

VML Comments on November 14 meeting of ethics commission

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VML has the following comments regarding the commission's work on November 14 on conflict of interests issues. This memo should not be taken to mean VML is not interested in the reform of the decennial redistricting process. VML fully supports that effort and is working with OneVirginia2021.

The commission did not invite further public input at its meeting. However, I hope the comments below will be useful for the commission as it moves forward.

Ethics Oversight and Enforcement

The commission discussed the role of VML and VACo in nominating members of the oversight commission. Commission members expressed concern about naming VML and VACo in the statute. The commission may not be aware that VML and/or VACo are identified by name in at least seven state entities that are set out in the state code.

The ethics advisory council created by § 30-348 provides the following in the subsection on composition of the council: "one member appointed by the Senate Committee on Rules from a list of three nominees submitted by the Virginia Association of Counties; and one member appointed by the Speaker of the House of Delegates from a list of three nominees submitted by the Virginia Municipal League". The FOIA Council, the Criminal Justice Training Academy, the Broadband Advisory Council, the State EMS Advisory Board and others name VML and VACo specifically.

Since the ethics review commission will have authority over local government officials, local government, through their member organizations should have a meaningful role in selecting members.

Gifts and Loans

1. Third-party sponsored travel.

VML agrees completely that trips paid by some entity attempting to gain favor from the General Assembly or other government entity should be reviewed by an independent council. As the recommendation is written, it captures travel paid by VML and VACo for their presidents and other organization officials to meetings they take on behalf of local governments. Examples

are the National Association of Counties and National League of Cities meetings. Those trips do not create the opportunity for a conflict, unlike trips paid by a private entity.

VML asks the commission to consider some accommodation for those kinds of trips. They are much more like a city paying for its mayor to attend an event, which the Governor's commission indicated should not be reportable. When a mayor or council member attends a meeting to carry out the business of the city or town, that trip inherently does not create a conflict situation. The form is a disclosure to allow the citizens to know when a conflict may exist.

Further, as clarification, we hope that the commission will expressly include local and regional bodies in the exemption from reporting. The material distributed at the meeting on the 14th states "Standard exemptions would be provided for travel reimbursed by a state government entity".

2. Limit on all gifts

VML supports including intangible gifts in the \$250 cap. However, it must be set up in a way that doesn't capture gifts that are unrelated to the government service. For example, it is not uncommon for a person to set up a trust to pay the college tuition of a friend's child. That kind of gift is prohibited in the language of the "Draft of December Recommendations" distributed at the meeting of the 14th. In addition, if a grandparent sets up a trust for the grandchildren's college tuition, the trust is a separate legal entity that would be prohibited from making the gift. That policy would serve no purpose other than to have a chilling effect on citizens considering service to the public in a governmental role.

3. Limits on non-lending institution loans over \$5,000 without preclearance.

In local governments, small business owners regularly serve – they are not full-time elected officials. The proposed limit on non-lending institution loans will have a chilling effect that will likely force good citizens to eschew serving on a local governing body.

Here is how: two individuals go into business, one is the financier, the other, a local government official, contributes sweat-equity. The business does well and the sweat-equity partner decides to open another, complementary business. The financier partner wants to back the new venture with a sizeable loan, but doesn't want to be an equity partner. The commission's proposal would require taking their private business dealings to the state agency. This will drive people away from serving in public office.

The ethics rules adopted in the 2014 session of the General Assembly allow this kind of relationship. That should be preserved.

Conflict of Interests

The draft suggests a process to allow a person to vote on the matter in which he or she has a conflict. This is in the last paragraph of the conflict of interests page. This fix is unnecessary. Va. Code §2.2-3112.C of COIA provides:

C. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. 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.

This provision of law has been on the books for years and works to deal with conflicts issues. We recommend against reinventing this wheel, at least at the local government level.

Disclosure Requirements

VML supports allowing local officials to file their COIA disclosure forms with the clerk of the local governing body, which is the current practice. We estimate that some 1,500 local officials file the form set out in Va. Code §2.2-3117. The vast majority are part-time legislators. Many of those rely on the local clerk to remind them to file. Some rely on the clerk to help with the forms. Moving the clerk out of the process will lead to many individuals failing to file in a timely manner. VML supports requiring the local clerk of the governing body to submit an electronic version of the forms with a state commissions.