

JOINT COMMITTEE ON

LEGISLATIVE ETHICS

ETHICS GUIDE

INCLUDING THE

COMPILATION OF ETHICS OPINIONS

ANNAPOLIS, MARYLAND

2003

For further information concerning this document contact:

Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore area 410-946-5200 - Washington area 301-970-5200
Other areas 1-800-492-7122, extension 5200
TDD 410-946-5401 - 301-970-5401
Maryland Relay Service: 1-800-735-2258

The Department of Legislative Services does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the admission or access to its programs or activities. Sherry M. Little has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice regulations. Requests for assistance should be directed to Ms. Little at the telephone numbers shown above.

MARYLAND GENERAL ASSEMBLY

JOINT COMMITTEE ON

LEGISLATIVE ETHICS

Staff

William G. Somerville, Ethics Counsel
Andrea D. Davis, Co-Counsel

Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401
410-946-5200 or 301-970-5200

TABLE OF CONTENTS

	Page
STATEMENT OF LEGISLATIVE INTENT	1
JOINT COMMITTEE ON LEGISLATIVE ETHICS	1
CONFLICTS OF INTEREST	2
Conflicts Generally	2
Presumption of Conflict	2
Suspension of Disqualification: Filing a Disclaimer of Conflict	3
Non-Legislative Interaction with Lobbyists	3
Recusal From Voting	3
Documentation of Recusal	4
Public Disclosure of Interests	4
Ethics Files	5
GIFTS	5
Acceptance and Prohibition of Gifts	5
Disclosure of Gifts	8
Fund-raising on Behalf of Others	8
Campaign Contributions	9
PROHIBITED EMPLOYMENT AND COMPENSATION	9
Employment Restrictions - Representation Before Government Agencies	9
Employment Restrictions - Procurement or the Adoption of Regulations	11
Employment Restrictions - Employment by Governmental Entity	11
MISCELLANEOUS PROVISIONS	13
Use of Prestige of Office	13
Ex Parte Communication	14
Use of Public Resources for Nongovernmental Purposes	14
Honoraria	14
Hiring of Relatives	15
Post-Legislative Employment	15
Ethics Opinions	15
Ethics Counsel	16

	Page
STATE ETHICS COMMISSION	16
ANNUAL FINANCIAL DISCLOSURE STATEMENT	17
Preliminary Financial Disclosure	17
Public Record	18
ELECTION LAW PROVISIONS	18
Contribution Limits	18
Timing of Contributions	18
No Fund-Raising or Contributions During the Session	19
Campaign Fund-Raising Involving a Regulated Lobbyist	20
ETHICS OPINIONS	21
Opinion #1 - Use of Prestige of Office	23
Opinion #2 - Use of Legislative Stationery	25
Opinion #3 - Non-Legislative Interaction with Lobbyists	27
Opinion #4 - Employment by State or Local Government	33
Opinion #5 - Receipt of Governmental Benefits	37
Opinion #6 - Doing Business with State or Local Government	39
Opinion #7 - Gifts	43
Opinion #8 - Conflicts of Interest and Voting	47
ETHICS FORMS	51

STATEMENT OF LEGISLATIVE INTENT

Maryland's Public Ethics Law sets out its purposes and intent in a codified preamble:

"The General Assembly of Maryland, recognizing that our system of representative government is dependent upon the people maintaining the highest trust in their government officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of those officials and employees will be maintained.

It is evident that this confidence and trust is eroded when the conduct of the State's business is subject to improper influence and even the appearance of improper influence.

For the purpose of guarding against improper influence, the General Assembly enacts this Maryland Public Ethics Law to require certain government officials and employees to disclose their financial affairs and to set minimum standards for their conduct of State and local business." (State Government Article, § 15-101(a) and (b) Annotated Code of Maryland)

JOINT COMMITTEE ON LEGISLATIVE ETHICS

The Joint Committee on Legislative Ethics ("Ethics Committee") is composed of six members of the Senate of Maryland and six members of the House of Delegates. It is a statutory committee of the General Assembly, established under §§ 2-701 through 2-709 of the State Government Article, to administer those sections of the Maryland Public Ethics Law that relate to legislators. There are co-chairmen from each chamber, who alternate annually as presiding chairman. The Ethics Committee is distinct from the State Ethics Commission, which is an independent agency in the Executive Branch with general jurisdiction over lobbyists and over all State officials and employees other than members of the General Assembly and State officials of the Judicial Branch.

The Ethics Law requires members of the General Assembly to file with the Committee certain mandatory public disclosure statements, as well as discretionary public "disclaimers of interest" with respect to legislative matters that constitute presumed or apparent conflicts of interest. Additionally, each member's annual financial disclosure statement is filed with *both* the State Ethics Commission and the Ethics Committee.

Unless otherwise noted, all statutory references in this handbook are to sections of the State Government Article of the Annotated Code of Maryland.

CONFLICTS OF INTEREST

Conflicts Generally (§ 15-511(b))

As a starting point, the Ethics Law states that a member of the General Assembly is disqualified from participating in any way on a legislative matter if the legislator's personal interest conflicts with the public interest and thereby *actually impairs* the legislator's impartiality and independence of judgment. If a member feels that his or her financial interests (or those of relative or associate) stand in the way of impartiality, then the member must avoid all legislative action on the matter.

Legislators are expected to look at their business and personal interests from the perspective of an average member of the general public to determine if anything presents the appearance of a conflict of interest. As discussed below, in the great majority of cases the appearance of conflict will not interfere with a legislator participating fully on legislation that relates to the conflict. However, situations involving an especially direct interest may require that the legislator refrain from voting on, debating, or otherwise attempting to influence the passage or defeat of a bill or class of bills (a process generally referred to as "recusal").

The Ethics Committee has adopted an Ethics Opinion (Opinion #8) that elaborates on these requirements. It, along with the other published Ethics Opinions, can be found at the back of this Ethics Guide.

Presumption of Conflict (§ 15-511(c))

Certain relationships or interests create the legal *presumption* of a conflict of interest. A legislator with a presumed conflict must file a "disclaimer statement" with the Ethics Committee if the legislator wishes to participate in legislative action that relates to the conflict.

The following constitute presumed conflicts under the law:

1. Having or acquiring a direct interest in an enterprise which would be affected by the legislator's vote on proposed legislation. Note, however, that a conflict will *not* be presumed if the interest is common to all members of a profession or occupation of which the legislator is a member, or to all members of a large class of the general public.

2. Benefitting financially from a close economic association with a person (including a lobbyist or a business that has employed a lobbyist) who has a direct interest in an enterprise or interest that would be affected by proposed legislation in a manner different from other like enterprises or interests. Generally, a "close economic association" includes: a legislator's employer, employees, or business and professional partners; a corporation in which the legislator is involved as an owner (the lesser of a 10 percent ownership interest or \$25,000 stock value), officer, director, or agent; or a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns any interest.

3. Soliciting, accepting, or agreeing to accept any loan (other than from a commercial lender in the normal course of business) from a person who would be affected by or has an interest in an enterprise which would be affected by the legislator's vote.

Suspension of Disqualification: Filing a Disclaimer of Conflict (§ 15-512(b))

When a legislator has a presumed or apparent conflict of interest, the disqualification from voting or otherwise influencing legislation may be suspended if the legislator files a disclaimer of conflict form with the Ethics Committee, asserting that the legislator is able to vote on the matter fairly, objectively, and in the public interest. Generally the filing is made on Form D, which is found in the packet of forms at the back of this Ethics Guide and is also available to legislators on-line. A disclaimer may apply to a single bill (preferredly identified on the form by bill number and title) or generally to all bills that fall within a particular subject area. The form also requires a short statement of the circumstances that give rise to the presumed or apparent conflict. A general disclaimer continues in effect unless it is revoked, and it need not be filed again each year.

Each disclaimer of a presumed or apparent conflict is reviewed by the Ethics Committee at a public meeting of the Committee. If the Committee determines that recusal would be a more appropriate course of action, that information will be conveyed to the legislator in a letter that cites the reasons for the determination.

Non-Legislative Interaction with Lobbyists

When a legislator has business dealings with a regulated lobbyist, or with an entity that employs a lobbyist, the appearance of conflict is often created with regard to the legislative interests of the lobbyist or entity.

The Ethics Committee, in Ethics Opinion #3, discusses a number of scenarios in which non-legislative interaction between a legislator and lobbyist should be addressed. In nearly all cases, the filing of a disclaimer that spells out the nature of the interaction is sufficient; however, some exceptional circumstances will require recusal from legislation that relates to the conflict.

Recusal From Voting (§ 15-512(a))

The Ethics Law requires a legislator's recusal from participation in legislation if a presumed or apparent conflict is "direct and personal to the legislator, a member of the legislator's immediate family, or the legislator's employer." Such a conflict cannot be overcome by filing a disclaimer.

Although the Ethics Law does not provide any specific examples of what constitutes a "direct and personal" conflict, the Ethics Committee has determined that the General Assembly intended for this provision to apply only to interests that are narrowly focused, and as to which a clear financial impact would flow from the passage or defeat of the legislation. The following are examples of direct and personal conflicts, as to the legislator himself or herself, the legislator's

immediate family member, or the legislator's employer. References to "person" may be either an individual or an entity (such as the legislator's employer).

- The person is the only person affected by the legislation, or one of a very small number of such persons.
- The person would be affected to a significantly greater degree than any other like person, as in the case of a business entity that is overwhelmingly predominant in the field to which the legislation relates.
- The person's salary or other compensation is specifically set by legislation, such as a deputy sheriff's salary that is specifically provided by law, even if there are several deputy sheriffs affected. (Note that this does not apply to legislation applicable to all legislators, such as legislative salary or pension benefits.)

A legislator who has questions as to the applicability of this provision to the legislator's circumstances should consult with the Ethics Counsel and, if an authoritative ruling is desired, ask for an opinion of the Ethics Committee.

A member who has a presumed or apparent conflict of interest that falls short of being a "direct and personal" conflict may nonetheless feel compelled to avoid participating in legislative action to which the conflict relates. The Ethics Committee recommends that recusal in such circumstances be used *sparingly*, noting that Rule 93 of the House and Senate Rules specifies a legislator's general duty to vote on all questions that arise on the floor.

Documentation of Recusal (§ 15-512(c))

When recusal is taken, whether required or discretionary, the legislator must file with the Ethics Committee a public disclosure (Form E) that specifies the bill or bills and states the reason for recusal. The form need not be filed prior to the vote being taken, but should be filed as soon as practicable thereafter. The form may be filed electronically from a laptop computer on the floor.

Public Disclosure of Interests (§ 15-513(b))

A separate public disclosure must be filed with the Ethics Committee if a legislator:

1. Represents a person for compensation before a State or local governmental agency (except in a judicial or quasi-judicial proceeding);
2. Represents a State or local government agency for compensation;
3. Owns, or the legislator's spouse or dependent child owns, the lesser of: 10 percent of the invested capital or stock of a corporation that is subject to regulation by a State agency, or capital stock worth \$25,000 or more;

4. Owns, or the legislator's spouse or dependent child owns, any interest in a business entity subject to regulation by a State agency, if the business entity is a partnership, limited liability partnership, or limited liability company;

5. Has a contract, *including a position of employment*, with a State or local government agency; or

6. Has had any commercial transaction with the State or a local government in the State that involves a monetary consideration.

