

# 27

## THE STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT

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### 27-1 SCOPE OF THE ACT

#### 27-1.01 Public Policy

The General Assembly has recognized that representative government is dependent upon “(i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees.” Va. Code § 2.2-3100. In order to assure citizens that the judgment of public officers and employees “will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests . . . and for the purpose of establishing a single body of law applicable to all state and local government officers and employees,” the General Assembly enacted the State and Local Government Conflict of Interests Act (the “Conflict of Interests Act” or the “Act”). *Id.*; see also 1991 Op. Va. Att’y Gen. 1 (Conflict of Interests Act’s nepotism standards govern uniformly throughout Commonwealth; local governmental entities may not promulgate more restrictive nepotism policies). The Act addresses financial interests of governmental officers and employees that conflict with their official duties. 1983-84 Op. Va. Att’y Gen. 146; see generally *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 131 S. Ct. 2343 (2011) (ethical restrictions on legislators’ voting are not restrictions on legislators’ protected speech).

#### 27-1.02 Application; Scope of this Chapter

As its name suggests, the State and Local Government Conflict of Interests Act applies to officers and employees at both the state and local government levels. This chapter addresses all of the Act’s provisions regarding local government officers and employees, but it does not address provisions that apply only to state officers and employees.

#### 27-1.03 Single Body of Law

The Act supersedes all general and special acts and charter provisions that purport to deal with conflicts of interests, except the conflicts disclosure provisions found in Va. Code §§ 15.2-852 (requiring disclosures of interests in land use proceedings by members of boards of supervisors, planning commissions, and boards of zoning appeals in localities operating under the urban county executive form of government), 15.2-2289 (authorizing localities to require disclosures of interests by applicants for special exceptions or special use permits), and 15.2-2287 (authorizing localities to require an oath by petitioners in zoning matters regarding property interests of members of local planning commission or governing body). Va. Code § 2.2-3100. In 2012, the following provision was added: “No person shall be mandated to file any disclosure not otherwise required by this article.” Va. Code § 2.2-3115(C). Given the Act’s specific reference to the three disclosures required or authorized by Title 15.2, local officials should continue to file those disclosures.

#### 27-1.03(a) Ethics in Public Contracting

The Ethics in Public Contracting provisions of the Virginia Public Procurement Act supplement, but do not supersede, the provisions of the Conflict of Interests Act. Va. Code

§ 2.2-3100. The Ethics in Public Contracting provisions apply regardless of whether the conduct constitutes a violation of the Conflict of Interests Act. Va. Code § 2.2-4367. See Chapter 25, Public Procurement Law, section [25-14](#) for a discussion of the Ethics in Public Contracting provisions.

### **27-1.03(b) Bribery**

The provisions of Virginia's criminal code that prohibit the acceptance of bribes by governmental officers and employees are not superseded by the provisions of the Conflict of Interests Act. See Va. Code §§ 18.2-439, 18.2-447. The Act specifically provides that its provisions do not preclude, or constitute a defense to, the prosecution of any criminal law. Va. Code § 2.2-3100.

### **27-1.03(c) Conflicts Policies Adopted by State and Local Governmental Entities**

The Attorney General has concluded that state and local governmental entities may not promulgate or adopt conflicts provisions that differ from the Act's provisions, regardless of whether the proposed provisions are more or less stringent than those contained in the Act. 1991 Op. Va. Att'y Gen. 1 (concluding that school board may not promulgate nepotism policy that differs from the nepotism provisions of the Act).

Localities may, however, adopt an ordinance regarding the acceptance of gifts. See section [27-4.04\(c\)](#).

Certain cities and counties may prohibit, for one year, former members of local governing bodies, officers and employees, as well as appointees who are financially compensated for service on a board or commission, from being paid for providing assistance to a party regarding a matter in which they substantially participated as a member of the local governing body, an officer, an employee, or an appointee. Va. Code § 15.2-1408.

### **27-1.04 Construction**

The Act "shall be liberally construed to accomplish its purpose." Va. Code § 2.2-3100. Although the Act includes criminal penalties for knowing violations of its provisions (Va. Code § 2.2-3120), the Act does not address the inconsistency between its stated requirement of liberal construction and the general requirement that all criminal statutes be strictly construed. *Compare* Va. Code § 2.2-3100 (requiring liberal construction of the Act) *with, e.g., Jimenez v. Commonwealth*, 241 Va. 244, 402 S.E.2d 678 (1991) (noting that criminal statutes must be construed strictly).

A previous version of the Act contained an explicit requirement that exceptions and exemptions to the Act's prohibitions be narrowly construed. See Va. Code § 2.1-599 (repealed 1987). The Supreme Court of Virginia's narrow construction of an exemption in *West v. Jones*, 228 Va. 409, 323 S.E.2d 96 (1984), was based on this earlier standard, not the current liberal construction provision.

### **27-1.05 Act's Complexity; Practice Pointers**

All public officers and employees are required to read the Conflict of Interests Act and familiarize themselves with its provisions. Va. Code § 2.2-3100.1. However, because the Act is complex and fraught with potential pitfalls, and because of the potentially severe ramifications of a violation of the Act, it is important that local government attorneys counsel their clients to seek an opinion interpreting the Act's provisions as soon as the client becomes aware of a potential conflict. See section [27-9.04](#).

Also, officers and employees should be told that the Act is not a code of ethics but instead merely sets minimum standards of conduct with respect to the financial interests of officers and employees. The Act does not protect against all appearances of improper influence. Instead, the Act places the burden on the individual officer or employee to

evaluate whether the facts presented create an appearance of impropriety that is unacceptable or that could affect the confidence of the public in the ability of the officer or employee to be impartial.

## 27-2 CONFLICT OF INTEREST & ETHICS ADVISORY COUNCIL

The Conflict of Interest and Ethics Advisory Council (Ethics Advisory Council) was created to encourage and facilitate compliance with the Conflict of Interests Act, the General Assembly Conflicts of Interests Act, and state lobbying laws. Va. Code § 30-355 et seq. It consists of nine members drawn from current members of the General Assembly, the Executive Branch, the Attorney General's office, Virginia Association of Counties (VACo) and Virginia Municipal League (VML) designees, and former judges. Va. Code § 30-355(B). The Ethics Advisory Council is responsible for prescribing all disclosure forms, including the [Statement of Economic Interests](#) (also known as the "long form"), [Financial Disclosure Statement](#) (also known as the "short form"), and [Disclosure of Real Estate Holdings](#). See section 27-8 for a thorough discussion of disclosure form requirements. Only state-level disclosure forms and lobbyist registration statements must be filed electronically with the Council, which may review them for completeness and compare forms from lobbyists with other filers. Va. Code § 30-356(2). The Council also maintains a publicly searchable database of all disclosure forms filed by lobbyists and state filers. Va. Code § 30-356(5).<sup>1</sup>

The Ethics Advisory Council provides formal guidelines and advisory opinions,<sup>2</sup> published on the Council's [website](#) with redactions as needed to protect the identity of the person involved or other persons supplying information. The Council is also required to give informal advice regarding ethics and conflict issues, which advice is confidential and exempt from the mandatory disclosure provisions of the Virginia Freedom of Information Act, unless immunity from prosecution based on reliance of such advice is invoked. See section 27-9.04(d)(4). Other records relating to formal advisory opinions or informal advice, including records of requests, notes, correspondence, and draft versions of such opinions or advice, are confidential and excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act. Va. Code § 30-356(6).

The Ethics Advisory Council also conducts training seminars (training modules are available on the [website](#)) and educational programs for lobbyists, state and local government officers and employees and legislators, and other interested persons. Upon request, the Council will review the educational materials and approve any training or course on the requirements conducted for state and local government officers and employees. Va. Code § 30-356(7), (8). Local elected officials, the members of appointed school boards, and the executive directors and members of industrial or economic development authorities must receive training from the Council within two months of assuming office and every two years thereafter; the clerk of the governing body or school board must maintain a public record of the training. Va. Code §§ 2.2-3132 and 30-356(7).

The Ethics Advisory Council is responsible for approval of gifts of travel expenses paid for by lobbyists, lobbyists' principals, and a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee (herein "locality contractors"). Va. Code § 30-356.1; see section 27-4.04(d)(4) for a full discussion.

For good cause, the Ethics Advisory Council may grant a filing extension. Good cause includes the death of a filer's relative, a state of emergency, active military service, and technical failures of the electronic filing system. Va. Code § 30-356.2. A filer is entitled to a five-day extension of time to file if the required provider of the form failed to provide

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<sup>1</sup> Forms filed by local filers will not be in this database as they are filed with the local clerk. Va. Code § 2.2-3115.

