

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

IN RE: The Matter of the Special Grand Jury

ORDER

COMES NOW the Special Grand Jury convened on February 5, 2013, at the request of the Commonwealth's Attorney and moves this court for entry of an order permitting the issuance of a report at the conclusion of the Special Grand Jury investigation and for additional relief;

THE COURT FINDS that this is a matter of significant public concern; that the issuance of such a report is not precluded by statute; that it is the Commonwealth's decision not to pursue any indictments in this matter; and that the Special Grand Jury is desirous of writing and issuing such a report. It is therefore

ORDERED that the Special Grand Jury is not precluded from writing and issuing a report; that said report shall be filed in the Office of the Clerk of Court for Loudon County Circuit Court; that upon its filing the report of the Special Grand Jury shall remain open to the public; that the identities of the members of the Special Grand Jury shall remain anonymous; and

IT IS FURTHER ORDERED that upon the filing of the report of the Special Grand Jury and the report being made public by order of this court the Special Grand Jury shall be discharged.

Office of the
Commonwealth's Attorney
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425 N. Courthouse Road
Arlington, VA 22201
(703) 228-4410

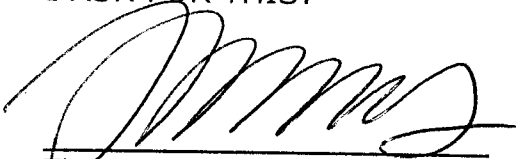
Theophani K. Stamos
Commonwealth's Attorney

ENTERED this 4th day of JUNE, 2013.



Judge

I ASK FOR THIS:



Theophani K. Stamos,
Commonwealth Attorney

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Theophani K. Stamos
Commonwealth's Attorney

Report of the Special Grand Jury on the Investigation into the Potential Misuse of Loudoun County Resources

June 2013

We the members of the Special Grand Jury of Loudoun County operating in the Loudoun Circuit Court and impanelled by the Commonwealth's Attorney for Arlington County and the City of Falls Church from February 2013 to June 2013 submit the below report to document our findings.

Executive Summary

The Special Grand Jury (the "Jury") was impanelled by the Commonwealth's Attorney (CA) for Arlington County and the City of Falls Church, Ms. Theophani (Theo) Stamos, on February 5, 2013, after a typical jury selection process involving only residents of Loudoun County, Virginia, and was granted authority by the Loudoun Circuit Court. At the outset, the Jury was told that an allegation had been made against Loudoun County Board of Supervisor Eugene A. Delgaudio that he improperly used Loudoun County resources for personal gain. The Jury was cautioned that there was no determination that these allegations were in fact true, and that the purpose of the Jury was to investigate these allegations as well as any other issues that may come to light during the course of the investigation.

Over the course of several months the Jury heard from and questioned 31 different witnesses and reviewed 36 items of material entered into evidence. Based upon testimony, the Jury also requested additional witnesses and evidence to further investigate both the original allegation as well as related issues that arose. At the conclusion of the investigation, the CA informed the Jury that she would not ask the Jury to consider any indictments. As such, the Jury never deliberated to consider whether it would indict Supervisor Delgaudio, the original focus of the investigation, or any other individual.

While the Jury cannot speak for the CA, we believe that at least one significant reason that the Jury was not asked to return an indictment is a result of limitations imposed by the Code of Virginia. This report summarizes evidence that suggests the misuse of public assets may have occurred within Supervisor Delgaudio's office between Fall 2011 and Spring 2012 and explains why such misuse may not be criminal in this instance. This report further summarizes evidence and testimony of other related and questionable activities, and the report concludes with several recommendations aimed at the Virginia General Assembly, Loudoun County and the voting public.

Purpose for Convening

Donna Mateer, a staff aide to Loudoun County Board of Supervisor (BoS) Eugene A. Delgaudio of the Sterling District, was fired in March 2012, and she subsequently filed a complaint that ultimately reached the office of the Commonwealth's Attorney for Loudoun County. The complaint alleges that

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Supervisor Delgaudio directed Ms. Mateer to spend time while being paid by Loudoun County to set up fundraising meetings to benefit Delgaudio's campaign efforts, and she also claims that Supervisor Delgaudio created a hostile and abusive environment in the office. To bolster her claim, Ms. Mateer provided copies of numerous documents that were entered into evidence. Due to the potential for a conflict of interest, the Commonwealth's Attorney for Loudoun County referred the matter to the Commonwealth's Attorney for Arlington County and the City of Falls Church who was appointed as special prosecutor in November 2012 to conduct an investigation into allegations that Supervisor Delgaudio improperly used county resources to benefit his political campaign. The CA determined there was sufficient evidence to warrant an investigation and in February 2013 convened this Jury to evaluate the evidence against Supervisor Delgaudio and to pursue any related avenues of investigation that may arise in the conduct of its business.

