

On April 26, 2013 the Richmond Commonwealth Attorney's Office was appointed to determine whether Attorney General Kenneth Cuccinelli knowingly violated relevant sections of the State and Local Government Conflict of Interest Act ("the Act"). The Attorney General ("AG") provided this office with copies of his original and amended Statements of Economic Interest ("Statement") for calendar years 2009 to 2012, and he invited us to interview him or any member of his staff. Representatives from this office and Virginia State Police ("VSP") reviewed all documents provided by the Attorney General. The VSP interviewed various persons, including the Attorney General. We also reviewed other documents obtained during the course of our investigation.

Our investigation focused on the content of the AG's Statements. We did not broadly investigate the Attorney General or his Office. This report is in no way intended to offer an explanation for the behavior of the Attorney General or any member of his staff. Likewise, we are in no way attempting to reconcile our factual determinations with the various media reports on this subject. Questions regarding such issues should be directed to the Attorney General or his designee. Finally, at the risk of stating the obvious, we will continue to review information discovered by the VSP or other appropriate investigative agency.

Law

The Act ensures the integrity of Virginia's representative form of government. The General Assembly enacted this statute to govern public officials' pursuit of personal interests while they are in office. An official's personal interests fall within the scope of

this legislation when they appear to motivate the behavior the representative in his or her official capacity, or otherwise influence their judgment in the performance of their duties. Ultimately, the Act employs transparency to engender confidence in our public officials. The Act accomplishes this by requiring public officers to disclose pertinent economic interests and by prohibiting certain conduct.

Designated representatives and officials must disclose certain gifts or benefits from individuals and entities other than immediate family members and personal friends. Similarly, they must disclose financial relationships with, and interests in, entities that may appear to influence their judgment or the performance of their duties. An official meets this reporting obligation by truthfully and completely executing his or her Statement for each calendar year.

Beyond the reporting requirements, the Act circumscribes an official's discretion to engage in certain transactions or receive certain benefits. VA code § 2.2-3103 provides a list of such prohibited conduct. In part, the Act prohibits an officer from soliciting or accepting any item of value in exchange for the performance of official duties. See VA Code § 2.2-3103 (1). It prohibits the use of an officer's position to secure contracts for another person or other private entity. See VA Code § 2.2-3103 (3). Officials may not exploit for their personal gain confidential information acquired by reason of their position in government. See VA Code § 2.2-3103 (4). Governmental representatives cannot accept benefits that "reasonably tend" to influence their official decision-making. See VA Code § 2.2-3103(5). Government officials must decline business or professional opportunities where there is a reasonable likelihood that the

opportunity is afforded to them for the purpose of influencing the performance of their duties. See VA Code § 2.2-3103(6).

Knowing violations of these provisions constitutes a Class 1 misdemeanor for Malfeasance. Any officer convicted of such an offense may also be removed from office. See VA Code §§ 2.2-3120, 3122. In addition to criminal charges, the Act allows for a civil penalty equal to the value of the money, item, or service provided, as well as forfeiture of the improper benefit. For state Officers, there is a one year statute of limitations on prosecutions, starting from the date the Attorney General has actual knowledge of the violation.

The Act also addresses the perception of, an official's pursuit of personal interests, as it prohibits receipt of gifts from interested parties, when the timing of the gift would cause a reasonable person to question that official's impartiality. See VA Code § 2.2-3103 (8). Finally, the Act bars public officials from receiving gifts from individuals on such a frequent basis as to raise the suspicion that he or she uses the office for personal benefit. See VA Code § 2.2-3103 (9). These "perception" provisions do not carry criminal penalties.

Background

The Attorney General explained to the VSP that in March 2012 other members of his staff became aware that Johnny Williams ("Williams") had provided at least one monetary gift to the first family, namely \$15,000.00 for wedding expenses. They learned this information in connection with their investigation of alleged wrongdoing by the executive mansion chef. The Attorney General advises that he was not informed of his

office's investigation of Williams "gifts" because certain members of the Office staff were aware of the friendship between the Attorney General and Williams.

The Attorney General maintains that it was not until August 2012 when he personally learned that Williams' relationship to the Governor was also the subject of investigation. He further explains that he learned of the federal investigation of Star Scientific and Williams in late September of 2012. This knowledge triggered his recollection of his own obligation to disclose his financial interest in Star Scientific, and he did so on October 4, 2012. He referred the Williams/McDonnell investigation to this office on November 7, 2012.

The Attorney General explained that in early spring 2013, he realized he needed to amend several of his Statements, as his political campaign prepared to publicly release his old tax returns.¹ On April 26, 2013, the Attorney General amended his Statements for calendar years 2009-2012.

Our analysis of those Statements reveals a failure to disclose a number of reportable gifts and certain financial interests. However, the Attorney General has admitted to the omissions, and he has filed amended Statements which include the additional disclosures. Those additional disclosures which are germane to this review are discussed individually below. Our conclusions regarding the Attorney General's Statements are based on evidence, or lack thereof, not suspicion.

¹ A non-attorney member of his staff assisting with the release of the documents inquired whether he had stayed at a Williams property in 2012

Analysis

The Attorney General amended his original **2009 Statement** to disclose Williams' payment of an estimated \$628.00 in transportation costs for a December 2009 event in New York City. The Attorney General attended in place of the Governor, who was unavailable. He informed investigators that he first met Williams during the event, at which time Williams offered the use of his various properties. The Attorney General returned to Virginia on Williams' private jet. He compared the cost of commercial flights in estimating the value of the passage on Williams' jet. We discovered no evidence that Williams received any benefit or assistance in exchange for the flight. We discovered no evidence that the flight was intended to curry favor or influence the Attorney General in the performance of his duties. We found no evidence that the Attorney General solicited the trip.