<sup>2</sup> Cited herein as EAO YEAR-F-XXX (Date).

it by the deadline, unless the form is provided within three days of the deadline, in which case a three-day extension is allowed. If the required provider provides the form more than three days after the deadline, the provider “shall” be assessed a \$250 penalty. Va. Code § 30-356.2(B). This extension is not available to statewide candidates for office, candidates for local constitutional offices, or candidates for local governing bodies or school boards (except candidates for a local governing body or school board of a town with a population of 3,500 or less). Va. Code § 30-356.2(C).

## **27-3 DEFINITION OF GENERAL TERMS**

### **27-3.01 Governmental Entities**

The Act defines two types of governmental entities: governmental agencies and advisory agencies.

#### **27-3.01(a) Governmental Agencies**

“Governmental agency” means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are “governmental agencies” for purposes of this chapter.

Va. Code § 2.2-3101. The term “governmental agency” includes school boards.

#### **27-3.01(b) Advisory Agencies**

“Advisory agency” means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

*Id.* Advisory agencies do not regulate or exercise any sovereign powers.

### **27-3.02 Officers, Employees, Their Immediate Family, and Dependents**

An “officer” is any person appointed or elected to any governmental or advisory agency, regardless of whether he is compensated. Va. Code § 2.2-3101. Holders of the constitutional offices of treasurer, commissioner of revenue, sheriff, Commonwealth’s Attorney, and clerk of circuit court of each county and city are deemed by the Act to be local officers. Va. Code § 2.2-3116.

An “employee” is a person employed by a governmental or advisory agency. Va. Code § 2.2-3101. The Attorney General has opined that public charter school employees are subject to the requirements of the Conflict of Interests Act. 2003 Op. Va. Att’y Gen. 89.

“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.” Va. Code § 2.2-3101.

### **27-3.03 Businesses**

Virginia Code § 2.2-3101 defines a “business” as “a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.” Governmental agencies do not fall within the scope of this definition. When construing Va. Code § 15.2-852, a conflicts statute applying specifically to land use decisions by an urban county executive form of government, the Virginia Supreme Court held that a “corporation”

does not include governmental agencies organized in corporate form. *Newberry Station HOA v. Bd. of Sup'rs of Fairfax Cnty.*, 285 Va. 604, 740 S.E.2d 548 (2013).

### **27-3.03(a) Subsidiaries**

The Act defines "parent-subsidary relationship" as "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." Va. Code § 2.2-3101.

### **27-3.03(b) Affiliated Businesses**

Virginia Code § 2.2-3101 defines "affiliated business entity relationship" as "a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities."

Factors to be considered in determining the existence of an affiliated business entity relationship include whether the same person (or substantially the same person) owns or manages the two entities, whether funds or assets are commingled, and whether the entities share the same offices or employees. *Id.*

## **27-4 PROHIBITED CONDUCT**

### **27-4.01 Acceptance of Money or Things of Value**

No officer or employee may accept money or any other thing of value for:

- performing services that are within the scope of his official duties;<sup>3</sup>
- offering or accepting consideration for obtaining employment, appointment, or promotion of any person with any governmental or advisory agency; or
- using or considering using his public position to obtain a contract with any governmental or advisory agency for any person or business.

Va. Code § 2.2-3103(1)-(3).

### **27-4.02 Use of Confidential Information**

No officer or employee may use for his own economic benefit or that of another party confidential information that he has learned because of his public position if that information is not available to the public. Va. Code § 2.2-3103(4).

### **27-4.03 Attempts to Influence the Performance of Official Duties**

No officer or employee may "[a]ccept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence<sup>4</sup> him in the performance of his official duties." This prohibition does not apply to political contributions that are actually used for campaign or constituent services purposes and reported as required by the Campaign Finance Disclosure Act of 2006 (Va. Code § 24.2-945 et seq.). Va. Code § 2.2-3103(5).

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<sup>3</sup> The prohibition against an officer or employee accepting money for the performance of his official duties does not apply to the salary, compensation, or other reimbursement received as remuneration from his governmental agency. Va. Code § 2.2-3103(1).

<sup>4</sup> The Act does not define the phrase "reasonably tends to influence." Thus, it is not possible to match a dollar amount to this provision that would apply in every case. An amount that would be large enough to reasonably tend to influence an employee with a low salary, for example, would not necessarily reasonably tend to influence an officer who earns ten times the employee's salary.

Additionally, no officer may accept any business or professional opportunity if he knows that there is a reasonable likelihood that the opportunity is being afforded to him to influence him in the performance of his official duties, regardless of whether the opportunity actually does influence him in the performance of those duties. Va. Code § 2.2-3103(6). For one year after the termination of public service, a constitutional officer may not act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer. Va. Code § 2.2-3104.02. The constitutional officer may apply to the Commonwealth's Attorney or the Ethics Advisory Council for an advisory opinion regarding a post-public employment opportunity. *Id.*

#### 27-4.04 Acceptance of Gifts

No officer or employee may accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Additionally, no officer or employee may accept gifts from sources on a basis so frequent as to raise the appearance that he is using his public office for private gain. Va. Code § 2.2-3103(8), (9). Gifts from a lobbyist, lobbyist's principal, or contractor<sup>5</sup> over fifty dollars (singly or in the aggregate) in a calendar year must be disclosed by persons required to file a [Statement of Economic Interests](#).

Furthermore, if required to file the Statement of Economic Interests prescribed by the Ethics Advisory Council, officers and employees, including constitutional officers and official candidates for local offices, and members of their immediate families may not accept gifts that exceed one hundred dollars in value (individually or in the aggregate) during a calendar year from a registered lobbyist; a lobbyist's principal; or a locality contractor. Gifts of less than twenty dollars are not subject to aggregation. Va. Code §§ 2.2-3103.1(B); 2.2-3116; EAO 2016-F-001 (Apr. 26, 2016); EAO 2015-F-001 (Dec. 10, 2015); EAO 2015-F-003 (Dec. 10, 2015).

Section 2.2-3101 of the Act defines "gift" broadly:

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 (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 . . . (v) any gift related to the private profession or occupation or volunteer service of an officer or employee 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)

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<sup>5</sup> "For local officers and employees, a contractor is a person, organization, or business who is or is seeking to become a party to a contract with the local agency of . . . [the] officer or an employee." Virginia Conflict of Interest and Ethics Advisory Council, State and Local Statement of Economic Interests (July 2022).

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 Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of, or any meal provided for attendance at such meeting by, 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; (xiv) gifts with a value of less than \$20; (xv) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages can be conveniently consumed by a person while standing or walking are offered; or (xvi) tickets or the registration or admission fees to an event that are provided by an agency to its own officers or employees for the purposes of performing official duties related to their public service; or (xvii) 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 or the donee's son-in-law or daughter-in-law. 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 [registered] lobbyist . . . (b) a lobbyist's principal . . .; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

This prohibition on gifts to local government employees and officers applies to gifts from a lobbyist's principal even when the principal is the locality itself. EAO 2020-F-001 (Nov. 18, 2020). A locality and its governing body are not identical; therefore, "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." *Id.*

To determine the value of the gift the official accepts, it is the responsibility of the official to determine how much was spent and by whom. For example, if invited to attend an event at no charge by the host, the official must determine what the cost-per-person of the event was. EAO 2017-F-004 (Oct. 17, 2017).

See sections [27-4.01](#) and [27-4.03](#) for additional restrictions on the acceptance of gifts, and section [27-4.04\(d\)](#) for exceptions to the prohibition against acceptance of gifts from registered lobbyists, lobbyist's principals, or a locality contractor.



In sum, no public official or employee may accept a gift that has the appearance of affecting the officer's or employee's performance of his duties. If required to file a Statement of Economic Interests, all gifts from a lobbyist, lobbyist's principal, or contractor valued over fifty dollars (singly and in the aggregate) must be disclosed, and no gifts valued over one hundred dollars may be accepted from a lobbyist, lobbyist's principal, or locality contractor, unless the exceptions discussed in section [27-4.04\(d\)](#) apply.

**27-4.04(a) Return of Gifts**

There is no violation of the Act if the recipient returns, within a reasonable amount of time after discovering the value of the gift, an unused gift or its monetary equivalent to the donor. The recipient may also donate the gift or its monetary equivalent to a charitable organization as long as no tax deduction is taken for the donation. The recipient also can give the donor consideration that reduces the value of the gift to one hundred dollars or less. Va. Code § 2.2-3103.2.

**27-4.04(b) Penalties**

Violations of the general prohibitions on gifts as defined under Va. Code § 2.2-3103(8), (9), unlike the Act's other prohibitions, are expressly not subject to criminal penalties. Va. Code § 2.2-3103(8), (9). If an officer or employee knowingly violates the gift prohibitions, a civil penalty equal to the value of the gift is to be imposed and the gift must be forfeited. Va. Code § 2.2-3124.