The Ethics Committee has prepared forms for these disclosures (Forms A, B, and C), found at the back of this Ethics Guide. These forms can also be found on-line and filed electronically.

Note that some of the situations that require disclosure, such as employment by governmental agencies or representation of persons for compensation before governmental agencies, are restricted under other provisions of the Ethics Law as discussed below. Note also that many of these circumstances might *additionally* require the filing of a Form D disclaimer.

Ethics Files (§ 2-706(b))

The various statements and forms filed by legislators with the Ethics Committee are maintained for public inspection and copying during normal business hours. The Committee maintains a record of the name and home address of any person who examines or copies a file. If the legislator has so requested, whenever the legislator's file is examined or copied, a copy of this log will be forwarded to the member. Legislators should contact the staff of the Ethics Committee if they wish to be notified whenever their file is examined or copied.

GIFTS

Acceptance and Prohibition of Gifts (§ 15-505)

A member of the General Assembly may not solicit any gift for personal use. Solicitations on behalf of others (e.g., charities and other non-profit recipients) are subject to restrictions that are discussed below.

Unless the gift is specifically exempted, a member may not knowingly accept an unsolicited gift if the member knows or has reason to know that the gift is from:

1. A regulated lobbyist (which, by law, includes the direct employer of a lobbyist);
2. A person doing business or seeking to do business with the General Assembly; or

3. A person who has a specific financial interest that may be affected, in a manner distinguishable from the general public, by an action of the General Assembly.

A member of the General Assembly may accept certain specifically exempted classes of gifts from any source, including lobbyists, so long as the gift would not impair the member's impartiality and independence of judgment. Even if exempted, however, a gift of "significant value" should not be accepted if it *gives the appearance* of impairing the legislator's impartiality and independence of judgment, or if the legislator believes it *was designed to impair* his or her impartiality and independence of judgment.

The following are classes of gifts that a legislator may accept:

Food and beverages

- Any food and beverages may be accepted as part of a reception or meal to which *all members of a legislative unit have been invited*. "Legislative unit" means the entire General Assembly, an entire chamber, a standing committee, or a county or regional delegation that is on a list issued by a presiding officer. Subcommittees are *not* legislative units, nor are caucuses. The reception or meal must be attended by the sponsor of the event or a representative of the sponsoring entity. These gifts need not be reported by the legislator, and the names of legislators attending are not reported by the lobbyist.
- Any food or beverages may be accepted by an individual legislator when offered at the time and geographical location of a meeting of a legislative organization that the legislator is attending at the General Assembly's expense. This would include, for example, a reception sponsored by an industry group at the time of an NCSL or SLC conference. These gifts need not be reported by the legislator, and the names of legislators attending are not reported by the lobbyist.
- Any food or beverages may be accepted by an individual legislator *during the interim* from a donor (such as a business) that is located in a county that contains the legislator's district. The meal must also be in a county that contains the legislator's district, and the donor may *not* be an individual regulated lobbyist. An example of this would be a lunch that is offered to a legislator as part of a tour at a place of business. Such a gift should be reported by the legislator if its value exceeds \$20.
- Food that does not constitute a "meal", including non-alcoholic beverages, is implicitly permitted under a general exception for unsolicited gifts not exceeding \$20. A legislator may accept a snack and/or non-alcoholic beverage in circumstances where it would be awkward for the legislator to pay his or her own cost, such as a meeting at which coffee and pastries were provided. In a restaurant or coffee-shop setting, a legislator should pay his or her own share of the bill. (A legislator may pay a lobbyist's restaurant tab, but not vice-versa.)

Tickets and free admission

- Tickets and free admission may be accepted for a charitable, cultural, or political event, *from the sponsor of the event*, if the legislator has been invited as a courtesy or ceremony to the office. Sports tickets are *never* legal gifts from a non-governmental donor, although sports tickets may be purchased by a legislator for face value. Tickets and free admission need not be reported if they do not exceed \$20. If all members of a legislative unit are invited, a ticket or free admission of *any* value need not be reported, unless there are two or more tickets or free admissions in the reporting period and the cumulative value is \$100 or more.

Conferences

- Reasonable expenses for food, travel, lodging, and scheduled entertainment may be accepted to attend a meeting or conference if the legislator is a *scheduled speaker or scheduled panel member*. If the anticipated value of the expenses is \$500 or more, and is being paid by a lobbyist (including an entity that employs a lobbyist), the legislator must notify the Ethics Committee by letter prior to attending the conference.
- Additionally, a legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment to attend a legislative conference that has been approved by the legislator's presiding officer. The intent of this provision is to allow payment of expenses, by sources other than the State, for attending conferences sponsored by legislative organizations. A legislator need not be a speaker or panel member at the conference in order to accept this gift. An example would be the "scholarships" offered by the American Legislative Exchange Council (ALEC). The provision does not apply to conferences sponsored by interest groups such as trade associations.
- The Ethics Committee has ruled that payment of expenses to attend other meetings and conferences, or to participate in educational travel, will be permitted under the law if the donor is neither a regulated lobbyist nor an entity that has substantial interests before the General Assembly. An example of this would be travel for which the expenses are paid by the U.S. government, a foreign government, or by a foundation that does not engage in legislative activities in Annapolis.

Ceremonial or insignificant gifts

- Ceremonial gifts or awards of insignificant monetary value (coffee mugs, caps) and trivial items of informational value may be accepted. A plaque or similar award that is purely ceremonial may be accepted regardless of value, but acceptance must be disclosed if the value appears to be greater than \$20. Expensive consumer items are presumed *not* to be acceptable under this provision.

- Miscellaneous unsolicited gifts, not exceeding \$20 in cost, may be accepted unless they are prohibited meals, alcoholic beverages, or sports tickets.

Personal and private gifts

- The Ethics Committee may exempt other classes of gifts that are personal and private in nature.

Gifts from governmental entities

- Gifts from governmental entities, whether state or local, are not regulated under the Ethics Law. For example, sports tickets may be accepted from a governmental entity (e.g., the University of Maryland or the Maryland Stadium Authority), and need not be reported. Likewise a government sponsor may provide a meal to an individual legislator.

Ethics Opinion #7, codified at the end of this Ethics Guide, provides specific rules on the acceptance of gifts.

Disclosure of Gifts (§§ 15-607 and 15-704)

Unless exempted from disclosure (such as with meals offered to all members of a legislative unit), a legislator must disclose a gift in excess of \$20 in value or a series of gifts from the same donor totaling \$100 or more during a calendar year. The nature of the gifts, their value (if known), and the donor's identity must be reported on the legislator's annual Financial Disclosure Statement, which is filed by April 30 each year. A gift to a legislator's spouse or dependent child, made by a donor scrutinized under the Ethics Law, will generally be deemed a gift to the legislator.

Legislators also should be aware that each regulated lobbyist is required to file reports with the State Ethics Commission every 6 months to disclose the name of a legislator who receives gifts with a cumulative value of \$75 or more from the lobbyist during the 6-month reporting period (subject to various exceptions, such as events to which all members of a legislative unit are invited).

Fund-Raising on Behalf of Others (§ 15-505(a)(2))

Legislators are frequently asked to help a non-profit community group raise funds for its mission. This activity is permissible, subject to a restriction on fund-raising from certain lobbyists. The Ethics Law prohibits a legislator from directly soliciting or facilitating the solicitation of a gift, on behalf of another person, from an "individual regulated lobbyist" described in § 15-701(a)(1) of the State Government Article. There are several classes of regulated lobbyists for the purposes of the Ethics Law, but this provision applies generally to the corps of lobbyists who are employed to directly lobby legislative issues on behalf of businesses or interest groups. A list of regulated lobbyists is available on-line or as a hard-copy compilation from the State Ethics Commission.

Fund-raising solicitations from business entities that employ lobbyists are permitted under this provision, but should be restricted to efforts on behalf of bona fide non-profit community organizations. These may include educational entities, miscellaneous charitable causes, and even charitable fund-raising efforts on behalf of individuals. Solicitations on behalf of other entities or individuals are not authorized.

When soliciting charitable contributions, there is a wide range of activity that is permitted. A legislator may be on a non-profit organization's board of directors, and his or her name may appear on the non-profit organization's letterhead; a legislator may be a sponsor or the "guest of honor" at a fund-raising function for charity; a legislator may participate directly in charitable fund-raising drives and may directly ask for charitable donations (so long as the request is *not* made to an individual regulated lobbyist); and the title "Senator" or "Delegate" may be used in these efforts.

The legislative intent of the prohibition on "facilitating" the solicitation of gifts is to prevent such activities as a legislator providing a list of individual regulated lobbyists that an organization should target, or allowing the organization to invoke the legislator's name in its solicitation of individual regulated lobbyists.

Campaign Contributions

Political campaign contributions are not considered gifts and may be solicited and accepted in accordance with the provisions of the State's Election Law. Be aware, however, that the Election Law prohibits the solicitation or acceptance of campaign contributions by a member during the regular legislative session (including solicitations on behalf of other candidates), unless the member has filed for election to a federal or local office, as discussed below.

PROHIBITED EMPLOYMENT AND COMPENSATION

Employment Restrictions - Representation Before Government Agencies (§ 15-504(b))

The Ethics Law states that a member of the General Assembly is prohibited from assisting or representing another party, for compensation, in a matter before or involving any unit of the State government or a local subdivision of the State, unless covered by one of the exemptions to the prohibition. The prohibition relates to representation in the course of any type of employment relationship, including regular salaried employment, contractual consultant work, and representation in a professional capacity (e.g., attorney-client).

The prohibition applies only to *compensated* assistance to or representation of another person. It does not apply in any way to uncompensated activities. Nor does it apply to the activities carried out by a legislator on his or her own behalf, even if financial benefit could be gained. This would include, for example, appearances before a governmental entity in matters relating to the legislator's real property (tax assessment, zoning, road maintenance) or a legislator's activities on behalf of a business entity owned in its entirety or in substantial part by the legislator, unless the activity relates to negotiating a government procurement contract (which is subject to a stricter rule, as noted below).

Exceptions

Several exceptions to this prohibition are set out in the law, some of them quite broad. Compensated assistance or representation in the following matters will be allowed (although it may need to be disclosed to the Ethics Committee on a standard form):

- *Matters relating to the performance of ministerial acts.* “Ministerial acts” are governmental functions in which there is little or no exercise of judgement or discretionary authority. Such acts involve essentially automatic functioning under prescribed procedures in which there is little or no likelihood or appearance that a legislator’s status as a member of the General Assembly could influence the transaction.
- *Judicial or quasi-judicial proceedings, or matters preliminary, incidental, or collateral to judicial or quasi-judicial proceedings.*
- *Assistance or representation in a matter before or involving the Workers’ Compensation Commission, MAIF, or the Criminal Injuries Compensation Board.*
- *Assistance or representation in matters involving the legislator’s regular business, employment, or profession, in which contact with a governmental unit: (1) is an incidental part of the business, employment, or profession; (2) is made in the manner that is customary for persons in that business, employment, or profession; and (3) is not for contingent compensation.* This overlaps some of the aforementioned exceptions and provides broad and generalized authority for legislators to interact with governmental entities in the normal course of their employment, so long as such interaction is not the primary focus of the employment. Examples of prohibited assistance or representation would include:
 - ▶ working as a governmental affairs officer for a corporation, if the job involves interaction with the State of Maryland and/or local governments in Maryland;
 - ▶ engaging in direct governmental lobbying at the State or local level in Maryland; and
 - ▶ being designated by one’s employer to interact with a governmental entity in the State if the assignment falls outside of what would be customary for an employee in the same position.

