



JOINT COMMITTEE ON LEGISLATIVE ETHICS

ETHICS GUIDE

MARYLAND GENERAL ASSEMBLY 2020

2020 Ethics Guide

**Including a Compilation of Ethics Opinions
and
Ethics Disclosure Forms**

**Joint Committee on Legislative Ethics
Maryland General Assembly**

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2020 Ethics Guide

Statement of Legislative Intent

Maryland's Public Ethics Law sets out its purposes and intent as follows:

- (a) (1) The General Assembly of Maryland, recognizing that our system of representative government is dependent on maintaining the highest trust by the people 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.

(2) It is evident that the people's confidence and trust are eroded when the conduct of the State's business is subject to improper influence and even the appearance of improper influence.
- (b) 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 the conduct of State and local business.

(General Provisions Article, § 5-102, 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-chairs from each chamber, who alternate annually as presiding chair. 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 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 Ethics 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 legislator must file an annual financial disclosure statement with the State Ethics Commission and the Ethics Committee.

Unless otherwise stated, all statutory references in this handbook are to sections of the General Provisions Article of the Annotated Code of Maryland.

Conflicts of Interest

Conflicts Generally (§ 5-512(b))

The Ethics Law states that a member of the General Assembly is disqualified from participating in any way in 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 the member's financial interests or those of a relative or associate stand in the way of impartiality, then the member must avoid participating in all legislative action on the matter.

Legislators are also 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 and focused financial interest may require that the legislator refrain from voting on, debating, or otherwise attempting to influence a bill, class of bills, or other legislative action, a process generally referred to as "recusal".

Ethics Opinion #8 elaborates on these requirements. Opinion #8, along with the other published Ethics Opinions, can be found at the back of this *Ethics Guide*.

Presumption of Conflict (§ 5-512(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. Benefiting 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 legislative action in a manner different from other like enterprises or interests. Generally, a "close economic interest 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% ownership interest or \$35,000 stock value), officer, director, or agent; a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns any interest; or an entity with which the legislator is negotiating employment or has arranged prospective employment.

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 interest in an enterprise which would be affected by the legislator's participation in legislative action.

Suspension of Disqualification: Filing a Disclaimer of Conflict (§ 5-513(a) and (b))

When a legislator has a presumed or apparent conflict of interest, the disqualification from voting or otherwise influencing the matter may be suspended if the legislator files a disclaimer of conflict form with the Ethics Committee, asserting that the legislator is able to act on the matter fairly, objectively, and in the public interest. Generally, the filing is made on Form D: Disclaimer of an Apparent or Presumed Conflict of Interest, which is found in the compilation of forms at the back of this *Ethics Guide* and is also available to legislators through the floor system on their General Assembly laptops. A disclaimer may apply to a single bill, identified on the form by bill number and title, if known, or generally as to all matters that fall within a specifically described subject area. The form 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 unless the circumstances change.

At a public meeting, the Ethics Committee reviews each disclaimer of a presumed or apparent conflict. If the committee determines that recusal would be a more appropriate course of action, the committee will convey that information to the legislator in a letter that cites the reasons for the determination.

A legislator who is an unpaid member of the board of directors of a nonprofit organization may participate in legislative action on a legislative bond initiative, formerly called bond bills, that would benefit the organization if the legislator files a disclaimer. In addition, a legislator must disclose membership on the board of a nonprofit entity that does business with the State, including the receipt of grants, on the legislator's annual financial disclosure statement.

Nonlegislative 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 likely will exist with regard to the legislative interests of the lobbyist or entity.

Conflicts of Interest

The Ethics Committee, in Ethics Opinion #3, discusses a number of scenarios in which nonlegislative 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 voting and other legislative actions as to matters on which the lobbyist is working.

Recusal (§ 5-513(a))

The Ethics Law requires a legislator's recusal from participation in legislative action if a presumed or apparent conflict is "direct and personal" to the legislator, a member of the legislator's immediate family, which is defined as a spouse or dependent child, or the legislator's employer. Such a conflict may not be overcome by filing a disclaimer.

Although the Ethics Law does not provide any specific description 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 quite narrowly focused, and as to which a clear financial impact would flow from the passage or defeat of the legislation or the matter. The following are examples of direct and personal conflicts, as to the legislator, the legislator's spouse or dependent child, or the legislator's employer. References to "person" may be either an individual or an entity, in the case of the legislator's employer.

- The person is the only person affected by the matter, 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 matter 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 and benefits.

If a legislator is employed by a State or local governmental unit in Maryland, considerable leeway will be given in allowing the legislator to participate in legislative action that affects the legislator's government employer. Several counties have only a single senator or a single resident delegate. It would be inappropriate and governmentally unsound to require recusal by a legislator on any legislative action that affects only the legislator's State or local government employer. Nonetheless, some matters affecting a governmental employer would require recusal, such as the salary-setting example noted above, or a bill that makes substantive administrative changes in the specific governmental agency in which the legislator is employed.

A legislator who has questions about the applicability of the recusal standards should consult with 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 both the House and Senate Rules specify a legislator's general duty to vote on all questions that arise on the floor.

A legislator who is recused on a matter may not take any legislative action on the matter or attempt to influence any legislative action to which the conflict relates.

Documentation of Recusal (§ 5-513(c))

When recusal is taken, whether required or at the legislator's discretion, the legislator must file with the Ethics Committee a public disclosure that specifies the bill or matters and states the reason for recusal. The Form E: Statements of Recusal from Voting and Other Legislative Action, need not be filed prior to the vote or other legislative action being taken, but should be filed as soon as practicable thereafter. The form may be filed electronically from the legislator's laptop computer through the floor system.

If recusal will *consistently* be taken on multiple bills and matters that relate to a specific circumstance, a single generic Form E may be filed on that matter. However, if the legislator will sometimes participate in matters relating to the subject, it would be appropriate to file a separate form for each matter.

Public Disclosure of Interests (§ 5-514(b))

A legislator must file separate public disclosures with the Ethics Committee disclosing any:

- representation of a person for compensation before a State or local governmental agency, except in a judicial or quasi-judicial proceeding;
- representation of a State or local government agency for compensation;
- ownership by the legislator, legislator's spouse, or legislator's dependent child of the lesser of: 10% of the invested capital or stock or capital stock worth \$35,000 or more of a corporation that is subject to regulation by a State agency;

Conflicts of Interest

- ownership by the legislator, legislator's spouse, or legislator's dependent child of any interest in a partnership, limited liability partnership, or limited liability company subject to regulation by a State agency;
- contract, *including a position of employment*, with a State or local government agency;
- commercial transaction with the State or a local government in the State that involves monetary consideration;
- primary employment and business ownership of the legislator and the legislator's spouse;
- client, if the legislator is assisting the client in seeking a State or local government competitive award, such as a license or a contract, and the legislator will receive a direct financial benefit as a result of the award to the client; and
- if the legislator's spouse is a lobbyist, the name of each entity that has engaged the spouse for lobbying purposes.

The Ethics Committee has prepared forms for these disclosures (Forms A, B, C, F, and G), found at the back of this *Ethics Guide*. Legislators may also file these forms electronically from their General Assembly laptops through the floor system.

As discussed below, other provisions of the Ethics Law may restrict some of the situations that require disclosure, such as employment by governmental agencies or representation of persons for compensation before governmental agencies. In addition, a legislator also may be required to file a Form D disclaimer related to many of these circumstances because of the appearance of a conflict of interest.

