Ethics provisions of Procurement Act prohibit former state officers and employees having official responsibility for procurement transactions from contracting with Commonwealth for provision of privatized state services. Conflict of Interests Act does not prohibit former Cabinet Secretary and Governor's Office employees from lobbying subordinate executive branch agencies.

The Honorable Walter A. Stosch
Member, Senate of Virginia
January 31, 1996

You ask whether Virginia law prohibits former state officers and employees from contracting with the Commonwealth for the provision of privatized state services. You also ask whether § 2.1-639.4:1 of the Code of Virginia, a portion of the State and Local Government Conflict of Interests Act (the "Conflict of Interests Act"), prohibits a former employee of an office of the Governor's Secretaries ("Secretary(ies)") from lobbying any of the agencies reporting directly to that secretariat, or a former employee of the Office of the Governor from lobbying any agencies in the executive branch of state government.

You relate that the provisions of § 2.1-639.4:1 are clear when applied to former employees of executive branch agencies and the General Assembly. You note, however, that the provisions are not clear when applied to former employees of the Secretaries and the Governor's Office. You note that in the Appropriation Act, each office in the executive branch is treated as a separate agency and is given a separate code; e.g., the Office of the Governor and the Secretaries. Therefore, you note that a former employee of a Secretary or the Governor's Office would be banned from lobbying his or her agency for the period of one year following separation from state service. You suggest that should the provisions of § 2.1-639.4:1 be construed to apply to all executive branch agencies as one agency, all former employees of the Secretaries and the Governor's Office would be banned from lobbying all of the executive branch agencies for a period of one year following termination of their state service.

The Conflict of Interests Act assures the citizens of Virginia that the "judgment of public officers and employees will not be compromised or affected by inappropriate conflicts." Section 2.1639.4 prohibits state government officers and employees from engaging in certain conduct. Section 2.1-639.6(A) restricts the personal interests an officer or employee of state government may have in contracts, other than his own employment contract, with state agencies. Section 2.1639.11 prohibits state government officers and employees from participating in certain transactions.

The Conflict of Interests Act has been interpreted by the Attorney General, however, to not expressly restrict the ability of current state employees to engage in private business activities. Prior advisory opinions of the Attorney General have approved outside business activities by state employees subject to the general prohibitions contained in § 2.1639.4. The Conflict of Interests Act does restrict the private financial activities of current employees of state
governmental agencies when there is a close relationship between an employee's private financial activities and his official duties.\(^9\)

When an officer or employee of state government leaves state employment, the restrictions in §§ 2.1639.4, 2.1639.6 and 2.1639.11 no longer apply to such officer or employee. The only other relevant provisions of general law that expressly impose restrictions or prohibitions on the postemployment activities of former officers and employees are found in the portion of the Virginia Public Procurement Act (the "Procurement Act")\(^{10}\) entitled "Ethics in Public Contracting"\(^{11}\) (the "ethics provisions"). The ethics provisions of the Procurement Act supplement the provisions of the Conflict of Interests Act, and "apply notwithstanding the fact that the conduct described may not constitute a violation of the … Conflict of Interests Act."\(^{12}\) Section 1174 of the ethics provisions provides:

[N]o public employee having official responsibility\(^{13}\) for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

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4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

A prior opinion of the Attorney General concludes that "[t]he nonparticipation provision of § 1174 covers not only the initial procurement transaction but also all phases of contract administration."\(^{14}\) Furthermore, the ethics provisions prohibit former state officers and employees from having official responsibility for procurement transactions [from employment] with any bidder, offeror or contractor with whom the … former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the … former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.\(^{15}\)

A willful violation of these provisions constitutes a Class 1 misdemeanor.\(^{16}\)

I am unable to find any other provision of general law that expressly imposes restrictions or prohibitions on the postemployment activities of former officers and employees.\(^{17}\) I am, therefore, of the opinion that the only statutory restrictions prohibiting former state officers and employees from contracting with the Commonwealth for the provision of privatized state services are contained in the ethics provisions of the Procurement Act, and apply to former officers and employees having official responsibility for procurement transactions.