- *Matters in which the assistance or representation was commenced before the member filed for office or was appointed to fill a vacancy.* The intent of this exception is to allow a legislator to continue employment with the same employer, or representation of the same client, that began before the legislator filed for office. Changes in the nature of the employment or representation would warrant consultation with the Ethics Counsel to discuss whether this exception remained applicable. (Also note that a grandfather provision in the 1999 amendments to the Ethics Law applies to employment or representation by incumbent members of the General Assembly that was entered into prior to October 1, 1999.)

Employment Restrictions - Procurement or the Adoption of Regulations (§ 15-504(c))

A stricter employment standard prohibits a member of the General Assembly from assisting or representing an employer or client before the State or a local government of the State in any matter involving procurement or the adoption of regulations. Moreover, a member may not represent his or her own financial interests before a State or local governmental entity in such matters.

Procurement. As a general rule, a legislator will be prohibited from participating *directly* in matters that relate to State or local procurement. It is permissible, however, for a legislator to be employed by or to own a business that enters into procurement contracts with a governmental entity, so long as the legislator is not involved in negotiations, discussions, or other direct contacts with the governmental entity as to the formation of the contract or modifications to the contract. A procurement in which there is no negotiation of price, such as one using sealed bids, would not be affected by this restriction.

The prohibition does not apply to an administrative proceeding conducted under the “contested case” provisions of the Administrative Procedure Act. This would allow a legislator to engage in assistance or representation in a procurement matter before the State Board of Contract Appeals, or in administrative matters that are a legally required antecedent to a proceeding before the Board of Contract Appeals.

Adoption of regulations. This restriction applies only to *compensated* representation relating to the adoption of regulations, which in many instances is regulated under lobbying laws. Legislators are fully authorized to participate in the regulatory process in a political context or as a constituent service. Additionally, a legislator who becomes involved in the adoption of regulations for personal reasons that are unrelated to the legislator’s business interests is not restricted by this provision.

Employment Restrictions - Employment by Governmental Entity (§ 15-513(a))

The Ethics Law prohibits receipt of earned income from a unit of the Executive Branch of State government or a political subdivision of the State, unless subject to one of the exceptions in the law. The prohibition applies to a filed candidate for election to the General Assembly, a member-elect of the General Assembly, and a member. A governmental position held at the time of filing for office (or appointment to fill a vacancy) is not subject to the prohibition.

The term “earned income” refers to salaried employment, contractual employment, and a consultant contract. It does not apply to income obtained from a procurement by a governmental

entity (which is subject to other restrictions and reporting requirements). Likewise, it does not apply to employment by an entity that receives governmental money in the form of a grant.

“Political subdivision” includes multi-county agencies (e.g., the Washington Suburban Sanitary Commission) and miscellaneous governmental entities such as special taxing districts and quasi-governmental entities created by State or local statute.

Earned income received from the federal government or from any state or local government outside of Maryland is not subject to the restrictions of this provision.

Exceptions are provided for several classifications of governmental employment. With the prior approval of the Ethics Committee, an exemption may be made for:

- A teaching position.
- A position that is subject to a “merit system hiring process”, in which a standardized process is utilized to rank applicants strictly on merit. Management positions and positions for which the tenure of employment is “at the pleasure” of the appointing authority are considered by the Ethics Committee *not* to be included in this exception.
- “A human services position”, which the Ethics Committee has determined is limited to jobs in fields such as social work or a health profession in which there is direct contact with the clients being served. It does not include jobs that are purely managerial and do not involve direct client service.
- “A career promotion, change, or progression that is a logical transition” from a governmental job that was held prior to filing for office. A member who comes to the General Assembly with a governmental job will not be prevented from moving along a career ladder, even if it means switching to a different governmental employer (e.g., between local governments or from local to State).

No approval from the Ethics Committee is necessary to accept a position as “a non-elected law enforcement officer or a fire or rescue squad worker.”

A position of governmental employment held prior to October 1, 1999 is grandfathered under the law, and the member may move along the same “career ladder” noted above.

See Ethics Opinion #4 and #6, codified at the back of this Ethics Guide, for further elaboration on these issues.

MISCELLANEOUS PROVISIONS

Use of Prestige of Office (§ 15-506)

The Ethics Law prohibits the intentional use of prestige of office for private gain or that of another, but allows the performance of usual and customary constituent services that are provided without compensation.

The essential guidelines cited by the Ethics Committee include the following:

- Refrain from using one's legislative title ("Senator" or "Delegate"), or prominent identification as a legislator, for the legislator's private gain or the private gain of another. However, service in the General Assembly may be noted in a resume, employment-related biographical description, or public notice of a legislator's new employment.
- Use official letterhead only for official General Assembly business or customary constituent services.
- Do not endorse a commercial entity or product under circumstances that invoke one's position as a legislator.
-

Examples of permissible constituent services include, but are not limited to:

- Writing a letter of recommendation;
- Promoting economic development in the members's district or elsewhere in the State; and
- Efforts on behalf of non-profit community groups (subject to the restriction on soliciting contributions from individual regulated lobbyists).

In promoting economic development or aiding community groups, use of the prestige of office would be improper if the legislator, a family member, or a close associate had an ownership interest with the entity in question or might otherwise gain financially as a result of the assistance.

See Ethics Opinion #1 for further elaboration on this issue.

Ex Parte Communications in Judicial and Quasi-Judicial Cases

It is improper for a legislator to attempt to influence a decision-making official, in a matter pending in court or before a quasi-judicial administrative body, by communicating in these proceedings off the record and out of the presence of the parties.

There are formal procedures available for conveying information to the decision-maker and the parties, and the Ethics Counsel can assist members in determining the appropriate method of communication.

Use of Public Resources for Nongovernmental Purposes (§ 2-108)

The law specifies that “public resources may be used by members of the General Assembly only for public purposes” but allows “incidental use of public resources for nonpublic purposes.”

The Ethics Committee has determined that resources such as telephones, computers, e-mail, and fax machines should not be used in any systematic way for business, personal, or political campaign purposes. Occasional use for business or personal use (especially when the need for timely communication reasonably precludes use of non-public resources) is permissible but should be guided by each member’s common sense as to what is “occasional and incidental” on the one hand and “systematic” on the other. Public resources should not be used by a legislator or the legislator’s staff as part of a campaign fund-raising function.

The use of a State-supplied computer to prepare campaign finance reports for filing with the Election Board is permissible only if the member does not own another computer. However, a legislative computer should not be used to maintain and update a personal or political Internet website.

Honoraria (§ 15-505)

Legislators are sometimes offered cash payments in return for a speech made to a group or a written opinion piece. Such honoraria are prohibited under the Ethics Law. The only acceptable payments are the expenses of travel, food, lodging, and scheduled entertainment for a meeting at which the legislator is a scheduled speaker, as noted above under the “Gifts” heading.

A legislator who is a professional speaker prior to election to the General Assembly should ask for an opinion of the Ethics Committee to determine whether, and under what guidelines, such employment may be continued.

Compensation for writing an article for a newspaper or other periodical is considered a prohibited honorarium. However, payment for writing a book is permissible.

Hiring of Relatives (§ 2-107)

A legislator may not employ, for legislative business using public funds over which the member has direct control, the legislator's own relative or the relative of another legislator from the same district. The definition of "relative" is a member's spouse; parent or stepparent; sibling or step sibling; child, stepchild, foster child, or ward; mother-in-law or father-in-law; son-in-law or daughter-in-law; grandparent; or grandchild.

An exception is made if the employing legislator has a physical impairment requiring the hiring of the specific relative. Hiring under this exception must be disclosed to the Ethics Committee.

Post-Legislative Employment (§ 15-504(d)(2))

A former legislator may not assist or represent a private party for compensation with regard to matters that are the subject of legislative action until the conclusion of the next regular session that begins after the legislator leaves office. For legislators who leave office at the end of the 1999 - 2003 term, the restriction applies until April 8, 2003.

This prohibition includes both direct lobbying and "behind the scenes" assistance to others doing advocacy work on matters before the General Assembly.

Uncompensated lobbying activities are not restricted. Additionally, the restriction does not apply to a former legislator working as a paid lobbyist on behalf of a State or local governmental entity.

Ethics Opinions (§ 15-514)

A legislator who is in doubt as to the propriety of a proposed action or interest may request a written opinion from the Ethics Committee. Opinions are confidential unless the legislator chooses to make them public. However, the Ethics Committee may publish an opinion after removing information that personally identifies the requestor.

The Ethics Committee, on its own motion, may publish general ethics opinions. (See the compilation of general ethics opinions at the back of this Ethics Guide.)

An ethics opinion is binding on the legislator to whom it is issued, and a published opinion is binding on all members of the General Assembly.

Legislators are encouraged to seek advice of a less formal nature on ethics matters from the co-chairman in the member's respective chamber or from the General Assembly's Ethics Counsel.

Ethics Counsel (§ 2-709)

The General Assembly employs a full-time Ethics Counsel who is responsible for advising legislators regarding the application of the Ethics Law. Each member is required by law to meet individually with the Ethics Counsel at least once each year.

The relationship between the Ethics Counsel and each member is one of attorney and client, and all communications are confidential unless the member chooses to make them public. If a complaint is filed against a legislator, the Ethics Counsel may not participate in the investigation or any activities of a prosecutorial nature.

The Ethics Counsel can provide written or verbal advice about any aspect of the Ethics Law. Additionally, the Ethics Counsel can assist a member in preparing a request for a formal opinion of the Ethics Committee.

STATE ETHICS COMMISSION

The State Ethics Commission, an independent agency established in 1979 in the Executive Branch of State government, consists of five members who are appointed by the Governor. The Commission is responsible for administering the Maryland Public Ethics Law with respect to all officials and employees of the Executive Branch. Legislators must file an annual Financial Disclosure Statement with the State Ethics Commission, but the Joint Committee on Legislative Ethics has jurisdiction over members in other aspects of the law.

Some of the Commission's major functions include rendering advisory opinions, receiving and reviewing financial disclosure statements, investigating complaints, and regulating lobbyists. A legislator may contact the State Ethics Commission for guidance as to public financial disclosure requirements.

A formal written advisory opinion from the Commission may also be requested for more difficult questions on public financial disclosure.

An advisory opinion of the State Ethics Commission is legally binding for the person requesting it. The Commission's Advisory Opinions are published in COMAR.

