Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER TWO (2014)

PERSONNEL DIRECTIVE PROHIBITING THE RECEIPT OF CERTAIN GIFTS; ESTABLISHMENT OF EXECUTIVE BRANCH ETHICS COMMISSION

Part I – Importance of the Initiative

Every citizen of the Commonwealth is entitled to have complete confidence and the highest degree of trust in Virginia's government. It is the intent of this Executive Order (the "Order") to ensure that Virginians are governed and represented with integrity. This Order is initiated to establish an ethical framework for state Executive Branch officers and employees with regard to gifts that will enhance the public's trust in the actions of such officers and employees by addressing the receipt of gifts that may result in, or create an appearance of, impropriety.

Therefore, by virtue of the authority vested in me under Article V of the Constitution of Virginia and under the laws of the Commonwealth of Virginia, including but not limited to, Chapters 1, 12, and 29 of Title 2.2 of the Code of Virginia, and as the Governor and Chief Personnel Officer of the Commonwealth, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish (i) the following personnel policy, banning the solicitation and receipt of certain gifts by officers and employees of the state Executive Branch of the Commonwealth and (ii) an Executive Branch Ethics Commission to perform such duties and responsibilities as are specified below. An officer's or employee's ethical duties and responsibilities under this Executive Order are in addition to those prescribed by law, primarily the State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.*, and the Virginia Public Procurement Act, § 2.2-4300 *et seq.*, of the Code of Virginia.

Part II – Definitions

As used in this Executive Order, unless the context clearly requires otherwise:
"Advisory agency" means any board, commission, committee or post of the state Executive Branch that does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;

2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;

3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;

4. A stock, bond, note, or other investment interest in an entity;

5. A receipt given for the payment of money or other property;

6. A gratuity, favor, special privilege or exception;

7. The provision of services;

8. Lodging;

9. A meal, or other food or beverage, or both;

10. Entertainment, including a ticket to an event, or hospitality;

11. The provision of travel or the payment or reimbursement of travel expenses;

12. A right in action;

13. A tangible good, chattel, or an interest in a tangible good, or chattel;

14. A loan or forgiveness of indebtedness;

15. A work of art, antique, or collectible;

16. An automobile or other means of personal transportation;

17. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;

18. An honorarium or compensation for services;

19. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an officer or employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;

20. A promise or offer of employment; or

21. Any other thing of value that is pecuniary or compensatory in value to a person.

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 *et seq.*) and Chapter 9.3 (§ 24.2-945 *et seq.*) of Title 24.2.

"Dependent" means a son, daughter, father, mother, brother, sister or other individual, whether or not related by blood or marriage, if such individual receives from the officer or employee, or provides to the officer or employee, more than one-half of his or her financial support.

"Employee" means, unless otherwise limited by the context of its use, all individuals who are not officers of a component part of the state Executive Branch but are employed by a component part of the state Executive Branch on an at will basis or serve at the pleasure of the Governor, and all individuals who are employed by the component parts of the state Executive Branch and who are covered by the Virginia Personnel Act, Va. Code § 2.2-2900 *et seq.*

"Fair market" value means the price that a good or service would bring between a willing seller and a willing buyer in the open market after negotiations. If the fair market value cannot be determined, the actual price paid for the good or service shall be given consideration.

"Gift" means anything of value to the extent that a consideration of equal or greater value is not received by the donor.

"Gift" does not mean:

1. Printed informational or promotional material;

2. A gift that is not used and, no later than sixty (60) days after receipt, is returned to the donor or delivered to a charitable organization or to a state governmental or advisory agency and is not claimed as a charitable contribution for federal income tax purposes;

3. A gift, devise, or inheritance from an officer's or employee's spouse, child, nephew, niece, aunt, uncle, first cousin, or the officer's or employee's or his or her spouse's parent, grandparent, grandchild, brother, sister, the spouse of any individual covered by this subdivision, or an individual to whom the officer or employee is engaged to be married; provided the donor is not acting as the agent or intermediary for someone other than an individual covered by this subdivision;

4. Anything of value provided by an individual on the basis of a personal friendship unless the officer or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the officer or employee and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the circumstances under which the gift was given shall be considered, including: (1) the history of the relationship of the individual receiving the gift with the individual giving the gift, including any previous exchange between them; (2) whether the individual receiving the gift knew that the individual giving the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (3) whether the individual receiving the gift knew that the individual giving the gift also gave the same or similar gifts to other officers or employees;

5. Anything of value provided to an officer or employee, or an immediate family member of an officer or employee, by an individual on the basis of a private business relationship between them that is unrelated to the official duties and responsibilities of the officer or employee, unless the officer or employee has reason to believe that, under the circumstances, the thing of value was provided by the individual to the officer or employee or the immediate family member because of the official position of the officer or employee and not because of the private business relationship;

6. Any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used or unless it is a ticket, admission or pass to an event held by a team or organization that is an official team or organization of a public or private institution of higher education or elementary or secondary school located in the Commonwealth or held by another governmental or advisory agency, or by a local government or component part of a local government, or by a school board;

7. Honorary degrees;

8. Payment or reimbursement of reasonable legitimate travel and related expenses incurred by an officer or employee in order to engage in an activity that serves a legitimate public purpose;

9. Attendance by an officer or employee at a widely attended event that is attended by at least twenty (20) non-officers or employees, is open to the public or to a wide range of individuals, and where (i) such attendance serves a legitimate public purpose, or (ii) the officer or employee attends by virtue of being the spouse of an invited public official who attends without charge;

10. Attendance by an officer or employee at a political or inaugural event where the officer or employee is invited to attend by the elected official, the candidate, or their authorized representative;

11. Financial aid awarded by an educational institution or training institution or program, provided that the financial aid is awarded pursuant to the institution's or program's normal financial aid standards and procedures;

12. Something of value given to an officer or employee by a governmental or advisory agency related to the officer's or employee's service as a public officer or employee or upon his or her retirement;

13. A prize in a competition that was widely available, or an award from a charitable, religious, civic, or educational group; or

14. A gift with a value of $25 or less.

"Governmental agency" means each component part of the state Executive Branch, 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.

