

99-049

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.

School board members and employees designated by ordinance adopted by board of supervisors must file disclosure statement of their personal interests with clerk of school board.

The Honorable William J. Howell
Member, House of Delegates
October 29, 1999

You inquire regarding interpretation of § 2.1-639.14(A) of the *Code of Virginia* pertaining to the filing of disclosure statements under the State and Local Government Conflict of Interests Act¹ (the "Act").²

You relate that members of the Stafford County School Board believe that the Act permits the board of supervisors to designate, by ordinance, positions within the school division that are required to file disclosure statements. You also relate that the county attorney believes that local law requires the filing of disclosure forms with the clerk of the county board of supervisors and, in the absence of a local ordinance, with the clerk of the school board.

The intent of the reporting requirements for the Statement of Economic Interests contained in § 2.1-639.15 is to further the general purposes of the Act, by establishing a written record of economic interests which may affect the judgment of governmental officers and employees in the performance of their official duties.³ Section 2.1-639.14(A) allows a local governing body to designate by ordinance persons appointed to and occupying positions of trust who are required to file the financial disclosure form set forth in § 2.1-639.15. A 1989 opinion of the Attorney General concludes that, because this grant of authority is discretionary, a local governing body is not required to adopt such an ordinance.⁴ When a local governing body adopts an ordinance designating and requiring persons appointed to positions of trust to file financial disclosure forms pursuant to § 2.1-639.14(A), they "shall file, as a condition to assuming office . . . , a disclosure statement of their personal interests . . . as is specified on the form set forth in § 2.1-639.15." The use of the word "shall" indicates that filing of this form is mandatory.⁵ A 1996 opinion of the Attorney General concludes that directors of an industrial development authority, having been designated by ordinance of the local board of supervisors pursuant to § 2.1-639.14(A) as persons appointed to and occupying "positions of trust," are required to file the financial disclosure form detailed in § 2.1-639.15.⁶

Section 2.1-639.14(A) also requires that "[t]he members of every . . . school board of each county . . . shall file . . . a disclosure statement of their personal interests." In addition, § 2.1-639.14(C) provides that such disclosure forms "shall be filed and maintained as public records for five years in the office of the clerk of the respective . . . school board." It is a well-settled rule of statutory construction that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."⁷ It is equally well-settled that "[a statute] which is plain needs no interpretation."⁸

Section 2.1-639.14(A) also requires "persons occupying such positions of employment as may be designated . . . by ordinance of the governing body" to file disclosure statements on the form set forth in § 2.1-639.15. Section 2.1-639.14(C) requires that such forms be filed with "the clerk of the respective governing body or school board." The purpose underlying a statute's enactment is particularly significant in construing it.⁹ Moreover, statutes should not be interpreted in ways that produce absurd or irrational consequences.¹⁰

I am, therefore, of the opinion that members of the school board must file a disclosure statement of their personal interests on the form set forth in § 2.1-639.15 with the clerk of the school board. It is further my opinion that employees of the school board designated by ordinance of the county board of supervisors must file disclosure statements on the form contained in § 2.1-639.15 with the clerk of the school board.

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

²Section 2.1-639.14(A) pertains to the filing of disclosure statements by persons occupying positions of trust (local governing body and school board officers) and positions of employment (local government and school board employees).

³See § 2.1-639.1.

⁴1989 Op. Va. Att'y Gen. 10, 11.

⁵The use of the word "shall" in a statute generally indicates the procedure is mandatory, rather than permissive or directory. See Op. Va. Att'y Gen.: 1994 at 64, 68; 1986-1987 at 300, 300, and opinions cited therein.

⁶1996 Op. Va. Att'y Gen. 8, 9.

⁷Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

⁸Winston v. City of Richmond, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954); see also 1993 Op. Va. Att'y Gen. 256, 257, and opinions cited therein.

⁹VEPCO v. Prince William Co., 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983).

¹⁰McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); Op. Va. Att'y Gen.: 1995 at 118, 120; 1991 at 5, 7.