ANNUAL FINANCIAL DISCLOSURE STATEMENT

By April 30 of each year, each legislator is required to file duplicate public financial disclosure forms with both the State Ethics Commission and the Ethics Committee. The statement must include:

1. All interests the legislator has in real property;
2. All interests the legislator has in any corporation or partnership;
3. All interests the legislator has in any noncorporate business entity that does business with the State;
4. Any nonexempt gift that the legislator receives over \$20 in value or a series of gifts totaling \$100 or more from a lobbyist or any person who does business with the State or is regulated by the State;
5. All offices, directorships, and salaried employment held by the legislator or by the legislator's immediate family in any business entity that does business with the State;
6. All debts of the legislator to any person who does business with the State;
7. Names of the members of the legislator's immediate family employed by the State;
8. Sources of the legislator's earned income and that of the legislator's immediate family, including employment or businesses; and
9. To the extent not disclosed in items 1 - 8, the information required to be disclosed to the Ethics Committee under § 15-513(b). These disclosures will have been made on Forms A through C, and are discussed above under the heading "Public Disclosure of Interests".

Preliminary Financial Disclosure

Although the filing deadline for the annual financial disclosure statement is April 30, a legislator must file a preliminary disclosure by the seventh day of the session (the first Tuesday in the session) if there will be a substantial change in the statement to be filed for the just-completed calendar year, as compared to the statement previously filed in the preceding year.

The preliminary statement should be filed only if there were a change from the previous disclosure statement by reason of marriage, change of employment, or acquisition or disposition of real property. If there are no such changes the forms should not be filed.

In lieu of filing the preliminary financial disclosure (assuming such a filing is required) a legislator may file the regular financial disclosure statement by the seventh day of the session.

Public Record

A public financial disclosure form filed by a legislator is open to examination and copying by the public. Upon request, the State Ethics Commission or the Ethics Committee will notify the legislator of the name of any person who examines the member's financial disclosure form.

There are monetary penalties for failing to file a public financial disclosure form, as well as fees for late filing.

ELECTION LAW PROVISIONS

The Election Code (the Election Law Article of the Annotated Code) is under the jurisdiction of the State Board of Elections. The following summary is provided for the convenience of legislators, but requests for an authoritative interpretation should be directed to the Election Board (410-269-2840).

Contribution Limits

An individual, association, unincorporated association, or corporation may contribute no more than \$4,000 (either in money or other “things of value”) to a legislator’s campaign account or political committee during the 4-year election cycle that runs from January 1, 2003 until December 31, 2006. Total contributions by an individual or entity during the 4-year election cycle may not exceed \$10,000 to all candidates and political committees.

A political committee, including a PAC, may transfer up to \$6,000 to another campaign account during the 4-year cycle. There is no limit, however, on transfers between any of the following:

- State and local party central committees of the same political party;
- A slate and its candidate members; and
- A candidate's authorized campaign committees (including the candidate's treasurer).

Timing of Contributions

A contribution by check is considered to have been made on the date the check was written or dated, *not* on the date it was received. Contributions of cash or other things of value are considered to have been made on the day they are received.

No Fund-Raising or Contributions During the Session (Election Law, § 13-235)

During the 90-day regular session of the General Assembly, a legislator may not:

- Receive a contribution for himself or herself, for any other candidate for federal, State, or local office, for a candidate campaign committee, or for any political committee that is organized under the Maryland Election Code and operated in coordination with a candidate;
- Conduct any fund-raising event in order to receive a contribution described above;
- Solicit or sell a ticket to any fund-raising event to raise contributions described above; or
- Deposit any contribution that was received before the convening of the regular session.

If an incumbent legislator has filed as a candidate for an elective federal or local government office, including election to a national political party presidential nominating convention, the legislator may raise funds for that campaign.

If an incumbent legislator is an eligible candidate who has applied for and accepts a public contribution from the Fair Campaign Financing Fund under the Public Financing Act, the legislator may accept an eligible private contribution and any disbursement of funds that are based on the eligible private contributions.

Note that the law also prohibits fund-raising activities in support of *another candidate*, even for a primary election that will take place during the legislative session, such as election to the Presidency, the United States Congress, or a political party presidential nominating convention. Legislators may contribute their own funds to such a candidate and may freely provide political endorsements, but they are prohibited from being involved in the fund-raising activities described above. General expressions of support for a candidate are permitted during the session, so long as they do not include solicitations for a fund-raising event.

Legislators who receive a prohibited contribution during the session should return the check to the contributor.

Campaign Fund-Raising Involving a Regulated Lobbyist (§ 15-714)

An individual regulated lobbyist, or a person acting on behalf of the regulated lobbyist, may not for the benefit of a legislator:

- solicit or transmit a political contribution from any person, including a political committee;
- serve on a fund-raising committee or a political committee;
- act as a treasurer for a candidate or as treasurer or chairman of a political committee;
- organize or establish a political committee for the purpose of soliciting or transmitting contributions or transfers from any person to the legislator; or
- forward tickets for fund-raising activities, or solicitations for political contributions, to a potential contributor.

However, a lobbyist is allowed to:

- make a personal political contribution; or
- “inform any entity of a position taken by a candidate or official.”

A legislator is allowed to ask a regulated lobbyist to make a personal contribution to the legislator’s campaign or to any other political campaign, except during the session. However, a lobbyist may not act as an intermediary in solicitations of the lobbyist’s client(s).

ETHICS OPINIONS

Opinion No.

- | | |
|---|---|
| 1 | Use of Prestige of Office |
| 2 | Use of Legislative Stationery |
| 3 | Non-Legislative Interaction with Lobbyists |
| 4 | Employment by State or Local Government |
| 5 | Receipt of Governmental Benefits |
| 6 | Doing Business with State or Local Government |
| 7 | Gifts |
| 8 | Conflicts of Interest and Voting |

ETHICS OPINION #1

USE OF PRESTIGE OF OFFICE

The Maryland General Assembly is a citizen legislature, and most members pursue various personal financial interests while also attending to their duties as legislators. One of the primary purposes of the Ethics Law is to assure the public that legislators do not use the status of their elective office to gain a financial advantage in personal matters. Additionally, the law prohibits a legislator from using his or her official position to improperly benefit a family member, friend, or business associate.

The Maryland Public Ethics Law addresses these concerns in a provision that is applicable to all officials and employees of the State. It is codified at § 15-506 of the State Government Article, as follows:

“(a) An official or employee may not intentionally use the prestige of office or public position for that official’s or employee’s private gain or that of another.

“(b) The performance of usual and customary constituent service, without additional compensation, is not prohibited under subsection (a) of this section.”

As it applies to members of the General Assembly, this “prestige of office” provision focuses on two broad areas: activities that involve financial benefit to the legislator, and activities that might benefit other persons.

Benefit To Members

The Ethics Committee for many years has advised legislators to refrain from using their title (Delegate or Senator) for commercial purposes. Additionally, a legislator should not suggest to an employer or client that the legislator’s status as a legislator might benefit the employer or client.

While it is natural that employers, business associates, and clients will be aware of a legislator’s service in the General Assembly, a legislator must exercise common sense to assure that there is no improper intermingling of the two roles. Instances will inevitably arise in which a legislator’s two roles overlap, such as when a business associate or client inquires about a legislative issue, or when a business matter comes up in a legislative setting. The legislator should exercise discretion to avoid an appearance of impropriety in these cases. Casual conversation that mixes both aspects of a legislator’s life is not a problem, but in the actual conduct of legislative or commercial business it should always be clear in which capacity the legislator is acting.

Legislators need not go to an extreme in separating their legislative role from their business or professional lives. It is certainly appropriate in legislative discussions to share knowledge gleaned from the legislator's professional experience. Moreover, in the business context it is not necessary to disguise one's service in the General Assembly. However, one's service in the General Assembly should not be emphasized. Job resumes, employment-related biographical descriptions, and public notices of new employment may mention a legislator's service in the Maryland General Assembly (or specifically in the House of Delegates or Senate), but the title "Delegate" or "Senator" should not be used in these instances.

Benefit To Others

The law specifically allows a legislator to use the prestige of office in the "performance of usual and customary constituent services" for which no compensation is paid to the legislator. The scope of what constitutes a usual or customary constituent service is quite broad, but care must be taken when the circumstances raise an appearance of impropriety.

The Ethics Committee has prohibited commercial endorsement of a for-profit entity, even though the legislator received no financial benefit. However, promoting employment and community development in one's district or the State as a whole is an important part of each legislator's official duties. The line between the two may not always be clear, and a legislator may need to ask the General Assembly's Ethics Advisor or request a written opinion from the Ethics Committee. Generally speaking, promotion of employment and economic development consists of attracting new business entities to the State and one's own district and aiding the expansion of existing business. Typically, this will entail assisting a business in securing governmental funds.

Support for and assistance provided to nonprofit groups and charitable causes carries the presumption of being an appropriate constituent service. A legislator may use his or her official letterhead and the title of "Delegate" or "Senator" to aid such entities.

In promoting economic development or aiding nonprofit groups, use of the prestige of office might be improper if the legislator, a close family member, or a close associate had an ownership interest with the entity or might otherwise stand to gain financially as a result of the assistance.

Providing uncompensated assistance to an individual by writing letters of recommendation for employment or admission to an educational institution is an appropriate constituent service. However, caution should be exercised if the educational institution or prospective employer is significantly dependent on the good will of the General Assembly (such as a governmental entity, a highly regulated business, or a private institution that receives funds in the State Budget) and the manner of stating the recommendation might reasonably be viewed as an application of inappropriate pressure.

ETHICS OPINION #2

USE OF LEGISLATIVE STATIONERY

The official stationery of a delegate or senator is provided at taxpayer expense and is intended for use in official General Assembly business and for customary constituent services. Other correspondence, particularly if it relates to a political campaign, must be sent on stationery that is not printed at the General Assembly's expense.

Because the official stationery invokes the authority of the entire General Assembly, members should be aware of the context in which they use it. It is not always clear, however, whether particular circumstances constitute an official action of a legislator or are instead private or political activities for which non-official stationery should be used. Consultation with the General Assembly's Ethics Advisor would be appropriate whenever a member has doubts about a specific case.

A legislator may print non-official stationery, at personal expense or through the expenditure of campaign funds, that indicates membership in the General Assembly (or specifically in the House of Delegates or Senate) and uses the title "Senator" or "Delegate" with the legislator's name. On November 23, 1999, the Speaker of the House of Delegates and the President of the Senate established standards for the appearance of such stationery in order to avoid conveying the impression that the communication is official business of the legislature. The standards require legislators to refrain from using non-official stationery, including envelopes, that prominently features as a heading the words "Senate of Maryland" or "House of Delegates" or that appears substantially similar to the stationery provided for official legislative business. The Ethics Committee endorses those standards for the purpose of this opinion.

Non-official stationery (including envelopes) printed at personal expense must contain a notation that it was not printed at State expense. If printed with political funds, the standard "authority line" should be substituted. The address of a legislator's Annapolis office or State-funded district office, or numbers of telephones that are paid for by the State, should not appear on stationery that is to be used for campaign fund-raising purposes because use of these facilities and resources for campaign purposes is generally prohibited.