Ethics Files (State Government Article, § 2-706(b) and General Provisions Article, § 5-606)

Annual financial disclosure statements filed by legislators with the Ethics Committee and the Ethics Commission are available for public inspection and copying during normal business hours. The Public Ethics Law requires the Ethics Committee and the Ethics Commission to maintain a record of the name and home address of any person who examines or copies a file. Financial disclosure statements filed on or after January 1, 2019, are available for public review on the Ethics Commission's website through an online registration program. For more information on financial disclosure statements, see the section State Ethics Commission found in this *Ethics Guide*. Other disclosures and disclaimers filed with the Ethics Committee are available for review during normal business hours and as provided in the Public Information Act. In addition, Forms A through G filed on or after January 1, 2013, are available for public review on the General

Assembly's website through an online registration system. If the legislator has requested, whenever the legislator's file is examined or copied, Ethics Committee staff or Ethics Commission staff will notify the legislator. Legislators should contact the staff of the Ethics Committee and note on their annual financial disclosure statements if they wish to be notified whenever their file is examined or copied.

Gifts

Acceptance of Gifts (§ 5-505)

A member of the General Assembly may not *solicit* any gift for personal use. Solicitations on behalf of charities, community groups, and other nonprofit recipients are subject to restrictions that are discussed in this *Ethics Guide* under the heading “Fundraising on Behalf of Others.”

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

- a regulated lobbyist which, by law, includes an entity that pays a lobbyist to lobby;
- a person doing business or seeking to do business with the General Assembly; or
- 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 discussed below 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 legislator may not accept a gift of “significant value” if acceptance of the gift *gives the appearance* of impairing the legislator’s impartiality and independence of judgment, or if the legislator believes the gift *was designed to impair* the legislator’s impartiality and independence of judgment.

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

Food and Beverages

- A legislator may accept food and beverages that are 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 sponsor of the event, or a representative of the sponsoring entity, must attend the meal or reception. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.
- An individual legislator may accept food or beverages 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. The Ethics Committee has allowed members paying their own way to the conference to utilize this exception as well.

The provision applies primarily to a reception sponsored by a lobbyist or interest group at the time of a National Conference of State Legislatures (NCSL) or Eastern Regional Conference (ERC) of the Council of State Governments meeting. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.

- An individual legislator may accept food or beverages *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. A legislator must report such a gift if its value exceeds \$20.
- Food that does not constitute "meals or alcoholic beverages" is implicitly permitted under a general exception for unsolicited gifts not exceeding \$20. A legislator may accept a snack or nonalcoholic beverage in circumstances where it would be awkward for the legislator to pay the legislator's own cost, such as a meeting at an office at which coffee and pastries are provided. In a restaurant or coffee shop setting, a legislator should pay the legislator's own share of the bill. A legislator may pay a lobbyist's restaurant tab, but not vice-versa.

Tickets and Free Admission

- A legislator may accept tickets and free admission for a charitable, cultural, or political event, *from the sponsor of the event*, if the legislator has been invited as a courtesy or ceremony of office. Sports tickets are *never* legal gifts from a nongovernmental donor; although a legislator may purchase sports tickets for face value. A legislator need not report gifts of tickets and free admission if the value does not exceed \$20, unless the legislator accepts multiple tickets or free admissions from the same donor with a cumulative value of \$100 or more in a calendar year. If the sponsor of the event invites all members of a legislative unit, a legislator need not report acceptance of a ticket or free admission, regardless of value unless the legislator accepts two or more tickets or free admissions in the calendar year and the cumulative value is \$100 or more.

Conferences

- A legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment associated with a meeting or conference if the legislator is a *scheduled speaker or scheduled panel member*. If the expenses exceed \$20, the legislator must report the gift on the legislator's annual financial disclosure statement. 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 in writing 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 NCSL. 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 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 a foreign government or by a foundation that does not engage in legislative activities in Annapolis.

Ceremonial or Insignificant Gifts

- A legislator may accept ceremonial gifts or awards of insignificant monetary value and trivial items of informational value. A legislator may accept a plaque or similar award that is purely ceremonial regardless of value, but must disclose the gift if the value appears to be greater than \$20. Consumer items valued at more than \$20 are presumed *not* to be acceptable under this provision.
- A legislator may accept miscellaneous unsolicited gifts, such as coffee mugs and caps, not exceeding \$20 in cost. Meals, alcoholic beverages, or sports tickets are not allowed under this exception.

Gifts from Governmental Entities

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

Other Exceptions

- Gifts that are clearly offered in the context of a member's outside employment, and not because of the member's status as a legislator, are not restricted under the Ethics Law.
- The Ethics Committee may exempt specific classes of gifts that are personal and private in nature.

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

Disclosure of Gifts (§§ 5-607 and 5-705)

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. A gift to a legislator's spouse or dependent child, made by a donor regulated under the Ethics Law, generally will 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 that disclose the name of a legislator who receives gifts with a cumulative value of \$75 or more from the lobbyist during each six-month reporting period, subject to various exceptions, such as events to which all members of a legislative unit are invited.

Fundraising on Behalf of Others (§ 5-505(a)(2))

Legislators are frequently asked to help nonprofit community groups raise funds for their missions. This activity is permissible provided the legislator is not compensated for the activity and is not an employee of the entity. In addition, 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 § 5-702. There are several classes of regulated lobbyists for the purposes of the Ethics Law, but this provision applies to *individuals* who are registered lobbyists, not to their clients. A list of regulated lobbyists is available online from the State Ethics Commission or as a hard-copy compilation at the Print Shop.

A legislator may engage in fundraising solicitations, including solicitation of a business that employs a lobbyist, but these activities must be restricted to efforts on behalf of bona fide nonprofit charitable and community organizations and causes. Examples include educational entities, 501(c)(3) charities, and even informal charitable fundraising efforts on behalf of individuals, such as a family made destitute by a house fire. Solicitations on behalf of other entities or persons are not allowed.

When soliciting charitable contributions, a wide range of activity is permitted. A legislator may be an uncompensated member of a nonprofit organization's board of directors or "honorary board," and the legislator's name may appear on the nonprofit organization's letterhead; a legislator may be a sponsor or the guest of honor at a fundraising function for charity; a legislator may participate directly in charitable fundraising 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 activities such 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.

Fundraising for Legislative Caucuses

As provided in Ethics Opinion #10, a legislative caucus wishing to raise funds from sources outside the Legislative Branch may do so only through a separate 501(c)(3) foundation. Such a foundation may not be headed by a currently serving legislator, nor may the names of individual caucus members appear on its fundraising solicitations. Moreover, the foundation may not engage in fundraising events or solicitations during a regular legislative session.

Lodging During Session

Legislators staying at hotels during the 90-day session are typically offered a range of amenities related to the comfort and convenience of long-term guests. Such amenities may be accepted as an appropriate part of the lodging contract entered into by the State on the legislator’s behalf. In accordance with Ethics Opinion #9, however, a legislator may not accept any of the following, unless the benefit is available in the normal course of business to *all guests* of the hotel, *regardless of their length of stay*:

- tangible items over \$20;
- free or discounted travel; or
- free or discounted future lodging.

The cost of a member’s stay in lodging during the session is typically paid pursuant to an invoice presented to the Department of Legislative Services. Because of the possible appearance of impropriety in receiving credit card “rewards” for charges that will be reimbursed by the State, the Ethics Committee has ruled that lodging expenses for the entire session, or for a shorter period that is known in advance, should not be paid with a member’s credit card. However, the Ethics Committee determined that occasional unanticipated hotel stays, such as for a single night when legislative business extends into the evening, may appropriately be paid with the member’s credit card and then be reimbursed.

Discounts for Goods and Services

A discount that is offered *only* to legislators is a gift in the amount of the discount and is subject to the same standards for acceptance under § 5-505 as other gifts in that amount. However,

a discount that is offered to a broad variety of recipients in the normal course of business, such as a widely distributed percentage-off coupon, will not be deemed a gift for the purposes of the Ethics Law.