There is no express language limiting criminal penalties regarding a "long-form" officer's or employee's acceptance of gifts of more than one hundred dollars in value during a calendar year from a lobbyist, a lobbyist's principal, or locality contractor, so a knowing violation would be a Class 1 misdemeanor in addition to being subject to a civil penalty and forfeiture of the gifts. Va. Code §§ 2.2-3103.1, 2.2-3120, and 2.2-3124. See section [27-9](#) for a further discussion of criminal penalties for violations of the Act's provisions.

**27-4.04(c) Ordinances Regulating Gifts**

The governing body of any locality may adopt an ordinance setting a dollar limit on the value of any gifts accepted by the locality's officers, appointees, or employees. The ordinance also may require disclosure of gifts. Va. Code § 2.2-3104.2.

**27-4.04(d) Exceptions to the \$100 Gift Limit*****27-4.04(d)(1) Widely Attended Events***

Persons covered by the one hundred dollar gift restriction may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of one hundred dollars when such gift is received while attending a widely-attended event and is associated with the event. A "widely attended event" is defined as

an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who are members of a public, civic, charitable, or professional organization, (ii) who are from a particular industry or profession, or (iii) who represent persons interested in a particular issue.

Such gifts shall be reported on the disclosure form. Va. Code § 2.2-3103.1(A), (D); see section [27-8](#).

***27-4.04(d)(2) Foreign Dignitaries***

A public official, employee, or member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding one hundred dollars for which the fair market value or a gift of greater or equal value has not been provided or exchanged, so long as



such foreign dignitary is not a representative of a foreign country of concern.<sup>6</sup> Va. Code § 2.2-3103.1(E). The gift must be received on behalf of the locality and archived in accordance with Library of Virginia guidelines. *Id.* The gift must be disclosed as having been accepted on behalf of the locality, but the value of the gift need not be disclosed. *Id.*

#### **27-4.04(d)(3) Personal Friend**

Gifts in excess of one hundred dollars may be received from personal friends. While the definition of a "gift" in Va. Code § 2.2-3101 provides that a personal friend cannot be a registered lobbyist, a lobbyist's principal, or a locality contractor, Va. Code § 2.2-3103.1(F) provides that "notwithstanding any other provision of law," such person may be a personal friend, such that the one hundred dollar restriction does not apply, if circumstantial factors suggest that such a donor is an actual personal friend. Those factors are:

- (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or 30-111.

#### **27-4.04(d)(4) Travel**

Travel expenses, including meals and lodging, may be accepted upon prior approval of the Ethics Advisory Council, provided that such expenses are reported on the disclosure form. Va. Code § 2.2-3103.1(G); see section 27-8. The Ethics Advisory Council

shall approve any request for travel that bears a reasonable relationship between the purpose of the travel and the official duties of the requester. Such travel shall include any meeting, conference, or other event (i) composed primarily of public officials; (ii) at which public policy related to the duties of the requester will be discussed in a substantial manner; (iii) reasonably expected to educate the requester on issues relevant to his official duties or to enhance the requester's knowledge and skills relative to his official duties; or (iv) at which the requester has been invited to speak regarding matters reasonably related to the requester's official duties.

Va. Code § 30-356.1. The Ethics Advisory Council is to grant or deny approval within five days of the request, unless it asks for more information, after receipt of which it must act within five days. Failure of the Ethics Advisory Council to act within that time frame constitutes approval. *Id.* Travel waiver requests may be made through the Council's [website](#).

See also EAO 2016-F-003 (Apr. 26, 2016) (meals and travel related to attendance at a private entity board meeting are expense reimbursements and are not required to be reported).

#### **27-4.04(d)(5) Awards by Nonprofit Entities**

The Act's gift provisions do not apply to the acceptance by a local government employee or a teacher or other school board employee of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee if made by a nonprofit entity

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<sup>6</sup> "Foreign country of concern" means any country designated by the Secretary of State to have repeatedly provided support for acts of international terrorism pursuant to the National Defense Authorization Act for Fiscal Year 2019, P.L. 115-232 § 1754(c), Aug. 13, 2018; the Arms Export Control Act § 40, 22 U.S.C. § 2780; or the Foreign Assistance Act of 1961 § 620A, 22 U.S.C. § 2370. Va. Code § 2.2-3103.1(A).

that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Va. Code § 2.2-3104.1.

### **27-4.05 Retaliation**

No officer or employee may use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law. Va. Code § 2.2-3103(10). Appropriate disciplinary action by a public employer or constitutional officer of an employee is not restricted by this provision.

### **27-4.06 Employment of Relatives of School Board Members or Superintendents**

For many years, Virginia had strict rules about hiring certain employees who were related to school board members or the superintendent (i.e., the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law), with limited exceptions primarily related to the employment being established before the familial relationship existed. Va. Code § 2.2-3119(A), (B); see *Williams v. Augusta Cnty. Sch. Bd.*, 248 Va. 124, 445 S.E.2d 118 (1994) (interpreting this prohibition as previously codified and discussing its legislative intent).<sup>7</sup> Current law allows the employment of such family relations if the school board member or superintendent certifies that he had no involvement with the hiring decision. Va. Code § 2.2-3119(E), (F). The superintendent (regarding school board members) or assistant superintendent (regarding the superintendent) must also certify to the school board that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board, or respectively the superintendent, had any involvement with the hiring decision. *Id.*

#### **27-4.06(a) Substitute Teachers**

A person employed as a substitute teacher who is a "relative" (as defined in the midst of the definition of "gift" in Va. Code § 2.2-3101; see section 27-4.03) may not be employed to any greater extent than he was employed in the last full school year prior to the taking of office of the related board member or superintendent, or prior to the inception of the familial relationship. The exceptions (discussed in section 27-4.06) apply only if the prior employment was in the same school division where the employee and the superintendent or school board member now seek to serve simultaneously. Va. Code § 2.2-3119(C).

#### **27-4.06(b) Personal Liability for Violations**

If a school board member or a superintendent knowingly violates these provisions, he will be personally liable to refund to the local treasury any amounts paid in violation of these provisions. The funds are to be recovered from the individual by action or suit, in the name of the Commonwealth, on the petition of the Commonwealth's Attorney. Recovered funds are paid into the local treasury for the use of the public schools. Va. Code § 2.2-3119(D).

## **27-5 PERSONAL INTERESTS**

### **27-5.01 Definition**

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership 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,

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<sup>7</sup> Virginia Code § 22.1-57.3, which is not part of the Conflict of Interests Act, provides that "[n]o employee of a school board shall be eligible to serve on the board with whom he is employed."

or may reasonably be anticipated to exceed, \$5,000 annually; (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).

Va. Code § 2.2-3101.<sup>8</sup> The Act also defines the terms “personal interest in a contract” and “personal interest in the transaction.” See *id.* Those terms are defined in sections 27-6.01(b) and 27-7.01(b), respectively. See *also* Va. Att’y Gen. COI Adv. Op. No. 03-A04 (Nov. 2003)<sup>9</sup> (“ownership interest” includes future or contingent interest).

## 27-6 PROHIBITED CONTRACTS

### 27-6.01 Definitions

#### 27-6.01(a) Contracts and Subcontracts

A “contract” is (i) any agreement to which a governmental agency is a party; or (ii) any agreement on behalf of a governmental agency that involves the payment of money appropriated by the political subdivision, whether or not such agreement is executed in the name of the political subdivision. Va. Code § 2.2-3101. Thus, any agreement with a governmental agency is a “contract,” regardless of whether the agreement involves the expenditure of governmental funds.

The term “contract” includes a subcontract only when the contract of which it is a part is with the officer’s or employee’s own governmental agency. *Id.*

#### 27-6.01(b) Personal Interest in a Contract

The Act defines “personal interest in a contract” as “a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.” Va. Code § 2.2-3101.

### 27-6.02 Members of County Boards of Supervisors and City and Town Councils

#### 27-6.02(a) Prohibitions

No member of the governing body of a county, city or town may have a “personal interest” in the following:

- any contract with his governing body;
- any contract with any governmental agency that is (i) a component part of his local government and (ii) subject to the ultimate control of his governing body; or
- any contract, other than a contract of employment, with any other governmental agency if such person’s governing body appoints a

<sup>8</sup> The Attorney General has opined that reimbursement of legal fees of board members indicted on criminal charges that were ultimately dismissed did not result in a personal interest because the specific provision of Va. Code § 15.2-1521 regarding legal fee reimbursements prevails over the general definition of Va. Code § 2.2-3101. Va. Att’y Gen. COI Adv. Op. No. 09-A01 (Oct. 2009).