You next ask whether § 2.1639.4:1 prohibits a former employee of a Secretary from lobbying any of the agencies reporting directly to that secretariat, and former employees of the Governor's Office from lobbying all executive branch agencies reporting to that office. The 1994 Session of the General Assembly added § 2.1639.4:1 to the Conflict of Interests Act, relating to conflicts of interests of legislators and certain officers and employees of state government.\(^{18}\) Section 2.1-639.4:1 prohibits a state officer or employee from representing, for compensation as a lobbyist, any person or group before the agency of which he was an officer or employee during the one year after the termination of his public service. This prohibition, however, applies "only to persons engaged in activities that would require registration as a lobbyist."\(^{19}\)
Section 2.1780 of the Lobbying Disclosure and Regulation Act defines "lobbying" and "lobbyist." Section 2.1782(A) of that Act requires that "[a] lobbyist shall register with the Secretary of the Commonwealth prior to engaging in lobbying." Officers and employees of executive branch agencies who report directly to the agency head and those at the level immediately below such officers and employees who report directly to the agency head and whose salary grade is sixteen or higher are subject to this prohibition.

As noted above, § 2.1639.4:1 prohibits a state officer or employee from representing, for compensation as a lobbyist, any person or group before the agency of which he was an officer or employee "during the one year after the termination of his public service." To determine legislative intent, statutes dealing with the same subject matter should, to the extent possible, be read together. The Conflict of Interests Act defines the term "governmental agency" to mean each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

The primary object in interpreting a statute is to ascertain and give effect to the legislative intent underlying the statute. "The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms." Unless a contrary legislative intent is manifest, words used in a statute should be given their common, ordinary and accepted meanings. The term "each" is defined as "denot[ing] or refer[ring] to every one of the ... things mentioned; every one of two or more ... things, composing the whole, separately considered." Use of the term "each" by the General Assembly in defining the component parts of the executive branch indicates that each element of the executive branch shall constitute a separate agency for purposes of the Conflict of Interests Act. Reading the definition of the term "governmental agency" to mean that the office of a Secretary is an agency that includes all state agencies reporting directly to that secretariat, and further, that the Office of the Governor is an agency that includes all other state agencies of the executive branch is inconsistent with the rules of statutory construction that require a statute to be read as a whole and every provision to be given effect if possible. Accordingly, I cannot conclude that § 2.1639.4:1 prohibits former state employees of the Secretaries and the Governor's Office from lobbying any of the agencies reporting directly to the secretariat and from lobbying any agencies in the executive branch of state government. Therefore, it is my opinion that a proper reading of the Conflict of Interests Act is that the office of a Secretary constitutes a separate agency, and further, that the Office of the Governor constitutes a separate agency for purposes of applying the prohibitions in § 2.1639.4:1.

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1 You refer to the definition of "privatization" as used in the Virginia Government Competition Act of 1995, which means "a variety of techniques and activities which promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector." VA. CODE ANN. § 9341.

2 Tit. 2.1, Ch. 40.1, §§ 2.1-639.1 to 2.1-639.24

3 The first three paragraphs of § 2.1639.4:1 provide:

"In addition to the prohibitions contained in § 2.1639.4, no state officer or employee shall, during the one year after the termination of his public employment or service, represent a client or act in
a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer or employee.

"For the purposes of this section, 'state officer or employee' shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

"The prohibitions of this section shall apply only to persons engaged in activities that would require registration as a lobbyist under § 2.1782."


5See, e.g., Acts of 1995 Ch. 853 id. at 1870 (Secretary of the Commonwealth), 1873 (Secretary of Administration), 1911 (Secretary of Commerce and Trade), 1936 (Secretary of Education), 2045 (Secretary of Finance), 2062 (Secretary of Health and Human Resources), 2118 (Secretary of Natural Resources), 2137 (Secretary of Public Safety), 2177 (Secretary of Transportation).

6Section 2.1639.1.


10Sections 1135 to 1180.

11Tit. 11, Ch. 7, Art. 4, §§ 11-72 to -80Tit. 11, Ch. 7, Art. 4, §§ 1172 to 1180.

12Section 1172.

13"Official responsibility" means "administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom." Section 1173.


15Section 1176.

16See § 1180.


Section 2.1639.4:1.

"Lobbying' means:

"1. Influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or

"2. Solicitation of others to influence an executive or legislative official.

"Lobbying' does not mean:

"1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;

"2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;

"3. The solicitation of an association by its members to influence legislative or executive action; or

"4. Communications between an association and its members and communications between a principal and its lobbyists.

"Lobbyist' means:

"1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

"2. An individual who represents an organization, association, or other group for the purpose of lobbying; or

"3. A local government employee who lobbies." Section 2.1780.

See § 2.1639.4:1 (defining "state officer or employee").


Section 2.1639.2 (emphasis added).

Vollin, 216 Va. at 679, 222 S.E.2d at 797 (1976).
