

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.

Attorney General is unaware of any legislative document or study to use as guide in determining rationale of General Assembly in establishing \$500 threshold in exception to Act's contract restrictions. Each component of executive branch of state government constitutes separate agency for purposes of applying Act's contract prohibitions to employees of state governmental agency. Employees of component of state government that is neither selling nor owning agency of surplus state property may purchase such property, provided property is sold (1) in compliance with competitive sealed bidding or negotiation procedures of Virginia Public Procurement Act; (2) following determination that such procurement procedures are not in public's best interest; or (3) at uniform prices available to public.

The Honorable Emily Couric

Member, Senate of Virginia

The Honorable Mitchell Van Yahres

Member, House of Delegates

August 27, 1998

You inquire regarding restrictions imposed on state employees by the State and Local Government Conflicts of Interest Act¹ (the "Act") in the purchase of surplus state property from agencies of the Commonwealth. You first inquire regarding the rationale of the General Assembly in establishing a \$500 threshold in the exception to the Act's contract restrictions. Section 2.1-639.9(A)(6) of the Act excepts from the restriction in § 2.1-639.6(A) "contracts for the purchase of goods or services when the contract does not exceed \$500."

You relate that state employees may bid up to \$500 on items placed for sale by the employee's agency with the State Surplus Property Unit of the Division of Purchases and Supply at a state surplus auction without having a personal interest in a contract in the resulting sale of the items. The Act defines "personal interest in a contract" as "a personal interest which an ... employee has in a contract with a governmental agency ... due to his being a party to the contract."²

The goal of statutory construction is to determine legislative intent and give meaning to that intent insofar as possible.³ In this instance, however, I am unaware of any document or study which I may use as a guide in determining the rationale of the General Assembly in establishing the \$500 limit in § 2.1-639.9(A)(6). Accordingly, I cannot provide to you with any certainty the rationale of the General Assembly in establishing \$500 as the threshold amount.

You also ask whether state employees are permitted to purchase, without restriction, surplus state property placed for sale, and sold at surplus property sales, by an agency other than their employing agency.

The Act assures the citizens of Virginia that "the judgment of public ... employees will not be compromised or affected by inappropriate conflicts."⁴ Section 2.1-639.6(A) restricts the personal interest an employee may have in a contract with the agency of state government that employs him, other than his own employment contract. Section 2.1-639.6(B) also restricts the personal interest an employee may have in a contract with any other agency of state government unless such contract is awarded (1) as a result of the competitive sealed bidding or negotiation procedure as defined in § 11-37 of the Virginia Public Procurement Act, or (2) following a determination, in writing, by the agency administrative head that such a competitive sealed bidding or negotiation procedure is contrary to the public's best interest. The Act defines "governmental agency" as

each component part of the legislative, executive or judicial branches of state ... 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.^[5]

The primary object in interpreting a statute is to ascertain and give effect to the legislative intent underlying the statute.⁶ "The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms."⁷ Unless a contrary legislative intent is manifest, words used in a statute should be given their common, ordinary and accepted meanings.⁸ The term "each" is defined as "denot[ing] or refer[ring] to every one of the ... things, composing the whole, separately considered."⁹ Use of the term "each" by the General Assembly in defining the component parts of the executive branch indicates that every element of the executive branch is a separate governmental agency for purposes of the Act. Accordingly, each component of the executive branch of state government constitutes a separate agency for the purposes of applying the contract prohibitions in § 2.1-639.6.

A 1984 opinion of the Attorney General concludes that officers and employees of a governmental agency of state government, other than those within the Division of Purchases and Supply—the agency selling the surplus—and the agency owning the surplus being sold, may purchase surplus property being sold by the Division, provided such sales and purchases are made pursuant to the provisions of the Act.¹⁰ A rule of statutory construction specifies that it is unnecessary to resort to any rules of statutory construction when the language of the applicable statute is unambiguous.¹¹ In such a case, the statute's plain meaning and intent govern. Accordingly, I must also conclude that employees of a component of state government that is neither the selling nor the owning agency of surplus state property may purchase such property, provided sales of the property are made (1) as a result of competitive sealed bidding or negotiation;¹² (2) following a determination that competitive bidding is not in the public's best interest;¹³ or (3) at uniform prices available to the public.¹⁴

¹Tit. 2.1, ch. 40.1, §§ 2.1-639.1 to 2.1-639.24.

²Section 2.1-639.2.

³See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); Op. Va. Att'y Gen.: 1994 at 114, 116; 1991 at 58, 60.

⁴Section 2.1-639.1.

⁵Section 2.1-639.2 (emphasis added).

⁶See *Turner v. Commonwealth*, 226 Va. At 459, 309 S.E.2d at 338.

⁷*Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976).

⁸See Op. Va. Att'y Gen.: 1991 at 296, 298; 1990 at 233, 234; 1989 at 155, 155.

⁹Black's Law Dictionary 507 (6th ed. 1990).

¹⁰1983-1984 Op. Va. Att'y Gen. 433, 434. Section 2.1-639.6(B) of the Act is the section that is comparable to former § 2.1-605(B) of the repealed Comprehensive Conflict of Interests Act interpreted in the 1984 opinion.

¹¹See *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

¹²Section 2.1-639.6(B); see also § 11-37.

¹³Section 2.1-639.6(B).

¹⁴Section 2.1-639.6(C)(4).