ETHICS OPINION #3

NON-LEGISLATIVE INTERACTION WITH LOBBYISTS

Members of the General Assembly come into frequent contact with members of the lobbying profession in the course of legislative activity. Lobbyists are an essential part of the process, conveying information on a wide variety of issues and expressing the positions of the entire spectrum of interest groups. However, the interaction of legislators and lobbyists has always attracted close scrutiny by the media and the general public. The primary reasons for this are the significant amounts of money spent to fund lobbying efforts, the importance of decisions made by the General Assembly, and the influence that some lobbyists bring to the legislative process.

The Maryland Public Ethics Law addresses legislator/lobbyist interaction primarily in the regulation of gifts from lobbyists to legislators. Many such gifts are prohibited, and many that are permitted are subject to extensive disclosure requirements. This area, which crosses into the jurisdiction of the State Ethics Commission, is not the subject of this opinion. For guidance on the permissibility of gifts from lobbyists, see Ethics Opinion #7 as well as numerous advisory opinions of the State Ethics Commission. This opinion relates instead to a variety of interactions between lobbyists and legislators that take place outside of the legislative context, but which nonetheless can raise important ethical concerns.

Both the Ethics Law (at § 15-707 of the State Government Article) and the Election Code (at Article 33, § 13-201(a)(4)) place restrictions on the involvement of a lobbyist in campaign fund-raising and the management of campaign committees. These issues are not covered in this opinion.

Business Interactions

Because the General Assembly is a part-time citizen legislature, legislators quite properly engage in a wide assortment of business activities in the private sector. When a lobbyist is involved in a legislator's private business activities, however, the appearance of a conflict of interest may arise regarding the legislative issue or issues that the lobbyist pursues. Additionally, the financial relationship may raise concerns of improper influence. The following are examples of situations that a legislator may encounter in the course of professional and business activities outside the General Assembly:

- Being employed by a business that employs a regulated lobbyist (thereby making the business entity itself a regulated lobbyist under the provisions of § 15-701(a)(5) of the State Government Article).
- Association with a business (as a professional, business owner, or employee) that is part of a coalition that employs a regulated lobbyist (e.g., the Chamber of Commerce or a professional organization).

- Being an attorney in a law firm in which one or more of the other attorneys is a regulated lobbyist.
- Doing business with a regulated lobbyist in a professional context, with either the lobbyist as the client or the legislator as the client.
- Engaging in a direct commercial transaction with a regulated lobbyist.
- A regulated lobbyist steering clients, customers, or other business opportunities to the legislator.

As a general rule, there is no statutory prohibition to any of these scenarios. However, in some situations the circumstances of a transaction may cause objective observers to believe that the relationship or transaction is improper. The statement of policy of the Maryland Public Ethics Law notes that the confidence and trust of the people “is eroded when the conduct of the State’s business is subject to improper influence or even the appearance of improper influence.” (§ 15-101(a)(2) of the State Government Article) For this reason, the Ethics Committee has formulated the following guidelines for legislators who have or are considering a business interaction with a regulated lobbyist.

Employment by an Entity That Hires a Regulated Lobbyist

Nearly every major employer in the State retains a regulated lobbyist to look after the entity’s interests in Annapolis, either as a full-time employee or pursuant to a contract for lobbying services. It has never been the intent of the Ethics Law to prohibit legislators from being employed by such an entity. There may be limitations, however, on a legislator’s ability to participate in legislative action that affects the legislator’s employer.

If a legislator is employed by an entity represented in Annapolis by a regulated lobbyist, it is mandatory that the legislator have on file with the Ethics Committee a “disclaimer of conflict” statement. The statement (typically on the form provided by the Ethics Committee) should describe the area or areas of legislation in which the appearance or presumption of conflict may exist for the legislator as a result of the employment and should also describe the position of employment that the legislator holds. Filing such a form allows the legislator to participate fully in most, but not necessarily all, legislative matters that affect the employer. When participating in these matters, however, a legislator must strive to avoid being perceived as a de facto lobbyist for the employer’s interests.

When a legislative issue presents a “direct and personal conflict” for a legislator’s employer, the Ethics Law requires that the legislator refrain from *all* participation in that legislative issue, including voting and debate on a bill as well as informal discussions intended to influence others. (See § 15-512(a) of the State Government Article.) The Ethics Committee has determined that a direct and personal conflict exists as to a legislator’s employer if the bill or issue affects only the employer, to the exclusion of all others, or affects a very small group of which the legislator’s

employer is a part. If a legislative issue applies to a more than a very small group of entities (e.g., all nonpublic colleges in the State, or all financial institutions), the legislator will be allowed to participate based on the filing of a disclaimer. Voluntary recusal is discouraged because it interferes with the functioning of the legislative process and denies constituents their full representation in the legislature. Legislators should note that § 15-512(c) of the State Government Article requires a form to be filed with the Ethics Committee explaining a recusal from voting, whether recusal is mandatory under the law or the result of the legislator's exercise of discretion.

Legislators should try to make themselves aware of any bill or a subject area of legislation that, based on their employment, might present a direct and personal conflict requiring nonparticipation. Consultation with the General Assembly's Ethics Advisor is appropriate if the matter is unclear. Additionally, the filing of a disclaimer form as to a specific bill presents the issue to the Ethics Committee for review, and approval of the disclaimer by the Committee allows full participation on the bill or issue.

Ownership of, or Employment by, a Business That Participates in a Lobbying Coalition

Many small-business owners and members of professions contribute money to retain the services of a lobbyist to work in Annapolis. If a legislator makes such a contribution, or is employed by an entity that does, there is an appearance of conflict with regard to the legislative issues that the lobbyist pursues. A disclaimer of conflict must be filed with the Ethics Committee in order for the legislator to participate in legislation that relates to the conflict. The disclaimer should identify the lobbyist or lobbying entity, if known.

The Ethics Committee has determined that conflicts raised by such a connection to a coalition lobbying effort would very likely never present a legislator with a "direct and personal" conflict, which would prohibit participation on an issue. As stated above, however, a legislator must exercise care so that his or her participation in legislative action is not so closely tied to the lobbying effort that the legislator is perceived as a de facto lobbyist for the business interest.

Legislator/Attorney In Partnership or Association With a Regulated Lobbyist

It is not unusual for an attorney/legislator in a law firm to be in partnership or association with one or more regulated lobbyists. Although the appearance of conflict will vary depending on various circumstances (e.g., the size of the firm, the diversity of legal issues undertaken, the number of separate clients, and the specific working relationship between the legislator and the lobbyist), the Ethics Committee has determined that a legislator in this position should file a disclaimer statement that names the lobbyist and lists the subject areas for which the lobbyist has been retained.

The result of this public disclosure and disclaimer of conflict would typically be an ability for the legislator to participate freely in these legislative matters. There will be exceptional circumstances, however, where the legislator's work in the firm is so closely associated with the lobbying effort that recusal would be the appropriate course. Consultation with the Ethics Counsel and the Ethics Committee can resolve whether a particular relationship provides such a direct conflict.

Doing Business With a Regulated Lobbyist In a Professional Services Context

A professional relationship between a legislator and a lobbyist (where one party is providing services as an attorney, CPA, etc.) is not prohibited under the Ethics Law, but it creates the presumption of a conflict as to legislative issues in which the lobbyist is involved. A legislator who enters into such a relationship must be careful that it is conducted in the normal course of business, with no special benefit derived from the legislator's official position. A reduced or waived fee by a lobbyist providing professional services will be deemed a gift and is subject to the gift prohibitions specified in § 15-505 of the State Government Article.

Because of the presumption of conflict, the legislator must file a disclaimer statement as to the legislative interests of the lobbyist.

Commercial Transaction With a Regulated Lobbyist

Legislators should be aware of the negative public perception that results when they enter into commercial relationships with lobbyists. Even if every aspect of the transaction is conducted in the ordinary course of business, members of the public may conclude that the lobbyist is only seeking to gain favor in legislative matters and/or that the legislator is using his or her office for financial gain.

The Ethics Law does not prohibit transactions between legislators and lobbyists; however a "close economic association" with a lobbyist raises the presumption of a conflict of interest. (See § 15-511 of the State Government Article.) It is mandatory for a legislator who enters into a commercial relationship of any kind with a lobbyist, other than a transaction of nominal amount, to file a disclaimer statement as to the legislative issues that the lobbyist is employed to pursue. The Ethics Committee, in reviewing the disclaimer, will provide guidance to the legislator as to whether the conflict is of such magnitude that recusal from participation will be necessary.

An enactment in the 2000 legislative session requires an individual regulated lobbyist to file a report with the State Ethics Commission disclosing any business transactions with a legislator or other State official involving the exchange of value of \$1,000 or more for a single transaction or of \$5,000 or more for a series of transactions.

Lobbyist Steering Business to a Legislator

The significant appearance of impropriety created when a lobbyist intentionally steers business opportunities to a legislator suggests that this practice should be avoided. The public's perception of such activity may be more negative than their perception of a direct business transaction between lobbyist and legislator, because the steering of a third party's business will be viewed as an exercise of winning legislative favor through business manipulation.

Although the Ethics Law does not prohibit a legislator from pursuing business opportunities that were arranged by a lobbyist, members of the General Assembly are urged to avoid placing themselves in a position that will reflect badly upon them and on the legislature as a whole.

Additionally, when a legislator *solicits* a regulated lobbyist to steer business to the legislator there is a probable violation of § 15-506 of the Ethics Law for improperly using the prestige of office.

Business Interactions By a Legislator's Immediate Family

The interests of members of a legislator's immediate family (spouse and dependent children) are attributable to the legislator under the Ethics Law. Therefore, if a legislator's spouse or dependent child carries out any of the business interaction described above, the legislator must file a disclaimer in the same manner as if the legislator had conducted the interaction.

Legislator Married to a Lobbyist

If a lobbyist and a legislator are married to each other, the inherent appearance of conflict requires that the legislator file a disclaimer statement noting the relationship. The statement should list each of the spouse's clients and should be updated periodically. Except in extraordinary circumstances, the legislator will be free to participate in matters being lobbied by his or her spouse. Common sense dictates, however, that the legislator exercise prudence in determining an appropriate level of involvement on a bill being lobbied by the lobbyist-spouse.

ETHICS OPINION #4

EMPLOYMENT BY STATE OR LOCAL GOVERNMENT

Prior to the enactment in 1999 of substantial changes to the Ethics Law, the only limitations on governmental employment by members of the General Assembly were contained in constitutional limitations on holding two offices. (See Articles 8 and 35 of the Declaration of Rights, and Article III, §§ 10 and 11 of the Maryland Constitution.)

The 1999 enactment codified a standard, at § 15-513(a) of the State Government Article, that prohibits members of the General Assembly from “receiving earned income from an Executive unit or a political subdivision of the State.” The law goes on, however, to specify several substantial exceptions to this rule, which are discussed in this opinion. Also discussed are standards of conduct and reporting requirements for legislators who hold State or local government jobs pursuant to one of the exceptions.

Prohibited Employment

Unless exempted, receiving earned income from the State of Maryland or from a local government in Maryland is prohibited for members of the General Assembly. “Earned income” refers to salaried employment, contractual employment, and consultant contracts. It does not apply to income obtained from a procurement by a governmental entity (which is subject to other restrictions and reporting requirements under the Maryland Public Ethics Law).

