure points that are not relevant to the majority of viewers. The trainings continue to stress the importance of contacting the Council when officials and employees find themselves with questions about the applicability of the law, particularly in regards to personal interests in contracts and personal interests in transactions. They now specifically address issues and questions that staff regularly encounters during filing periods, such as the applicability of the gift cap and the reporting of gifts and travel. A glossary of frequently used terms is accessible throughout the presentation, and direct links to the Code sections being discussed and the Council's existing filing guides are provided.

Disclosure and Registration Filings

The Council receives disclosure filings from all members of the General Assembly, all district and circuit court judges, the Governor, the Lieutenant Governor, the Attorney General, all constitutional officers, and all state officers and employees who are required to file. Executive branch board appointees are also required to file their Financial Disclosure Statements with the Council. The total number of individuals in Virginia who filed directly with the Council as of November 1, 2019, was approximately 11,744. Of these, 8,762 were Statements of Economic Interests and 2,982 were Financial Disclosure Statements. These figures are very close to the number of forms received in all of 2018: 8,749 Statements of Economic Interests and 3,337 Financial Disclosure Statements, for a total of 12,086 forms submitted.

In addition, the Council also received 2,537 lobbyist registrations and approximately the same number of lobbyist disclosure reports for the lobbying registration cycle of May 1, 2018 through April 30, 2019. This number is similar to the number of lobbyist registrations received during the previous lobbying registration cycle; 2,366 lobbyist registrations were received between May 1, 2017 and April 30, 2018. All disclosures and registrations filed with the Council are submitted electronically, using the Council's online filing system.

Travel Waivers

The Council received and approved approximately 95 requests for travel waivers in 2019, submitted pursuant to subsection G of § 2.2-3103.1, subsection F of § 30-103.1, and § 30-356.1. There were approximately 29 additional requests for travel waivers that were submitted but were subsequently determined to have been incorrectly filed, as the anticipated travel was not being paid for by a lobbyist, a lobbyist's principal, or a person or entity that had a contract with, or was seeking a contract, with the requestor's agency. For these 29 requests, the person making the request was contacted and informed that a travel waiver was not needed.

Recommendations for Changes in the Laws

Pursuant to subdivision 13 of § 30-356, the Council shall include in its annual report “recommendations for changes in the laws.” Staff presented two possible legislative changes to the Council.

Proposal 1: Amend subdivision 12 of § 30-355 to authorize the Council to redact email addresses from any document or form that is to be made available to the public. (The Council already redacts personal telephone numbers, residential addresses, and signatures).

After consideration, the Council voted to [**Approve/Reject**] this proposal.

Proposal 2: Amend §§ 2.2-3104.02 and 30-103 to make clear that the Council is authorized to provide advisory opinions to constitutional officers and legislators on whether future employment opportunities are permissible under Virginia's "revolving door" statutes. The Council is already authorized to provide guidance and opinions on all matters relating to the Conflict(s) of Interests Acts and is specifically authorized under § 2.2-3104 to provide advisory opinions to state officials and employees on the permissibility of future employment opportunities.

After consideration, the Council voted to [**Approve/Reject**] this proposal.

Conclusion

Throughout 2019, the Council continued its regular operations. No requests for Formal Advisory Opinions were received this year. This may reflect the fact that in its first two years of existence, the Council provided Opinions on most of the main topics for which officials and employees have questions concerning Virginia’s Conflict(s) of Interests Acts. The Council continues to be a resource for all state and local officials and employees as well as legislators; the total number of phone inquiries received by Council staff decreased slightly from last year, while the number of emails received increased by over 800. In addition, to assist with the new legislative requirement that all local elected officials receive training on the Conflict of Interests Act this year, staff conducted double the number of live presentations throughout the Commonwealth, compared with last year.

The Council looks forward to continuing to serve the needs of state and local officials and employees and registered lobbyists throughout the Commonwealth for all matters related to the Conflict(s) of Interests Acts and Virginia’s lobbying laws.

The Council would like to thank all who have participated in the work of the Council throughout the year.