

The Disclosure Requirements for Members of Authorities Pursuant to Va. Code § 2.2-3115(A)

July 18, 2017



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- Background: FAO 2015-F-002
- Analysis
- Discussion



Background

Background

- On December 10, 2015, the Council issued Formal Advisory Opinion 2015-F-002.
- One of the questions presented was whether a member of a planning district commission, created pursuant to the Regional Cooperation Act (Va. Code § 15.2-4200 et seq.) is required to file a disclosure statement.

- In the Opinion, the language of Va. Code § 2.2-3115(A) was analyzed.
- The second paragraph of Va. Code § 2.2-3115(A) states, in relevant part:

The members of the governing body of any authority established in any county or city, or parts or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file with the [Council], as a condition to assuming office, a [Financial Disclosure Statement] and thereafter shall file such a statement annually....



- The reasoning of the Opinion focused on whether or not a planning commission has the power to issue bonds or expend funds in excess of \$10,000 per fiscal year:
“If a planning commission has [such power], each of its members is required to file the financial disclosure form in §2.2-3118.”
- The Opinion further noted that if the governing body of a jurisdiction appoints the members to the commission, § 2.2-3115(A) gives the governing body the authority to require, if they so choose, the commission members to file a statement of economic interests in lieu of a financial disclosure statement.

- The Opinion goes on to state that:

“If a planning commission does not have the power to issue bonds or expend funds in excess of \$10,000 per fiscal year, then the commission members are not automatically required to file any disclosure statements. However, a governing body that appoints a member to a planning commission may designate, by ordinance, the member to file that statement of economic interests form in § 2.2-3117.”



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

Analysis

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- In its analysis, the Formal Advisory Opinion issued by the Council focuses on whether or not the planning commission has expenditure powers in excess of \$10,000.
- It does not delineate between “commissions” and “authorities.”

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- In other contexts, the distinction between “commissions,” “authorities,” and other entities is important.
- For example, the question was raised in an Attorney General’s Opinion as to whether or not the George Washington Regional Commission could have a contract for architectural or professional engineering services in excess of \$500,000 for multiple construction projects.

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- Under the Virginia Public Procurement Act, the sum of all such projects performed in one contract term shall not exceed \$500,000, except for state agencies which have a limit of \$1 million, or localities, authorities or sanitation districts with a population in excess of 80,000, which have a limit of \$5 million.
- The Attorney General opined that the George Washington Regional Commission was a commission, not an authority, and therefore the \$500,000 limit applied. 2010 Op. Va. Attorney General. 10-020 (Apr. 27, 2010).

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- Under the State and Local Government Conflict of Interests Act, the “General Assembly...finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that...requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees, the General Assembly enacts this [Act] so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.” Va. Code § 2.2-3100.

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- It would seem to run counter to the stated public purpose of the State and Local Government Conflict of Interests Act to require the members of one category of local entity, capable of spending public money, to file financial disclosures, but not require this of the members of another category of local entity, who have just as much expenditure authority.



- The key policy question for this issue is:
 - Should the members of any local entity (authority, commission, board, etc.) that has the power to issue bonds or expend funds in excess of \$10,000 be required to file, at a minimum, a financial disclosure statement? Or, should this requirement be limited solely to the members of “authorities?”
- A secondary policy question:
 - Is the \$10,000 threshold established in Va. Code § 2.2-3115(A) the correct amount?



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

Discussion