The restriction applies not only to agencies that are clearly governmental, but also to “quasi-governmental” entities of the State that were created by statute (such as the University of Maryland Medical System), as well as to miscellaneous local governmental entities such as special taxing districts and multi-county agencies.

Employment by a non-governmental entity is not subject to this restriction, even if the entity is funded by the State or a local government (e.g., through a grant or contract awarded to the entity). However, if the paycheck for the job is written by the State or a local government of the State, the job is included under the restriction.

Earned income received from the federal government or from any government outside of Maryland is not subject to the restrictions of this provision.

Exceptions

Governmental employment that would otherwise be prohibited is permitted for a member of the General Assembly under the following circumstances:

- if the position was held on the effective date of the enactment, October 1, 1999; or
- if it was held prior to the time when the member filed for election to the office.

Exceptions are also provided for several classifications of governmental employment. With the prior approval of the Ethics Committee, the following are allowed:

1. A teaching position (“educational instruction”) at any educational level.
2. A position that is subject to a “merit system hiring process” in which a standardized process is utilized to rank applicants strictly on merit. Management positions and positions for which the tenure of employment is “at the pleasure” of the appointing authority are generally considered by the Ethics Committee to be excluded from this exception.
3. “A human services position”, which the Ethics Committee has determined is limited to jobs in fields such as social work or a health profession in which there is direct contact with clients being served. It does not include a job in which there is no provision of a direct service to members of the public, such as a purely managerial job.
4. “A career promotion, change, or progression that is a logical transition” from a governmental job that was held prior to filing for office. A member who comes to the General Assembly with a governmental job will not be prevented from moving along a career ladder, even if it means switching to a different governmental employer (e.g., between local governments or from local to State). This same standard will be applied to a grandfathered job held prior to October 1, 1999.

No approval from the Ethics Committee is necessary to accept a position as “a non-elected law enforcement officer or a fire or rescue squad worker.”

Reporting of Governmental Employment

Any position of governmental employment that is permitted under an exception mentioned above must be disclosed to the Ethics Committee. The Ethics Law, at § 15-513(b) of the State Government Article, requires disclosure to the Ethics Committee “if representing a State or local government agency for compensation” and further requires disclosure of “details of any contractual relationship with the State or a State agency, or a local government in the State.” Although ordinary employment by a governmental agency is not specifically mentioned, the Ethics Committee has determined that it is subject to this requirement.

The report to the Ethics Committee, typically on the form provided for this purpose, must include the name of the governmental unit from which earned income is received, the position or job title, and the approximate compensation (which may be less than the official salary for the position because of unpaid leave during the legislative session). Once filed, this disclosure need not be re-filed unless there is a change in the information provided.

Standards of Conduct

As in the case of private-sector employment, there are “prestige of office” considerations when a legislator is employed by a governmental entity. (See Ethics Opinion #1) In seeking a position of employment, a legislator should not suggest that his or her position as a legislator might benefit the employer. Likewise, service in the General Assembly should not be emphasized in the context of the employment.

A legislator who is employed by a governmental entity brings to the legislative process the presumption of a conflict of interest as to issues that relate directly to the employer. State agencies are substantially regulated by the General Assembly, especially in the budget process. Local governments are also quite dependent on favorable legislative action, both in the passage of local bills and the receipt of monetary assistance from the State.

At a minimum, a legislator who holds governmental employment must file a general disclaimer of conflict with the Joint Ethics Committee in order to participate in legislative action that affects the employer. There may occasionally be situations in which a legislator should refrain from participating in a matter, such as legislation or a budget amendment that would significantly benefit or diminish the member’s specific position of employment. However, a member is unconditionally permitted, and is *expected*, to vote on the Budget Bill as a whole, or on the Capital Budget as a whole.

The Joint Ethics Committee has determined that a legislator who holds governmental employment may participate fully in legislation or funding measures applicable to the governmental unit generally. For example, an employee of a county board of education may vote on issues that relate generally to school funding for that county.

Honoraria

A fee for making a speech, unless received in the ordinary course of a professional lecturer’s business, is a prohibited gift under the Ethics Law. In the context of a private-sector donor, a legislator is prohibited from receiving such an honorarium, though he or she may be reimbursed the actual cost of travel, food, lodging, and scheduled entertainment for the function.

Although the gift prohibitions of the Ethics Law (found at § 15-505 of the State Government Article) do not apply to gifts from governmental entities, the Joint Ethics Committee has determined that legislators may not accept cash honoraria from a public sector donor. A legislator who holds a faculty position is not covered by this prohibition when speaking in accordance with the contract of employment.

ETHICS OPINION #5

RECEIPT OF GOVERNMENTAL BENEFITS

State agencies and local governments provide numerous programs that offer financial benefit to citizens who meet specific eligibility requirements. Low-interest loans for housing rehabilitation or business development, tax abatement programs, and purchase of easements for open-space or agricultural land preservation are only a few such areas. Members of the General Assembly, as citizen-legislators, are eligible to participate in such programs, but they must ensure that the transaction is conducted openly and at arm's length.

The appearance of conflict is evident only when recipients of the benefit are chosen from a group of eligible applicants, and an award is made on the discretionary actions of a governmental entity. Benefits that flow automatically to all persons who meet specified criteria (such as property tax relief programs based on age or disability) do not raise an ethical issue and need not be reported by a legislator who participates in the program.

As to a discretionary program, it would clearly be improper for a legislator to suggest or imply to the entity administering the program that any favorable legislative action would result from the award of a benefit to the legislator (or, conversely, that negative legislative action would result from a denial). Even where no such impropriety exists, however, it is necessary to address the possible negative public perception.

The public may be understandably skeptical about the impartiality of a program that singles out a legislator for a financial benefit, and particularly so if the General Assembly directly oversees the budget of the governmental agency that administers the program. It is therefore essential for the legislator to provide timely public disclosure by filing with the Joint Ethics Committee a description of the transaction, including the amount of the financial benefit. The Maryland Public Ethics Law, at § 15-513(b)(5) of the State Government Article, requires that a legislator provide notice to the Committee regarding "details of any transaction with the State, or a local government in the State, involving a monetary consideration." A form is provided by the Joint Ethics Committee for such disclosures.

Because of the appearance of conflict arising out of such a financial relationship, it is also necessary for a legislator who receives a special governmental benefit to file a general "disclaimer of conflict" statement with the Joint Ethics Committee, acknowledging the appearance of conflict with regard to the interests of the administering governmental unit. The disclaimer allows the legislator to participate fully in any legislative action affecting the governmental unit.

As with other sensitive issues, it is appropriate for a legislator to ask the advice of the Joint Ethics Committee or the General Assembly's Ethics Advisor prior to entering into the process to obtain governmental benefits as described in this opinion.

ETHICS OPINION #6

DOING BUSINESS WITH STATE OR LOCAL GOVERNMENT

As members of a citizen legislature, senators and delegates engage in a wide variety of business and employment activities in their private lives. In view of the significant role that governments play in the State's economy, it is inevitable that the business activities of some legislators or their employers will involve transactions with governmental units at the State or local level. The public may have concerns about improper influence entering into these transactions, however, because of the budgetary and legal oversight that the General Assembly exercises with regard to governmental entities in Maryland.

The Maryland Public Ethics Law places various restrictions on a legislator's business activities that involve governmental units, prohibiting certain activities while requiring public disclosure of other actions.

This opinion does not relate to the employment of a legislator by a governmental agency. That issue is covered in Ethics Opinion #4.

Government Procurement Contracts

Under § 15-504(c) of the State Government Article, a legislator is prohibited from assisting or representing an employer or client, for compensation, before the State or a local government of the State in any matter involving procurement. Moreover, a legislator may not represent his or her own financial interests before a State or local governmental entity in such matters.

As a general rule, a legislator is prohibited from participating *directly* in matters that relate to State or local procurement. It is permissible, therefore, for a legislator to be employed by or to own a business that enters into procurement contracts with a governmental entity, so long as the legislator is not involved in negotiations, discussions, or other direct contacts with the governmental entity as to the formation of the contract or modifications to the contract. A procurement in which there is no negotiation, such as one using sealed bids, would not be affected by this restriction.

Even if the legislator is not directly involved in negotiations, discussions, or other direct contacts regarding a government procurement contract, the transaction would need to be publically disclosed to the Joint Ethics Committee, as discussed below, if the legislator were owner of the contracting business or owned a substantial interest in the business.

Exception

The prohibition does not apply to an administrative proceeding conducted under the "contested case" provisions of the Administrative Procedure Act. This would allow a legislator to engage in assistance or representation in a procurement matter before the State Board of Contract

Appeals. Additionally, though not specifically stated in the law, the Joint Ethics Committee has determined that a legislator may provide representation in an administrative proceeding that is preliminary, incidental, or collateral to a claim before the Board of Contract Appeals. Representation by a lawyer/legislator would also be allowed in any judicial proceeding relating to procurement or an administrative proceeding that is preliminary, incidental, or collateral to a judicial proceeding.

Representation of Clients and Employers in Other Matters

In addition to the prohibition relating to procurement contracts, the Ethics Law (at § 15-504(b) of the State Government Article) sets out a broad prohibition on legislators representing employers or clients in matters before or involving the State or a local government in the State. However, a series of exceptions to that general rule provides rather broad authority for legislators to interact with governmental entities in the normal course of their employment. Compensated assistance or representation in the following matters will be allowed (although it may need to be disclosed to the Joint Ethics Committee, as discussed below):

- *Matters relating to the performance of ministerial acts.* (§ 15-504(b)(2)(I)) “Ministerial acts” are governmental functions in which there is little or no exercise of judgement or discretionary authority. Such acts involve essentially automatic functioning under prescribed procedures, and therefore do not give rise to an appearance that a legislator’s official status could influence the transaction.
- *Judicial or quasi-judicial proceedings, or matters preliminary, incidental, or collateral to judicial or quasi-judicial proceedings.* (§ 15-504(b)(2)(iii)) The clearest example of a quasi-judicial proceeding would be a matter before the Office of Administrative Hearings.
- *Assistance or representation in a matter before or involving the Workers’ Compensation Commission, the Maryland Automobile Insurance Fund, or the Criminal Injuries Compensation Board.* (§ 15-504(b)(2)(iv))
- *Assistance or representation in matters involving the legislator’s regular business, employment, or profession, in which contact with a governmental unit: (1) is an incidental part of the business, employment, or profession; (2) is made in the manner that is customary for persons in that business, employment, or profession; and (3) is not for contingent compensation.* (§ 15-504(b)(2)(ii)) This overlaps some of the aforementioned exceptions and provides broad and generalized authority for legislators to interact with governmental entities in the normal course of their employment, so long as such interaction was not the primary focus of the employment.

- *Matters in which the assistance or representation was commenced before the member filed for office or was appointed to fill a vacancy.* The intent of this exception is to allow a legislator to continue employment with the same employer, or representation of the same client, that began before the legislator filed for office. Changes in the nature of the employment or representation would warrant consultation with the Joint Ethics Committee or the General Assembly's Ethics Counsel to discuss whether this exception remained applicable. (Also note that a grandfather provision in the 1999 amendments to the Ethics Law applies to employment or representation by then-current members of the General Assembly that was entered into prior to October 1, 1999.)