It is worth quickly comparing and contrasting from a procedural standpoint a special grand jury versus a criminal trial jury (petit jury) for those that may not be familiar with a special grand jury. During special grand jury proceedings no judge is present nor is any defense present. Each witness may have a lawyer of their choosing present. However, this lawyer has no standing to object to questions and may only opt to delay questioning to confer with their client in private. Unlike criminal trials in many jurisdictions, special grand jurors are permitted to ask questions and there are virtually no bounds on the type of question the CA or special grand jurors may ask. Because there is no defense present, there is no cross examination of witnesses. The Fifth Amendment of the U.S. Constitution naturally applies at all times, and no witness need answer questions that may incriminate him/her. Like a criminal trial, all testimony is recorded by a court reporter, and witnesses provide sworn testimony that is subject to pertinent perjury laws.

Purpose of this Report

Under Virginia statute, a special grand jury impanelled by the CA is not required to produce a report. However, in light of the fact that the investigation centers around a prominent and long-serving Loudoun County Board of Supervisor, and because this case has generated media interest both before the Jury was impanelled and during the course of its investigation, the Jury believes it is in the public's best interest to understand the Jury's findings. We further believe that the parties involved deserve to know why no indictment is forthcoming. Finally, based on our findings we have discovered several recommendations that we believe could be implemented to improve the Code of Virginia and Loudoun County policies.

With the desire to produce a written report at the conclusion of this Special Grand Jury, the Jury discussed whether a report could be produced and whether such a report would be made public. The CA ultimately referred the matter to the Chief Judge of the Loudoun Circuit Court who produced an order authorizing the issuance of this report.

Summary of Investigation

This section contains an overview of key witness testimony and evidence from the investigation into the allegations that Supervisor Delgaudio misused county resources. The Jury elected to arrange the information according to several overarching themes that emerged during the course of our investigation. In this case, Supervisor Delgaudio did not testify before the Jury; however, he provided information requested by the Jury.

Atmosphere of Office

Multiple witnesses testified that there was behavior within Supervisor Delgaudio's Loudoun county office, particularly between Fall 2011 and Spring 2012, that resulted in a hostile work environment. These incidents included acts of verbal abuse that on multiple occasions brought his aides to tears and led to the departure of several employees. These actions were in direct violation of the Board of Supervisors Code of Conduct which reads: "Avoid, during either public or private meetings and during the performance of public duties, the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens, or personnel." Additionally, the Supervisor isolated his staff by strictly forbidding their interaction with other BoS aides and attendance at regular BoS staff aide meetings. However, the Jury found no criminal acts related to this behavior.

Potential Misuse of County Resources

Witness testimony revealed that an individual volunteered to help Delgaudio in 2010 or 2011 compile a list of campaign contributors from publicly available information utilizing the Virginia Public Access Project website (vpap.org). The individual who created the list testified that the list, referred to within Supervisor Delgaudio's office as the Igor list, was intended to identify potential campaign donors. While this witness could not easily imagine another purpose for this list, the witness ultimately did not know how this list was actually used or if it was used by Supervisor Delgaudio or any of his staff or volunteers.

One of Delgaudio's BoS aides, Donna Mateer, testified that Delgaudio instructed her to call people on the Igor list with a prepared script and schedule what he called Loudoun appointments or Loudoun County meetings, presumably to discuss concerns about the future of Loudoun County. Frequently, those that were contacted lived outside the Sterling District and even outside of Loudoun County. According to testimony, Delgaudio told Mateer she would get five percent of any large donations he received as a result of the meetings or calls. She was also promised a bonus for expanding the list or collecting additional donors. However, while she did receive her regular Loudoun County salary for her efforts, she never actually received any of the aforementioned bonus compensation.

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After the start of 2012, Mateer was told to dedicate more time to the Igor list and draft letters in addition to making calls. Testimony indicated that she was unsure of the purpose of the list, but several other witnesses testified that they believed the Igor list was used to reduce Delgaudio's campaign debt. Additional witness testimony indicated that Delgaudio claimed the calls made from the Igor list and letters were designed to raise money for the Lower Loudoun Boys Football League (LLBFL), but separate testimony from one of Delgaudio's long time aides who had extensive experience supporting the LLBFL fundraising efforts indicated this aide was prohibited from working on the Igor list project. This aide also indicated she contacted LLBFL and discovered that they had no fundraising projects on-going at the time that the Igor list was in use. The aide was very concerned about what was actually transpiring and was told by Delgaudio to stay away from this activity. The aide further testified that numerous red flags were observed at this point in time ultimately leading to her resignation. Despite the suspicions, the aide had no absolute proof of wrongdoing. Further, the Jury heard testimony from several individuals who had been contacted from the Igor list and none of them said they had been asked about the LLBFL during their meetings with Delgaudio.

