



**TOWN OF BOWLING GREEN
TOWN COUNCIL WORK SESSION**

A G E N D A

**Thursday, May 02, 2024
6:00 PM**

CALL TO ORDER AND QUORUM ESTABLISHED:

BUSINESS:

1. Water Permit & Gross Alpha Exceedance Action Plan Updates, Bryant Mountjoy, Stantec
2. Conflict of Interest Act (COIA) Training, Jeff Gore

ACTION ITEMS:

ADJOURNMENT:

State and Local Government Conflicts of Interest Act

Town of Bowling Green
Town Council Training

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Jeff Gore, Town Attorney
Hefty Wiley & Gore, PC

April 4, 2024

What is COIA? Why should I care?

- Applies to generally prohibited conduct that shall be unlawful and to state and **local government officers** and employees.
- "Officer" means **any person appointed** or elected to **any governmental or advisory agency** ... whether or not he receives compensation or other emolument of office.
- "Governmental agency" means each component part of ... state and **local government**, including each office, department, authority ... **commission**, committee, etc.

What is COIA? Why should I care?

- **Violations can result in civil penalties**
- **Knowing violations can result in misdemeanors and forfeiture of office**

Where can you seek guidance?

- **County Attorney**

- Good faith reliance on written opinion can be used in your defense (re: knowing violations)

- **Commonwealth Attorney**

- Good faith reliance on written opinion grants immunity from prosecution

- **VA COIA & Ethics Advisory Council**

- <http://ethics.dls.virginia.gov/>
- Good faith reliance on written opinion grants immunity from prosecution
- Council also conducts online training – Training is required by law

When in doubt seek guidance and disclose all the facts!

COIA Road Map

Generally Prohibited Conduct

Gifts

Personal Interest in Contracts

Personal Interest in Transactions

Required Annual Disclosure



Prohibited and Improper Conduct

Do Not, for example:

Solicit or accept money for performing official duties (other than remuneration paid by your local government)

Use confidential information for your personal economic benefit

Accept gifts from someone who has interests that may be affected by your official duties (if timing and nature of gift raise doubt as to impartiality)

Use your public position to retaliate or threaten any person for expressing views on matters of public concern

Accept any business or professional opportunity intended to influence performance of your official duties

Gifts

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred.

Gift does not include: Unused tickets, coupons, passes, etc., Honorary degrees, Scholarships and financial aid awarded pursuant to procedures applicable to general public, Campaign donations properly received and reported, Gifts related to private profession or occupation, Food or beverages consumed or fees waived for an event where officer is a featured speaker, Unsolicited awards in form of plaque, trophy, etc., Inheritance, Travel disclosed pursuant to Campaign Finance Disclosure Act, Travel paid for by U.S., state or local government, Gifts with a value of less than \$20, Food and beverages served at a function which can be consumed while standing or walking around, Gifts from “relatives” or “personal friends”

Gifts, Cont'd

Certain Gifts prohibited; exceptions

Prohibited: Single gift or combination of gifts valued at more than \$108 within a calendar year from a lobbyist, lobbyist's principal or entity seeking to contract with local agency. **Gifts \$20 and over are aggregated in a calendar year.**

Exceptions:

- Officer may accept gift of food and beverage, entertainment or admission valued in excess of \$108 associated with a “widely attended event.” Gift must be reported.
- Gift from foreign dignitary may be accepted on behalf of government agency (so long as such foreign dignitary is not a representative of a foreign country of concern)
- Gifts may be accepted if made on basis of personal friendship.
- Gifts of travel and related expenses may be accepted if approved in advance by Virginia Conflicts of Interest Advisory Council.

Personal Interest in Contracts and Transactions

- When you have a **personal interest** in a **contract** or **transaction** before the public body what does that mean? Can you participate? Is it prohibited?
- First, what is a “**personal interest**”?

Personal Interest

- **"Personal interest"** means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Including:
 - (i) ownership in a business if the interest exceeds three percent of the total equity of the business;
 - (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or 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, \$5,000 annually;

Personal Interest Cont'd

- (iv) ownership of real or personal property if the interest exceeds \$5,000 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
- (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).
- "Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee **and** is a dependent of the officer or employee.

Personal Interest in a Contract

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to being a party to the contract or due to a personal interest in a business that is a party to the contract.

Prohibitions: (a) Any contract with governing body; (b) Any contract with any governmental agency that is (i) a component part of his local government and (ii) subject to the ultimate control of his governing body; (c) or any contract, other than a contract of employment, with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency (such as an appointed school board)

Personal Interest in Contract

Exceptions to Prohibitions:

- ❖ If the employment began prior to the officer becoming a member of the governing body;
- ❖ If the officer or employee was employed prior to July 1, 1983;
- ❖ Contracts for sale of governmental goods or services at uniform prices available to general public;
- ❖ Contract awarded through formal competitive procurement process(competitive sealed bidding or competitive negotiation) in accordance with Virginia Public Procurement Act. However, governing body must have established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. Member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

Personal Interest in Contract

Exceptions to Prohibition, cont'd:

- The sale, lease or exchange of real property between an officer or employee and a governmental agency, **provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;**
- Contracts for the purchase of goods or services when the contract does not exceed \$500

Personal Interest in a Transaction

- **"Personal interest in a transaction"** means a personal interest of an officer or employee (or immediate family) in any matter considered by his agency on which official action is taken or contemplated.
- Exists when an officer or 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 benefit or detriment as a result of the action of the agency considering the transaction.

Personal Interest in a Transaction

- **DISQUALIFICATION:** If the transaction has application solely to property or business in which he has a personal interest, officer must disqualify himself, disclose the personal interest and abstain from voting or acting on behalf of the agency in the transaction. Cannot attend closed meetings or discuss the matter with other members or employees at any time.

EXCEPTIONS:

- If an officer is a member of a business, profession or group of three or more that is affected by the transaction, the officer may declare his personal interest and participate. (“member of group” exception)
- When a party to the transaction is a client of his firm if he does not personally represent or provide services to such client
- If the transaction affects the public generally, the officer may participate.

***If a quorum is lost by disqualification of an officer, the remaining members have the authority to act for the agency.

Required Declaration of Personal Interest if COIA exception applies, then declare...

- (i) the transaction involved, (ii) the nature of the officer's personal interest affected by the transaction, (iii) the exemption that applies, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest.
- The officer shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or chief executive of the local government, who shall, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt.

Annual Disclosure

- Annual disclosures must be filed of all interests in real estate located in the municipality.
- Disclosure shall include any business in which you own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the jurisdiction.
- Shall be filed as a condition of assuming office, and thereafter shall be filed annually with the Clerk to the Board on or before February 1.

Training Requirement

- Training is required at least once every two years from the date it was last completed
- Individuals new to the office must complete first training within 2 months after assuming office
- Training is provided by the Conflicts of Interest and Ethics Advisory Council. Training may be provided by online means.
- Filed and maintained as public records for five years. Clerk of locality (or school board) to keep records

State and Local Government Conflicts of Interest Act

- Questions?