The Joint Ethics Committee has determined that the following positions of employment or representation are prohibited under this provision of the law:

- working as a governmental affairs officer for a corporation, if the job involves interaction with the State of Maryland and/or local governments in the State;
- engaging in a law practice that consists primarily of lobbying the State and/or local governments in the State; and
- being designated by one's employer to interact with a governmental entity in the State if the assignment falls outside of what would be customary for an employee in the same position.

Reporting Requirements

Representation before government agency

The Ethics Law (at § 15-513(b)(1) of the State Government Article) requires specific disclosure to be made to the Joint Ethics Committee whenever a legislator is "representing a person for compensation before a State or local governmental agency, except in a judicial proceeding or in a quasi-judicial proceeding...". The disclosure, typically made on the standard form provided to legislators, is required to contain "the name of the person represented, the services performed, and the consideration."

This requirement applies not only to representation in a professional capacity, but also to actions in the course of regular employment. A legislator who has representational duties on behalf of an employer, assuming the representation is allowed under § 15-504(b), should file the required disclosure. If the contacts with governmental entities are likely to occur on multiple occasions, a generically-stated disclosure is appropriate.

Contracts and other transactions with government agency

Specific disclosure is also required to be made to the Joint Ethics Committee, under § 15-513(b)(4) and (5) of the State Government Article, if a legislator has a contractual relationship or any other “transaction” with the State or a local government of the State. The disclosure is typically made on the form provided to legislators for this purpose and requires details of the subject matter and the monetary consideration. These requirements apply only if the contract or transaction is entered into by the legislator personally or by a business entity owned in whole or in substantial part by the legislator. Disclosure is not required to be filed by a legislator who is merely an employee of the business entity.

A legislator who owns a business (particularly a retail business) will not be expected to know of every transaction conducted by his or her employees. Only information that is actually known to the legislator is required to be reported.

A legislator who has numerous small transactions with governmental entities should seek the guidance of the Joint Ethics Committee as to the most practical manner of disclosing the transactions. It generally will be unnecessary to file a separate disclosure of each transaction under these circumstances. With the approval of the Joint Ethics Committee, the legislator may file a year-end statement that aggregates all known transactions with a particular governmental unit. It will often be appropriate, however, to separately disclose transactions with a significant monetary value.

Presumption of Conflict of Interest

Legislators should note that business relationships with a governmental entity may give rise to the appearance of a conflict of interest. It may be appropriate, therefore, for a legislator who engages in a business transaction with the State or a local government to file a disclaimer of conflict as to the legislative interests of the governmental entity.

ETHICS OPINION #7

GIFTS

The Maryland Public Ethics Law places various restrictions on gifts offered to a member of the General Assembly by a person whose interests may be directly affected by legislative action. The reason that some gifts are prohibited by the Ethics Law is found in the statement of legislative intent at § 15-101 of the State Government Article, which states that the public's confidence and trust in the impartiality and independence of judgment of governmental officials "is eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence."

In provisions codified at § 15-505, gifts from regulated lobbyists and certain other sources are generally prohibited unless they are covered by a specific statutory exception. Some situations are very clearly addressed by the law when it either bans or allows a specific class of gifts. In other cases, however, there are gaps or grey areas in the law. This Opinion is intended to expand upon the provisions of the gift law that are not sufficiently clear.

Members should note, however, that § 15-505(c)(1) absolutely prohibits a gift, even if it would otherwise be allowed under one of the statutory exceptions - if:

(1) the gift would tend to impair the legislator's impartiality and independent judgment; or

(2) as to a gift of significant value:

- acceptance would give the appearance of impairing the legislator's impartiality and independent judgment; or

- the legislator believes that the gift was given with the *intent* to impair his or her impartiality and independent judgment.

As with other aspects of the Ethics Law, members should consult with the General Assembly's Ethics Advisor if they have any questions about the acceptance or reporting of gifts.

General Prohibition of Gifts - Identification of Applicable Donors

The Ethics Law is not intended to regulate every gift that a legislator may receive from any source. Instead, the law focuses on circumstances where the donor has a particular interest in legislative actions. To this end, the law sets out classes of persons whose gifts will be scrutinized. However, most of the gift provisions in Ethics Law apply to *all* governmental officials and employees in the State. In order to determine how these provisions apply to legislators specifically, it is necessary to separate out provisions that were designed to apply to officials and employees of the Executive Branch. The general prohibition on gifts, subject to a list of exceptions, at § 15-505(b) states:

"Except as provided in subsection (c) of this section, an official or employee may not

knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know:

(1) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;

(2) engages in an activity that is regulated or controlled by the official's or employee's governmental unit;

(3) has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; or

(4) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee.”

The criterion contained in item (1), which relates to persons seeking or doing business with the official's governmental unit, generally does *not* apply to legislators. A legislator's "unit" is the General Assembly and not the entire State government. The provision would apply to legislators only in relation to contractors seeking or doing business with the Legislative Branch.

The criterion in item (2) relates to persons engaging in an activity that is "regulated or controlled" by the official's unit. While it might be said that every resident of the State engages in activities controlled by the Legislative Branch, the Joint Ethics Committee has determined that this criterion was intended to apply only to Executive Branch officials and not to the General Assembly.

The criterion set out in item (3), having a financial interest distinguishable from the public generally that may be affected by the performance or nonperformance of the official's duties, is applicable to legislators, though it is difficult to define precisely and could be interpreted to extend quite far. The Joint Ethics Committee has determined that this provision covers persons who have a substantial financial interest in one or more legislative issues, even if they do not engage in specific acts that would require their registration as lobbyists. The owner of a business that is substantially regulated by statutory law would be covered under this section, and a legislator who is offered a gift by such a person should judge its acceptability by the same standards as if the gift were offered by a regulated lobbyist.

The criterion in item (4), a regulated lobbyist who offers a gift, is the most commonly encountered situation in the legislative context. Any individual or entity that is on the list of regulated lobbyists is explicitly subject to the gift prohibitions. It is important to note that a business or organization that employs a regulated lobbyist is itself considered a regulated lobbyist. Therefore, if a gift is offered by an entity that employs an individual to lobby, the gift is generally treated in the same manner as if it came from the individual lobbyist. Note, however, a person or business entity that belongs to a professional organization or chamber of commerce will generally not be considered the employer of the lobbyist who is hired by the chamber or professional organization.

Persons Whose Gifts Are Not Restricted

Relatives and Friends

The law specifically allows gifts from people related by blood or marriage, or who are members of a legislator's household. (See § 15-505(c)(2)(x)) Moreover, a legislator may accept a gift from a friend who is not a member of one of the classes of applicable donors described above.

Governmental Entities

The Joint Ethics Committee has consistently determined that gifts offered by governmental entities are not regulated by the Ethics Law and are therefore permissible to accept. Legislators are cautioned, however, that extravagant gifts from a State agency or a local government may be viewed by the public as unacceptable efforts to improperly influence the legislative process.

Conferences and Educational Travel

Legislators are sometimes invited to attend out-of-town meetings and conferences, or participate in educational travel, at the expense of an organization or entity. The Ethics Law explicitly allows a legislator to accept reasonable expenses for travel, food, lodging, and scheduled entertainment, even if the donor is a regulated lobbyist, under certain specific circumstances. (See § 15-505(c)(2)(vi), as to attending a meeting at which the legislator is a scheduled speaker or scheduled panel member; and § 15-505(c)(2)(vii) as to attending a legislative conference that has been approved by the legislator's presiding officer.) Beyond the statutory exceptions, however, there are some gifts of travel, food, and lodging expenses that the Joint Ethics Committee has determined not to be restricted because the donor is not in one of the groups of applicable donors listed in § 15-505(b). It would be permissible, therefore, for a legislator's travel expenses to be paid by a government or by an entity (such as a foundation) that does not engage in legislative activities in Annapolis.

Funds collected from business interests by a national legislative organization and offered to legislators as "scholarships" to attend the organization's meeting may be permissible if there is sufficient distance between the corporate donors and the recipient legislators. The following factors would be key to a finding that such distance exists:

- The corporate interests should have no input in determining which legislators receive funding.
- There should be a variety of interests contributing to the fund, rather than a single corporation or a single community of interest.
- Funds of all contributors should be intermingled, so there is no specific identification of a particular donor with a particular scholarship.
- Corporate sponsors may be recognized in the materials prepared by the organization, but should receive no special access to the legislators receiving the funding.

Solicitation of Gifts

Legislators are not allowed to solicit a gift from a regulated lobbyist or from any other person from the classes of “applicable donors” noted above, even if acceptance of the gift would be permitted under the law. The prohibition applies to the solicitation of gifts for one’s self or for others. An exception is made for requests for support of charitable causes and educational organizations, so long as the request is not made to an individual regulated lobbyist (i.e., a member of the Annapolis lobbying corps).

Gifts to Legislator’s Family Members and Guests

Although there may be situations when a legislator’s spouse may receive a gift from a lobbyist or other applicable donor for reasons that are unconnected to the legislator’s position, the presumption is that such a gift is actually being made indirectly to the legislator. If a donor has invited a legislator to bring a guest or guests to a function, the expenses of the guests will be deemed part of the gift to the legislator and will be subject to the same reporting requirements (if any) as a single gift to the legislator.

Some reporting requirements in the Ethics Law are based on acceptance of more than one ticket or free admission to an event. If a legislator brings a guest to such an event, that will be considered multiple free admissions for purposes of disclosure.

Gifts of Food

The gift law at § 15-505 has a variety of provisions that concern the acceptance of meals and beverages from a lobbyist or other applicable donor. Most of these provisions stand on their own, without the need for clarification in this opinion. Two issues, however, need elaboration.

Gifts of food that do not constitute a “meal”, and beverages that are not alcoholic, are implicitly permitted under a general authorization of unsolicited gifts not exceeding \$20. A legislator may accept a light snack and/or non-alcoholic beverage in circumstances where it would be awkward for the legislator to pay his or her own cost. An example would be a morning meeting at which coffee and pastries were provided. Such gifts are not reported by the legislator unless there are multiple gifts from the same lobbyist to the same legislator with a cumulative value of \$100 or more during the year. The gift is not reported by the lobbyist unless the cumulative amount is \$75 during the 6-month reporting period for lobbyist reports.

A tray of food intended for a legislative committee to consume in the legislative complex is not an appropriate gift, even if it could arguably be justified under exceptions contained in the Ethics Law. The usual timing of such gifts (e.g., sandwich trays) is during the busy period at the end of the legislative session when committees are engaged in long voting sessions. The appearance of impropriety in a lobbyist providing food at such a critical moment in the legislative process is quite strong and therefore inappropriate.

ETHICS OPINION #8

CONFLICTS OF INTEREST AND VOTING

As members of a “citizen legislature”, senators and delegates will almost inevitably face instances where their personal interests could be affected by their conduct in legislative matters. Non-legislative employment, ownership interest in a business, and economic benefit to family members or close associates can all present a situation where there is at least the *appearance* of conflict between a legislator’s private interests and his or her obligation to provide constituents with impartial representation and independent judgment.

