

**At a Special Meeting of the Sussex County Board of Supervisors  
Held in the General District Courtroom on  
Thursday, June 15, 2017 at 5:15 pm**

**BOARD MEMBERS PRESENT**

Keith C. Blowe  
Alfred G. Futrell  
Susan B. Seward  
John A. Stringfield  
Rufus E. Tyler, Sr.

**BOARD MEMBER ABSENT**

C. Eric Fly, Sr.

**STAFF PRESENT:**

Vandy V. Jones, III, Interim County Administrator  
Millard Stith, Independent Consultant  
Mark Flynn, County Attorney  
Shilton R. Butts, Assistant to the County Administrator/Deputy Clerk to the Board  
Deste J. Cox, Deputy Treasurer  
Brenda H. Drew, Housing Coordinator  
Patrick Plourde, Director of Social Services  
Steve White, Tie Breaker

**Item 1. Call to Order**

The June 15, 2017 special meeting of the Sussex County Board of Supervisors was called to order by Chairman Seward.

**Item 2. The Invocation**

The Invocation was offered by Supervisor Blowe.

**Item 3. The Pledge of Allegiance**

The Pledge of Allegiance was recited by all.

**Item 4. Agenda Amendment**

There were no agenda amendments.

**Item 5. Approval Agenda**

ON MOTION OF SUPERVISOR FUTRELL, seconded by SUPERVISOR BLOWE and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the agenda as presented.

Voting aye: Supervisors Blowe, Futrell, Seward, Stringfield

Voting nay: none

Absent during vote: Supervisor Tyler

Absent: Supervisor Fly

## **Item 6. Conflict of Interest Act (COIA) - Mark Flynn, County Attorney**

*Supervisor Tyler entered at 5:30 p.m.*

County Attorney Flynn gave a brief overview of the Conflict of Interest Act (COIA).

County Attorney Flynn advised that there are three (3) major areas of COIA. Those three (3) areas are:

### **1. Prohibited conduct.**

County Attorney Flynn advised that a government official or employee may not as noted in State Code §2.2-3103:

- Solicit or accept money or other thing of value for services performed within the scope of his official duties.
- Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency.
- 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.
- Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public.
- Accept money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties – N/A to campaign contributions.
- 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.
- Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality.
- Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain.
- Ordinance to limit gift size & require reporting: §2.2-3104.2.

### **2. Personal interest in a contract**

County Attorney Flynn advised that personal interest as defined in State Code §2.2-3101 means:

- Own at least 3% of a business
- Income from owning business or property that exceeds \$5000/year
- Salary that exceeds \$5000/year
- Own at least \$5000 worth of property
- Liability for a business if it exceeds 3% of asset value of business
- Option for business or property that will result is 3% stake or \$5000 value or more.
- Applies to officer/employee and immediate family

County Attorney Flynn advised that personal interest in a contract as defined in State Code §2.2-3101 means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

A Board member may not have a personal interest (defined term) in a contract with: County, component of county under county control, any other agency if county appoints majority of members.

County Attorney Flynn advised that the exceptions are:

- Employment if the job predated election to council. (Town regulation may prohibit this.)
- Contract for goods, if (1.) County has acquired similar goods before person went on council; 2. No involvement in drafting specifications for the contract; and 3. Council adopts a resolution stating it to be in the public interest for the person to bid.
- Sale of real estate to the county.
- Contract less than \$500 in value - §2.2-3110.(A)(7)
- Spouse who works for agency if employment began 5 or more years prior to marriage.
- Contracts up to \$10,000 with county if population less than 10,000, up to \$25,000 if based on “sealed bid basis” §2.2-3110(A)(3)
- If sole personal interest in contract is salary over \$10,000 from contracting firm or government agency, if:
  - Neither board member nor immediate family participates on behalf of firm
  - Councilor doesn't participate for locality or disqualifies himself from participating on behalf of locality. § 2.2-3110(A)(4).

### **3. Personal Interest in a Transaction**

County Attorney Flynn advised that personal interest in a contract as defined in State Code §2.2-3101 means:

- Personal interest in business or property subject of transaction or represents/provides services to business or property that is the subject and
- The business/property is the subject of the transaction OR

- It may realize a benefit or detriment from the transaction. (Broader than Personal Interest in a Contract)

If Board member or employee has personal interest in a transaction (defined terms), he or she may not participate on behalf of the county in the transaction if the transaction applies solely to him, the company for which he works or his client. § 2.2-3112(A)(1).

If transaction applies to group of 3 or more & council member or employee is in that group, he or she may participate upon certifying that he or she is “able to participate in the transaction fairly, objectively, and in the public interest. § 2.2-3112(A)(2), 3115(H).

If the transaction affects the public generally – no restriction § 2.2-3112(A)(4).

#### Enforcement and Penalties

- Knowing violation of major provisions – Class 1 misdemeanor “A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.”
- Knowing violation is malfeasance – judge may remove offender from office.
- Civil penalty equal to value of value received.
- Court may invalidate contract entered in violation.

