

State and Local Government Conflicts of Interest Act

Virginia Municipal League
Newly Elected Officials Conference

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Purpose of the Act

- ▶ Help ensure that Government will fully represent the public in its operation
- ▶ Give citizens confidence in public officials and government so they will trust government by creating a clear set of rules for government
- ▶ Assemble all laws affecting COIA in one location to create uniform rules

What is COIA?

Why should I care?

- ▶ Applies to generally prohibited conduct that shall be unlawful and to state and **local government officers** and employees.
- ▶ "Officer" means **any person appointed** or elected to **any governmental or advisory agency** ... whether or not he receives compensation or other emolument of office.
- ▶ "Governmental agency" means each component part of ... state and **local government**, including each office, department, authority ... **commission**, committee, etc.

What is COIA?

Why should I care?

- ▶ **Violations can result in civil penalties**
- ▶ **Knowing violations can result in misdemeanors and forfeiture of office**

Where can you seek guidance?

▶ **City or Town Attorney**

- ▶ **Good faith reliance on written opinion can be used in your defense (re: knowing violations)**

▶ **Commonwealth Attorney**

- ▶ **Good faith reliance on written opinion grants immunity from prosecution**

▶ **VA COIA & Ethics Advisory Council**

- ▶ **<http://ethics.dls.virginia.gov/>**
- ▶ **Good faith reliance on written opinion grants immunity from prosecution**
- ▶ **Council also conducts online training – Training is required by law**

When in doubt seek guidance and disclose all the facts!

COIA Overview

- ▶ **Generally Prohibited Conduct**
- ▶ **Gifts**
- ▶ **Personal Interest in Contracts**
- ▶ **Personal Interest in Transactions**
- ▶ **Required Annual Disclosure**
- ▶ **Potential Changes to COIA**

Prohibited and Improper Conduct

Do Not, for example:

Solicit or accept money for performing official duties (other than remuneration paid by your local government)

Use confidential information for your personal economic benefit

Accept gifts from someone who has interests that may be affected by your official duties (if timing and nature of gift raise doubt as to impartiality)

Use your public position to retaliate or threaten any person for expressing views on matters of public concern

Accept any business or professional opportunity intended to influence performance of your official duties

Gifts

- ▶ **“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, local travel, 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: Unused tickets, coupons, passes, etc., Honorary degrees, Scholarships and financial aid awarded pursuant to procedures applicable to general public, Campaign donations properly received and reported, Gifts related to private profession or occupation, Food or beverages consumed or fees waived for an event where officer is a featured speaker, Unsolicited awards in form of plaque, trophy, etc., Inheritance, Travel disclosed pursuant to Campaign Finance Disclosure Act, Travel paid for by U.S., state or local government, Gifts with a value of less than \$20, Food and beverages served at a function which can be consumed while standing or walking around, Gifts from “relatives’ or “personal friends”**

Gifts, Cont'd

Certain Gifts prohibited; exceptions

Prohibited: Single gift or combination of gifts valued at more than \$108 within a calendar year from a lobbyist, lobbyist's principal or entity seeking to contract with local agency. Gifts \$20 and over are aggregated in a calendar year.

Officer may accept gift of food and beverage, entertainment or admission valued in excess of \$108 associated with a “widely attended event.” Gift must be reported.

Gift from foreign dignitary may be accepted on behalf of government agency.

Gifts may be accepted if made on basis of personal friendship.

Gifts of travel and related expenses may be accepted if approved in advance by Virginia Conflicts of Interest Advisory Council.

Personal Interest in Contracts and Transactions

- ▶ **When you have a personal interest in a contract or transaction before the public body what does that mean? Can you participate? Is it prohibited?**
- ▶ **First, what is a “personal interest”?**

Personal Interest

- ▶ **"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Including:**
- ▶ **(i) ownership in a business if the interest exceeds three percent of the total equity of the business;**
- ▶ **(ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business;**
- ▶ **(iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually;**

Personal Interest Cont'd

- ▶ (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property;
- ▶ (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or
- ▶ (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).
- ▶ "Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

Personal Interest in a Contract

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to being a party to the contract or due to a personal interest in a business that is a party to the contract.