The witnesses who had been contacted from the Igor list testified that they met with Supervisor Delgaudio after receiving a call from his office to set up the meeting. One witness said that during their meeting, Delgaudio provided a pamphlet of his campaign and supervisor activities and discussed both county and more controversial issues unrelated to Loudoun County. Toward the end of the meeting Supervisor Delgaudio turned to the back of the pamphlet where there was an envelope and card soliciting money to "Retire Delgaudio Campaign Debt" and said that no amount is too small. Another such witness testified that after meeting with Delgaudio this individual believed the only purpose for the meeting was for Supervisor Delgaudio to solicit a campaign contribution.

While there is testimony that supports at least a circumstantial assertion of misuse of public assets, the Code of Virginia criminalizes such action only for "full-time" employees. Because Loudoun County pays a nominal salary to the members of the BoS there is a general expectation that BoS have another source of income. BoS members are not required to work a certain number of hours nor do they submit timecards. However, based on testimony that most BoS members do not frequent their offices during the day and only have a limited number of BoS and committee meetings to attend on a monthly basis, it would be difficult to claim that any supervisor is a "full-time" agent or officer of Loudoun County. Consequently, additional avenues of potential investigation were ultimately dropped when it was determined that criminal charges would not be filed based on the use of the term "full-time" in the Code of Virginia. In the Recommendations section, the Jury strongly urges a change to this statute.

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Potential Unreported Campaign Funds

Among the evidence presented to the Special Grand Jury was a copy of an envelope from a retired pastor of a prominent Loudoun County community church in which Supervisor Delgaudio (according to multiple witnesses familiar with his handwriting) wrote "\$5,000 donor" and indicated that he had met with the pastor and wanted his aide to send a thank you letter and add him to the Igor List. Upon reviewing Delgaudio's campaign finance report and the campaign account records he provided, the Jury did not find any claim for \$5,000 from the retired pastor (or anyone else), but did find a smaller donation from a member of the pastor's family. However, a member of the BoS testified that he had spoken with the retired pastor who had confirmed that he had provided that money in cash to Delgaudio.

When called upon by the Grand Jury to testify, the retired pastor denied having provided \$5,000 to Delgaudio and vehemently claimed he had never donated any money to any politician. Further review of campaign disclosure forms and testimony from other members of the Loudoun County BoS revealed that the retired pastor and members of his family had donated money to several members of the Board. Additionally, another Supervisor testified that during a telephone conversation with the retired pastor subsequent to the pastor's testimony to the Jury, the pastor told this Supervisor that the Jury had asked the wrong questions during his testimony. Specifically, it was reported that he had said he was acting as a conduit for other parties in delivering money to Delgaudio and therefore based his testimony on the strict interpretation that he did not give *his* money to Delgaudio, and that because he was not asked if he gave money to Delgaudio that originated from other sources he felt comfortable in answering in the negative to the Jury. This witness further claimed that the pastor had said that his lawyer advised him to never give money to a politician in that fashion again.

After uncovering evidence that the retired pastor had provided money to members of the BoS and testimony that indicated he may have committed perjury, the Jury summoned him to testify again. The retired pastor again denied donating to politicians and then was presented with a copy of a cashed check from his private bank account to a supervisor's campaign. The retired pastor admitted that it is his check and signature but claimed that he did not recall providing it, citing memory problems. He likewise claimed no memory of a check entered into evidence showing that his spouse had donated to a supervisor's campaign. When asked about the telephone conversation related to his misleading the Jury he stated that he could not remember that telephone call. He also could not remember talking to the other Supervisor on the phone. When asked if he gave money to Delgaudio regardless of the source of the money, he said he could not remember. Another witness close to the retired pastor testified that he had seen the retired pastor provide envelopes to members of the BoS with what he assumed were donations, though he was unaware of the amount. In general, whenever this pastor was presented with evidence that contradicted his original sworn testimony, he would change his testimony to indicate that he then had no recollection. Although perjury charges were considered, no action

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was ultimately taken in regard to this individual due to his change of testimony and another extenuating circumstance.