<sup>9</sup> Attorney General Conflict of Interests Advisory Opinions are not published, but summaries of selected opinions through 2010 are available using CaseFinder, Geronimo’s subscription-based electronic database, as explained in section 27-9.05(b). The Ethics Advisory Council is now the main interpretative body.

majority of the members of the governing body of the second governmental agency (such as an appointed school board).

Va. Code § 2.2-3107(A).

### **27-6.02(b) Exceptions**

The following contracts are exempted from these prohibitions:

- A member's personal interest in a contract of employment if the employment began prior to the officer becoming a member of the governing body;
- A member's personal interest in a contract of employment if the officer or employee was employed prior to July 1, 1983, in accordance with the provisions of the now-repealed Virginia Conflict of Interests Act, as it existed on June 30, 1983;
- Contracts for the sale, by a governmental agency, of services or goods at uniform prices available to the public; or
- A contract awarded to a member of a governing body as a result of competitive sealed bidding where (i) the governing body has established a need for the same or substantially similar goods through purchases prior to the member's election or appointment to the governing body; (ii) the member has no involvement in the preparation of the specifications for the contract; and (iii) the remaining members of the governing body, by written resolution, state that it is in the public interest for the member to bid on the contract.

Va. Code § 2.2-3107(B).

With respect to the last exception (contracts awarded as a result of competitive sealed bidding), the Supreme Court of Virginia has concluded that only a majority of the remaining governing body members must agree that allowing the member to bid on the contract is in the public interest. See section [27-9.05\(c\)](#) (discussing *Harris v. Ingram*, 240 Va. 46, 392 S.E.2d 816 (1990)).

The Advisory Council has opined that the COIA list of exceptions is exclusive, and non-competitive sealed bidding contracts that are allowed under the Procurement Act do not fall within the scope of the COIA's exceptions. EAO 2017-F-002 (July 18, 2017).

The Act contains additional general exceptions applicable to contracts with all governmental officers and employees. Those exceptions are discussed in section [27-6.06](#).

## **27-6.03 School Board Members**

### **27-6.03(a) Prohibitions**

Pursuant to Va. Code § 2.2-3108(A), no school board member may have a "personal interest" in (i) any contract with his school board; or (ii) any contract with any governmental agency that is subject to his school board's ultimate control.

### **27-6.03(b) Exceptions**

These prohibitions do not apply to:

- A member's personal interest in a contract of employment, provided the employment began prior to the officer becoming a school board member (although no employee of a school board may serve on the board with whom he is employed, Va. Code § 22.1-57.3(G));

- Contracts for the sale, by a governmental agency, of services or goods at uniform prices available to the public; or
- A contract awarded to a school board member as a result of competitive sealed bidding where (i) the school board has established a need for the same or substantially similar goods through purchases prior to the member's election or appointment to the school board; (ii) the member has no involvement in the preparation of the specifications for the contract; and (iii) the remaining school board members, by written resolution, state that it is in the public interest for the member to bid on such contract.

Va. Code § 2.2-3108(B).

The Act contains additional general exceptions applicable to contracts with all governmental officers and employees. Those exceptions are discussed in section [27-6.06](#).

## **27-6.04 Officers and Employees**

### **27-6.04(a) Prohibitions**

No officer or employee of a local governmental agency,<sup>10</sup> other than the members of county boards of supervisors, city councils, town councils, or school boards, may have a "personal interest" in:

- a contract with the agency of which he is an officer or employee, other than his own employment contract; or
- a contract with any other governmental agency that is a component of the government of his county, city, or town unless such contract is awarded (i) as a result of competitive sealed bidding or competitive negotiation as defined in the Virginia Public Procurement Act (Va. Code §§ 2.2-4302.1, 2.2-4302.2) or of the local government's own competitive procurement policies and procedures as authorized by the Procurement Act (see Va. Code § 2.2-4343(A)(10)-(12)); or (ii) after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

Va. Code § 2.2-3109(A)-(B). For a discussion of the Public Procurement Act and competitive bidding and negotiation, see [Chapter 25, Public Procurement Law](#).

### **27-6.04(b) Exceptions**

The following contracts are exempted from these prohibitions:

- An employee's personal interest in additional contracts of employment or contracts for goods or services with his own governmental agency that accrue to him via a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the family member and the employee is not in a position to influence those activities or the award of the contract for goods or services;

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<sup>10</sup> Note that this prohibition applies only to officers or employees of a governmental agency. Thus, it does not apply to appointees who serve on advisory agencies. See Va. Code § 2.2-3109(A)-(B); see also section [27-3.01](#) (distinguishing between governmental and advisory agencies).

- An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;<sup>11</sup>
- Contracts for the sale, by a governmental agency, of services or goods at uniform prices available to the general public; and
- Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, provided such interest has been disclosed in the public charter school application as required by Va. Code § 22.1-212.8(B)(33).

Va. Code § 2.2-3109(C).

The Act contains additional general exceptions applicable to contracts with all governmental officers and employees. Those exceptions are discussed in section 27-6.06.

### 27-6.05 General Assembly Members

The General Assembly Conflict of Interests Act, Va. Code §§ 30-100 to 30-129, addresses a General Assembly member's interest in contracts with local governments, and local government attorneys may be asked by their clients to opine as to the permissibility of such contracts. The Act provides that no legislator may have a personal interest in a contract with any governmental agency of local government, other than a contract of regular employment, unless the contract is awarded (i) as a result of competitive sealed bidding or competitive negotiation as defined in the Virginia Public Procurement Act (Va. Code §§ 2.2-4302.1 and 2.2-4302.2) or of a procedure embodying competitive principles as authorized by the Procurement Act (see Va. Code § 2.2-4343(A)(10)-(12)), or (ii) after a finding, in writing, by the administrative head of the local government agency that competitive bidding or negotiation is contrary to the best interest of the public. Va. Code § 30-105(C).

### 27-6.06 Exceptions Applicable to All Contracts

The Act's prohibitions against certain contracts also do not apply to the following:

- The sale, lease or exchange of real property between an officer or employee<sup>12</sup> and a governmental agency, if (i) the officer or employee does not participate in any way on behalf of the governmental agency in the transaction; and (ii) this fact is made a matter of public record by the governing body or administrative head of the governmental agency;

<sup>11</sup> See 1985-86 Op. Va. Att'y Gen. 32 (concluding that the "other governmental agency" exception permits appointment of city attorney's spouse to city's electoral board).

<sup>12</sup> This exception unquestionably applies to real property contracts between a governmental agency and an officer or employee, on his or her own behalf. Although the exception does not explicitly address contracts between a governmental agency and a business in which an officer or employee has a personal interest, the Attorney General has concluded that the exception applies to such contracts. See, e.g., 2011 Op. Va. Att'y Gen. 42 (concluding that a business would be free to continue negotiating and signing contracts for the sale or lease of real estate with the locality as long as the nonparticipation of the elected official is a matter of public record); Va. Att'y Gen. COI Adv. Op. No. 94-A09 (concluding that exemption applies to chairman of board of trustees of Virginia Retirement System (VRS) with respect to lease by a VRS wholly owned subsidiary to a business in which chairman has a personal interest); 1976-77 Op. Va. Att'y Gen. 97 (concluding that exemption applies to lease of property between state agencies and business in which a senator had a financial interest).

See also FAO 2017-F-003 (Oct. 17, 2017) (a public employee can purchase property at a delinquent tax sale without violating the COIA as long as the employee does not participate as an employee in the sale).



- The publication of official notices;
- Contracts between the government or school board of a town, city, or county with a population of less than 10,000 and an officer or employee of locality or school board when the total of such contracts between the government or school board and the officer or employee or a business controlled by him (i) does not exceed \$5,000 per year or (ii) exceeds \$5,000 but is less than \$25,000 and results from contracts awarded on a sealed bid basis, and such officer or employee has made disclosure as provided for in Va. Code § 2.2-3115;<sup>13</sup>
- An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$5,000 per year, provided that (i) the officer or employee or a member of his immediate family does not participate, and has no authority to participate, in the procurement or letting of the contract on behalf of the contracting firm and (ii) the officer or employee either does not have authority to participate in the procurement on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating or approving the contract;
- Contracts between an officer's or employee's governmental agency<sup>14</sup> and a public service corporation, financial institution,<sup>15</sup> or company furnishing public utilities, in which the officer or employee has a personal interest, provided that the officer or employee (i) disqualifies himself as a matter of public record and (ii) does not participate on behalf of his governmental agency in negotiating or approving the contract;
- Contracts for the purchase of goods or services when the contract does not exceed \$500;
- Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;<sup>16</sup>
- An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his spouse's employment

<sup>13</sup> Virginia Code § 2.2-3115 addresses several types of disclosures, including the disclosures that must be made when one has a personal interest in a transaction. This Code section, however, does not address the disclosure of an interest in a contract. The reference to this Code section may be erroneous. An alternative interpretation is that the "disclosure" requirement is satisfied by the inclusion of the contract in the [Statement of Economic Interests](#). Nevertheless, in keeping with the spirit of the Act, an officer or employee with an interest in a contract subject to this exception should be urged to file a disclosure statement similar to those required with respect to personal interests in transactions. See Va. Code § 2.2-3115(F), (H); see *also* sections [27-7.02\(b\)](#) and [27-7.04\(a\)\(1\)](#) (addressing disclosure provisions concerning personal interests in transactions).