The Maryland Public Ethics Law is designed to accommodate the contradictory aspects of service in a citizen legislature. While conflicts (and appearances of conflict) must be addressed, the law recognizes that a member’s participation in legislative activity that relates to a conflict is not only necessary but often beneficial to the effective crafting of laws. Participation is necessary because constituents’ interests depend on a member’s active participation on all issues. Additionally, the constitutional requirement that a bill receive a majority vote of the entire membership of the body precludes recusal by a large number of members. The benefits of participation, notwithstanding a conflict, are seen when legislators are allowed to be fully involved in legislation on subjects about which they are most knowledgeable. Therefore farmers should participate in the debate on agriculture bills and physicians can share their expertise on health care issues. Only in the case of a conflict that involves a very direct and personal financial interest will recusal from legislative activity be required by the Ethics Law.

Conflicts Generally

The law initially states the principle that a member of the General Assembly is disqualified from participating in any way on a legislative matter if the legislator’s personal interest conflicts with the public interest and thereby tends to impair the legislator’s impartiality and independence of judgment. Such a situation is typically based on the impact of legislation on a member’s personal financial interests.

Legislators are also expected to look at their business and personal interests from the perspective of the general public to determine if anything presents the *appearance* of a conflict of interest. An apparent conflict, even when there is no actual impairment of the legislator’s impartiality and independence of judgement, must still be addressed, though it will rarely warrant recusal.

In the overwhelming majority of cases, the disqualification can be waived and the legislator will be free to participate fully on legislation that relates to the conflict, as discussed below. However, situations involving an especially direct conflict may require that the legislator refrain from voting, debating, or otherwise attempting to influence the passage or defeat of a bill or class of bills.

Presumption of Conflict

Certain relationships or interests create the legal presumption of a conflict of interest. A legislator with a presumed conflict would be required to either refrain from participating in legislation relating to the issue (generally referred to as “recusal”), or else file a disclaimer if the legislator felt that he or she could act impartially.

The following constitute presumed conflicts under the law:

1. Having or acquiring a direct interest in an enterprise which would be affected by the legislator's vote on proposed legislation.

2. Benefitting financially from a close economic association with a person (including a lobbyist or a business that has employed a lobbyist) who has a direct interest in an enterprise or interest that would be affected by proposed legislation in a manner different from other like enterprises or interests. Generally, a "close economic association" includes: a legislator's employer, employees, or business and professional partners; a corporation in which the legislator is involved as an owner (the lesser of a 10 percent interest or \$25,000 stock value), officer, director, or agent; or a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns any interest.

3. Soliciting, accepting, or agreeing to accept any loan, other than from a commercial lender in the normal course of business, from a person who would be affected by or has an interest in an enterprise which would be affected by the legislator's vote.

Interests that are common to all members of the general public, or all members of a large class of the public, will not fall under the presumption of conflict and will not require any action by a legislator. Hence, a bill affecting all residential property owners does not create a conflict of interest for legislators who own homes.

Additionally, the law provides that an interest that is common to all members of a business or occupation of which the legislator is a member will not create the presumption of conflict. Nevertheless, it is generally recommended that a legislator file an on-going disclaimer of conflict relating generally to his or her occupation, based on the appearance of conflict.

Appearance of Conflict

The Ethics Law, at § 15-101(a) of the State Government Article, notes that the public’s “confidence and trust is eroded when the conduct of the State’s business is subject to improper influence or even the appearance of improper influence.” If a situation, viewed objectively, would present a problematic appearance, it should be addressed by the filing of a disclaimer or, in rare instances, by recusal.

Suspension of Disqualification: Filing a Disclaimer of Conflict

When a legislator has a presumed or apparent conflict of interest, the disqualification from voting or otherwise influencing legislation may be suspended if the legislator files a “disclaimer of conflict” form with the Joint Ethics Committee, asserting that the legislator is able to vote on the matter fairly, objectively, and in the public interest. Generally the filing is made on the form provided by the Joint Ethics Committee (which is also available to legislators on-line). A disclaimer may apply to a single bill (preferredly identified by bill number and title) or to all bills that fall within a specific subject area. The form also requires a short statement of the circumstances that give rise to the presumed or apparent conflict. A general disclaimer continues in effect unless it is revoked, and it need not be filed again each year.

Each disclaimer of a presumed or apparent conflict is reviewed by the Joint Ethics Committee at a public meeting of the Committee. If the Committee determines that recusal would be a more appropriate course of action, that information will be conveyed to the legislator in a letter that cites the reasons for the determination. That determination is binding on the member.

Recusal From Voting

The Ethics Law requires a legislator’s recusal from participation in legislation if a presumed or apparent conflict is “direct and personal to the legislator, a member of the legislator’s immediate family, or the legislator’s employer.” Such a conflict may not be disclaimed.

Although the Ethics Law does not provide any guidance as to what constitutes a “direct and personal” conflict, the Joint Ethics Committee has determined that the General Assembly intended for this provision to apply only to interests that are narrowly focused, and as to which a clear financial impact would flow from the passage or defeat of the legislation. The following are examples of direct and personal conflicts, as to the legislator himself or herself, the legislator’s immediate family member, or the legislator’s employer. References to “person” may be either an individual or an entity (such as the legislator’s employer).

- The person is the only person affected by the legislation, or one of a very small number of such persons.
- The person would be affected to a significantly greater degree than any other like person, as in the case of a business entity that is overwhelmingly predominant in the field to which the legislation relates.
- The person’s salary or other compensation is specifically set by legislation (such as a deputy sheriff’s salary that is specifically provided by law, even if there are several deputy sheriffs affected).

A legislator who has questions as to the applicability of this provision to the legislator's circumstances should consult with the Ethics Counsel and, if an authoritative ruling is desired, ask for an opinion of the Joint Ethics Committee.

A member who has a presumed or apparent conflict of interest that falls short of being a "direct and personal" conflict may nonetheless feel compelled to avoid participating in legislative action to which the conflict relates. The Joint Ethics Committee strongly discourages recusal in such circumstances, noting that Rule 93 specifies a legislator's general duty to vote on all questions that arise on the floor of the House or Senate.

Documentation of Recusal

When recusal is taken, whether required or discretionary, the legislator must file with the Joint Ethics Committee a form that specifies the bill or bills and states the reason for recusal. The form need not be filed prior to the vote being taken, but should be filed as soon as practicable thereafter. The form can be filed electronically from a laptop computer on the floor.

ETHICS FORMS

Disclosure of Interest:

FORM A: Representation Before a State or Local Agency

FORM B: Financial Relationship with the State or a Local Government

FORM C: Interest in a Business Entity Regulated by a State Agency

Disclaimer of Interest:

FORM D: Disclaimer of an Apparent or Presumed Conflict of Interest

Statement of Recusal:

FORM E: Statement of Recusal from Voting and Other Legislative Action

JOINT COMMITTEE ON LEGISLATIVE ETHICS

FORM A

DISCLOSURE OF INTEREST: REPRESENTATION BEFORE A STATE OR LOCAL AGENCY

Under §15-513(b)(1) of the State Government Article, a legislator is required to file this form “if representing a person for compensation before a State or local government agency, except in a judicial or quasi-judicial proceeding. . . .”

Senator
I, Delegate _____ hereby report that I am
(Name)

representing for compensation _____
(Name of Person or Entity)

as an _____
(e.g., Attorney, Accountant)

before _____
(Name of the State or Local Agency)

on _____ for the following consideration: \$ _____.*
(Date)

This representation is exempt from the general prohibition provided in § 15-504(b).

Date: _____ Signed: _____

* If consideration has not been set, an amended report shall be filed at a later date.

REVISED: 01/10/01

JOINT COMMITTEE ON LEGISLATIVE ETHICS

FORM B

**DISCLOSURE OF INTEREST:
FINANCIAL RELATIONSHIP WITH THE STATE OR A LOCAL GOVERNMENT**

Under §15-513(b)(2), (4), and (5) of the State Government Article, a legislator is required to file this form if:

- (1) Representing a State or local government agency for compensation;*
- (2) Has a contractual relationship with the State or local government in the State; or*
- (3) Has conducted a transaction with the State or a local government in the State for monetary consideration.**

Senator
I, Delegate _____ hereby report that I have entered into
(Name)

the following financial relationship with _____:
(Name of Governmental Agency)

(Describe the Position of Employment, *or* Services Performed, *or* Transaction Entered Into)

for the following consideration: \$ _____.
(If consideration has not been set, an amended report shall be filed at a later date.)

This relationship is exempt from the general prohibition on receiving earned income from a State or local agency (§ 15-513(a)) because:

_____.

Date: _____ Signed: _____

*Note: A legislator is prohibited by law from being directly involved in negotiations, discussions, or other contacts with a government entity as to a procurement contract in which the legislator has a financial interest.

REVISED: 01/10/01

JOINT COMMITTEE ON LEGISLATIVE ETHICS

FORM C

**DISCLOSURE OF INTEREST:
INTEREST IN A BUSINESS ENTITY REGULATED BY A STATE AGENCY**

Under §15-513(b)(3) of the State Government Article, a legislator is required to file this form if the legislator, or the legislator's spouse or dependent children, together or separately, have:

- (1) Either 10% or more of the capital stock, or stock worth \$25,000 or more, in a corporation subject to regulation by a State agency; or*
- (2) Any interest in a partnership, limited liability partnership, or limited liability company, subject to regulation by a State agency.*

Senator _____
I, Delegate _____ hereby report that I and/or
(Name)

_____ my _____
(Name of Immediate Family Member) (Relationship)

together or separately own a reportable interest in:

(Name of Corporation, Partnership, Limited Liability Partnership, or Limited Liability Company)

This business entity is subject to regulation by:

(State Agency)

Date: _____ Signed: _____

REVISED: 10/1/99

JOINT COMMITTEE ON LEGISLATIVE ETHICS

FORM D

DISCLAIMER OF AN APPARENT OR PRESUMED CONFLICT OF INTEREST

Senator _____
Delegate _____
(Name)

Under §15-511 of the State Government Article, the appearance or presumption of a conflict of interest exists with regard to:

(General Subject Matter *or* Specific Bill Number and Title)

because _____

_____.

However, I swear or affirm that despite the presumed or apparent conflict, I am able to participate in legislative action relating to the above fairly, objectively, and in the public interest.

Date: _____ Signed: _____

Note: A disclaimer relating to a general subject matter is continuing and need not be re-filed unless the circumstances to which it relates have changed.

REVISED: 10/1/99

JOINT COMMITTEE ON LEGISLATIVE ETHICS

FORM E

STATEMENT OF RECUSAL FROM VOTING AND OTHER LEGISLATIVE ACTION

Under §15-512 of the State Government Article, a legislator who is disqualified from participation in legislative action, or who chooses to be excused because of the appearance of a conflict, must file a statement in a timely manner that describes the circumstances of the conflict.

I, Senator _____
Delegate _____, will avoid all
(Name)

participation in all legislative action relating to the following bill or subject area because of the noted actual or apparent conflict of interest:

(State subject area *or* bill number and title)

Describe reason for recusal: _____

_____.

Date: _____ Signed: _____

REVISED: 01/10/01