The Jury found another envelope in evidence that also had "\$5,000 donor" written on it with instructions to send a thank you letter and add him to the Igor list. The Jury called several witnesses to address the issue. Again, the \$5,000 was not listed on Delgaudio's campaign finance report, and the witness denied providing a donation. However, some of the circumstances surrounding the alleged donation raised questions for the Jury. The individual who may have given a \$5,000 donation had been conferring with various BoS members to prevent the construction of a Loudoun County building. Around the timeframe of the postmark on the envelope in which Supervisor Delgaudio wrote \$5,000 donor, the BoS voted for a second time on this land use decision. Testimony indicated Supervisor Delgaudio supported this project in the original BoS vote and then voted against it the second time.

In the end, while there is some circumstantial evidence that Supervisor Delgaudio collected money for his campaign (or other private use), there is no solid evidence that would be required to pursue criminal charges. Further, while the aforementioned land use vote raised the specter of the "Herring Law," ultimately there was insufficient evidence to pursue charges under this law, which is a Virginia statute that applies only to Loudoun County and is aimed to minimize the opportunity for business relationships or gifts to influence votes on land use matters. However, the Jury did learn of specific limitations associated with both campaign finance laws and the Herring Law, and recommendations related to these laws are presented in the Recommendations section.

Lack of Focus on Constituent Services

Witness testimony indicated Delgaudio specifically instructed his aides not to answer the phones or address constituent concerns and instead focus on other priorities, to include calling and creating mailings derived from working with the Igor list. The Supervisor in at least one instance reprimanded one of his aides for trying to resolve a constituent issue instead of concentrating on the Igor list. On multiple occasions, the lack of attention to constituent concerns resulted in the Chairman of the Board as well as another supervisor to take action to address these constituent concerns, even though the constituents did not live in their district. Several additional witnesses provided similar testimony, stating that there is general knowledge among the supervisors' aides of the unresponsiveness from the Sterling office.

Although such testimony may be compelling to the constituents of the Loudoun County Sterling District, the Jury does not find that such action amounts to any criminal act.

Indistinct Association Between Public Advocate of the United States & Loudoun BoS

Supervisor Delgaudio is the founder and president of a non-profit 501(c)(4) organization known as Public Advocate of the United States ("Public Advocate"). Several of Supervisor Delgaudio's BoS staff aides, who are Loudoun County employees, also periodically worked for Public Advocate. Multiple aides testified that when they were interviewed for their position with Loudoun County they were asked their views on religion, same sex marriage and related topics.

According to testimony, staff meetings to discuss County business were often conducted during normal business hours at the Public Advocate office as a matter of convenience. During these meetings, the BoS aides, Supervisor Delgaudio and the Public Advocate staff discussed Supervisor Delgaudio's calendar as well as County and Public Advocate business. It is unclear to the Jury whether the county employees were paid with county funds for the meetings in which both county and Public Advocate business were discussed, blurring the lines between the two, especially when Supervisor Delgaudio was the one responsible for certifying time and attendance records for his BoS aides.

The same BoS aides who attended meetings at Public Advocate also worked for Public Advocate to produce several controversial videos with Delgaudio. These satirical videos were created for Public Advocate's use and show Delgaudio's BoS aides and others dressed in costume or with bags over their heads during daytime hours. The Jury was unable to determine the exact date and time that each video was filmed, limiting our ability to conduct a comparative analysis of county time and attendance records. The Jury heard conflicting testimony from those aides as to the filming timeframe and their county time sheets. Because county time and attendance records include the start and end time of work for a given date, if a precise timeframe could be developed of when the films took place one could determine if Loudoun County taxpayer dollars were used to produce these films. These videos along with still photography can be seen at <http://www.publicadvocateusa.org/photogallery/> and http://www.publicadvocateusa.org/media_library/videos.php (videos are hosted by YouTube).

Additionally, witness testimony indicates that at times Delgaudio's BoS aides were directed to report to the executive assistant for Public Advocate, who was never a county employee, and routinely cc'd her on county emails.

While some individuals may be concerned about the degree to which Supervisor Delgaudio permitted these two diverse entities to intermingle, the Jury did not find sufficient evidence that would support criminal charges.

Recommendations

This section contains several recommendations the Jury is making as a result of investigating the allegations against Supervisor Eugene Delgaudio of improperly using county resources for campaign or other non-official activities. The Special Grand Jury believes all these recommendations are important

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and worthy of discussion and action where appropriate. These recommendations are listed in no particular order.

Recommendation 1: Amend “misuse of public assets” statute (Virginia § 18.2-112.1) so that it applies to anyone that works for or is elected to any government body in the Commonwealth of Virginia.