Campaign Contributions

Political campaign contributions are not gifts and may be solicited and accepted in accordance with the provisions of the State's Election Law. State resources may not be used to solicit campaign contributions. Further, 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 later in this *Ethics Guide* under the heading "Election Law Provisions." In addition, Ethics Opinion #11 generally requires members to comply with the regular session fundraising restrictions during special sessions.

Prohibited Employment and Compensation

Employment Restrictions – Representation before Government Agencies (§ 5-504(b))

The Ethics Law prohibits a member of the General Assembly 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 exceptions 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, such as attorney and client.

The prohibition applies only to *compensated* assistance to or representation of another person. It does not apply in any way to uncompensated activities or to activities carried out by a legislator on the legislator's own behalf, even if the legislator could gain a financial benefit. 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 contract which is subject to a stricter rule, as noted below.

Exceptions

The Public Ethics Law includes several exceptions to this prohibition, some of which are quite broad. Compensated assistance or representation in the following matters is 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 judgment 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, the Maryland Automobile Insurance Fund, 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 exception overlaps some of the previously listed 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 include:
 - working as a governmental affairs officer for a corporation, if the job involves interaction with the State of Maryland or local governments in Maryland;
 - engaging in acts that would require registration as a lobbyist at the State or local level in Maryland;
 - 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; and
 - making a business introduction of one's employer to a governmental official.
- *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 warrant consultation with Ethics Counsel to discuss whether this exception remains 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 (§ 5-504(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 in the State in any matter involving procurement or the adoption of regulations. Moreover, a member may not represent the member's 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 Maryland State Board of Contract Appeals, or in administrative matters that are a legally required antecedent to a proceeding before the Maryland State 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 subject to lobbyist registration requirements. 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 (§ 5-514(a))

The Public Ethics Law prohibits a legislator from being employed by a unit of the Executive Branch of State government or a political subdivision of the State, unless authorized by 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 of the General Assembly. A governmental position held at the time of filing for office or appointment to fill a vacancy is not subject to the prohibition.

The law refers to “receiving earned income” and applies to regular salaried employment as well as contractual employment, including a consultant position. It does not apply to income obtained under a procurement contract with a governmental entity, which is subject to different restrictions and reporting requirements. Likewise, it does not apply to employment by a nongovernmental entity that receives governmental money in the form of a grant.

“Political subdivision” includes multi-county agencies, such as 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.

The Ethics Committee may grant an exemption for the following classifications of government employment:

- 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. The Ethics Committee has determined that management positions and positions for which the tenure of employment is “at the pleasure” of the appointing authority are *not* 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 the employee has direct contact with the clients being served. It does not include jobs that are purely managerial and do not involve direct client service; and
- “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 has a governmental job when elected or appointed to the General Assembly will not be prevented from moving along a career ladder, even if it means switching to a different governmental employer (*e.g.*, between different local government jurisdictions, or from local to State).

A member should contact the Ethics Committee before accepting employment that requires an exemption.

No approval from the Ethics Committee is necessary to accept a position as “a nonelected 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 Opinions #4 and #6, included at the back of this *Ethics Guide*, for further elaboration on these issues.

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Use of Prestige of Office (§ 5-506)

The Public Ethics Law prohibits the intentional use of a legislator's "prestige of office" for the legislator's private gain or that of another, but allows the performance of usual and customary constituent services that are provided without compensation. The law also prohibits a legislator from influencing, except as part of the legislator's official duties or as a usual and customary constituent service, the award of a State or local government contract to a specific person. Further, a legislator may not initiate a solicitation for a person to hire a specific lobbyist or lobbying firm or use public resources to solicit a political contribution.

The basic 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 member's new employment.
- Use official General Assembly correspondence only for official legislative business or customary constituent services.
- Do not publicly 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 or character reference, provided that the communication does not violate the prohibition against ex parte communication discussed later in this *Ethics Guide*;
- promoting economic development in the member's district or elsewhere in the State; and
- efforts on behalf of nonprofit community groups, subject to the prohibition against soliciting contributions from individual regulated lobbyists.

In promoting economic development or aiding community groups, use of one's 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 otherwise might gain financially as a result of the assistance.

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

Format of General Assembly Letterhead

The Presiding Officers have determined that the following standards apply to the official General Assembly letterhead, in order to promote the dignity of official correspondence, the uniformity of its appearance, and the efficiency of the design process.

- Legislators' letterhead may contain reference to standing committees, statutory committees, and other official entities in the Legislative Branch that are ongoing and not temporary. Reference to other legislative groups, including unofficial entities such as caucuses, is not permitted.
- Reference to a legislator's position in the leadership of the General Assembly, including a leadership position in the legislator's party caucus, may be included on letterhead.
- Nonlegislative entities, such as those that are part of the Executive Branch, a local government, a governmental association such as NCSL, or the private sector, may not be included.
- Pictures, the address (URL) of a personal or political website, or private email addresses may not be included.
- Telephone numbers other than legislative or district office numbers may not be included.

Use of Official General Assembly Stationery and Email

Ethics Opinions #2 and #12 govern the use of official General Assembly stationery and communications sent through the General Assembly's email system. As a general rule, these resources are to be used only for official General Assembly business and for customary constituent services. Other correspondence, particularly if it relates to a political campaign, must be sent on nonofficial letterhead or through private email.

Legislative issues sometimes have a political context that cannot be completely removed from a reasonable discussion of the issue. Nonetheless, members are cautioned about politicizing the content of communications when using official stationery or email. This standard extends beyond references to election campaigns and applies as well to communications of an overtly partisan nature and efforts to sway political opinion. Additionally, official correspondence must not be used to denigrate fellow legislators.

Opinion #12 specifies that the following topics may not be contained in official correspondence:

- a member's political campaign (whether past or future);
- the election or defeat of an official of, or candidate for election to, the governing body of a

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- political, quasi-political, or nonpublic entity;
- the success or defeat of a ballot question, except in responding to an inquiry regarding the ballot question;
- contributions for the member’s campaign fund, for the campaign of another, or for the success or defeat of a ballot question; and
- soliciting volunteers for an election campaign or a ballot question.

Opinion #12 additionally notes that even correspondence on nonofficial stationery and in private email must respect the norms of civility and decorum within the legislature. Any correspondence that misrepresents, threatens, or vilifies another legislator as a means of gaining legislative advantage may result in disciplinary action by the Ethics Committee.

Because it is impossible to fashion a written standard that clearly addresses all possible situations, a legislator’s own common sense must provide guidance. Additionally legislators may ask Ethics Counsel to review the proposed content of correspondence and offer confidential advice.

Constituent Correspondence – Use of General Assembly Print Shop, Mail Room, Email and Electronic Newsletters

The Presiding Officers of the General Assembly have issued the following guidelines for the use of the General Assembly’s Print Shop, Mail Room, Email, and Electronic Newsletters:

The use of governmental resources for printing, mailing, and emailing correspondence or other documents is intended primarily for official legislative business, communications relating directly to a single legislative issue, and responses to constituent inquiries. A member may use governmental resources for printing, mailing, or emailing correspondence and documents only in accordance with the following standards:

1. An item of mail or email may be sent only to a named person or named family. An item generically addressed to “Friend,” “Resident,” or a comparable word or phrase, or using only an address, is not permitted. For non–electronic mailings, this restriction applies to the addressee listed on the **envelope** and not the enclosed letter.
2. Except for electronic newsletters authorized under these guidelines, mailings, including emails, to constituents and community organizations may relate only to a single specific issue or bill, or be a specific response to an inquiry. A mailing may contain the member’s position on a specific

issue. A member may not send an excessive number of unsolicited, single subject letters or emails.