<sup>14</sup> This exception does not apply when the governmental agency is the Virginia Retirement System. Va. Code § 2.2-3110(A)(6).

<sup>15</sup> The Act defines "financial institution" as "any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in [Va. Code] § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940." Va. Code § 2.2-3101.

<sup>16</sup> For an analysis of this exception, see 1999 Op. Va. Att'y Gen. 10 (concluding that loans made by Virginia Housing Development Authority to its employees to finance purchase or improvement of single-family homes are payments that are subject to the grant exception).



by the agency, if the spouse was employed by the agency for five or more years prior to marrying the officer or employee;<sup>17</sup>

- Certain contracts entered into pursuant to the Agricultural Best Management Practices Cost-Share Program (Va. Code § 10.2-506 et seq.); or
- Employment contracts, or renewals thereof, or any other contracts entered into prior to August 1, 1987, that were in compliance, at the time of their formation and thereafter, with either the former Virginia Conflict of Interests Act (Va. Code §§ 2.1-347 through 2.1-358 (repealed 1983)) or the former Comprehensive Conflict of Interests Act (Va. Code §§ 2.1-599 through 2.1-634 (repealed 1987)). Those contracts continue to be governed by the provisions of the applicable prior Act. The employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household will not be deemed to create a material financial interest<sup>18</sup> except when one of the persons is employed in a direct supervisory or administrative position, or both, with respect to his spouse or other relative residing in his household and the annual salary of the subordinate spouse or relative is \$35,000 or more.

Va. Code § 2.2-3110.

## 27-7 PROHIBITED AND RESTRICTED TRANSACTIONS

### 27-7.01 Definitions

#### 27-7.01(a) Transaction

Virginia Code § 2.2-3101 defines “transaction” as “any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.”

#### 27-7.01(b) 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. Such personal interest exists when an officer or employee or a 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 reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency and the personal interest in the transaction of the

<sup>17</sup> This exception applies even if the officer or employee is in a position to exercise indirect influence over the spouse’s salary or employment activities. See Va. Att’y Gen. COI Adv. Op. No. 02-A10 (May 2003) and Va. Att’y Gen. COI Adv. Op. No. 03-A06 (Nov. 2003), respectively.

<sup>18</sup> The term “material financial interest” is not defined in the current Act. In the prior conflicts acts, it was defined as “a personal and pecuniary interest accruing to an officer or employee or to his spouse or to any other relative who resides in the same household.” See Comprehensive Conflict of Interests Act (Va. Code §§ 2.1-599 through 2.1-634 (repealed 1987); Virginia Conflict of Interests Act (Va. Code §§ 2.1-347 through 2.1-358 (repealed 1983)).

governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body to the employee, elected member, or member of his immediate family.<sup>19</sup>

Va. Code § 2.2-3101.

### **27-7.01(b)(1) Reasonable Foreseeability**

The Act does not define the term “reasonably foreseeable.” The Attorney General, however, has concluded that, in circumstances where the effect of a transaction is speculative, remote, or contingent on factors beyond the officer’s or employee’s control, it is not reasonably foreseeable that the officer’s or employee’s personal interest will benefit or suffer as a result of the transaction. 1986-87 Op. Va. Att’y Gen. 11.<sup>20</sup> The test of reasonable foreseeability should be applied at the time of the transaction. *Id.* (discussing *West v. Jones*, 228 Va. 409, 323 S.E.2d 96 (1984)).

### **27-7.02 When Disqualification Is Required**

An officer or employee who has a “personal interest in a transaction” must disqualify himself from participating in the transaction if (i) the transaction has application solely to property, a business, or a governmental agency in which he has a personal interest, or a business that has a parent-subsidary or affiliated business entity relationship with a business in which he has a personal interest; or (ii) none of the exceptions listed in sections 27-7.03(b) or 27-7.04 applies. Va. Code § 2.2-3112(A).<sup>21</sup>

#### **27-7.02(a) Participation in a Transaction**

If an officer or employee is prohibited from participating in a transaction, he may not vote on the matter, and he may not, in any way, act on behalf of his agency in conducting the transaction. The officer or employee may not attend any portion of a closed meeting when the matter in which he has a personal interest is discussed, and he may not discuss the matter with other governmental officers or employees. *Id.*

#### **27-7.02(b) Disclosure of Personal Interest in a Transaction**

Any officer or employee who is disqualified from participating in a transaction (or otherwise chooses to disqualify himself) must “forthwith” disclose the existence of his interest, and his disclosure must be reflected in the public records of his governmental or advisory agency for five years in the office of the agency’s administrative head. If the officer’s or employee’s interest involves a business, then the disclosure must include the business’s full name and address; if the interest involves real estate, then the disclosure must include the address or parcel number. Va. Code § 2.2-3115(F).

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<sup>19</sup> If an officer or employee provides services to a business, he will have a personal interest in any transaction involving that business regardless of whether he received compensation for his services. EAO 2021-F-001 (Nov. 23, 2021).

<sup>20</sup> This Attorney General’s opinion predated revisions to the Act’s definition of “personal interest in a transaction” that address served or represented businesses, but the same analysis should apply with respect to such businesses: in circumstances where the effect of a transaction is speculative, remote, or contingent on factors beyond the officer’s or employee’s control, it is not reasonably foreseeable that a served or represented business will benefit or suffer as a result of the transaction.

<sup>21</sup> An elected official appointed by the governing body to serve on a community board as a volunteer has no personal interest in the community board and thus no personal interest in any transactions that may affect the board. As such, a member of a local governing body who is appointed to serve without compensation on a community board is not restricted from voting on the budgetary matters of the governing body that may affect the board’s program funding. 2012 Op. Va. Att’y Gen. 7.

**27-7.02(c) Disqualified Employee May Represent Self or Family**

An employee who is prohibited from participating on behalf of his governmental or advisory agency in a transaction may represent his own interests or those of his immediate family member in the transaction if (i) he does not receive compensation for such representation and (ii) he complies with the disqualification and disclosure requirements outlined in section [27-7.02\(a\)-\(b\)](#). Va. Code § 2.2-3112(C). This provision does *not* apply to officers.

**27-7.03 Effect of Disqualification on Votes by Governmental Entities****27-7.03(a) Quorums and Unanimous Votes**

Notwithstanding any other provision of law, if disqualifications leave fewer than the number required by law to act, then the remaining member or members constitute a quorum for the conduct of business and have the authority to act for the agency by majority vote. If a unanimous vote of all members is required, then authority to act requires a unanimous vote of the remaining members. Va. Code § 2.2-3112(D).

**27-7.03(b) Supermajority Exception for Sale of Public Property**

If the sole interest of a member of a local governing body in any proposed sale of public property is by virtue of his employment by a business involved in the proposed sale, and his vote is essential to obtaining the supermajority<sup>22</sup> vote required by Va. Const. art. VII, § 9 and Va. Code § 15.2-2100, that member may vote and participate in the deliberations of the governing body concerning whether to approve, enter into, or execute the sale.<sup>23</sup> Va. Code § 2.2-3112(D). Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require. *Id.* See section [27-9.03\(a\)](#) for a discussion of the Act's provisions concerning invalidation of contracts.

**27-7.04 When Participation May Occur, Notwithstanding a Personal Interest****27-7.04(a) Membership in a Business, Profession, Occupation, or Group**

An officer or employee may participate in a transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he properly discloses his interest.<sup>24</sup> Va. Code § 2.2-3112(B)(1); see 2020 Op. Va. Att'y Gen. 43 for a discussion of the "group of three or more persons" provision.

**27-7.04(a)(1) Declaration Requirements**

If an officer or employee chooses to participate in a transaction pursuant to the membership exception, he must publicly note the transaction involved and state the nature of his personal interest affected by the transaction. He also must declare that (i) he is a member of a business, profession, occupation, or group the members of which are affected by the transaction; and (ii) that he is able to participate in the transaction fairly, objectively, and in the public interest. The declaration may be made orally, to be recorded in the agency's

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<sup>22</sup> The term "supermajority" refers to the requirement of an affirmative vote of three-fourths of all the members elected to the governing body. See Va. Const. art. VII, § 9; Va. Code § 15.2-2100.

