



COMMONWEALTH of VIRGINIA

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The Honorable Greg McLemore
Councilman, City of Franklin
204 Madison Street
Franklin, Virginia 23851

Dear Mr. McLemore:

I am responding to your request for an advisory opinion pursuant to § 2.2-3126(B) of the *Code of Virginia*, a portion of the State and Local Government Conflict of Interests Act¹ (the "Act"). The conclusions expressed in this opinion are based on the information presented in your correspondence dated August 19, 2010. If the facts set forth in your correspondence are incorrect or incomplete, you may not rely on this opinion in the event your conduct later is challenged.

Issues Presented

You inquire whether, in light of the fact that you owe real estate tax penalties and interest to the City of Franklin, you may participate as a member of the City's Council in the Council's discussions and deliberations relating to tax burdens and, specifically, whether you may urge the Council to lessen the burden on persons who owe back taxes by pursuing measures such as a cap on interest charges, a rebate on interest or interest abatement.

Response

It is my opinion that you would not have an impermissible conflict of interest under the Act that would prevent you from participating in discussions of tax rates because those rates affect the public at large. To the extent you would benefit personally from a reduction in interest charges and penalties, you still may participate in the transaction because it would benefit three or more persons, but before participating in the transaction, you must comply (and be able to comply) with the declaration requirements found in § 2.2-3114(F).

Background

You state that you owe real estate tax penalties and interest to the City. You relate that you reached an agreement with the City that would resolve the outstanding debt by providing for a method of payment, to include interest and penalty charges. You also note that you reached this agreement before your election to the City Council.

Applicable Law and Discussion

¹VA. CODE ANN. tit. 2.2, ch. 31, §§ 2.2-3100 to 2.2-3131 (2008 & Supp. 2010).

The Act provides minimum rules of ethical conduct for state and local 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 employees;² (2) it restricts the ability of such officers and employees to have personal interests in certain contracts with their own or other governmental agencies;³ and (3) it restricts the participation of such officers and employees in transactions of their governmental agencies in which they have a personal interest.⁴

The Act applies to state and local government officers and employees.⁵ As a member of the City Council for the City of Franklin, you are an "officer" covered by the Act.⁶

Section 2.2-3112(A)(1) limits an officer's participation in transactions when the officer has a "personal interest in the transaction." A "personal interest in a transaction" includes situations where the officer "may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction."⁷ A transaction is broadly defined to include "any matter considered by" the agency "on which official action is taken or contemplated."⁸

You indicate that you owe penalties and interest for past property taxes. Advocating for a cap on interest or a reduction in interest or penalties would benefit you personally. Therefore, you have a personal interest in such a transaction. An officer who has a personal interest in a transaction may not participate in the transaction, unless an exception applies.⁹ Two exceptions could be applicable to your situation.

First, under § 2.2-3112(A)(4), you may participate in a transaction that impacts your property if the transaction would affect the public generally. To the extent you are advocating a lower tax rate, such discussions and votes clearly would be permissible because a lower tax rate would affect the public generally.

With respect to advocating lower penalties and interest rates for persons who currently owe such penalties and interest, relatively few persons would benefit from such a measure, and, therefore, it would not "affect the public generally." Unless an exception applies, you must disqualify yourself from such

² See § 2.2-3103 (2008).

³ See § 2.2-3106(A), (B) (2008).

⁴ See § 2.2-3112(A)(1) (2008).

⁵ "[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 (2008).

⁶ "'Officer' means any person appointed or elected to any governmental or advisory agency" Section 2.2-3101 (2008).

⁷ *Id.*

⁸ *Id.*

⁹ See § 2.2-3112.

transactions.¹⁰ Section 2.2-3112(A)(2), allows participation in such a transaction if the officer "is a member of a . . . group of three or more persons the members of which are affected by the transaction." It is highly likely that more than three residents who owe penalties and interest would be affected by lower interest rates or penalties. Therefore, you still could participate in the transaction, provided you comply with the declaration requirements found in § 2.2-3114(F). Specifically, you must declare your interest by stating (1) the transaction involved; (2) the nature of your personal interest affected by the transaction; (3) that you are a member of a group of persons affected by the transaction; and (4) you are able to participate in the transaction objectively, fairly and in the public interest. You may make this declaration orally to be recorded in the written minutes, or you may file a signed written declaration and file it with the clerk or administrative head of the City Council. If you are unable to make such a declaration, you should disqualify yourself from participating in the transaction.


Conclusion

Accordingly, it is my opinion that you would not have an impermissible conflict of interest under the Act that would prevent you from participating in discussions of tax rates because those rates also affect the public at large. To the extent you would benefit personally from a reduction in interest charges and penalties, you still may participate in a transaction related to such issues because it would benefit three or more persons, but before participating in the transaction, you must comply (and be able to comply) with the declaration requirements found in § 2.2-3114(F).

Our system of government is dependent in large part on citizens maintaining the highest trust in their public officials. The conduct and character of public employees is of particular concern to state and local governments, because it is chiefly through such conduct and character that the government's reputation is derived. The purpose of the conflict of interests law is to assure the citizens of the Commonwealth that the decisions of public officers and employees will not be influenced by inappropriate conflicts.¹¹ To this end, the Act defines certain standards or types of conduct that clearly are improper. The law cannot, however, protect against all appearances of conflict. It is incumbent on you, therefore, to determine whether your service on the City Council will present an appearance of impropriety that you find unacceptable and that will affect the confidence of the public in your ability to perform your duties impartially.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-A07

¹⁰Section 2.2-3112(A)(1).

¹¹Section 2.2-3106 (2008).