3. Except for a specific response to an inquiry, an electronic newsletter authorized under these guidelines, or as otherwise provided in these guidelines, a mailing or email may not cover multiple issues, cover bills on multiple subjects, or discuss the general responsibilities of members.
4. Mailings, emails, and printings may not survey constituents, ask for opinions, or cover non-legislative matters.
5. Except for electronic newsletters authorized under these guidelines, mailings and printings may not contain notices of district gatherings such as “town hall meetings.” Notices of official legislative receptions within the legislative complex are allowed. A legislator may email notices of meetings outside the legislative complex with groups of constituents to discuss legislative matters provided that the meeting is not political or campaign-related.
6. Mailings and emails recognizing significant anniversaries or other notable events, are permitted. As a general rule, a legislator may send a mailing or email for an occasion that is eligible for a Maryland General Assembly citation. Permissible occasions include a retirement or an extraordinary act of heroism. However, other letters for congratulatory or greeting purposes or for events that occur commonly or in large numbers across the State, such as for graduations, birthdays, new district residents, or new voters, are not permitted.
7. Letters on business, personal, or campaign letterhead are not permitted. The General Assembly Print Shop will not print and the General Assembly Mail Room will not mail campaign materials.
8. Mailings and emails relating to the Legislative Scholarship Program or to notary public appointments are not restricted. These mailings should be labelled when delivered to the Mail Room.
9. At the end of a regular legislative session, up until the close of business on the second Friday following *sine die*, a letter or email covering multiple subjects may be sent *only* to persons who have communicated with the member’s office regarding a legislative matter during that session. An electronic legislative newsletter sent in accordance with these guidelines is not subject to this restriction.
10. A member may send a periodic email newsletter covering multiple legislative and constituent issues using the electronic newsletter system provided by the General Assembly. Except as otherwise authorized in

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these guidelines, this newsletter must comply with the standards of legislative ethics, opinions issued by the Ethics Committee, the Ethics Guide, and other relevant laws. The newsletter may include notices of constituent events that are not political or campaign related. This newsletter may not be used for political or campaign activity and may not include links to or a referral to a website with political or campaign content.

11. Except for a confidential communication that is labeled “Confidential,” envelopes may not be sealed before being submitted to the Mail Room.
12. The General Assembly Print Shop will not compose or print any letter that cannot be sent at taxpayer expense, in accordance with these standards.
13. General Assembly funds may not be used to mail items that may not be mailed through the General Assembly Mail Room.
14. The Mail Room or Print Shop staff, after consultation with Ethics Counsel, will notify the appropriate Presiding Officer of mailings or print requests that appear to violate these standards, or significantly exceed the normally expected numbers. In addition, Mail Room staff, after consultation with Ethics Counsel, will advise the appropriate Presiding Officer of excessive amounts of returned mail.

A periodic email newsletter that is not sent using the electronic newsletter system provided by the General Assembly may not be sent from or, based on the address in the email’s “From” line, appear to be sent from a General Assembly email address.

Ex Parte Communications in Judicial and Quasi-judicial Proceedings

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 with the official off the record and out of the presence of the parties. There are formal procedures available for conveying information, such as a character reference, in such situations, and Ethics Counsel can assist members in determining the appropriate method of communication.

Use of Public Resources for Nongovernmental Purposes (State Government Article, § 2-108 and General Provisions Article, § 5-506(c)(2))

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.” In addition, the law prohibits a legislator from using public resources to solicit a political contribution.

Ethics Opinion #12 provides that resources such as telephones, computers, email, and fax machines should not be used in any systematic way for business, personal, or political campaign purposes. Occasional and non-systematic use for business or personal matters, especially when the need for timely communication reasonably precludes use of nonpublic resources, is permitted. It is also permissible, when receiving an incoming campaign-related phone call or email, to provide a simple answer to an inquiry or to steer the correspondent to an appropriate campaign address or phone number. In general, however, campaign-related communications should not be initiated by members or their staff using public resources, and campaign fundraising functions may *never* be initiated using the General Assembly's telephones, email, or fax machines. The use of a private email account is subject to these standards only at such times that it is accessed on a State-owned computer.

In accordance with Ethics Opinion #12, political campaign rallies, campaign-related press conferences, and distribution of campaign materials may not take place inside the buildings of the legislative complex.

Personal/Political Websites and Social Media

Ethics Opinion #12 sets out standards relating to personal websites maintained at a member's own expense or at the expense of the member's campaign. While there are no restrictions on the content of these websites, the Ethics Committee has determined that the site's address (URL) may not be included in official correspondence if the website contains campaign-related or overtly political material. However, the address of a website that contains only nonpolitical information may be included in the text of a letter on official stationery or a General Assembly email. This same standard applies to the addresses of a member's social media accounts.

Additionally, a website address or information regarding a member's social media accounts may not be printed as part of official letterhead. It is likewise improper to have the URL on an official General Assembly business card or in "signature" text that can be programmed to appear at the end of outgoing email messages using the General Assembly email system.

A legislative computer may not be used to create, maintain, or edit a personal or political website.

Honoraria (§ 5-505(d))

Legislators are sometimes offered cash payments in return for making a speech to a group or for submitting an article for publication. These honoraria are prohibited under the Ethics Law. The only acceptable payments are reasonable expenses for travel, food, lodging, and scheduled entertainment for a meeting at which the legislator is a scheduled speaker, as noted previously in the "Gifts" section of this *Ethics Guide*.

Compensation for writing an article for a newspaper or other periodical is likewise a prohibited honorarium under the law, though payment for writing a book is permitted.

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

In lieu of a cash honorarium, an organization may sometimes offer to make a contribution to a charitable cause. Charitable contributions under such circumstances are appropriate only if the legislator does not specifically designate the recipient charity, and the donation is not attributed to the legislator by name.

Hiring of Relatives (State Government Article, § 2-107)

Members are prohibited from employing their own relatives, or the relatives of other members, for legislative jobs. Specifically, a legislator may not employ, for a job paid with public funds over which the member has direct control, the legislator's own relative or the relative of another legislator from the same legislative district. "Relative" means a member's spouse; parent or stepparent; sibling or stepsibling; child, stepchild, foster child, or ward; mother-in-law or father-in-law; son-in-law or daughter-in-law; grandparent; or grandchild.

A legislator that has a physical impairment that reasonably requires may hire a relative if the legislator discloses that information to the Ethics Committee.

Postlegislative Employment (§ 5-504(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 for one calendar year after the legislator leaves office. This prohibition includes both direct lobbying and compensated "behind the scenes" assistance to others doing advocacy work on matters before the General Assembly. Uncompensated activities are not restricted in any way. Additionally, the restriction does not apply to advocacy work on behalf of a State or local governmental entity.

Ethics Opinions (§ 5-515)

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 Ethics Committee Co-Chair in the member's chamber or from the General Assembly's Ethics Counsel.

Enforcement (§§ 5-516 – 5-522)

The Ethics Committee may receive complaints alleging a violation of the standards of legislative ethics in three ways: through a written and signed statement filed by any person; on a

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motion of the majority of the members of the committee; or through a referral from a Presiding Officer. After reviewing a complaint, the committee may (1) counsel or educate the member on the standards of legislative ethics; (2) dismiss the complaint for various reasons, including because the violation was cured or was minor; or (3) hold further proceedings. The committee may hold a hearing and may make recommendations to the appropriate Presiding Officer or the full house of the accused legislator. The committee is required by law to keep information related to complaints confidential unless the member involved in the matter waives confidentiality or the committee votes to release information.

