



COMMONWEALTH of VIRGINIA

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The Honorable William M. Stanley
Member, Senate of Virginia
13508 Booker T. Washington Highway
Moneta, Virginia 24121

Dear Senator Stanley:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether the requirement in § 30-111 of the *Code of Virginia* that a member or member-elect of the General Assembly disclose a "lobbyist relationship" applies in the context of an election campaign where a person who has registered as a lobbyist provides assistance in the election campaign of the member or member-elect. If § 30-111 is applicable in an election campaign setting, you further ask whether a "lobbyist relationship" may exist whenever a lobbyist assists a member in an election campaign or only in those circumstances where the lobbyist is rendering assistance by utilizing the skills from the lobbyist's usual occupation in legal, consulting or public relations services.

Response

It is my opinion that, if a "lobbyist relationship" as defined by § 30-111 arises in the context of an election campaign, the separate disclosure requirement of § 30-111 for members and members-elect of the General Assembly applies irrespective of any disclosure the Campaign Finance Disclosure Act of 2006 may require of the campaign committee for the member or member-elect. It is further my opinion that a "lobbyist relationship" is not established when a person who has registered as a lobbyist provides volunteer assistance to the election campaign of a member or member-elect if the nature of that assistance is not within the scope of the lobbyist's usual occupation in legal, consulting or public relations services.

Background

As a result of recent discussions you have had with legislative colleagues regarding ethics reform, you indicate that questions have arisen with respect to the statement of economic interests disclosure form that General Assembly members and members-elect are required, pursuant to the General Assembly Conflicts of Interests Act,¹ to file annually on or before January 8.² In particular, you point to question 7B on the disclosure form which asks whether the member or member-elect has a "lobbyist relationship"

¹ VA. CODE ANN. §§ 30-100 through 30-129 (2011 & Supp. 2013).

² See § 30-110 (2011).

as defined in § 30-111.³ If the answer to that question is “yes,” the member or member-elect is required to complete schedule F-2 of the disclosure form detailing the lobbyist relationship.⁴

You relate that numerous members of the General Assembly receive assistance in their election or reelection campaigns from persons who are or have been registered as lobbyists with the Secretary of the Commonwealth.⁵ You indicate that the nature of this assistance can take a variety of forms. For example, you observe that a lobbyist might assist a legislator with raising campaign contributions from donors. Such assistance might involve the lobbyist serving on a host committee for a legislator’s fundraising event or being a member of a finance committee for the legislator’s campaign. You also relate that a lobbyist might participate in a legislator’s campaign as a volunteer in voter contact efforts such as door-to-door campaigning. You indicate that certain forms of this campaign assistance are disclosed and reported, *i.e.* as campaign contributions, in-kind donations of professional services, or payments for services rendered, on campaign finance reports filed by the campaign committee of the member or member-elect pursuant to the Campaign Finance Disclosure Act of 2006.⁶

Applicable Law and Discussion

The Commonwealth of Virginia substantially relies on disclosure requirements in its conflict of interests and campaign finance laws in its efforts to instill public confidence in state government.⁷ The General Assembly Conflicts of Interests Act requires members and members-elect to disclose annually certain economic interests.⁸ Specific to your inquiries, § 30-111 requires a member or member-elect to disclose a “lobbyist relationship.” The term “lobbyist relationship” is defined in § 30-111(A) to mean:

(i) an engagement, agreement, or representation that relates to legal services, consulting services, or public relations services, whether gratuitous or for compensation, between a member or member-elect and any person who is, or has been within the prior calendar year, registered as a lobbyist with the Secretary of the Commonwealth, or (ii) a greater than three percent ownership interest by a member or member-elect in a business that employs, or engages as an independent contractor, any person who is, or has been within the prior calendar year, registered as a lobbyist with the Secretary of the Commonwealth.

The General Assembly included in the Campaign Finance Disclosure Act of 2006 a preemption clause stating that the act “shall constitute the exclusive and entire campaign finance disclosure law of the Commonwealth, and elections to which the [act] applies shall not be subject to further regulation by local law.”⁹ You ask whether this provision preempts the disclosure requirement in § 30-111 when, for example, a “lobbyist relationship” as defined in § 30-111 arises in the context of an election campaign. When the language in a statute is free from ambiguity, its plain meaning will control.¹⁰ Repeal by

³ See § 30-111(A) (2011) (setting forth the text of the statement of economic interests disclosure form).

⁴ *Id.*

⁵ See VA. CODE ANN. §§ 2.2-418 through 2.2-435 (2011) (relating to registration of lobbyists).

⁶ See VA. CODE ANN. §§ 24.2-945 through 24.2-953.5 (2011 & Supp. 2013).