The Attorney General amended his **2010 Statement** to include Alpha Natural Resources' payment of \$7,751.00 in travel expenses for himself and his parents. We discovered no evidence that Alpha Natural Resources received any benefit or assistance in exchange for paying the travel costs.

In that same amended Statement, the Attorney General disclosed a Thanksgiving holiday stay (including unsolicited catered food) at Williams' Smith Mountain Lake property. Comparing the rental cost of an upscale Outer Banks property, the Attorney General estimated the value of the stay at \$1500.00.² Although the Attorney General

² The Attorney General also originally disclosed his use of Williams' property in Goochland County, VA. He recalls staying at the property several times in January 2010, and then less frequently until early March. Comparing the double occupancy cost of a motel room, which he would normally share with his driver, he estimated the value of the stays at \$800.00.

advised investigators that he asked Williams to host his family for the Thanksgiving holiday, we discovered no evidence that Williams received any benefit or assistance in exchange for hosting the Cuccinellis. There is no evidence that Williams intended to curry favor or influence the Attorney General in the performance of his duties.

The Attorney General amended his **2011 Statement** to disclose his ownership in excess of \$10,000.00 of securities in Star Scientific, a corporation formed and or operated by Williams.³ He explains that because of his engineering background, he became interested in the purported science surrounding the company's Anatabloc product. In October 2010 and September 2011, he made two original purchases of the stock (each valued slightly in excess of \$10,000) totaling 8660 shares. During reporting year 2011, the Attorney General received (and disclosed) from Star Scientific an unsolicited sample of Anatabloc, valued at \$6711.00. He advises that Williams aggressively sought ways to promote the product. The Attorney General indicates that he referred a friend and a family member to Williams so that they could learn about the product's uses. Otherwise, our investigation revealed no actual evidence, beyond hearsay, that the Attorney General in any way promoted or supported Anatabloc.

Between June 29, 2012 and July 2, 2012 the Attorney General sold 1500 shares for \$7033.93, enjoying a short-term profit. The Federal investigation of Williams and Star Scientific became public knowledge in March 2013. The Attorney General sold the balance of his 7160 shares on April 12, 2013 for \$10,187.35, suffering an aggregate loss.

³ Schedule C of the relevant Statement of Economic Interest requires disclosure of ownership of any one business and security in excess of \$10,000.00. Our investigation reveals that the AG may have a reportable interest in several Vanguard Mutual Funds (believed to be a retirement account). His nondisclosure of these funds may be the product of his determination that his mutual fund ownership of no single business or security exceeds \$10,000.

Absent any evidence to contradict the Attorney General's explanation that he became aware of the Williams/McDonnell investigations between August and September 2012, there is no basis to conclude he benefitted from confidential investigation information when he sold his stock in the summer of 2012. Finally, to his knowledge, no other member of his family has owned shares of Star Scientific stock.

Civil litigation regarding a tax dispute between the Commonwealth of Virginia and Star Scientific began in July 2011. The Attorney General explained that he learned of the litigation after Williams or Star Scientific filed suit. He also indicated that he made no recommendations of attorneys who might be able to assist with the litigation.⁴ Records show that the Attorney General owned his interest in Star Scientific while his office represented the Commonwealth in litigation with the company. Investigators interviewed members of his Office staff and found no evidence that Mr. Cuccinelli's personal financial interest in Star Scientific affected his judgment or that of his employees during the litigation. Any suspicion that the pace and or substance of the litigation has been affected by his ownership of company or his relationship with Williams cannot be confirmed by this investigation.

The Attorney General further amended his 2011 Statement by reclassifying as "gifts" over \$20,000.00 in previously disclosed transportation expenses. He had previously declared them as payments for talks and meetings (presumably honoraria) on Schedule D of his 2011 statement. Although Johnny Williams was once again one of the benefactors (\$3,255.00 worth of travel on his jet to a meeting in Kentucky), we found no

⁴ Although he is unsure of the date, the Attorney General advised investigators that he may have suggested that Williams contact a certain attorney at a Richmond law firm "to assist him and his company with the Tobacco Fund." This quoted language comes from the investigative report and is not believed to be the exact words of the AG.

evidence that he or any of the other benefactors sought or received any benefit, or exerted any influence on the judgment of the Attorney General.

The Attorney General amended his **2012 Statement** to disclose a week-long summer vacation stay at Williams' Smith Mountain Lake property valued at \$3000.00. The Attorney General informed investigators that he asked Williams for use of his vacation property. He also disclosed a \$795.00 travel honorarium from the Federation of American Coal and Energy and Security (FACES). We discovered no evidence that Williams or FACES received any benefit or assistance in exchange for the gifts to Attorney General Cuccinelli. Likewise, there is no evidence that either intended to curry favor or influence the Attorney General in the performance of his duties.

Conclusion

As of this date, July 18, 2013, our investigation finds no evidence that the Attorney General, in violation of the Act or any other law, received any payments, loans, or negotiable tender of any type from any reportable person or entity, including Johnny Williams and Star Scientific.

Our investigation finds no evidence that the Attorney General in any way promoted, supported or assisted Star Scientific while he had a financial interest in the company.

Although one cannot help but question whether repeated omissions of gifts from Williams are coincidence or a pattern reflecting intent to conceal, the disclosure of several other gifts and benefits from Williams in his original statements suggests that the

Attorney General was not attempting to conceal the relationship. Furthermore, we find no evidence that in his Statements the AG intentionally mischaracterized gifts and benefits from Star Scientific and Williams.

Michael N. Herring, Commonwealth's Attorney

John C. Bullard, Chief Deputy Commonwealth's Attorney