Ethics Counsel (State Government Article, § 2-709)

The General Assembly employs a full-time Ethics Counsel who is responsible for advising legislators regarding the application of the Ethics Law. The Ethics Counsel is required by law to meet individually with each legislator 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. One of the Governor's appointments is the nominee of the President of the Senate and one is the nominee of the Speaker of the House. The commission is responsible for administering the Maryland Public Ethics Law with respect to all State officials of the Executive Branch employees of all three branches of State government, and lobbyists. Legislators must file an annual financial disclosure statement with the State Ethics Commission, but the Ethics Committee has jurisdiction over members in all other aspects of the Maryland Public Ethics Law.

Some of the commission's major functions include issuing advisory opinions, providing informal advice, receiving and reviewing financial disclosure statements, investigating complaints, and regulating lobbyists. An advisory opinion of the State Ethics Commission is legally binding on the person requesting it. The commission's advisory opinions are published in the *Maryland Register* and are available at the Division of State Document's Code of Maryland Regulations website. A legislator may contact the State Ethics Commission (410-260-7770) for guidance as to public financial disclosure requirements.

Annual Financial Disclosure Statement

By April 30 of each year, each legislator is required to file a public financial disclosure form with both the State Ethics Commission and the Ethics Committee. In the year of a gubernatorial election, a legislator who is running for reelection must file a financial disclosure statement on or before the last day for withdrawal of candidacy. 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. subject to limited exceptions, any gift that the legislator receives with a value over \$20 or a series of gifts with a value 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, including unpaid positions on the board of a nonprofit organization, and salaried employment held by the legislator or by the legislator's immediate family with any business entity that does business with the State;
6. all debts of the legislator to any person who does business with the General Assembly;

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, business interests, or income from rental property; and
9. to the extent not disclosed in items 1-8, the information required to be disclosed to the Ethics Committee under § 5-514(b), which is also disclosed to the Ethics Committee on Forms A, B, C, F, and G, and is discussed previously in this *Ethics Guide* under the heading "Public Disclosure of Interests."

Preliminary Financial Disclosure

In addition to the annual financial disclosure statement, 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 filed in the preceding year. A "substantial change" means 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 legislator need not file the form.

In lieu of filing the preliminary financial disclosure, assuming a preliminary 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 statement filed by a legislator is open to examination and copying by the public during normal business hours. 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. The Ethics Commission must make a financial disclosure statement filed by a legislator on or after January 1, 2019, available for public review on the Ethics Commission's website through an online registration program. Neither the State Ethics Commission nor the Ethics Committee may provide public access to a portion of a filer's financial disclosure statement filed after January 1, 2019, that includes the filer's home address.

The State Ethics Commission may assess late fees, issue a reprimand, or recommend other discipline against an individual who fails to file a financial disclosure statement in a timely manner.

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 of the Election Code should be directed to the Board of Elections (410-269-2840). Legislators should direct questions related to campaign fundraising activities involving regulated lobbyists to the State Ethics Commission.

Contribution Limits

An individual, association, unincorporated association, or corporation may contribute no more than \$6,000, either in money or other things of value, to a legislator's campaign committee during the four-year election cycle that runs from January 1, 2018, until December 31, 2022.

A political committee, including a political action committee, may transfer up to \$6,000 to another political committee during the four-year cycle. A slate may transfer up to \$24,000 to the authorized candidate campaign committee of any single member of the slate during an election cycle but may not transfer more than \$6,000 to a candidate who is not a member of the slate. A candidate member of a slate may make unlimited transfers into that slate committee. Additionally, there is no limit on transfer between any of the following:

- State and local party central committees of the same political party; and
- a candidate's authorized campaign committees, including the candidate's treasurer.

No Fundraising or Contributions During the Session (Election Law Article, § 13-235)

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

- receive a contribution for:
 - the legislator;
 - any other candidate for federal, State, or local office;
 - a candidate campaign committee;
 - a slate; or
 - a legislative party caucus committee.
- conduct any fundraising event in order to receive a contribution described above;

- solicit contributions described above; or
- deposit any contribution that was received before the convening of the regular session.

However, a legislator may deposit a contribution that was made electronically before the start of the legislative session.

Note that the law also prohibits fundraising activities in support of *another candidate*, even for a primary election that will take place during the legislative session. This restriction also applies to fundraising information posted on social media pages or websites. Legislators may contribute their own personal or campaign funds to such a candidate and may freely provide political endorsements, but they are prohibited from being involved in the fundraising 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 fundraising event.

If an incumbent legislator has filed as a candidate for an elective federal or local government office, the legislator may raise funds for that campaign during session.

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 (contributions from individuals of \$250 or less) and any disbursement of funds that are based on the eligible private contributions.

A legislator who receives a prohibited contribution during the session must return the check to the contributor. A legislator may hold a check that was received before the session started, but not deposited until the end of the session and then deposited after Sine Die.

The Board of Elections may issue a civil citation and impose a fine for a violation of the prohibition against fundraising during session.

Fundraising During a Special Session

The Ethics Committee has ruled, in Ethics Opinion #11, that the same standards relating to campaign fundraising and contributions will apply during a special session of the General Assembly. However, any fundraising event that was organized, through the commitment of funds or sending of solicitations, prior to the calling of a special session may proceed as planned.

Campaign Fundraising Involving a Regulated Lobbyist (§ 5-715)

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 fundraising 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 fundraising activities, or solicitations for political contributions, to a potential contributor.

However, a lobbyist may:

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

A legislator may 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 clients, other than providing basic contact information so that the solicitation can be directed to an appropriate recipient.

Ethics Opinions

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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 Maryland Public Ethics Law is to assure the public that legislators do not use the status of their elective office to gain an advantage in personal matters. Additionally, the law prohibits a legislator from using the legislator's official position to improperly benefit a family member, friend, business associate, or other entity with whom the legislator has a relationship.

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 § 5-506 of the General Provisions Article, as follows:

- (a) (1) An official or employee may not intentionally use the prestige of office or public position:
 - (i) for that official's or employee's private gain or that of another; or
 - (ii) to influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a State or local contract to a specific person.
- (2) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.
- (b) The performance of usual and customary constituent services, without additional compensation, is not prohibited under subsection (a) of this section.
- (c) (1) A public official or employee may not use public resources or the title of the public official or employee to solicit a political contribution that is regulated in accordance with the Election Law Article.
- (2) A State official may not use public resources to solicit a political contribution that is regulated in accordance with the Election Law Article.

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

Benefit to Members

Professional Activities

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” may not be used in these instances.

Campaign Activities

As State officials, legislators must ensure that they do not use public resources for campaign fundraising activities but may use their State titles in their political activities. The general rule for the use of General Assembly resources is stated in Ethics Opinion #12 as follows:

It is also permissible, when receiving an incoming campaign-related phone call or email, to provide a simple answer to an inquiry or to steer the correspondent to an appropriate campaign address or phone number. In general, however, campaign-related communications should not be initiated by members or their staff using public resources, and campaign fundraising functions must never be initiated using the General Assembly’s telephones, email, or fax machines.

Legislators must ensure that legislative staff do not perform campaign activities while on State time or using State resources. In addition, a legislator may not require legislative staff to perform campaign activities on their personal time as a condition of employment.

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 Counsel 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 the legislator’s official letterhead and the title of “Delegate” or “Senator” to aid such entities. Legislators must ensure that their activities in support of nonprofit groups and charitable causes do not include solicitation of or facilitating the solicitation of an individual regulated lobbyist.

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 has an ownership interest with the entity or might otherwise stand to gain financially as a result of the assistance.