Audience: Virginia General Assembly

Rationale

As currently written, any government employee or elected official who is not serving in a **full time** capacity can utilize public assets and other employees for private or personal purposes without any criminal liability. We the Jury believe that that the misappropriation or misuse of public assets for personal or private gain should be illegal regardless of the employment status of any public servant with or in the state of Virginia.

Discussion

Paragraph B of § 18.2-112.1 limits the applicability of misuse of public assets to “any **full-time** officer, agent, or employee of the Commonwealth...” Because of this language the Commonwealth’s Attorney stated that no criminal charges could reasonably be filed in this case since Loudoun County Board of Supervisors are typically considered part time employees, and most Supervisors maintain another job as supplemental or primary income.

The term “full-time” is not explicitly defined, and one could attempt to make the argument that an elected official is full-time in that they can and do represent their office at any time, and they are never on the clock in the traditional sense. However, since any ambiguity is likely to be interpreted in favor of the defendant, we feel that this argument will likely not prevail. We further believe that many people would likely interpret “full-time” based on whether or not an individual is required to work a specific number of hours each week (e.g., 40 or something close to 40 hours/week). As such, we believe that amending this statute is the best course of action, especially in the view that no state or local employee or agent should misuse public resources.

Lastly, it is worth noting that the parent statute, § 18.2-112, which addresses embezzlement, notably does not contain the “full-time” clause and would appear to apply to all government employees and elected officials regardless of how frequently they work. As such, a court is likely to focus on the term “full-time” and interpret it in the defendant’s interest.

Recommendation 2: Create a written process by which aides to the Loudoun County Board of Supervisors can inquire as to the legality of any tasks assigned to them or report potential illegal activities; educate every new aide on this process.

Audience: Loudoun County Administration Staff

Rationale

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As a result of this investigation it appears that there is no HR or other official policy that outlines how a Loudoun BoS aide can ascertain if their supervisor's actions or directions may be illegal or how to best report activity that they believe may be illegal.

Discussion

It is apparent that aides to the BoS live largely if not entirely outside the normal HR policies and protections that apply to other county employees. Since their employers are elected officials and Virginia is an employment-at-will state, we appreciate the complexities. However, we believe it is beneficial to provide a clear path by which an aide can report activities that may be illegal or ask questions about the legality of an activity without notification to their supervisor. By providing an avenue to report potential illegal activities without having to notify their supervisor, aides are more likely to come forward in the event that inappropriate actions take place without having to be worried about being fired. While it may not be possible to shield their identification if actual illegal activities are found, in the event that no illegal acts are found their identity and reporting of an issue should be kept in confidence.

Recommendation 3: Amend "disclosure of land use proceedings" statute ([Virginia § 15.2-2287.1](#)) to apply to all Virginia Counties and to simplify the enforcement of the statute.

Audience: Virginia General Assembly

Rationale

There may be some historical and political reasons why this statute, intended to prevent members of the BoS and other specific employees from participating in zoning and land use proceedings when an applicant has a business relationship or has given significant and recent contributions to the member, applies only to Loudoun County. However, the Jury believes the possibility exists for inappropriate influence to occur within any county within Virginia, and consequently this statute should not single out any one county. Further, while well intentioned, because of the complexity of the language and a one-year statute of limitation associated with Class 1 misdemeanors, prosecution appears unlikely.

Discussion

During this investigation, testimony was introduced that brought to light a law that is sometimes referred to as the "Herring Law" (named after Virginia Senator Mark Herring who introduced the law via Senate Bill 532 in 2008). Further testimony introduced the possibility that a violation of that statute may have occurred. As a result, the Special Grand Jury investigated this topic; ultimately, there was insufficient evidence to pursue an indictment. Further, the Commonwealth's Attorney advised the Jury that essentially all misdemeanors in Virginia have a one-year statute of limitations (unless a statute says otherwise) which further restricted the possibility of pursuing this issue.

Because land use proceedings can be very involved, by the time any potential violation is highlighted and researched, it may be difficult to pursue charges within one year. As such, the General Assembly should consider extending the statute of limitations for this statute to some longer period of time

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(perhaps two or even up to five years). The approach for campaign finance issues may provide a good model wherein potential violations must be discovered within three years of occurrence, and charges must be filed within one year of discovery.

What struck the Jury was that the language involved in this statute is very convoluted and difficult to read. The Commonwealth's Attorney assigned an Assistant Commonwealth's Attorney (ACA) to research this statute just to better understand what was involved, and this ACA eventually reported to the Jury what was discovered including the apparent fact that no prosecutions have ever been sought under this statute. While this Jury does not speak for the Commonwealth's Attorney, we were left with the distinct impression that from a prosecutor's viewpoint enforcing this statute is difficult at best.