<sup>23</sup> This exception also purportedly applies to the exchange, lease and conveyance of public property. Because article VII, section 9 of the Constitution of Virginia and Va. Code § 15.2-2100 only require a supermajority vote for the sale of public property, however, this exception can only apply to sales.

<sup>24</sup> Thus, a member of the board of supervisors whose spouse is employed by the school board may invoke this exception, disclose the interest, and vote on the school board budget. See Va. Att'y Gen. COI Adv. Op. No. 04-A03 (July 2004); Va. Att'y Gen. COI Adv. Op. No. A 6-A07 (Sept. 2006) (town advisory committee); Va. Att'y Gen. COI Adv. Op. No. 07-A03 (June 2007) (town manager on state board).

When four board members were indicted on parallel charges, the exception for groups of three or more applies, and the members may vote on a transaction involving the reimbursement of their legal fees. Va. Att'y Gen. COI Adv. Op. No. 09-A01 (Oct. 2009).

written minutes, or he may file a signed written declaration with the clerk or administrative head of his agency, who must retain and make available for public inspection the declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this section prior to participation in the transaction, the officer or employee must prepare and file the required declaration by the end of the next business day. The Act also requires that the officer or employee “shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed, and such disclosure shall be recorded in the minutes.” Va. Code § 2.2-3115(H).

#### **27-7.04(b) Firm Clients**

An officer or employee may participate in a transaction in which a party to the transaction is a client of his firm only if the officer or employee does not personally represent or provide services to the client.<sup>25</sup> Va. Code § 2.2-3112(B)(2). In order to participate in such a transaction, the officer or employee must declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee 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 administrative head of his governmental or advisory agency, who must retain and make available for public inspection the declaration for a period of five years. If reasonable time is not available to comply prior to participation in the transaction, the officer or employee must prepare and file the required declaration by the end of the next business day. Va. Code § 2.2-3115(I).

#### **27-7.04(c) Transactions That Affect the Public Generally**

An officer or employee may participate in a transaction if it affects the public generally, even though his personal interest as a member of the public may be affected by that transaction. No declaration is required in such circumstances. Va. Code § 2.2-3112(B)(3). Note, however, that even a transaction affecting several thousand people may not constitute a transaction that “affects the public generally” for purposes of the Act. For example, the Attorney General opined that a school board member married to one of the approximately 12,000 employees of the local school division, when called upon to participate in deliberations regarding the salaries and benefits of the employees, must declare his personal interest in the transaction. Because his spouse’s salary and benefits would be directly impacted by the transaction, the school board member’s interest was not akin to the interest of a member of the public at large. 2020 Op. Va. Att’y Gen. 43.

#### **27-7.04(d) Civil Legal Proceedings**

If an officer or employee is a party to a civil legal proceeding regarding a transaction, that fact alone does not preclude the officer or employee from participating in the transaction. Va. Code § 2.2-3112(E).

## **27-8 DISCLOSURE STATEMENTS**

### **27-8.01 When and for What Period**

An officer or employee who is required to file a disclosure statement must file by February 1, and the information is for the prior calendar year. If filing a disclosure statement is a

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<sup>25</sup> Although the Act does not prohibit the firm of an attorney who serves on a governing body from appearing before that body, keep in mind that the Virginia Rules of Professional Conduct also govern attorneys. In Legal Ethics Opinion #1718, the Virginia State Bar’s Committee on Legal Ethics concluded that although the Conflict of Interests Act may not prohibit such appearances, attorneys are subject to a “higher standard” of ethical conduct. The committee concluded that the disciplinary rules prohibited members of a firm from appearing before a local governing body regarding a zoning application because a member of the firm served on the governing body. See *also* Legal Ethics Opinion #1763 (affirming Legal Ethics Opinion #1718).

condition of assuming office or employment, the person must file the disclosure statement on or before assuming office or beginning employment and the information contained is for the preceding 12-month period through the last day of the month immediately preceding the date the person assumes an office or position of employment. However, if the employment or office tenure begins in January, then the disclosure form is due February 1 with information from the preceding calendar year. Va. Code § 2.2-3118.2.

### **27-8.02 Persons Required to File Disclosure Statements**

#### **27-8.02(a) Members of Governing Bodies, School Boards, and Industrial or Economic Development Authorities**

As a condition of assuming office, the members of the governing body and school board of every county, city, and town with populations in excess of 3,500, and the director and members of each industrial or economic development authority, must file a [Statement of Economic Interests](#), as prescribed by the Ethics Advisory Council. Thereafter, the officers must file the statement annually, on or before February 1, with the clerk of the governing body or school board, or the local clerk of the jurisdiction where the authority is located. Va. Code § 2.2-3115(A). The disclosure statement may be signed electronically. Va. Code § 2.2-3118. The public body's administrator must provide a copy of the Act to the members within two weeks of their election, reelection, appointment, or reappointment, and the members must read and familiarize themselves with the Act's provisions. Va. Code § 2.2-3100.1.

#### **27-8.02(b) Candidates for Governing Bodies and School Boards**

Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons must file a Statement of Economic Interests. Va. Code § 2.2-3115(E); *see also* Va. Code § 24.2-502 (requiring candidates for elective office to file disclosure statement); 2011 Op. Va. Att'y Gen. 42 candidate must disclose interest in business that has ongoing relationship with the locality).

#### **27-8.02(c) Members of Planning Commissions, Boards of Zoning Appeals, Real Estate Assessors, and County, City and Town Managers or Executive Officers**

In each county and city, and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers must make annual disclosures of all their [interests in real estate](#) located in the county, city, or town in which they are elected, appointed, or employed. Such disclosure must include any business in which the person owns 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 county, city, or town. Such disclosure must be filed as a condition to assuming office or employment, and thereafter must be filed annually on or before February 1. Va. Code § 2.2-3115(G).

#### **27-8.02(d) Authority Members**

As a condition of assuming office, the members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, must file a disclosure statement of their personal interests and other information on the [Financial Disclosure Statement](#), as prescribed by the Ethics Advisory Council, unless the appointing governing body requires the authority members to complete the Statement of Economic Interests. Thereafter, the officer must file the statement with the clerk of the governing body annually on or before February 1. Va. Code § 2.2-3115(A). The public body's administrator must provide a copy of the Act to the members within two weeks of their appointment or reappointment, and the members must read and familiarize themselves with the Act's provisions. Va. Code § 2.2-3100.1.



**27-8.02(e) Nonsalaried Board, Commission, and Council Members**

Nonsalaried citizen members of local boards, commissions and councils who are required by their governing body to file disclosure statements must file, as a condition of assuming office, a disclosure form of their personal interests and such other information as is specified on the Financial Disclosure Statement. Thereafter, the member must file the statement annually, on or before February 1. Va. Code § 2.2-3115(B). The public body's administrator must provide a copy of the Act to the members within two weeks of their appointment or reappointment, and the appointees must read and familiarize themselves with the Act's provisions. Va. Code § 2.2-3100.1.

Retracting an earlier opinion, the Advisory Council has stated that commission members are not automatically required to file a disclosure form, but they may be required to file a disclosure form by the governing body that appoints them to the commission. A nonsalaried citizen member of a commission may be required by designation of the appointing governing body to file the Financial Disclosure Statement. Any appointed commission member may be required to file a Statement of Economic Interests, but only if the appointing governing body has passed an ordinance requiring such disclosure. Commission staff members are not automatically required to file, but they may be designated by ordinance to file a Statement of Economic Interests by their respective governing body. If staff members work directly for the commission and are not employees of the governing body that has established the commission, they are not be required to file any disclosure statements. EAO 2015-F-002 (Oct. 17, 2017).

In Part I of the form, filers are not required to disclose interests in any business, other than a news medium, that represents less than three percent of the business's total equity. Also in Part I, filers may exclude annual income from a business of less than \$10,000. Local officials and appointees are not required to complete Parts III A and B, but they must complete Part III C. Va. Code § 2.2-3118.

**27-8.02(f) Community Policy and Management Teams and Family Assessment and Planning Teams**

Any person who serves on a Community Policy and Management Team (CPMT) or on a Family Assessment and Planning Team (FAPT) who does not represent a public agency shall file the [Statement of Economic Interests](#). Va. Code §§ 2.2-5205, 2.2-5207. These requirements are not contained in the Act but rather are part of the separate Children's Services Act. That Act does not explicitly require the filing of the form upon appointment and annually thereafter, but the statute could be fairly interpreted as implicitly requiring that filing schedule, given that all other statutorily mandated filers of the Statement of Economic Interests must file upon appointment and annually thereafter. Members of the teams who do represent governmental agencies are only required to file disclosure forms if so required by the governing body as discussed in section [27-8.02\(e\)](#).