⁷ See §§ 24.2-945 (2011), 24.2-945.2 (2011), 30-100 (2011) and 30-110. See also VA. CODE ANN. §§ 2.2-3100 (2011) and 2.2-3114 (2011).

⁸ Section 30-110.

⁹ Section 24.2-945(B).

¹⁰ See *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 269, 136 S.E.2d 817, 825 (1964). See also 2003 Op. Va. Att’y Gen. 108, 111.

implication is not favored.¹¹ The disclosures required by the General Assembly Conflicts of Interests Act in § 30-111 serve the purpose of assuring Virginians that “the judgment of the members of the General Assembly will not be compromised or affected by inappropriate conflicts.”¹² The disclosures required by the Campaign Finance Disclosure Act of 2006 serve a different purpose, to regulate the receipt and expenditure of money intended for expressly advocating the election or defeat of a clearly identified candidate. Its provisions, therefore, are not in conflict with the General Assembly Conflicts of Interests Act.

A prior opinion of this Office, issued in 1987, reached a consistent conclusion in analyzing the effect of the preemption clause in the Commonwealth’s predecessor campaign finance act on a disclosure requirement in land use proceedings for members of a local governing body in an urban county executive form of government.¹³ This disclosure requirement, now set forth in § 15.2-852,¹⁴ is substantially the same as the reporting requirements of both the State and Local Government Conflict of Interests Act¹⁵ and the General Assembly Conflicts of Interests Act. Each of these three statutes seeks to establish a record of economic interests which may affect the judgment of elected officials in the performance of their official duties.¹⁶ The 1987 opinion concluded:

[T]he reporting requirements of the Fair Elections Practices Act, in my opinion, serve a different and distinct purpose from the transactional disclosure requirement of [predecessor to § 15.2-852]. It is my opinion, therefore, that [predecessor to § 24.2-945] does not repeal by implication the transactional disclosure requirement of [predecessor to § 15.2-852]. In instances where a “business or financial relationship” exists between the supervisor and the applicant, etc., based on the receipt of political contributions, therefore, it is my opinion that [predecessor to § 15.2-852] requires that the relationship be disclosed.¹⁷

When the General Assembly wishes to limit disclosure to one or the other act, it does so expressly. I note that § 30-111 expressly provides in schedule E of the statement of economic interests disclosure form the following instruction regarding disclosure of gifts: “Do not list campaign contributions publicly reported as required by [the Campaign Finance Disclosure Act of 2006].”¹⁸ Clearly, then, the preemption clause of § 24.2-945 does not operate to preempt the entirety of disclosures required by § 30-111, because, if it did, the direction set forth in schedule E would be superfluous.¹⁹

¹¹ See *Standard Drug Co. v. Gen. Elec. Co.*, 202 Va. 367, 378-79, 117 S.E.2d 289, 297 (1960) (“Repeal by implication is not favored and the firmly established principle of law is, that where two statutes are in apparent conflict, it is the duty of the court, if it be reasonably possible, to give to them such a construction as will give force and effect to each.”) (quoting *Scott v. Lichford*, 164 Va. 419, 422, 180 S.E. 393, 394 (1935)).

¹² Section 30-100.

¹³ 1987-88 Op. Va. Att’y Gen. 153.

¹⁴ VA. CODE ANN. § 15.2-852 (2012).

¹⁵ See §§ 2.2-3100 through 2.2-3131 (2011 & Supp. 2013).

¹⁶ See 1999 Op. Va. Att’y Gen. 78, 79.

¹⁷ 1987-88 Op. Va. Att’y Gen. at 155.

¹⁸ Section 30-111 (Schedule E–Gifts). See also § 2.2-3117 (Schedule E–Gifts) (Supp. 2013) for the same instruction as provided to state and local government officers and employees required to file a statement of economic interests disclosure form pursuant to the State and Local Government Conflict of Interests Act.

¹⁹ See, e.g., *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004) (“Words in a statute should be interpreted, if possible, to avoid rendering words superfluous.”).

Thus, if a “lobbyist relationship” as defined by § 30-111 arises in the context of an election campaign, the separate disclosure requirement of § 30-111 must be met irrespective of any disclosure made under the Commonwealth’s campaign finance disclosure laws.

