



# COMMONWEALTH of VIRGINIA

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The Honorable Roslyn C. Tyler  
Member, House of Delegates  
25359 Blue Star Highway  
Jarratt, Virginia 23867

Dear Delegate Tyler:

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 inquire whether an impermissible conflict of interest precludes members of local governing bodies who also serve on community action boards from voting in budgetary matters of the local government when such items may affect the community action program funding.

## Response

It is my opinion that no conflict of interest precludes members of local governing bodies who also serve on community action boards from voting in budgetary matters of the local government when such items may affect the community action program funding.

## Applicable Law and Discussion

The Community Action Act<sup>1</sup> establishes and governs community action agencies<sup>2</sup> to facilitate the development of social and economic opportunities for low-income persons.<sup>3</sup> These agencies are administered by community action boards. Pursuant to 2.2-5303, with limited exception, “[o]ne-third of the members of the board shall be elected public officials or their designees, who shall be selected by the local governing body of the service area[.]”

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<sup>1</sup> VA. CODE ANN. §§ 2.2-5400 through 2.2-5408 (2011).

<sup>2</sup> A community action agency is “a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private nonprofit agency that has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.” Section 2.2-5400.

<sup>3</sup> Section 2.2-5401.

As you note, the elected public officials selected to serve on a community action board often will be members of the local governing body. In both capacities, such an individual is subject to the State and Local Conflict of Interests Act (“the Act”).<sup>4</sup> In general, the Act restricts the ability of state and local officers and employees to have personal interests in certain contracts with their own or other governmental agencies;<sup>5</sup> and it prohibits the participation of such officers and employees in transactions of their governmental agencies in which they have a personal interest.<sup>6</sup> Your inquiry involves the transactional restriction.

Section 2.2-3112 requires, in the absence of an exception, governmental officers to disqualify themselves from transactions of their agencies in which they have a personal interest. Voting on budgetary matters constitutes a transaction under the Act.<sup>7</sup>

Under the Act, a “personal interest in a transaction”

exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.<sup>8</sup>

The Act defines “personal interest” as

a financial benefit or liability accruing to an officer...or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in...a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or

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<sup>4</sup> VA. CODE ANN. §§ 2.2-3100 through 2.2-3131 (2011). The Act applies to officers and employees of governmental agencies. An “*officer*” means any person appointed or elected to any governmental or advisory agency . . . whether or not he receives compensation or other emolument office.” Section 2.2-3101. “*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>5</sup> See § 2.2-3106(A).

<sup>6</sup> See § 2.2-3112(A)(1).

<sup>7</sup> “*Transaction*” means any matter considered by any governmental or advisory agency . . . on which official action is taken or contemplated.” Section 2.2-3101.

<sup>8</sup> *Id.*

(vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.<sup>9]</sup>

Assuming members of local government bodies earn more than \$10,000 annually for their service, they have a personal interest in their position with the governing body. To the contrary, provided a member of a community action board serves on the board as a volunteer, without compensation, he does not have a personal interest in his position on the board or its transactions. Thus, because the elected official has no personal interest in the community action board, he also has no personal interest in any transactions that may affect the board. As such, a member of a local governing body who is appointed to serve without compensation on a community action board is not restricted from voting on the budgetary matters of the governing body that may affect community action program funding.

### Conclusion

Accordingly, it is my opinion that no conflict of interest precludes members of local governing bodies who also serve on community action boards from voting in budgetary matters of the local government when such items may affect the community action program funding.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>9</sup> *Id.*