

99-054

**ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.**

**Community college employee may not accept additional cash bonus from private corporation for training services provided to corporation by college.**

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You ask whether an employee of a community college whose duties include administering a training program as part of an agreement between the college and a private corporation may accept a cash bonus from the private corporation for exemplary services rendered over a period of several years.

You relate that a community college is party to an agreement with the private corporation by which the college provides extensive training services to the corporation. You state that the private corporation does not provide any services to the community college. You also state that the college employee coordinates and manages this project, selects and supervises the staff for the project, and develops the budgets for the activities of the project.<sup>1</sup> You further state that in recognition of this employee's exemplary services, the corporation seeks to award the employee a cash bonus. You inquire whether such an award would violate the State and Local Government Conflict of Interests Act<sup>2</sup> (the "Act").

The community college employee is an "employee" of a "governmental agency," subject to the Act's prohibitions and restrictions.<sup>3</sup> Section 2.1-639.4(1) of the *Code of Virginia*, a portion of the Act, provides that no employee of a state governmental agency shall

[s]olicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an ... employee. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law[.]

The express legislative intent of the Act is to assure the citizens of the Commonwealth that "the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts."<sup>4</sup> To further this end, the Act identifies certain prohibited and unlawful conduct on the part of public employees including the conduct described in § 2.1-639.4. The Act provides that it "shall be unlawful"<sup>5</sup> for any state government employee to "accept money ... for services performed within the scope of his official duties, except the [amounts] paid by the agency of which he is an ... employee."<sup>6</sup> The use of the word "shall" indicates that the General Assembly intends the terms of § 2.1-639.4 to be mandatory.<sup>7</sup> Additionally, under well-accepted principles of statutory construction, when the language of a statute is plain and unambiguous and its meaning clear and definite, it must be given effect.<sup>8</sup>

Under the facts you present, the responsibilities of the employee of the community college include administering the training program, and the employee is paid by the community college for performing these duties. The plain, unambiguous, and mandatory language of § 2.1-639.4(1) prohibits a public employee from accepting money for services performed within the scope of his official duties beyond the "compensation, expenses or other remuneration" paid by the college. The General Assembly has clearly placed restrictions on public employees with regard to that

which they may accept resulting from the performance of their official duties. Accordingly, it is my opinion that the community college employee may not accept an additional cash bonus from the private corporation for the performance of such duties.

<sup>1</sup>For the purposes of this opinion, I shall assume that the employee is a full-time, salaried employee of the community college.

<sup>2</sup>Tit. 2.1, ch. 40.1, Va. Code Ann. §§ 2.1-639.1 to 2.1-639.24.

<sup>3</sup>See § 2.1-639.2 (defining "employee," "governmental agency").

<sup>4</sup>Section 2.1-639.1.

<sup>5</sup>Section 2.1-639.3 (emphasis added).

<sup>6</sup>Section 2.1-639.4(1).

<sup>7</sup>Op. Va. Att'y Gen.: 1996 at 183, 184; 1986-1987 at 300, 300.

<sup>8</sup>See *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944); 1997 Op. Va. Att'y Gen. 16, 17.