



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Terry G. Kilgore  
General Assembly Building, Room 704  
Capitol Square  
Richmond, Virginia 23219

Dear Delegate Kilgore:

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

## Issue Presented

You ask whether it would be a violation of the State and Local Government Conflict of Interests Act (the "Act"),<sup>1</sup> for members of the Virginia Tobacco Indemnification and Community Revitalization Commission ("Commission") to vote on transactions before the Commission where such transaction involves an entity or organization represented by a consulting or law firm where a member's sibling is a partner.

## Response

It is my opinion that it is not a violation of the Act for members of the Commission to vote on transactions before the Commission where such transaction involves an entity or organization represented by a consulting or law firm where a member's sibling is a partner, unless such sibling resides in the same household with the member and the member is dependent on the sibling or the sibling is dependent on the member.<sup>2</sup>

## Applicable Law and Discussion

In enacting the Act, the General Assembly recognized that our system of government is dependent in part upon its citizens maintaining the highest trust in their public officers and employees. The purpose of the Act is to assure the citizens of the Commonwealth that the judgment of public officers and employees will not be compromised by inappropriate conflicts.<sup>3</sup> The Act provides minimum rules of ethical conduct for state government officers and employees and contains three general types of restrictions and prohibitions: (1) it details certain types of conduct that are improper for such officers and

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<sup>1</sup> VA. CODE ANN. §§ 2.2-3100 through 2.2-3131 (2011 & Supp. 2013).

<sup>2</sup> This Opinion is limited to the application of the State and Local Conflict of Interests Act, and does not consider any implications under the General Assembly Conflicts of Interests Act, VA. CODE ANN., §§ 30-100 through 30-129 (2011 & Supp. 2013).

<sup>3</sup> See § 2.2-3100 (Supp. 2013).

employees;<sup>4</sup> (2) it restricts the personal interest such officers and employees may have in certain contracts with their own or other governmental agencies;<sup>5</sup> and (3) it restricts the participation of such officers and employees in transactions of their governmental agencies in which they have a personal interest.<sup>6</sup>

The Act applies to state and local government officers and employees.<sup>7</sup> Members of the Commission are an "officer"<sup>8</sup> of a state "governmental agency,"<sup>9</sup> subject to the Act's prohibitions and restrictions.

Prior opinions have held that the Act restricts the private financial activities of officers of state governmental agencies when there is a close relationship between the officers' private financial activities and their official duties.<sup>10</sup> Section 2.2-3103 provides that no state officer or employee shall:

1. Solicit 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 officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;

....

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

....

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties....; [or]

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties[.]

Section 2.2-3106(A) provides that "[n]o officer or employee of any governmental agency of state government ... shall have a personal interest in a contract with the governmental agency of which he is an

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<sup>4</sup> See § 2.2-3103 (2011).

<sup>5</sup> See § 2.2-3106(A), (B) (Supp. 2013).

<sup>6</sup> See § 2.2-3112(A)(1) (Supp. 2013).

<sup>7</sup> "[F]or the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts [the] State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth." Section 2.2-3100.

<sup>8</sup> "'Officer' means any person appointed or elected to any governmental or advisory agency ... whether or not he receives compensation or other emolument of office." Section 2.2-3101 (Supp. 2013).

<sup>9</sup> "'Governmental agency' means each component part of the legislative, executive or judicial branches of state and local 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." *Id.*

<sup>10</sup> See 2000 COI Adv. Op. Va. Att'y Gen. No. 00-A06 (concluding that it is not an impermissible conflict of interest for environmental health manager employed by state Health Department to teach course for regional health environment association).

officer or employee, other than his own contract of employment.” Section 2.2-3112(A)(1) further requires an officer of a state governmental agency to “disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business ... in which he has a personal interest ... or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4.” Personal interest includes “salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, ... that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually.”<sup>11</sup> Personal interest in a transaction includes a personal interest of an officer in any matter considered by his agency when the officer may realize a reasonably foreseeable direct or indirect benefit as a result of the agency’s action.<sup>12</sup>

You ask whether any benefit a member’s sibling may receive as a partner in a consulting or law firm where the firm represents entities or organizations before the Commission is imputed to the member such that it gives rise to an impermissible conflict of interest in violation of the Act.

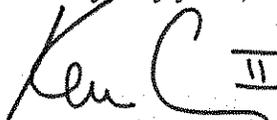
The Act defines a personal interest to include “a financial benefit or liability accruing to an officer or employee or to a member of his immediate family.”<sup>13</sup> Section 2.2-3101 defines immediate family as “(i) a spouse and (ii) any person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.” Section 2.2-3101 further defines dependent as a “son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides the officer or employee, more than one-half of his financial support.” In the situation you describe, the member would be precluded from participating in, or voting on matters before the Commission only if the siblings lived together and if one provided the other with more than one-half of his financial support. If the siblings live apart and are not financially dependent upon one another, the Act does not prohibit a vote by the member.<sup>14</sup>

### Conclusion

Accordingly, it is my opinion that it is not a violation of the State and Local Government Conflict of Interests Act for members of the Commission to vote on transactions before the Commission where such transaction involves an entity or organization represented by a consulting or law firm where a member’s sibling is a partner, unless such sibling resides in the same household with the member or the member is dependent on the sibling or the sibling is dependent on the member.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>11</sup> Section 2.2-3101.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See 1995 COI Adv. Op. Va. Att’y Gen. No. 95-A16; 2007 COI Adv. Op. Va. Att’y Gen. No. 00-A05; 2012 COI Adv. Op. Va. Att’y Gen. No. 12-A07 (applying the definition of “immediate family” for purposes of the Act).