A legislator may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a specific lobbyist or lobbying firm. The Ethics Committee has determined that the General Assembly intends this provision to refer to the lobbying services of a specific lobbyist or a lobbying firm. Therefore, a legislator may serve as an employment reference for an individual who is registered as a lobbyist. However, a legislator may not initiate a conversation to recommend that a person hire a specific lobbyist or firm to represent the person in lobbying activities.

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. In addition, a legislator may not attempt to influence a decision-making official, in a matter pending in court or before a quasi-judicial administrative body, by communicating with the official off the record and out of the presence of the parties.

Revised: October 1, 2014 and August 29, 2017

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 fundraising purposes because use of these facilities and resources for campaign purposes is generally prohibited.

Ethics Opinion #3: Nonlegislative 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 interaction between legislators and lobbyists primarily by regulating gifts from lobbyists to legislators. Many types of 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 to legislators, see Ethics Opinion #7. 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 Maryland Public Ethics Law (at §§ 5-708 and 5-715 of the General Provisions Article) and the Election Code (at §13-210 of the Election Law Article,) place restrictions on the involvement of a lobbyist in campaign fundraising and the management of campaign committees. These issues are not covered in this opinion.

In addition, the Maryland Public Ethics Law, at § 5-506 of the General Provisions Article, prohibits an official from initiating a solicitation for a person to retain the compensated services of a specific lobbyist or lobbying firm. Similarly, a lobbyist may not request an official or employee to recommend the lobbying services of the lobbyist or another lobbyist. This opinion does not address these restrictions.

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 § 5-702(a)(6) of the General Provisions 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 “are eroded when the conduct of the State’s business is subject to improper influence or even the appearance of improper influence.” (§ 5-102(a)(2) of the General Provisions 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 or is 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 Maryland Public 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 that is a regulated lobbyist, including an entity that is 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, filed 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 Maryland Public 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 § 5-513(a)(2) of the General Provisions 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 more than a very small group of entities (*e.g.*, all financial institutions or all insurance companies in the State), 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 § 5-513(c) of the General Provisions 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. For more detailed guidance on conflicts of interest, see Ethics Opinion #8.

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 Ethics Counsel 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 Ethics 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 rarely 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 the legislator's 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.

This public disclosure and disclaimer of conflict would typically allow 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, accountant, etc.) is not prohibited under the Maryland Public 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 § 5-505 of the General Provisions 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 or that the legislator is using the legislator's office for financial gain.

The Maryland Public 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 § 5-512 of the General Provisions 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 with which 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 individual regulated lobbyist must 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 Maryland Public 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 violation of § 5-506 of the General Provisions Article 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 Maryland Public 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 must 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.

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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, currently at § 5-514(a) of the General Provisions 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 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 nonelected 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 § 5-514(b) of the General Provisions 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 a governmental entity of the State 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 § 5-505 of the General Provisions 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 § 5-514(b)(1)(v) of the General Provisions Article, requires that a legislator provide notice to the Committee regarding "details of any transaction with a governmental entity of 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 entities 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 entities, prohibiting certain activities while requiring public disclosure of other actions.

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

Government Procurement Contracts

Under § 5-504(c) of the General Provisions 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 the legislator's 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 publicly disclosed to the 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 exception 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 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 Maryland Public Ethics Law (at § 5-504(b) of the General Provisions 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 Ethics Committee, as discussed below):

- *Matters relating to the performance of ministerial acts.* (§ 5-504(b)(2)(i)) “Ministerial acts” are governmental functions in which there is little or no exercise of judgment 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.* (§ 5-504(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.* (§ 5-504(b)(2)(iv))
- *Assistance or representation in matters involving the legislator’s regular business, employment, or profession, in which contact with governmental entities (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.* (§ 5-504(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.* (§ 5-504(b)(2)(v)) 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 Committee or Ethics Counsel to discuss whether this exception remained applicable. (Also note that a

grandfather provision in the 1999 amendments to the Maryland Public 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 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 or local governments in the State;
- engaging in a law practice that consists primarily of lobbying the State 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 a Government Entity

The Maryland Public Ethics Law (at § 5-514(b)(1)(i) of the General Provisions Article) requires specific disclosure to be made to the 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 § 5-504(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 a Government Entity

Specific disclosure is also required to be made to the Ethics Committee, under § 5-514(b)(1)(iv) and (v) of the General Provisions 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 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 Ethics Committee, the legislator may file a year-end statement that aggregates all known transactions with a particular governmental entity. It will often be appropriate, however, to separately disclose transactions with a significant monetary value.

Assisting a Client in Seeking a Government Competitive Award

A legislator must disclose the name of a client of the legislator or a business in which the legislator has an ownership interest if (1) the legislator is assisting the client in seeking a State or local government contract, license, or other competitive award and (2) the legislator will or expects to financially benefit if the client is successful in seeking the award. “Financial benefit” includes not only contingent compensation based on the success or failure of the client’s application, but also other benefits, such as ongoing employment with the client or holding an ownership interest in the client’s business. Section 5-504(b)(1)(iv) includes an exception for assistance in a judicial or quasi-judicial proceeding, such as representation of a client by an attorney in a proceeding before a court. This disclosure must be made on a form provided by the Ethics Committee.

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.

Revised: August 29, 2017

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 § 5-102 of the General Provisions Article, which states that the public's confidence and trust in the impartiality and independence of judgment of governmental officials "are 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 § 5-505, 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 § 5-505(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 § 5-505(b)(2) 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:

- (i) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;
- (ii) engages in an activity that is regulated or controlled by the official's or employee's governmental unit;
- (iii) 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
- (iv) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee.

The criterion contained in item (i), 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 (ii) 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 (iii), 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 (iv), 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 § 5-505(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 § 5-505(c)(2)(vi), as to attending a meeting at which the legislator is a scheduled speaker or scheduled panel member; and § 5-505(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 § 5-505(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 § 5-505 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.

Revised: October 1, 2014

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. Nonlegislative 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 the legislator’s 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 Maryland Public 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 judgment, 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 or advocating in an official legislative capacity before a unit of State or local government.

Presumption of Conflict

Certain relationships or interests create the legal presumption of a conflict of interest. A legislator with a presumed conflict is required to either refrain from participating in legislative action relating to the issue, generally referred to as “recusal,” or else file a disclaimer if the legislator feels that the legislator can 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. Benefiting 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% interest or \$35,000 stock value), officer, director, or agent; a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns any interest; or an entity with which the legislator is negotiating or has arranged potential employment.
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 participation in legislative action.

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 ongoing disclaimer of conflict relating generally to the legislator’s occupation, based on the appearance of conflict.

Appearance of Conflict

The Maryland Public Ethics Law, at § 5-102(a) of the General Provisions Article, notes that the public’s “confidence and trust are 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 taking legislative action may be suspended if the legislator files a “disclaimer of conflict” form with the Ethics Committee, asserting that the legislator is able to participate in the matter fairly, objectively, and in the public interest. Generally the filing is made on the form provided by the Ethics Committee, which is also available to legislators through the floor system. A disclaimer may apply to a single bill (preferably identified by bill number and title) or to all legislative action 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 Ethics Committee at a public meeting of the Ethics Committee. If the Ethics 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 Maryland Public Ethics Law requires a legislator’s recusal from participation in legislative action 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 Maryland Public Ethics Law does not provide any guidance as to 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, 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 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 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 Ethics Committee a form that specifies the bill or subject matter and states the reason for recusal. The form need not be filed prior to the legislative action being taken, but should be filed as soon as practicable thereafter. The form can be filed electronically from the member's State laptop computer on the floor.