#### Annual Disclosures

All officers and employees shall read and familiarize themselves with the provisions of Chapter §2.2-3100.1.

Statements of economic interest (SEI) are due February 1 for 12 month period ending December 31. Filed with clerk of board. § 2.2-3115. Extension is possible, but a good excuse needed. The Clerk of board notifies Commonwealth’s attorney of late filings Commonwealth’s Attorney assesses the \$250 penalty. §2.2-3124 Penalties go to fund the COIA Council.

#### Limit on gifts from 3 forbidden groups § 2.2-3103.1

- \$100 cap per gift & per year on gifts from:
- Registered lobbyist
- The lobbyist’s principal (including leaders of a company that is the principal).
- Any person who has or is attempting to obtain a contract with the city
- For all 3 categories – board member must know or have reason to know the status of the gift-giver.
- Gifts of less than \$20 need not be added together for annual cap.
- Applies to officer or employee and members of immediate family

- Immediate family redefined: (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee

### **Gifts from relatives, some friends are not gifts**

- Gifts from relatives & personal friends are not gifts subject to the act.
  - Bills redefine relatives: donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse.
- Gifts from personal friends OK, but a lobbyist, the lobbyist's principal or any person who has or attempting to obtain a contact with the locality cannot be a personal friend. § 2.2-3101, definitions.

### **Exceptions to \$100 limit**

1. Widely attended event.
  - 25 or more persons either invited to event or reasonably expected to attend event and is open to individuals (i) with a common interest, (ii) are members of a public, civic, charitable or professional organization (iii) are from a particular industry or profession, or (iv) who represent persons interested in a particular issue.
  - Only food, beverage, entertainment and admission are allowed.
  - Examples: Chamber of Commerce, Sierra Club, Realtors Association, Manufacturers Association.  
The amounts must be disclosed on statement of economic interests form. §2.2-3013.1(D)
2. Gifts from foreign dignitaries.
  - Must be turned over to locality & reported as accepted on behalf of same. §2.2-3103.1(E)
  - If a personal friend is a lobbyist, principal or contractor, he may give a gift to board member or immediate family if they truly are personal friends. § 2.2-3103.1(F)
  - Section sets out a friendship test:
    - Circumstances of gift;
    - History of relationship;
    - Friend paid for gift & didn't take business tax deduction;
    - Donor doesn't give same / similar gifts to other officials.
  - Travel paid by lobbyist, lobbyist's principal or contractor allowed if the COIA and Ethics Advisory Council approves it. 2.2-3103.1(G) & 30-356.1(A).
  - Test:
    - Reasonable relationship to public office;
    - Conference, meeting or other event related to duties of official;
    - Public policy matters related to official's responsibilities discussed;
    - Reasonably expected to educate official in duties; or

- Official is to speak on matters related to his or her office.
- Example: French company flies board members to Paris to tour facility it plans to build in locality.
- Travel paid by US government or another state or territory does not need conflicts council approval. § 30-356.1(A)(2)
- Because travel paid by county & related agencies is not a gift, it requires no council approval. § 30-356.1(A)(4)
- It must be reported on the statement of economic interests.

## **Return Gifts**

Section 2.2-3103.2 creates a get out of jail free card.

If a gift would exceed the \$100 limit, the official may return it, pay for it, give it to a charity without claiming a charitable deduction, or the may give a consideration to the donor that reduces the net value of the gift to less than \$100.

## **New Reporting Requirements**

- Forms are filed with clerk of board. Travel in official capacity – § 2.2-3117 Question 4, Schedule D
  1. Answer question 4 Yes if any travel with combined value over \$100, whether paid by locality or other entity in reporting period.
  2. On Schedule D, for travel paid by county or government agency, only required to list trips out-of-state. For payments by any other entity (VACo, NACo, etc.) list all travel – in-state or out.

Both apply only to travel exceeding \$100

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As noted in County Attorney Flynn’s presentation, some advisory opinions are:

- No person may be prosecuted for a violation of the conflicts act if the COIA Council or the Commonwealth’s attorney OK’s the gift or contract or participation in a transaction.
  - Must fully disclose the facts.
  - The request and approval must be done before the fact.
  - The decision of the attorney or council is public.

Information provided the handout for the Conflict of Interest and Ethics Advisory Council as follows:

- Council: legislators, executive branch, former judge, one from list by VML, one from list by VACo. Political parties to have equal representation.
- Issues formal and informal ethics opinions – only to the official or the locality/agency, not to members of public.
- Decides on gift and travel requests by public officials.
- Walter Erwin, city attorney of Lynchburg and Sharon Pandak, long-term local government attorney are on council.

**Item 7. Citizens' Comments** – none

**Item 8. Adjournment**

ON MOTION OF SUPERVISOR BLOWE, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the June 15, 2017 special meeting of the Sussex County Board of Supervisors adjourned at 5:56 p.m.

Voting aye: Supervisors Blowe, Futrell, Seward, Stringfield, Tyler

Voting nay: none

Absent: Supervisor Fly