You next ask whether a “lobbyist relationship” may exist whenever a lobbyist assists a member of the General Assembly in an election campaign, or only in those circumstances where the lobbyist is rendering assistance by utilizing the skills from the lobbyist’s usual occupation in legal, consulting or public relations services. The 1987 opinion of this Office addressed a similar question. That opinion considered the requirement in the predecessor to § 15.2-852 that a supervisor disclose any “business or financial relationship” the supervisor has or has had within the past twelve months with the applicant in a zoning case, or with the agent, attorney or real estate broker for the applicant.²⁰ In considering the question whether the volunteer work by a zoning applicant for a political campaign of a supervisor is ever considered a “gift” that may establish a “business or financial relationship,” the 1987 opinion concluded:

Volunteer work of the type you specify generally is rendered without compensation and generally is not subject to precise valuation. The rendering of volunteer services is not generally subject to the reporting requirements of the Fair Elections Practices Act applicable to election campaigns. It is my opinion, therefore, that volunteer work by the applicant, etc. for a political campaign or for constituent purposes does not establish a “business or financial relationship” within the meaning of [predecessor to § 15.2-852]. The receipt by a supervisor of other services from the applicant, etc., which are subject to precise valuation, however—e.g., professional or trade services—may, in certain circumstances, constitute a “business or professional [sic] relationship” when such services are donated to the supervisor.^[21]

A close examination of § 30-111 leads me to conclude that a “lobbyist relationship” is established only when there exists between member and lobbyist an interaction of a formal and substantive manner. Section 30-111 defines “lobbyist relationship” to be (i) “an engagement, agreement, or representation” entered into directly by a member or member-elect with a lobbyist “that relates to legal services, consulting services, or public relations services, whether gratuitous or for compensation,” or (ii) “a greater than three percent ownership interest by a member or member-elect in a business that employs, or engages as an independent contractor” a lobbyist.²² The first prong of the definition does include “gratuitous” undertakings by a lobbyist, but is restricted to the provision of legal, consulting or public relations services. The second prong of the definition envisions a for-compensation relationship where the lobbyist is engaged by the member’s business as an independent contractor to perform services not limited to the legal, consulting or public relations fields.

In your inquiry, you offer the hypothetical example of a lobbyist who is a member of the Virginia State Bar and who assists a member of the General Assembly in an election campaign, not by providing legal services, but rather by assisting with fund-raising activities or door-to-door voter contact activities. Such an arrangement is unlikely to meet the first prong of the “lobbyist relationship” definition. Volunteer campaign activity could be encompassed within the first prong, but only if that activity relates to the provision of legal, consulting or public relations services in “an engagement, agreement, or representation.” Your hypothetical example posits that the attorney/lobbyist is not providing legal

²⁰ 1987-88 Op. Va. Att’y Gen. at 153.

²¹ *Id.* at 157 (citation omitted).

²² Section 30-111.

services. Unless the attorney/lobbyist is a professional fund-raising consultant by occupation, it is difficult to envision how that person's volunteer service on a finance committee or host committee raising contributions for the election campaign of a member or member-elect meets the formal interaction required in § 30-111 (e.g., an engagement that relates to consulting services) to establish a "lobbyist relationship." Likewise, unless the attorney/lobbyist is a professional campaign consultant, the act of the attorney/lobbyist volunteering to make door-to-door voter contacts, without more, would not create for the member or member-elect a "lobbyist relationship."

Your hypothetical example also would not appear to meet the second prong of the "lobbyist relationship" definition. It is conceivable that a campaign committee for a member or member-elect might meet the definition of "business" set forth in § 30-111(A) under the broadest possible reading of that definition.²³ Your example, however, suggests a volunteer arrangement with no compensation made to the attorney/lobbyist, and the second prong of the definition envisions a circumstance where the lobbyist is employed or engaged as an independent contractor for a business owned by the member or member-elect. If the campaign committee of the member or member-elect has not employed or engaged the attorney/lobbyist as an independent contractor to perform services for the campaign, the volunteer activity of the attorney/lobbyist would not create for the member or member-elect a "lobbyist relationship."

I caution that whether a "lobbyist relationship" exists in a particular circumstance will depend on the specific facts involved and, therefore, is a fact-specific determination beyond the scope of this opinion.²⁴

Conclusion

Accordingly, it is my opinion that, if a "lobbyist relationship" as defined by § 30-111 arises in the context of an election campaign, the separate disclosure requirement of § 30-111 for members and members-elect of the General Assembly applies irrespective of any disclosure the Campaign Finance Disclosure Act of 2006 may require of the campaign committee for the member or member-elect. It is further my opinion that a "lobbyist relationship" is not established when a person who has registered as a lobbyist provides volunteer assistance to the election campaign of a member or member-elect if the nature of that assistance is not within the scope of the lobbyist's usual occupation in legal, consulting or public relations services.

With kindest regards, I am

Very truly yours,



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²³ Section 30-111(A) ("Business" is defined to mean "a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.").

²⁴ I refrain from commenting on matters that would require additional facts or factual determinations. See 2012 Op. Va. Att'y Gen. 117, 118; 2010 Op. Va. Att'y Gen. 56, 58.