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## MEMORANDUM

**To: Virginia Conflict of Interest and Ethics Advisory Council**

**From: G. Stewart Petoe, Executive Director**

**Date: November 18, 2020**

**Re: Formal Advisory Opinion 2020-F-001 Applicability of Restrictions on Gifts Made by a Locality That Is a Lobbyist's Principal to Members of the Governing Body**

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### ISSUE PRESENTED

Your question relates to the applicability of the various restrictions on gifts given by lobbyist principals to officers required to file a Statement of Economic Interests, in situations where the lobbyist's principal is a locality and is giving a gift to a member of the governing body of that locality.

You ask whether or not the restrictions and reporting requirements found in the State and Local Government Conflict of Interests Act would apply in this situation. Your assertion is that they would not apply; the members of the governing body cannot be restricted nor prohibited from receiving gifts from the locality, because those gifts are coming from itself. In support of this interpretation, you point out that the charter of the locality vests all of the powers of the locality in its governing body, except as otherwise provided for in the charter. You provide one hypothetical example, in which the locality might purchase tickets to an event sponsored by the locality, and then provide those tickets to the members of the governing body.

### DISCUSSION

The State and Local Government Conflict of Interests Act (COIA) provides restrictions on the acceptance of gifts by state and local government officers and employees. In particular, no officer or employee of a local governmental agency who is required to file the disclosure form prescribed in § 2.2-3117 (the Statement of Economic Interests) may receive any single gift or combination of gifts with a value in excess of \$100 within any calendar year for himself or a member of his immediate family from a lobbyist's principal as defined in § 2.2-419.<sup>1</sup> There are exceptions to this

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<sup>1</sup> VA. CODE § 2.2-3103.1 (B) (2020).

general prohibition.<sup>2</sup> Further, COIA defines the term "gift" as excluding certain things altogether.<sup>3</sup> There are reporting requirements for gifts from lobbyists' principals as well; the disclosure form prescribed in § 2.2-3117 requires that gifts with an aggregate value of more than \$50 given by a lobbyist's principal be disclosed.<sup>4</sup>

In the situation you have outlined, a locality has hired a lobbyist to represent the interests of the locality, and is therefore a lobbyist's principal as that term is defined in § 2.2-419. COIA does not provide an exception from any of the restrictions, prohibitions, or reporting requirements for gifts that come from an agency to its own officers or employees. Therefore, if any governmental agency, including a locality, is a lobbyist's principal, the restrictions of § 2.2-3103.1 must apply.<sup>5</sup>

It is a legal impossibility for a person (or entity) to give a gift to himself.<sup>6</sup> Accordingly, if a locality and the members of its governing body were legally one and the same, the restrictions on gifts in COIA would not be applicable; indeed, nothing given by the locality to the members of its governing body could ever be considered a gift. However, this is not the case. Under Virginia law, a locality is not necessarily identical to its governing body.<sup>7</sup> Under the definitional section of COIA, while a "governmental agency" includes the governing body of a locality, the term "officer" is defined separately as "any person appointed or elected to any governmental or advisory agency, including local school boards."<sup>8</sup> The General Assembly, in enacting the statutes of COIA, recognized a distinction between governmental agencies and the officers who are elected or appointed to serve on those governmental agencies. While the powers of the locality may be vested in its governing body,<sup>9</sup> that is not the same thing as the locality being identical to the governing body. Thus, the elected members of the governing body are not exempt from any restrictions or reporting requirements for gifts that they receive from their own locality that they would otherwise be required to observe if such gifts came from a different lobbyist's principal.

This analysis is applicable only to gifts. It has no applicability to the salaries or other compensation that is regularly paid to the members of governing bodies. Addressing the hypothetical posed in your inquiry, in which a locality purchases tickets for an event sponsored by the locality and then distributes them to members of the governing body, not enough specific information has been provided to fully evaluate this scenario. However, if the tickets actually are a gift, as the hypothetical assumes, then the requirements of COIA will be applicable.

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<sup>2</sup> See, e.g. VA. CODE § 2.2-3103.1 (D) (2020) (exception for widely attended events).

<sup>3</sup> VA. CODE § 2.2-3101 (2020). For example, a gift does not include "(xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state;" or "(xv) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered."

<sup>4</sup> VA. CONFLICT OF INTEREST & ETHICS ADVISORY COUNCIL, STATE AND LOCAL STATEMENT OF ECONOMIC INTERESTS, SCHEDULE G (2020).

<sup>5</sup> For purposes of COIA, the term "governmental agency" includes "each component part of the legislative, executive or judicial branches of state and local government." VA. CODE § 2.2-3101 (2020).

<sup>6</sup> Among the requirements for a valid gift is for title to the property to transfer from the donor to the donee at the time of the gift. Rust v. Phillips, 208 Va. 573, 578 (1968), Thomas v. First Nat'l Bank, 166 Va. 497, 504 (1936). There would be no change in title if the donor and the donee were the same.

<sup>7</sup> Miller v. Highland County, 274 Va. 355, 364-65 (2007) ("we conclude that the governing body of a locality is a distinct legal entity authorized in Title 15.2 to exercise the statutory powers of that locality.")

<sup>8</sup> VA. CODE § 2.2-3101 (2020).

<sup>9</sup> VA. CODE §§ 15.2-403(A), 15.2-502(A), 15.2-602, 15.2-702, 15.2-802, 15.2-1100 (2020).

## CONCLUSION

The elected members of the governing body of a locality must follow the restrictions and reporting requirements provided for in COIA whenever they receive any gifts from lobbyist's principals. This applies even in those rare circumstances where the lobbyist's principal is their own locality, and the locality is giving them a gift, distinct from their regular compensation.