

OP. NO. 05-030

GENERAL ASSEMBLY: GENERAL ASSEMBLY CONFLICTS OF INTERESTS ACT.

No violation of Act for current member of General Assembly to act as attorney for or represent clients for compensation before executive agencies of Commonwealth in administrative law proceedings or legal matters.

The Honorable Terry G. Kilgore
Member, House of Delegates
April 5, 2005

Issue

You ask whether a member of the General Assembly may represent clients¹ as an attorney for compensation before executive agencies of the Commonwealth in administrative law proceedings or other legal matters.²

Response

It is my opinion that it is not a violation of the General Assembly Conflicts of Interests Act for a current member of the General Assembly to act as an attorney for and represent clients for compensation before executive agencies of the Commonwealth in administrative law proceedings or other legal matters.

Applicable Law and Discussion

The qualifications to hold office as a member of the General Assembly are set out in Article II, § 5(c) of the Constitution of Virginia, which provides that "nothing in this Constitution shall limit the power of the General Assembly to prevent conflicts of interests, dual officeholding, or other incompatible activities by elective or appointive officials of the Commonwealth or of any political subdivision."

The General Assembly enacted the General Assembly Conflicts of Interests Act³ (the "Act"), which governs conflicts of interest by General Assembly members. A legislator is prohibited from accepting any position that would "reasonably tend[] to influence him in the performance of his official duties"⁴ or where "there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties."⁵ The legislator bears the initial burden of determining whether a business opportunity is being offered to influence him in his official capacity, and if so, the legislator must decline such opportunity to avoid an impermissible conflict of interest.⁶ In the situation about which you inquire, you state that the representation of clients is not being afforded to influence a member of the General Assembly, nor would it influence such member, in the performance of his official duties.

A legislator may also have a conflict of interest by participating in certain transactions in which he has a personal interest.⁷ By definition, this prohibition is

limited to matters considered by the General Assembly⁸ and, therefore, not applicable to the facts you present.

Additionally, § 30-105 of the Act sets forth certain contractual arrangements that are considered to be a conflict of interest:

A. No legislator shall have a personal interest in a contract^[9] with the legislative branch of state government.

B. No legislator shall have a personal interest in a contract with any governmental agency of the executive or judicial branches of state government, other than in a contract of regular employment, unless such contract is awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301.

C. No legislator shall have a personal interest in a contract with any governmental agency of local government, other than in a contract of regular employment, unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision 10 or 11 of § 2.2-4343, or (ii) is awarded after a finding, in writing, by the administrative head of the local governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

D. The provisions of this section shall not apply to contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public.

E. The provisions of this section shall not apply to a legislator's personal interest in a contract between a public institution of higher education in Virginia and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials.

Generally, the representation of clients as an attorney for compensation before executive agencies of the Commonwealth in administrative law proceedings or other legal matters would not implicate the contracts described in § 30-105.

Please be advised that the purpose of the Act is to ensure that "the citizens are entitled to be assured that the judgment of the members of the General Assembly will not be compromised or affected by inappropriate conflicts."¹⁰ Our system of government is dependent in large part on its citizens maintaining the highest trust in their public officials. The conduct and character of public officials is of particular concern to state and local governments, because it is chiefly through that 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 judgment of public officers and employees will not be compromised or affected by inappropriate conflicts. To this end, the Act defines certain standards and types of conduct that clearly are improper. The law cannot, however, protect against all appearances of conflict. It is incumbent, therefore, on

members of the General Assembly and other state and local government officials to examine their conduct to determine if it involves an appearance of impropriety that they find unacceptable and that could affect the confidence of the public in their ability to perform their duties impartially.

Conclusion

Accordingly, it is my opinion that it is not a violation of the General Assembly Conflicts of Interests Act for a current member of the General Assembly to act as an attorney for and represent clients for compensation before executive agencies of the Commonwealth in administrative law proceedings or other legal matters.

¹For purposes of this opinion, I assume that the clients to which you refer are not agencies of the Commonwealth.

²Please note that this opinion is not a legal ethics opinion as such matters are reserved by the Supreme Court rules to the Virginia State Bar. See 1994 Op. Va. Att'y Gen. 9, 12 n.1.

³Va. Code Ann. tit. 30., ch. 13, §§ 30-100 through 30-129 (LexisNexis Repl. Vol. 2004).

⁴Section 30-103(5).

⁵Section 30-103(6).

⁶See COI Adv. Op. No. 99-A16, at 1 (2000) (noting that legislator should exercise caution in any representation where opportunity could be construed as being afforded to him to influence him in his official capacity).

⁷See § 30-108.

⁸See § 30-101 (defining "personal interest in a transaction" to mean "a personal interest of a legislator in any matter considered by the General Assembly").

⁹See *id.* (defining "personal interest in a contract" to mean "a personal interest which a legislator 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 which is a party to the contract").

¹⁰Section § 30-100.

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