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Virginia Conflict of Interest and Ethics Advisory Council

M E M O R A N D U M

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

FROM: **Rebekah Stefanski, Staff Attorney**

DATE: **December 10, 2015**

RE: **Formal Advisory Opinion 2015-F-001: § 2.2-3103.1 Applicability of gift cap**

QUESTION: According to the language of § 2.2-3103.1, does the monetary limit on accepting gifts apply to all officers and employees of state and local governmental or advisory agencies or only those required to file disclosure forms?

ANSWER: The monetary limit on accepting gifts applies only to those officers and employees of state and local governmental or advisory agencies that are required to file disclosure forms.

APPLICABLE CODE (as of January 1, 2016):
§ **2.2-3103.1. Certain gifts prohibited.**

. . .

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any

combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.
. . .

DISCUSSION:
At issue is whether the phrase "required to file the disclosure form" modifies both "officer or employee" and "candidate" or only "candidate" in subsections B and C of § 2.2-3103.1. Normally, "referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is 'the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.'"[1] So, a clause or phrase "usually is constructed to apply to the provision or clause immediately preceding it."[2] Therefore, under basic statutory interpretation and the rule of the last antecedent, "required to file the disclosure form" would apply only to "candidates." The monetary limit on accepting gifts would apply to candidates required to file disclosure forms and to every officer or employee of a local or state governmental or advisory agency, regardless of whether or not they are required to file disclosure forms.

However, "as with all the rules of statutory interpretation, the last antecedent rule is merely another aid to discover legislative intent or statutory meaning, and is not inflexible and uniformly binding. In general, then, where the sense of an entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the qualifying word or phrase is not restricted to its immediate antecedent."[3] The U.S. Supreme Court in *Nobleman* has recognized that the rule of the last antecedent is a helpful tool for statutory interpretation, but one that does not have to be strictly utilized.[4] If a reading of a modifying clause or phrase strays from the overall intent of a law, the "more reasonable" interpretation can be used.[5]

If the gift cap applied to all officers and employees, it would be nearly impossible to enforce with regard to those officers and employees not required to file disclosure statements. In light of this, such an interpretation would not be reasonable. Instead, the more reasonable interpretation is that the monetary limit for accepting gifts is intended to apply only to those employees and officers required to file disclosure statements. Therefore, "required to file the disclosure form" should be read to apply to both "officer or employee" and "candidate."

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[1] Newberry Station Homeowners Ass'n, Inc. v. Bd. of Supervisors of Fairfax Cnty., 740 S.E. 2d 548, 554 (Va. 2013) (citing Alger v. Commonwealth, 267 Va. 255, 259 (2004) (quoting 2A Norman J. Singer, Sutherland on Statutory Construction § 47.33 (6th rev. ed. 2000))).

[2] Norman J. Singer & Shambie Singer, Sutherland on Statutory Construction §47:33 (7th ed. 2014).

[3] Id.

[4] "We acknowledge that this reading of the clause is quite sensible as a matter of grammar. But it is not compelled." Nobleman v. Am. Sav. Bank, 508 U.S. 324, 330 (1993).

[5] *Nobleman*, 508 U.S. at 331.

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