Personal interest by a member of a local governing body in a contract with his own local government or a component is generally prohibited. However, there are exceptions ...

Personal Interest in Contract

▶ Exceptions to Prohibition:

- ▶ An employment contract with a component of your local government
- ▶ Contracts for sale of governmental goods or services at uniform prices available to general public
- ▶ Contract awarded through formal competitive procurement process(competitive sealed bidding or competitive negotiation) in accordance with Virginia Public Procurement Act
- ▶ An employee's personal interest in additional contracts for goods or services, or contracts of employment that accrue by immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;

Personal Interest in Contract

Exceptions to Prohibition, cont'd:

- ▶ The sale, lease or exchange of real property between an officer or employee and a governmental agency, **provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;**
- ▶ Contracts for the purchase of goods or services when the contract does not exceed \$500

Personal Interest in a Transaction

- ▶ **"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency.**
- ▶ **Exists when an officer or member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a benefit or detriment as a result of the action of the agency considering the transaction.**

Personal Interest in a Transaction

- ▶ If the transaction has application solely to property or business in which he has a personal interest, officer must disqualify himself, disclose the personal interest and abstain from voting or acting on behalf of the agency in the transaction.
- ▶ If an officer is a member of a business, profession or group of three or more that is affected by the transaction, the officer may declare his personal interest and participate. (“member of group” exception)
- ▶ If the transaction affects the public generally, the officer may participate.
- ▶ If a quorum is lost by disqualification of an officer, the remaining members have the authority to act for the agency.

Required Declaration of Personal Interest if

COIA “member of group” exception applies, then declare

- ▶ **(i) the transaction involved, (ii) the nature of the officer's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest.**
- ▶ **The officer shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or chief executive of the local government, who shall, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt.**

Annual Disclosure

- ▶ Annual disclosures must be filed of all interests in real estate located in the municipality.
- ▶ Disclosure shall include any business in which you own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the jurisdiction.
- ▶ Shall be filed as a condition of assuming office, and thereafter shall be filed annually with the Clerk of the your governing body on or before February 1.
- ▶ Filed and maintained as public records for five years.

Legislative Issues to look out for

COIA Opinion - potential legislative fix

- ▶ **ISSUE:** Whether or not the restrictions and reporting requirements found in the State & Local Government COIA Act would apply when:
 - ▶ A locality purchases tickets to an event sponsored by the locality and then provides those tickets to members of the governing body
- ▶ **FINDING:** The elected members must follow the restrictions and reporting requirements in COIA whenever they receive a gift from a lobbyist's principal (which in this case is the locality)
- ▶ [SB57](#) (Locke) proposes a bill to reverse this opinion

2.2-3115 Executive Directors & Members of IDA's & EDA's

- ▶ In 2020 the COIA Act was amended to require all Executive Directors and members of Industrial Development Authorities / Economic Development Authorities to fill out detailed disclosure statements
 - ▶ CHILLING EFFECT ON LOCAL'S
- ▶ Senator Norment proposed a bill [SB1171](#) last session to require the forms for localities with a population over 25,000 (**FAILED**)

Lobbying; notification to the local clerk

- ▶ [SB383](#) (McPike) in the 2020 session of the General Assembly
 - ▶ Would have required an individual who is compensated to influence or attempt to influence a local government officer or employee regarding local government action to provide notice of such status to the clerk of the local governing body of the county, city, or town in which the officer or employee serves and pay a fee
 - ▶ Extremely broad and overreaching
 - ▶ Sent to the COIA Council for study

Local Govt. Lobbying (cont.)

- ▶ COIA Council recommended the following:
 - ▶ Limited the number of people who would be required to provide the notice
 - ▶ Narrowed the definition of “local government action”
 - ▶ Notice is required to be provided 15 days after the compensated individual communicated or attempted to communicate with a local government officer or employee
 - ▶ The notice would expire one calendar year after being filed
 - ▶ Failure to provide notice is a Class 1 misdemeanor
 - ▶ [Local notification by compensated individuals.pdf \(virginia.gov\)](#)

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▶ Questions?

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