Let's examine the following hypothetical example:

- Entity A wants to construct a structure in Loudoun County that would require a zoning change such as named in this statute.
- Entity A hires Entity B to perform the construction.
- Entity B alone applies for the zoning change to Loudoun County.
- Entity A contributes \$1,000 to the re-election campaign of a current member of the BoS one month before the BoS votes on the matter.

In this hypothetical example, while a violation may have occurred (assuming Entity A meets certain parameters defined in the statute), the member of the BoS may not even realize that there is a connection between A and B (or at the very least could claim ignorance). As such, this statute may require that the zoning application itself require the applicant to disclose if they "are currently acting an agent, contractor, subcontractor, or intermediary for a party that has an interest in a property to be affected by the sought after zoning change," where "interest" is defined in subsections (i) through (iv) of § 15.2-2287.1(B). Then, all BoS and other parties affected by this law could easily review the application to determine if a conflict under this statute exists. To ensure applicants do not purposely misreport this information, penalties may also be appropriate for misreporting who they represent.

Consider making the following changes to § 15.2-2287.1. Disclosures in land use proceedings:

- Apply the statute to all counties in Virginia.
- Increases the statute of limitations for this one offense.
- Require the applicant to disclose any parties they are working for or representing.
 - Add a penalty for the applicant for falsifying or failing to report this information.
- List any exceptions in a separate paragraph for ease of understanding.

Ultimately we understand the intent of this law and we also appreciate the complexities associated with trying to articulate legal language to enforce the intent. However, to be truly effective it is worthwhile to revisit this statute and improve its language.

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Recommendation 4: Form a committee to research and amend the Virginia Campaign Finance Disclosure Act of 2006.

Audience: Virginia General Assembly

Rationale

After reviewing the Virginia Campaign Finance Disclosure Act of 2006, comprising Virginia § 24.2-945 through § 24.2-953.5, it appears difficult to criminally prosecute a candidate who fails to report significant campaign donations. The Jury can imagine a situation in which a candidate may inadvertently fail to report a single \$100 contribution, and that such a situation likely is best handled via civil fines. Conversely, the Jury believes that a candidate receiving a significant donation (e.g., \$5,000, especially when no other single donation comes close to that amount) has no standing to claim forgetfulness.

Discussion

Because this Act is lengthy, the Jury is not prepared to provide a specific recommendation on language change. However, in consulting with the Commonwealth's Attorney, it does appear that pursuing criminal charges for even flagrant violations that likely are intended to deceive the public are difficult to prosecute. The Jury does find, however, that language in § 19.2-8 ("Limitation of prosecutions") does expand the statute of limitations to a reasonable degree.

The Jury recommends the General Assembly form a committee or other appropriate body to review this Act. If such body believes that maliciously disguising campaign contributions is deserving of criminal liability, then appropriate language should be modified and as part of the review process current or former prosecutors should be consulted to ensure changes are enforceable. As a few examples of possible changes to consider:

- Is there a threshold (either in terms of an absolute dollar amount or percentage of the total campaign funds received) that if not reported within a reasonable time period that such failure to report would automatically trigger criminal liability?
- Consider if a sliding scale is appropriate such that a lesser offense such as a Class 2 misdemeanor could be used for serious but less than egregious offenses.
- Consider removal or modification of the term willful such as in § 24.2-953 ("General Provisions"). The burden of proof short of a candidate's confession may be too high. The current rebuttable presumption focuses on a candidate who refuses to make a report even after being told to make such a report. However, consider the instance where the omission is so significant or where extraordinary measures were used to hide the funds that it can be presumed the omission was intentional.
- Consider in the case of § 24.2-953.3 ("Incomplete Reports") whether there are instances that should trigger penalties automatically and do not afford notification of the candidate in order for the candidate to avoid a penalty.
- Consider whether all campaign donations should be reported regardless of the amount of money donated. This would in some ways simplify the process as candidates would not have to

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consider whether a \$20 donation from someone puts them over the aggregate threshold or not. It likewise removes the ability of a candidate to claim that a simple oversight in tracking total donations from each entity was the reason why they did not report an aggregate contribution threshold.

- Consider whether to prohibit the donation of cash to a campaign fund in any amount instead requiring that all donations be made via a traceable monetary instrument (e.g., check or credit card), with significant civil penalties for accepting small amounts (e.g., a civil penalty equal to the donation itself) and criminal penalties for large amounts.
- Consider criminal penalties for falsifying reports (e.g., falsifying a donor's name to avoid acknowledging an association with a particular individual or group).

While this Jury does not know the legal feasibility, consider whether serious infractions could nullify an election result in the instance that a candidate won an election and was later found guilty of some threshold, such as a Class 1 misdemeanor under this Act.

