

Commonwealth of Virginia

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Virginia Conflict of Interest and Ethics Advisory Council

MEMORANDUM

TO: Virginia Conflict of Interest and Ethics Advisory Council

FROM: Rebekah Stefanski, Staff Attorney

DATE: December 10, 2015

RE: 2015-F-003 30-101 Professional organization membership

QUESTION: Effective January 1, 2016, would the acceptance by a member of the Virginia General Assembly of a complimentary annual membership in a Virginia professional or trade association, the value of which annual membership is in excess of \$100 and which professional or trade association is also a lobbyist's principal, constitute an impermissible gift under § 30-103.1(B), when such membership is offered uniformly to all members of the General Assembly who are members of the profession or trade represented by the association?

ANSWER: Yes, complimentary membership to a professional organization offered only to General Assembly members is a gift.

APPLICABLE CODE (as of January 1, 2016):

§ 30-101. Definitions.

As used in this chapter, unless the context requires a different meaning:

...

“Gift: means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. “Gift” does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly

received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of a legislator or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (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; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, “relative” means the donee’s spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee’s or his spouse’s parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee’s brother’s or sister’s spouse. For the purpose of this definition, “personal friend” does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 or (b) a lobbyist’s principal as defined in § 2.2-419.

§ 30-103.1. Certain gifts prohibited.

. . .
B. No legislator or candidate for the General Assembly required to file the disclosure form prescribed in § 30-111 or a member of his immediate family shall solicit, accept, or receive any single gift for himself or a member of his immediate family 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 of Title 2.2 or (ii) a lobbyist’s principal as defined in § 2.2-419. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

§ 30-103.2. Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B of § 30-103.1.

DISCUSSION:

Legislators are prohibited from accepting a gift with a value, or gifts with an aggregate value, in excess of \$100 from a lobbyist or lobbyist principal in a calendar year.¹ A gift is “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”² If a legislator receives anything of value over \$100 from a lobbyist or lobbyist principal, he will be in violation of § 30-103.1.

Membership to a professional organization is an item of value, and it does not fall into any of the exempted categories in the definition of “gift.”³ While membership in the organization is related to the legislator’s private profession, the complimentary membership is only offered to the legislator due to his status as a member of the General Assembly, and not just as a result of his private profession or occupation. Therefore, membership to such a professional organization is a gift.

If the professional organization is a registered lobbyist or lobbyist principal, then acceptance of a membership valued over \$100 would violate § 30-103.1. The legislator may accept up to a \$100 discount on the membership fee (assuming he has not accepted any other gifts from the organization that count against the monetary limit), but must pay for any value in excess of \$100.⁴

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

¹ § 30-103.1

² § 30-101

³ § 30-101

⁴ § 30-103.2