

99-024

COUNTIES, CITIES AND TOWNS: URBAN COUNTY EXECUTIVE FORM OF GOVERNMENT.

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.

ELECTIONS: CAMPAIGN FINANCE DISCLOSURE ACT.

Purpose of disclosure of business or financial relationship at hearing held to consider application for special exception, variance or zoning is to establish public record of economic interests that may affect judgment of governmental officials in performance of their duties. Strict compliance with requirement to disclose such relationship between county official who has power to approve certain land use changes and applicant requesting changes; \$200 threshold amount triggers financial relationship that requires disclosure.

Mr. David P. Bobzien
County Attorney for Fairfax County
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You ask whether § 15.2-852 of the *Code of Virginia* requires a local elected official to treat as a campaign contribution the entire entry fee received from each participant in a political fund-raising event or whether the official may deduct the portion of the fee covering his costs in sponsoring the event. You indicate that individuals and firms involved in land use applications may attend the event.

Section 15.2-852 applies whenever the board of supervisors, the planning commission, or the board of zoning appeals holds a hearing on an application for a special exception or variance or an amendment to a zoning ordinance other than a comprehensive zoning plan or ordinance applicable throughout the county.¹ Section 15.2-852(A) provides that, prior to or at the hearing, each member of the body conducting the proceeding is to publicly disclose "any business or financial relationship" the member has or has had within the preceding twelve-month period with certain persons involved in the application.² The statute broadly defines the term "business or financial relationship" to include

the receipt by the member, or by any person, firm, corporation or committee in his behalf from the applicant in the case or from the title owner, contract purchaser or lessee of the subject land, or from any of the other persons above specified, during the twelve-month period prior to the hearing in such case, of any *gift or donation* having a value of \$200 or more.^[3]

A prior opinion of the Attorney General concludes that the "gift or donation" language in the statute is sufficiently broad to encompass political contributions and that, therefore, the disclosure requirements of § 15.2-852 are in addition to any reporting requirements imposed by the Campaign Finance Disclosure Act.⁴

The opinion recognizes, however, that the disclosure requirements of § 15.2-852 serve a different purpose from the reporting requirements of the Act.⁵ The purpose of the Campaign Finance Disclosure Act is to provide a public record of campaign contributions to candidates for public office; the purpose of § 15.2-852 is to disclose a "business or financial relationship" at the time and at the place that an application for a special exception, variance or zoning amendment is being considered.⁶

The purpose of § 15.2-852 is thus substantially the same as the reporting requirements under the State and Local Government Conflict of Interests Act:⁷ to establish a record of economic interests which may affect the judgment of governmental officers and employees in the performance of their official duties.⁸ A 1989 opinion concludes that, in determining the value of a complimentary ticket to a fund-raising event under the Act, only the value of the meal or refreshments provided at the event need be considered since any profit from the event would be given to the candidate, political committee or other entity which sponsored the event.⁹ Thus, unless the value of the meal or refreshments exceeds the threshold amount set out in the statute, no disclosure is required.¹⁰

Although based on a different factual setting, the 1989 opinion may be read as authority for the proposition that, for reporting purposes, the value of a ticket to a political fund-raising event may be divided between the expenses associated with the event and the profit from the event. I am unable to conclude, however, that the General Assembly intended this result in the enactment of § 15.2-852.

Section 15.2-852 requires generally the disclosure of any business or financial relationship between a county official who has the power to approve certain land use changes and an applicant requesting the changes. The "gift or donation" language of § 15.2-852 has a narrower purpose: the public disclosure of a particular type of financial transaction between the county official and the persons who will benefit from approval of the application. Under the statute, this type of financial transaction constitutes a "financial relationship" between the official and the applicant. The General Assembly has set \$200 as the threshold amount that triggers a financial relationship and thus requires disclosure.¹¹ In my view, no language in the statute supports the conclusion that, although an applicant may pay a county official more than the threshold amount for a ticket to a fund-raising event held to benefit the official, a "financial relationship" is not established if the county official's actual profit from the sale of the ticket falls below \$200.

I point out also that, while knowing violations of both § 15.2-852 and the disclosure requirements of the State and Local Government Conflict of Interests Act carry criminal penalties,¹² a local official may avoid prosecution under the Act if the official acts in reliance on a written opinion of the Commonwealth's attorney; a state official likewise may rely on a written opinion of the Attorney General.¹³ The General Assembly has not expressly authorized either the Commonwealth's attorney or the Attorney General to provide local officials subject to § 15.2-852 this protection. It is, therefore, advisable for local officials engaged in transactions within § 15.2-852 to strictly comply with the statute's disclosure requirements.

¹Section 15.2-852 applies only in a county with the urban county executive form of government.

²The persons include the applicant, the title owner, contract purchaser or lessee of the land, any trust beneficiary with an interest in the land, and the agent, attorney or real estate broker of any of the above. Section 15.2-852(A).

³Section 15.2-852(A) (emphasis added).

⁴Sections 24.2-900 to 24.2-930; see 1987-1988 Op. Va. Att'y Gen. 153, 154-55 (citing repealed § 15.1-73.4, revised as § 15.2-852).

⁵See 1987-1988 Op. Va. Att'y Gen., *supra*, at 155.

⁶See *id.*

⁷Sections 2.1-639.1 to 2.1-639.24. Section 15.2-852 is not superseded by the State and Local Government Conflicts of Interest Act. See § 2.1-639.1 (Act supersedes "all general and special acts," with exception of § 15.1-73.4, predecessor statute to § 15.2-852, which "shall remain in full force and effect").

⁸See § 2.1-639.1.

⁹See 1989 Op. Va. Att'y Gen. 6, 7.

¹⁰See *id.*

¹¹See § 15.2-852(A).

¹²See §§ 15.2-852(C), 2.1-639.17.

¹³See § 2.1-639.18.(A), (B)