Recommendation 5: Modify policies for Loudoun BoS staff aides to ensure an unbiased third-party review occurs of any outside employment or political activities.

Audience: Loudoun County BoS/Administration Staff

Rationale

The Special Grand Jury investigation revealed several instances that appeared to present a conflict of interest among Delgaudio's BoS staff activities, Public Advocate and his campaign that created the potential for perceived malfeasance and unintentional cross-over between county business and the supervisor's private activities. Presently there is no mechanism to ensure transparency of BoS staff aides outside employment or involvement in political activities.

Discussion

To avoid a situation where the perception of misconduct or conflict of interest arises and increase transparency, the Jury proposes that non-political Loudoun County staff serve as a third-party review of outside employment or political activities for Loudoun County BoS aides. Aides would need to notify the Loudoun County administrative staff of their intention to take outside employment or participate in political activities (volunteer or paid), especially when it relates to the partisan interests of their supervisor. The process is not intended to prohibit outside activities but designed to ensure general awareness and a record of BoS aide actions to prevent the appearance of misconduct and reduce the likelihood of a conflict of interest.

While the simplest solution would be to add a statement into the BoS "Standards of Conduct" preventing BoS aides from working for their Supervisor's private business, organizations or other political activities, the Jury recognizes that such a preclusion might be too stringent. However, there should be some oversight to prevent the perception that Loudoun County aides are being used for anything other than Loudoun County business.

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The May 19, 2009, BoS Code of Ethics, signed by every member of the BoS except for Supervisor Delgaudio, states, "Adopt policies and programs that are in accordance with the County's EEO policy, and that support the rights and recognize the needs of all citizens regardless of race, sex, age, religion, creed, country of origin, or handicapping conditions." Every effort should be made to keep Loudon County business in line with the BoS Code of Ethics. Should Loudon County aides be used for outside interest groups, they could be seen as losing their objectivity for the citizens of Loudon County, whether paid by the interest group or not. Moreover, the BoS should take care to prevent BoS aides from participating in business ventures, organizations, or any outside activities for which a Supervisor of the Loudon County BoS is responsible that could discredit the Board. Every effort should be made to prevent any perception that the employees who are paid via taxpayer money are doing anything other than Loudon County business. By having an objective third party the Board can better provide transparency while maintaining the trust of Loudon County residents. Finally, by utilizing a responsible third party representative to examine the merits of BoS aide outside activities for which their Supervisor is also involved, the BoS can protect individual Board members from unwittingly putting the BoS in a situation that casts a shadow on Loudon County BoS business.

In the instance where Loudoun County staff disapproves of a request for an outside activity, an appeal process such as promoting the issue to a full and binding vote of the BoS could transpire. Further, Loudoun County staff should be authorized to terminate employment of any aide found to contradict the uncontested Loudoun County staff decision or the vote of the full BoS when appealed.

Recommendation 6: Individual voters need to increase their awareness of and involvement in local politics and elections.

Audience: The Voting Public

Rationale

While national elections historically tend to generate greater interest, news, debate, etc., local elections can significantly impact one's life on a wide range of matters such as property taxes, education, local transportation and community services to name a few.

Discussion

This investigation has been an eye-opening experience for this Jury. As a result we expect to all spend more time learning about our respective supervisor and other local politicians. We likewise strongly encourage every other individual who is eligible to vote to learn about his or her local representatives and candidates and to participate in voting when the time comes.

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Appendix A: References to Virginia Statutes

In this document we reference several Virginia statutes. This section contains the text of these statutes as obtained in June 2013 from the Virginia General Assembly Legislative Information System (<http://leg1.state.va.us/>).

Reference 1: § 19.2-213. Report by special grand jury; return of true bill.

This statute indicates that a special grand jury impanelled by the court must file a report of its findings. In this case, the Special Grand Jury was impanelled by the Commonwealth's Attorney for Arlington County. However, there is no exclusion preventing such an impanelled special grand jury from writing a report. Further, the special grand jury received an order from the Chief Judge of the Loudoun County Circuit Court specifically authorizing this report.

§ 19.2-213. Report by special grand jury; return of true bill.

At the conclusion of its investigation and deliberation, a special grand jury impanelled by the court on its own motion or on recommendation of a regular grand jury shall file a report of its findings with the court, including therein any recommendations that it may deem appropriate, after which it shall be discharged. Such report shall be sealed and not open to public inspection, other than by order of the court.

A majority, but not less than five, of the members of a special grand jury convened upon request of the attorney for the Commonwealth must concur in order to return a "true bill" of indictment. A "true bill" may be returned upon the testimony of, or evidence produced by, any witness who was called by the grand jury, upon evidence presented or sent to it.