Revised: October 1, 2014 and August 29, 2017

Ethics Opinion #9: Acceptance of Hotel Marketing Incentives

Legislators who stay at hotels in Annapolis during the 90-day session are traditionally provided with amenities related to the convenience and comfort of long-term hotel guests. In general, such amenities are an appropriate part of the lodging contract entered into by the State on a legislator's behalf. However, in order to attract legislators as guests, some hotels have begun offering increasingly elaborate packages of benefits that include outright gifts not related to comfort and convenience during the hotel stay. This opinion is intended to clear up any misunderstanding about the application of the Ethics Law to these gifts.

The Ethics Law prohibits an official from accepting gifts from a person who "does or seeks to do any business" with the official's governmental unit, with an exception made for gifts of nominal value. (See § 5-505(b)(2) and (c)(2) of the General Provisions Article.) When the State is paying a legislator's lodging expenses, this provision is clearly applicable to gifts offered by the hotel.

It is the opinion of the Joint Committee on Legislative Ethics that members may accept incentives, discounts, and other benefits that are offered in the normal course of business to the general public. Marketing incentives available to every customer are not "gifts" subject to the restrictions of the Ethics Law.

Tangible items that are not offered to all guests at the hotel are considered gifts under the Ethics Law and may not be accepted if they exceed the Ethics Law's "nominal value" cut-off of \$20. (See § 5-505(c)(2)(iv) of the General Provisions Article.)

Free or discounted travel or lodging, except in accordance with marketing programs available in the normal course of business to all guests, regardless of length of stay, are not acceptable benefits for legislators staying at a hotel at State expense.

Revised: October 1, 2014

Ethics Opinion #10: Fundraising for Legislative Caucuses

Legislative caucuses are groups of legislators who join together informally, based on a common theme of ethnicity, gender, geography, or interest in a legislative subject area or issue, and that are officially–recognized by the Presiding Officers. The Joint Committee on Legislative Ethics, pursuant to its authority to establish standards of legislative ethics, has determined that the public interest will be served by setting guidelines for caucus fundraising.

The work of caucuses is beneficial to the legislative process. They make it possible for legislators with a commonality of interest to formulate positions and speak on issues with a unified voice. It is not the intent of this Opinion to interfere in any way with the legislative functions of caucuses.

The funding needs of caucuses vary. If caucus activities relate solely to legislative matters, these might be handled using only the regular General Assembly resources provided to members. Further funding may be derived from contributions of the members' personal funds. The General Assembly, at the discretion of the Presiding Officers, may authorize the use of additional public resources to support the staffing and legislative activities of a caucus.

A caucus that wishes to raise funds from outside contributors may do so only through a distinct and separate nonprofit entity that is established pursuant to Section 501(c)(3) of the Internal Revenue Code and that complies with the restrictions and requirements of this Opinion. A caucus and the nonprofit entity should enter an agreement that establishes the manner in which the organizations will interact. The agreement should include a requirement that the nonprofit share information with the caucus, including the nonprofit's bylaws, financial information, fundraising data, and expenditure reports. The head of the nonprofit entity may not be an incumbent member of the General Assembly; however, a former legislator is not prohibited from serving. General Assembly phone numbers, email addresses, and mailing addresses must not be used by the nonprofit entity. Although the name of the nonprofit entity must be distinct from the name of the caucus, it is permissible to incorporate some or all of the caucus name (*e.g.*, using the caucus name with the addition of the word "Foundation"). Expenditures by the nonprofit entity must be consistent with the restrictions of federal law for 501(c)(3) organizations.

General Assembly staff may not fundraise for the nonprofit entity while on State time, using State resources, using a State email address or phone number, or referencing the employee's State title. Staff of the caucus may not receive compensation from the nonprofit entity and funds provided by the nonprofit entity may not be used to supplement the State salary of caucus staff. Staff of the caucus should seek guidance from the State Ethics Commission regarding outside employment.

Because of the possible appearance of improper influence, fundraising solicitations on behalf of a nonprofit entity established by a caucus may not contain the names of individual caucus members. Legislators may not solicit contributions to the nonprofit entity. Additionally, the

entity's fundraising events may not be scheduled to take place during a regular legislative session, and fundraising solicitations may not be sent during the session.

This Opinion applies only to nonprofit entities that are the creation of legislative caucuses. It does not apply to any other nonprofit organization, even if the organization has one or more legislators serving on its board of directors or on an honorary board. However, members should be aware that it is a violation of the Public Ethics Law for a legislator to solicit an individual regulated lobbyist to make a charitable contribution and for an individual regulated lobbyist to engage in charitable fundraising at the request of an official.

Because compliance with this Opinion may require substantial lead time to implement changes by legislative caucus and affiliated nonprofit entities, the provisions of this Opinion will become binding on the first day of the 2007 Session: January 10, 2007.

[NOTE: In a letter issued on April 4, 2007, the Joint Committee on Legislative Ethics extended the deadline for full compliance with this opinion until January 8, 2008.]

Revised: November 14, 2017

Ethics Opinion #11: Campaign Fundraising During Special Sessions

While the General Assembly is conducting its regular 90-day legislative session, members are prohibited by law from receiving or depositing political contributions, holding fundraising events, and soliciting ticket sales for post-session fundraising events. This standard is necessary to avoid the appearance of impropriety during the period when proposed legislation is being debated, amended, and voted upon. However, the statute that sets out these prohibitions (§ 13-235 of the Election Law Article) is silent with regard to fundraising activities during a special session of the General Assembly, even though the legislative process is no different, and the appearance of improper influence can be just as great.

The Joint Ethics Committee has determined that, notwithstanding the limited scope of the statute, it is appropriate to hold members to the same fundraising restrictions during a special session as during a regular session. Therefore, during a special session of the General Assembly a legislator, or a person acting on behalf of the legislator, may not:

- (1) receive a contribution;
- (2) conduct a fundraising event;
- (3) sell or solicit for the sale of a ticket to a fundraising event; or
- (4) deposit or use any contribution of money that was received but not deposited prior to the special session.

Section 13-235 also prohibits a legislator from doing any of those actions on behalf of “a candidate for federal, State, or local office, or a campaign finance entity of the candidate or any other campaign finance entity organized under [Title 13 of the Election Law Article] and operated in coordination with a candidate.” That provision will be applicable to fundraising on behalf of others during a special session.

The exception in § 13-235 that allows fundraising by a legislator who is a filed candidate for a federal or local office will also apply during a special session.

Because a special session can be called on very short notice, whereas campaign fundraising events are typically scheduled well in advance, it would not be practical or prudent to force the cancellation of a previously-scheduled event that may coincide with a special session. Therefore, the Joint Ethics Committee has determined that a fundraising event that had been organized, through the commitment of funds or the sending of solicitations, prior to the announcement of the special session may proceed as planned. Once a special session is called, however, a member may not intentionally schedule a fundraising event to coincide with the special session.

Ethics Opinion #12: Official Correspondence and Use of General Assembly Resources

In response to concerns about inappropriate uses of General Assembly letterhead, the legislative email system, and other General Assembly resources, this opinion is intended to provide more explicit standards of ethical conduct and help members to avoid violations.

Use of General Assembly Letterhead and Email

The general rule for use of official General Assembly letterhead is stated in Ethics Opinion #2, as follows:

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.

The Ethics Committee has determined that this same standard shall apply to communications sent through the General Assembly's email system.

Legislative issues sometimes have a political context that cannot be completely removed from a reasonable discussion of the issue. Nonetheless, members should be cautious about politicizing the content of communications when using official letterhead or email. This standard extends beyond references to election campaigns. It applies as well to communications of an overtly partisan nature and efforts to sway political opinion. Additionally, official correspondence must not be used to denigrate fellow legislators.