Note also that although governing bodies appoint CPMT members, FAPT members are appointed by the CPMTs. Va. Code §§ 2.2-5205, 2.2-5207. Thus, the clerks of governing bodies may be unaware of the names and mailing addresses of members of FAPTs who are statutorily required to file the long form, and thus may need prompting to ensure that they include these appointees in their annual mailing of disclosure forms. Clerks likely also would be unaware that a new citizen FAPT member has been appointed, so local departments of social services should be certain that they inform their clerks of such appointments and the need for citizen members to be sent the Statement of Economic Interests upon appointment.

**27-8.02(g) Appointees and Employees of Governing Bodies or School Boards**

Persons occupying positions of trust who are appointed or employed by a local governing body or a school board and who are required by ordinance of the governing body or by adopted policy of the school board to file disclosure statements must file, as a condition to

assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the Statement of Economic Interests. Thereafter, the appointee or employee must file the statement annually, on or before February 1, with the clerk of the governing body. Va. Code § 2.2-3115(A). The public body's administrator must provide a copy of the Act to such persons within two weeks of their employment, appointment, or reappointment, and the recipients must read and familiarize themselves with the Act's provisions. Va. Code § 2.2-3100.1.

#### **27-8.02(h) Constitutional Officers**

Holders of the constitutional offices of treasurer, commissioner of revenue, sheriff, Commonwealth's Attorney, and clerk of circuit court of each county and city and candidates for those offices must electronically file the [Statement of Economic Interests](#) with the Ethics Advisory Council. Va. Code § 2.2-3116. The public body's administrator must provide a copy of the Act to the officers within two weeks of their election, reelection, or appointment, and the officers must read and familiarize themselves with the Act's provisions. Va. Code § 2.2-3100.1.

#### **27-8.02(i) Prohibition on Requiring Additional Disclosures**

No person is mandated to file any disclosure not otherwise required by Article 5 of the Act. Va. Code § 2.2-3115(C). For a discussion of the disclosures required by Title 15.2 of the Code of Virginia, see section [27-1.03](#).

#### **27-8.03 Disclosure Forms**

##### **27-8.03(a) Distribution of Forms**

The Ethics Advisory Council must make the forms available at least thirty days prior to the filing deadline, and the clerks of the local governing bodies and school boards must distribute the forms at least twenty days prior to the filing deadline. Va. Code § 2.2-3115(D). Forms are available from the Ethics Advisory Council [website](#).

##### **27-8.03(b) Filing and Retention of Forms**

[Statements of Economic Interests](#), [Financial Disclosure Statements](#), and [Disclosure of Real Estate Holdings](#) forms must be filed in the office of the clerk of the governing body or school board. The clerk must maintain the forms as public records for five years. The Act provides that forms must be made public within six weeks of the filing deadline. This provision may have been included in order to assist the Ethics Advisory Council with its publication of the forms online, but given that the forms are public records subject to the Virginia Freedom of Information Act, and no exemption or delay mechanism for the release of the forms is contained therein, the safer course of action would be to provide public access to the forms in the time frame provided by the Freedom of Information Act. Va. Code § 2.2-3115(D), (G); see Chapter 23, FOIA, section [23-4.02\(d\)](#). For public release, the residential address (except on the Real Estate Holdings form), personal telephone number, email address, and signature on a form must be redacted. Va. Code § 2.2-3115(J).

A single filing of the Statement of Economic Interests is sufficient for all positions or offices held or sought that require long form filing during a calendar year, and a single filing of the Financial Disclosure Statement is sufficient for all positions or office that require short form filing during a calendar year. Va. Code § 2.2-3118.1. An individual who has met the requirement for annual filing of the long or short form shall not be required to file an additional statement upon reappointment to the same office or position provided that such reappointment occurs within twelve months after filing the long form or short form. *Id.*

##### **27-8.03(c) Civil and Criminal Penalties**

Any person required to file the Statement of Economic Interests who fails to do so within the time period prescribed "shall" be assessed a \$250 civil penalty. Within thirty days of the passed deadline, the local clerk must notify the Commonwealth's Attorney, who is to assess



and collect the penalty. Va. Code § 2.2-3124(B). Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony. Va. Code § 2.2-3117. These specific penalties are in addition to the more general penalties discussed in section [27-9](#).

#### **27-8.04 Role of the Commonwealth's Attorney**

The Act requires Commonwealth's Attorneys to establish a written procedure for implementing the Act's disclosure requirements of local officers and employees of his county, city, or town. The Commonwealth's Attorney must provide a copy of the Act to all local officers and employees in his jurisdiction who are required to file a disclosure statement. Failure to receive a copy of the Act, however, will not constitute a defense to a prosecution for a violation of the Act. Va. Code § 2.2-3126(B).

## **27-9 PENALTIES, REMEDIES, AND ADVISORY OPINIONS**

### **27-9.01 Knowing Violations**

A "knowing violation" is one in which the person engages in conduct, performs an act, or refuses to perform an act when he knows that the conduct is either prohibited or required by the Act. Va. Code § 2.2-3120.

### **27-9.02 Criminal Penalties for Knowing Violations**

Any person who knowingly violates a provision of the Act is guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates the prohibition against a personal interest in a transaction (Va. Code § 2.2-3112(A)) or the provision requiring disclosure of a prohibited interest in a transaction (Va. Code § 2.2-3115(F)) is guilty of a Class 3 misdemeanor.<sup>26</sup> Va. Code § 2.2-3120. Also, as noted above (see section [27-4.04](#)), violations of the prohibitions on certain gifts are not subject to criminal penalties. Va. Code § 2.2-3103(8)-(9).

#### **27-9.02(a) Knowing Violation Constitutes Malfeasance**

Any person who knowingly violates any of the Act's provisions is guilty of malfeasance in office or employment. Upon conviction, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment. Va. Code § 2.2-3122.

#### **27-9.02(b) Statute of Limitations**

A prosecution for a violation of the Act, other than a malfeasance prosecution, must commence within one year from when the Commonwealth's Attorney learns of the violation. No prosecution, however, may commence for a violation that occurred more than five years from the date of the violation, regardless of when the Commonwealth's Attorney learned of the violation. Va. Code § 2.2-3125. Prosecutions for malfeasance must commence within two years of the violation. *Id.*; Va. Code § 19.2-8.

#### **27-9.02(c) Enforcement**

The Commonwealth's Attorney prosecutes violations by local government officers and employees. If the violation involves more than one local jurisdiction, the Attorney General designates which Commonwealth's Attorney will serve as prosecutor. Va. Code § 2.2-3126(B).

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<sup>26</sup> The Act provides that "any member of a local governing body who knowingly violates § 2.2-3112(A) or § 2.2-3115(D) or (F) shall be guilty of a Class 3 misdemeanor." Va. Code § 2.2-3120. Virginia Code § 2.2-3115(D), however, does not apply to members of local governing bodies; it applies only to the Ethics Advisory Council and clerks of governing bodies and school boards. Virginia Code § 2.2-3115(H), which concerns disclosure when one is a member of a group and is permitted to disclose his interest and participate, does apply to members of local governing bodies. The drafters, therefore, probably intended to refer to subsection "H" instead of subsection "D."

**27-9.02(d) Venue**

The appropriate venue for a prosecution under the Act is the court of competent jurisdiction within the county or city in which the violation occurs. Va. Code § 2.2-3127.

**27-9.03 Other Remedies****27-9.03(a) Invalidation of Contracts**

Any contract made in violation of the Act's provisions concerning personal interests in a contract (Va. Code §§ 2.2-3106 to 2.2-3109; see section 27-6) or the general provisions concerning prohibited conduct (Va. Code § 2.2-3103; see section 27-4) may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescission of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency. Va. Code § 2.2-3123(A).

**27-9.03(b) Rescission of Purchases**

Any purchase made in violation of the Act's provisions concerning personal interests in a contract (Va. Code §§ 2.2-3106 to 2.2-3109; see section 27-6) or the general provisions concerning prohibited conduct (Va. Code § 2.2-3103; see section 27-4) may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of purchase. Va. Code § 2.2-3123(B).

**27-9.03(c) Civil Penalty and Forfeiture**

In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of Va. Code §§ 2.2-3103 through 2.2-3112 is subject to a civil penalty in an amount equal to the amount of money or thing of value received as a result of the violation. If the thing of value increases in value between the time of the violation and the time of discovery, the greater value is the basis for the civil penalty. Va. Code § 2.2-3124. Additionally, the amount of money or thing of value must be forfeited pursuant to the requirements of Va. Code § 19.2-386.33.