Reference 2: § 18.2-112.1. Misuse of public assets; penalty.

Recommendation #1 references this statute, suggesting elimination of the term "full-time" from the beginning of paragraph B.

§ 18.2-112.1. Misuse of public assets; penalty.

A. For purposes of this section, "public assets" means personal property belonging to or paid for by the Commonwealth, or any city, town, county, or any other political subdivision, or the labor of any person other than the accused that is paid for by the Commonwealth, or any city, town, county, or any other political subdivision.

B. Any full-time officer, agent, or employee of the Commonwealth, or of any city, town, county, or any other political subdivision who, without lawful authorization,

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uses or permits the use of public assets for private or personal purposes unrelated to the duties and office of the accused or any other legitimate government interest when the value of such use exceeds \$1,000 in any 12-month period, is guilty of a Class 4 felony.

Reference 3: § 18.2-112. Embezzlement by officers, etc., of public or other funds; default in paying over funds evidence of guilt.

Although there was no testimony or evidence related to embezzlement encountered during the course of this investigation, it is useful to compare the language of this statute to Reference 2, which adds the term “full-time” to the population of people to which this statute applies.

§ 18.2-112. Embezzlement by officers, etc., of public or other funds; default in paying over funds evidence of guilt.

If any officer, agent or employee of the Commonwealth or of any city, town, county, or any other political subdivision, or the deputy of any such officer having custody of public funds, or other funds coming into his custody under his official capacity, knowingly misuse or misappropriate the same or knowingly dispose thereof otherwise than in accordance with law, he shall be guilty of a Class 4 felony; and any default of such officer, agent, employee or deputy in paying over any such funds to the proper authorities when required by law to do so shall be deemed prima facie evidence of his guilt.

Reference 4: § 15.2-2287.1. Disclosures in land use proceedings.

Sometimes called the “Herring Law,” this statute appears intended to limit the ability of business relationships or gifts to influence land use decisions in Loudoun County.

§ 15.2-2287.1. Disclosures in land use proceedings.

A. The provisions of this section shall apply in their entirety to the County of Loudoun.

B. Each individual member of the board of supervisors, the planning commission, and the board of zoning appeals in any proceeding before each such body involving an application for a special exception or variance or involving an application for amendment of a zoning ordinance map, which does not constitute the adoption of a comprehensive zoning plan, an ordinance applicable throughout the locality, or an application filed by the board of supervisors that involves more than 10 parcels that are owned by different individuals, trusts, corporations, or other entities, shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing, (i) with the applicant in such case; or (ii) with the title owner, contract purchaser or lessee of the land that is the subject of the application, except, in the case of a

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condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium; or (iii) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land; or (iv) with the agent, attorney or real estate broker of any of the foregoing. For the purpose of this subsection, "business or financial relationship" means any relationship (other than any ordinary customer or depositor relationship with a retail establishment, public utility, or bank) such member, or any member of the member's immediate household, either directly or by way of a partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class, has, or has had within the 12-month period prior to such hearing, with the applicant in the case, or with the title owner, contract purchaser, or lessee of the subject land, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or with any of the other persons above specified. For the purpose of this subsection "business or financial relationship" also means the receipt by the member, or by any person, firm, corporation, or committee in his behalf, from the applicant in the case or from the title owner, contract purchaser, or lessee of the subject land, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or from any of the other persons above specified, during the 12-month period prior to the hearing in such case, of any gift or donation having a value of more than \$100, singularly or in the aggregate.

If at the time of the hearing in any such case such member has a business or financial interest with the applicant in the case or with the title owner, contract purchaser, or lessee of the subject land except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or with any of the other persons above specified involving the relationship of employee-employer, agent-principal, or attorney-client, that member shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of such relationship and shall be ineligible to vote or participate in any way in such case or in any hearing thereon.

C. In any case described in subsection B pending before the board of supervisors, planning commission, or board of zoning appeals, the applicant in the case shall, prior to any hearing on the matter, file with the board or commission a statement in writing and under oath identifying by name and last known address each person, corporation, partnership, or other association specified in the first paragraph of subsection B. The requirements of this section shall be applicable only with respect to those so identified.

D. Any person knowingly and willfully violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

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Reference 5: Campaign Finance Disclosure Act of 2006 (§ 24.2-945 through 24.2-953.5)

A recommendation is made related to this Act comprising a number of statutes. Due to the length of the statutes they are not repeated here. Please see Title 24.2, Chapter 9 of the Code of Virginia for details.