The Ethics Committee has determined that the following topics shall not be contained in official correspondence:

- a member's political campaign (whether past or future);
- the election or defeat of an official of, or candidate for election to, the governing body of a political, quasi-political, or nonpublic entity;
- the success or defeat of a ballot question, except in responding to an inquiry regarding the ballot question;
- contributions for the member's campaign fund, for the campaign of another, or for the success or defeat of a ballot question; and
- soliciting volunteers for an election campaign or a ballot question.

Although nonofficial letterhead and email are appropriate for communicating political content, members nonetheless should remain cognizant of the norms of civility and decorum within the legislature. Correspondence that misrepresents, threatens, or vilifies another legislator as a means of gaining legislative advantage, even if sent on nonofficial letterhead or private email, does not serve the best interests of the General Assembly or the citizens of Maryland and may result in disciplinary action by the Ethics Committee.

Because it is impossible to fashion a written standard that explicitly addresses all possible situations, members are expected to use their own common sense before sending a letter or email that might be viewed as political or inflammatory. Additionally, Ethics Counsel is available to review the text and offer confidential advice.

Use of State Computers and Other Equipment

Use of State equipment is subject to § 2-108 of the State Government Article, which 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.” In addition, § 5-506(c)(2) of the General Provisions Article prohibits a legislator from using public resources to solicit a campaign contribution.

The Ethics Committee has determined that public resources such as telephones, computers, email, and fax machines should not be used in any systematic way for business, personal, or political campaign purposes. Occasional use for business or personal matters, especially when the need for timely communication reasonably precludes use of nonpublic resources, is permitted. It is also permissible, when receiving an incoming campaign-related phone call or email, to provide a simple answer to an inquiry or to steer the correspondent to an appropriate campaign address or phone number. In general, however, campaign-related communications should not be initiated by members or their staff using public resources, and campaign fundraising functions must never be initiated using the General Assembly’s telephones, email, or fax machines.

If you have an Internet-based email account (such as Yahoo Mail, Hotmail, or Gmail), it is subject to these standards only at such times that it is accessed on a State computer.

Personal/Political Websites

Members are free to maintain personal websites at their own expense or the expense of their campaign. Some members maintain websites that contain only nonpolitical information for the benefit of constituents, while others have considerable political content, including information about campaign contributions and volunteering.

While there are no restrictions on the content of these websites, the Ethics Committee has determined that the site’s address (URL) may not be contained in the text of official correspondence if the website includes campaign-related or overtly political material. However,

the address of a website that contains only nonpolitical information may be included in the text of a letter on official stationery or a General Assembly email.

The Ethics Committee endorses the 1999 ruling by the Presiding Officers that a website address may not be printed as part of official letterhead. It is likewise improper to have the URL on an official business card or in “signature” text that can be programmed to appear at the end of outgoing email messages using the General Assembly email system.

In accordance with a previous determination by the Ethics Committee, a personal website may not be maintained or updated using a State computer.

Social Media

Members often use social media as a tool for engaging the public about legislation and other official matters. Some members maintain social media accounts that contain only legislative and other nonpolitical information for the benefit of constituents, while other accounts are more political and include information about campaign events and fundraising activities.

Public resources are to be used for public purposes and should not be used for campaign or political fundraising purposes. Therefore, public resources, including staff on State time and State computers, may not be used to post campaign-related content on a member’s social media account.

Consistent with the rules for personal/political websites, addresses of social media accounts may not be included as part of official letterhead or on official business cards. Similarly, members may not include links to social media accounts on the “signature” text at the end of an outgoing email message from a General Assembly email account. The address of a social media account that contains no campaign content may be included in the text of a letter sent on official General Assembly stationery or email.

Campaign Activity in Legislative Buildings

Campaign rallies, campaign-related press conferences, and distribution of campaign materials may not take place inside the buildings of the legislative complex.

Ethics Forms

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Note: Legislators may file these forms electronically from their General Assembly laptops.

Joint Committee on Legislative Ethics

Form A

**Disclosure of Interest:
Representation before a State or Local Agency**

Under § 5-514(b)(1)(i) of the General Provisions 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 § 5-504(b).

Date: _____ Signed: _____

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

REVISED: 10/15/12 and 10/1/14 79 77

Joint Committee on Legislative Ethics

Form B

**Disclosure of Interest:
Financial Relationship with the State or a Local Government**

Under § 5-514(b)(1)(ii), (iv), and (v) of the General Provisions Article, a legislator is required to file this form if the legislator:

- (1) *Is 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 (§ 5-514(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: 10/15/12, 11/08/12, and 10/1/14

Joint Committee on Legislative Ethics

Form C

**Disclosure of Interest:
Interest in a Business Entity Regulated by a State Agency**

Under § 5-514(b)(1)(iii) of the General Provisions 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 \$35,000 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 Corp., Partnership, Limited Liability Partnership, or Limited Liability Co.)

This business entity is subject to regulation by:

(State Agency)

Date: _____ Signed: _____

REVISED: 10/15/12, 10/1/14, and 9/17/19

Joint Committee on Legislative Ethics

Form D

Disclaimer of an Apparent or Presumed Conflict of Interest

Senator _____

Delegate _____

(Name)

Under § 5-512 of the General Provisions Article, the appearance or presumption of a conflict of interest may exist 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: _____

Please note:

- A disclaimer relating to a general subject matter is continuing and need not be refiled unless the circumstances to which it relates have changed.
- A legislator who is married to a regulated lobbyist must disclose the names of the spouse's lobbying clients on this form and periodically update the disclosure.

REVISED: February 5, 2007, October 1, 2014 and August 29, 2017

Joint Committee on Legislative Ethics

Form E

Statement of Recusal from Voting and Other Legislative Action

Under § 5-513 of the General Provisions 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.

Senator
I, 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 and 10/1/14

Joint Committee on Legislative Ethics

Form F

Disclosure of Sources of Earned Income

Under § 5-514(b)(1)(vi) of the General Provisions Article, as interpreted by the Joint Ethics Committee, a legislator is required to file this form to disclose sources of earned income, as to both the legislator and the legislator's spouse, from primary employment (other than service as a legislator) and earned income from an ownership interest in a business.

Senator
I, Delegate _____ hereby report that:

(a) (1) I am primarily employed* by the following entity:

(Name of employing entity); and

(2) My spouse, _____, is primarily
(Name of spouse)
employed by the following entity:
_____.

(b) (1) I receive earned income** as a result of an ownership interest in the following
business:

(Name of business); and

(2) My spouse, _____,
(Name of spouse)
Receives earned income** as a result of an ownership interest in the following
business:
_____.

* Do not report service as a member of the General Assembly or public-sector employment that has already been disclosed on Form B.

** Earned income includes salary, profit-sharing, and real property rental income. Earned income does not include stock dividends.

Date: _____ Signed: _____

Adopted: 8/21/13 Revised: 10/1/14

Joint Committee on Legislative Ethics

Form G

Disclosure of Clients

Under § 5-514(b)(1)(vii) of the General Provisions Article, a legislator is required to file this form disclosing the name of a client of the legislator or a business entity in which the legislator has an ownership interest if, except in a judicial or quasi-judicial proceeding, the legislator:

- *is assisting the client in seeking a State or local government contract, license, or other competitive award; and*
- *will receive or expects to receive a direct financial benefit as a result of the award of the contract, license, or other competitive award to the client.*

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

assisting _____
(Name of Client)

in seeking a contract, license, or other competitive award with or from

(Name of State or local government entity)

and I will or expect to financially benefit if the client is awarded the contract, license, or other competitive award.

Date: _____ Signed: _____

Adopted: August 29, 2017