**27-9.04 Advisory Opinions and Declaratory Judgments****27-9.04(a) Opinions of a Commonwealth's Attorney**

The Act requires the Commonwealth's Attorney to render advisory opinions to governing bodies and individual officers or employees in his jurisdiction as to whether the facts in a particular case would constitute a violation of the Act. If written, such opinions are public records that must be released upon request. Va. Code § 2.2-3126(B).

**27-9.04(b) Appeal to Attorney General**

If the Commonwealth's Attorney concludes that the facts would constitute a violation, the officer or employee may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General revokes the Commonwealth's Attorney's opinion. Va. Code § 2.2-3126(B). The Attorney General may choose to publish his decision. *Id.*; see section 27-9.05(b) (regarding published and unpublished Attorney General opinions).

**27-9.04(c) Declaratory Judgment and Other Judicial Relief**

Irrespective of whether an opinion of the Commonwealth's Attorney or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law. *Id.* For an example of a declaratory judgment case concerning the Act, see *Williams v. Augusta County School Board*, 248 Va. 124, 445 S.E.2d 118 (1994).

**27-9.04(d) Effect of Advisory Opinions on Criminal Prosecutions****27-9.04(d)(1) Opinions of the Commonwealth's Attorney: Immunity**

The Act provides that an officer or employee shall not be prosecuted for a knowing violation of the Act if the alleged violation resulted from his good faith reliance on a written opinion of the Commonwealth's Attorney and the opinion was made upon written request and with a full disclosure of the facts. This immunity applies even if the opinion is later withdrawn, if the alleged violation occurred prior to withdrawal. The opinion will not be subject to the attorney-client privilege and must be released upon request. Va. Code § 2.2-3121(B).

**27-9.04(d)(2) Opinions of a Local Government Attorney: A Defense**

If any officer or employee is charged with a knowing violation of the Act, and the alleged violation resulted from his reliance upon a written opinion of his city, county, or town attorney, made after a full disclosure of the facts, that his action would not be in violation of the Act, then the officer or employee may introduce a copy of the opinion at his trial as evidence that he did not knowingly violate the Act. Va. Code § 2.2-3121(C).

**27-9.04(d)(3) Opinions of the Attorney General: Probable Immunity**

The Act provides that an opinion of the Attorney General acts as a bar to prosecution of state officers and employees, but it does not address the effect of such opinions regarding local officers and employees. See Va. Code § 2.2-3121(A). Presumably, a Commonwealth's Attorney would be unlikely to prosecute a local officer or employee for a knowing violation of the Act if the officer or employee acted in reliance upon an opinion of the Attorney General.

**27-9.04(d)(4) Opinions of the Ethics Advisory Council**

A local level officer or employee is immune from prosecution of a knowing violation of the Act if there was good faith reliance, after a full disclosure of the facts, on a formal opinion or written informal advice of the Ethics Advisory Council. Va. Code § 2.2-3121(B).

**27-9.05 Interpretations of the Act****27-9.05(a) Historical Context of Interpretations**

Virginia has adopted several collections of laws concerning conflicts, of which the current Act is the most recent. See, e.g., the 1970 Virginia Conflict of Interests Act (Va. Code §§ 2.1-347 through 2.1-358 (repealed 1983)), the 1983 Comprehensive Conflict of Interests Act (Va. Code §§ 2.1-599 through 2.1-634 (repealed 1987)), and the 1987 State and Local Government Conflict of Interests Act (Va. Code §§ 2.1-639.1 through 2.1-639.24 (repealed but recodified in 2001 at Va. Code § 2.2-3100 et seq.)). In 2002, the LGA's Committee on Issues Affecting Local Government Law conducted a comprehensive review of the Act. The next year, the General Assembly amended the Act to address concerns raised by the Committee. Among other things, the amendments addressed affiliated business entities and representation by an official's firm or business. Because the various conflicts acts have been replaced, revised, and amended dozens of times over the years, caution must be exercised in relying upon older conflicts opinions, particularly those concerning earlier versions of the Act.<sup>27</sup>

**27-9.05(b) Opinions of the Attorney General**

The Attorney General has written hundreds of opinions applying the provisions of Virginia's various conflict of interest provisions. Many of the opinions have been published in the *Annual Report of the Attorney General*, and all official Attorney General opinions published since January 1996 are available on the Attorney General's [website](#). Published opinions are also contained on LexisNexis (beginning with opinions issued in July 1958), Westlaw

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<sup>27</sup> The Supreme Court, for example, has disavowed reliance on certain opinions of the Attorney General concerning the statutory construction of the conflicts provisions because those opinions addressed a prior version of the state's conflicts provisions that did not explicitly address statutory construction. *Williams v. Augusta Cnty. Sch. Bd.*, 248 Va. 124, 445 S.E.2d 118 (1994).

(beginning with opinions issued in July 1976), and CaseFinder (beginning with opinions issued in July 1967).

Many of the Attorney General's opinions concerning conflicts, however, are unpublished advisory opinions. The Attorney General has provided Geronimo Development Corporation with these opinions from 1994 through 2010. The opinions can be accessed using CaseFinder, Geronimo's subscription-based electronic database. The Ethics Advisory Council is now the main interpretive body.

The Attorney General's conflicts opinions, both published and unpublished, are an excellent resource for those attempting to interpret the Act. Caution should be exercised in applying the opinions to a given set of facts, however, because the nature of the Act dictates that conflicts opinions are fact-specific.

### **27-9.05(c) The Supreme Court of Virginia**

The Supreme Court of Virginia has published five opinions concerning the Act. Four of those opinions continue to have precedential value;<sup>28</sup> none of the opinions arose out of a prosecution. The most recent decision addresses quorums and is discussed in section 27-7.03(a). The other opinions arose out of suits for declaratory judgment, as authorized by Va. Code § 2.2-3126(B). See section 27-9.04(c).

The Supreme Court's most lengthy and often-cited examination of the Act's provisions is found in *West v. Jones*, 228 Va. 409, 323 S.E.2d 96 (1984). The court concluded that the Act prohibited a mayor, who was also an employee of the city's school board, from participating in the selection and appointment of members of the school board. The Act's current provisions concerning a personal interest in a transaction differ substantially from those contained in the 1983 Act that were in effect at the time of the court's decision. Nevertheless, the opinion can be relied upon to the extent it concludes that the exception (contained in both versions of the Act) that permits participation in a transaction if it affects the public generally, may only be invoked if the officer or employee does not have an additional interest in the transaction apart from his general interest as a member of the public. See Va. Code § 2.2-3112(B)(3); section 27-7.04(b). The court also concluded that a violation of the Act can exist despite the absence of any evidence, or even any suggestion, that the officer or employee allowed or would allow his judgment to be compromised or affected by a personal interest.

In *Williams v. Augusta County School Board*, 248 Va. 124, 445 S.E.2d 118 (1994), the court interpreted the prohibition against hiring a relative of a school board member, along with the exceptions to that prohibition. The court concluded that construction of an exemption in such a way as to allow situations in which preference or undue influence in hiring decisions, based on familial relationship, could occur would be contrary to the Act's goals. Subsequent to the publication of this opinion, the General Assembly added an exception apparently crafted to apply to the plaintiff in this case.<sup>29</sup>

In *Harris v. Ingram*, 240 Va. 46, 392 S.E.2d 816 (1990), the court addressed the provision of the Act that permits award of a contract to a member of a governing body if, among other things, the remaining members of the body by written resolution state that

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<sup>28</sup> *Ambrogi v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982), addresses a grandfathering provision of the 1970 version of the Act. That provision was substantially revised in subsequent versions of the Act, thereby rendering moot the issue at the heart of the court's decision.

<sup>29</sup> The Act now excludes from the prohibition against hiring relatives any employee who "was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to . . . the school board member or division superintendent of schools taking office." Va. Code § 2.2-3119(B). See *Williams v. Augusta Cnty. Sch. Bd.*, 248 Va. 124, 445 S.E.2d 118 (1994).

it is in the public interest for the member to bid on the contract. The court concluded that this provision does not require the remaining members to unanimously adopt such a resolution—a simple majority suffices.

**27-9.05(d) Additional Resources**

In 1993, the Office of the Attorney General published its final update to *The Law Review*. Section 1 of that publication concerns the Act as it existed in June 1993. The chapter is arranged chronologically by Code section and includes citations to applicable Attorney General opinions. Although several amendments have been made to the Act since 1993, the chapter nevertheless remains a helpful resource for understanding the Act's provisions. See 1 VA. ATT'Y GEN. L. REV. § 1 (rev. 1993).

The Virginia Municipal League annually publishes an excellent booklet entitled [\*Virginia Freedom of Information Act, the Virginia Conflict of Interests Act and the Virginia Public Records Act\*](#). It includes an explanation of the Act's requirements and a copy of the Act itself. Paper copies may be purchased, and electronic copies may be downloaded without charge.