

Local government recommendations – Conflict of Interests Act, Ethics Reform

Presented by:

Mark K. Flynn
General Counsel
Virginia Municipal League
PO Box 12164
Richmond, VA 23241
(804) 523-8525
mflynn@vml.org

Roger C. Wiley
Hefty & Wiley, P.C.
Old City Hall, Suite 230
1001 East Broad Street
Richmond, Virginia 23219-1928
Phone: (804) 780-3143
roger@heftywiley.com

Local governments, represented by the Virginia Municipal League, submit the following positions on issues related to the 2014 amendments to the State and Local Government Conflict of Interests Act (the “COI Act”), the creation of the state Conflict of Interest and Ethics Advisory Council, and the deliberations of the Governor’s Commission on Integrity and Public Confidence in State Government.

1. New ethics / conflict of interests act panel

Background: The 2014 amendments to the COI Act created an advisory council in the legislative branch to receive financial disclosure forms and provide training and advisory opinions about the COI Acts to state legislators, executive branch officers and employees, and local government officials. Governor McAuliffe expressed concern that the commission lacked the authority needed to make a difference and expressed a preference for an executive branch entity to perform similar functions with the exercise independent investigative and enforcement powers. The Governor’s Commission’s initial discussions indicate it may recommend that jurisdiction be split between a legislative entity with authority over General Assembly members and lobbyists, and an executive branch entity dealing with other state and local officials.

Position: *VML supports the creation of a state-level entity to offer advice and monitoring of compliance with the COI Act as it applies to elected and appointed local government officers and employees. It has no position on whether this entity should be housed in the legislative or executive branch of state government. VML is open to discussion of giving this entity reasonable investigative and enforcement powers, as long as there are appropriate limitations on those powers and safeguards to afford due process.*

Background: The sheer number of local officers and employees who are covered by the COI Act makes it likely that any ethics advisory and/or enforcement body will have at least as many cases and inquiries from local government as it does from the state level, making meaningful local government representation essential. Commission members acknowledged the value of having representatives from the body in which an individual serves on an ethics oversight entity.

Position: Approximately half of the members of any public body established concerning public ethics and COI issues should be current local officers or employees, or have significant and recent past local government experience.

2. Local government officials should file disclosures locally

The 2014 amendments to the COI Act go beyond requiring local officials to file financial disclosure forms twice a year instead of once per year. After a phase-in period, they will have to file these forms with the COI and Ethics Advisory Council in Richmond, instead of with the local governing body clerk or other local official who has receives them now.

This change will be confusing to local government officials. The list of local officials required to file disclosure forms includes members of city and town councils, county boards of supervisors, planning commissions, boards of zoning appeals and any local authorities empowered to issue bonds. Many localities also require their chief administrative and finance officers, attorneys and other officers to file the forms. The number of local officials who file these disclosures across the state is in the thousands. This could overwhelm the newly created state ethics panel if it receives all the forms from local officials directly.

Especially in smaller localities, the officials who file these forms rely on the clerk of the county board or municipal council who receives the form to help them complete it.

Some of these local officials serve part-time, and have no computer at home or lack internet access for filing disclosure forms electronically. As a result, the clerks often work to help officials understand the forms and to make sure they are filed on time. There is an obvious benefit to having a central statewide repository of the forms, but that can be accomplished by having the local clerks receive them and send them on to Richmond.

Position: VML supports having local officials continue to file their COI disclosure forms in their own localities. The responsible state entity's database should be designed so that the local clerks can either scan the forms and send them to Richmond electronically, or make basic entries into the database from the information contained on the forms.

3. Talks and Meetings reporting requirements.

Background: The 2014 amendments to the COI Acts place a limit on the acceptance of tangible gifts by public officials and alter a number of requirements for reporting intangible gifts, which include tickets to events, travel and entertainment. While some of these changes are welcome,

other changes seem to confuse two things: first, the acceptance of gifts from persons or groups who are seeking some favorable action from a locality and second, the public official with expense reimbursements by the official's own locality, or from organizations of which the official's locality belongs, and acceptance of invitations to meetings, education and community events that are an appropriate part of a local official's job.

For example, a locality's payments for its own elected officials or employees to attend conferences and seminars directly related to their duties may be of interest to the public, but they do not raise conflict of interest issues; they do not fall into the first category of payments. Requiring these expenses to be reported on a COI disclosure form unfairly suggests that they are comparable to vacation trips or recreational events paid for by lobbyists or prospective public contractors. Localities routinely give reporters and other citizens copies of their officials' travel expenses for attending meetings and conferences, which are public documents under the FOIA. There is no compelling need for these expenses to be reported on the COI disclosure forms.

Similarly, it is common for chambers of commerce, trade associations and other civic groups to invite local officials to meetings or educational events to keep them aware of those organizations' activities in the community or to keep the officials up to date with important information they need to carry out their duties. Members of governing bodies and administrative officials go because their presence is expected, or they can benefit from the information being shared.

4. Gift from a party to a contract or is seeking to become a party to a contract with a local government

Another problem with some of the newly amended reporting requirements is that they may prohibit or require local elected officials to report meals or gifts from current or prospective contractors with their locality, but the contractors' dealings have only been with the administrative staff of the locality and the elected official has no knowledge of the contract or no knowledge that the person may be seeking a contract with the local government. These requirements should only apply in situations when the contract in question is, or will soon be, before the elected governing body for approval or the official has actual knowledge of the contract or procurement.

Position on items 3 and 4: VML supports reporting requirements for officials to report meals and entertainment paid for by lobbyists or public contractors, and strict limits on the value of other types of gifts or loans that may be accepted. VML asks, however, that the General Assembly revisit reporting requirements and not require job-related travel and conferences paid for by an elected official's or employee's own agency or locality to be listed on a COI disclosure form, because these do not present a COI issue. VML also asks for careful reconsideration of requirements for reporting meals or gifts from public contractors so that local officials are not held responsible if they have no way of knowing that action on a contract is pending.