"Immediate family" means (i) a spouse, regardless of whether he or she resides in the same household as the officer or employee, (ii) any individual residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent, (iii) any individual who has a child in common with the officer or

employee, whether or not the officer or employee and that individual have been married or have resided together at any time, as long as there is a legally enforceable financial relationship between them, or (iv) any individual who cohabits or who, within the previous 12 months, cohabited with the officer or employee, and any children of either of them then residing in the same household as the officer or employee. With regard to the receipt of gifts, "immediate family" also shall mean an officer's or employee's child, grandchild, parent, grandparent, brother, sister, or brother's or sister's spouse or children, if such individual knew or should have known that the gift was given because of the officer's or employee's position as an officer or employee.

"Legitimate travel and related expenses" include reasonable expenses incurred by the officer or employee in order to engage in an activity that serves a legitimate public purpose, including, but not limited to, air, train, bus, and taxi fare, rental car charges, the cost of meals and lodging, and expenses related to attendance at an event that has a legitimate public purpose, including, but not limited to, costs of registration, admission, tickets, food, refreshments, instruction, and materials.

"Legitimate public purpose" means an activity that is intended to promote the interests of the Commonwealth, a political subdivision of the Commonwealth, an advisory or governmental agency of the Commonwealth, or a component part of a political subdivision of the Commonwealth, including, but not limited to, activities that promote tourism, economic development, charitable, public health, environmental, or educational goals; attendance at training and educational events and conferences designed to improve the efficiencies and effectiveness of public service, or to enhance the knowledge and skills of public officers or employees, or both, relative to their official duties; and any purpose defined as a legitimate public purpose by the Commonwealth, the Governor, the governing body of a political subdivision of the Commonwealth, an advisory or governmental agency, or the Commission established by Part V of this Order.

"Officer" means the Governor, his Cabinet, Deputy Secretaries, and any individual appointed or elected to any governmental or advisory agency who serves at the pleasure of the Governor or whose position may be affected "for cause," whether or not he or she receives compensation or other emolument of office.

"State Executive Branch" means every component part of the government of the Commonwealth of Virginia except any component part of the state Legislative or Judicial Branches, the Office of the Lieutenant Governor, the Office of the Attorney General, the State Corporation Commission, the Virginia Workers' Compensation Commission, the State Lottery Department, local governments and their component parts, and the offices of constitutional officers.

"Value" means the actual cost or fair market value of an item or items, whichever is greater. If the fair market value cannot be determined, the actual amount paid for the item or items shall be given consideration. For food and beverages, "value" includes a proportional amount of any tip, a portion of which was for the food item or beverage.

Part III – Personnel Directive – Prohibited Conduct

No officer or employee of the state Executive Branch or an immediate family member of such officer or employee shall (i) solicit anything of value, or (ii) accept, directly or indirectly, any gift from any lobbyist or from any principal or employee or agent of a principal, as the terms "lobbyist" and "principal" are defined in § 2.2-419 of the Commonwealth's lobbying laws, § 2.2-418 *et seq.* of

the Code of Virginia, or (iii) accept directly or indirectly, any gift valued at over $100, from any one source, singularly or in the aggregate over the course of any given calendar year. An officer or employee may receive or may be reimbursed for any legitimate travel and related expenses incurred while engaging in an activity that serves a legitimate public purpose. The receipt of anything of value with a value of $25 or less does not count toward the $100 cumulative total set forth in this paragraph.

An officer or employee or an immediate family member of such officer or employee is not prohibited from accepting an unsolicited gift that is valued at less than $100, from one source, singularly or in the aggregate over the course of any given calendar year, unless a reasonable person, having knowledge of the relevant circumstances, would conclude that the officer or employee may unduly favor the source or be influenced by the source when performing the officer's or employee's official duties.

Part IV– Department of Human Resources Management

The Department of Human Resource Management is designated and directed to work with the Executive Branch Ethics Commission established by Part V of this Executive Order to implement this Order and, specifically, is authorized and directed:

(a) In cooperation and collaboration with the Executive Branch Ethics Commission, to develop and issue appropriate personnel guidelines implementing Part III of this Order, including, but not limited to, (i) any applicable discipline for a violation of Part III of this Executive Order and (ii) the procedures available to any officer or employee alleged to have violated Part III of this Order; and

(b) To recommend to the Governor, at least annually, such revisions to this Executive Order as may appear necessary to ensure the maintenance of high ethical standards within the state Executive Branch.

Part V –Executive Branch Ethics Commission

The Executive Branch Ethics Commission (the "Commission") is hereby established and shall be comprised of three (3) members who shall be appointed by the Governor. Members of the Commission shall serve without compensation, but shall receive reimbursement for reasonable expenses incurred in the discharge of their official duties.

The Commission shall be responsible for overseeing the execution of this Order. The Commission shall:

(a) Upon request from an officer or employee, provide a written opinion as to whether engagement in an activity, or receipt of a gift or other thing of value violates the provisions of this Executive Order, and whether payment or reimbursement for expenses related to that activity, gift, or other thing of value would constitute legitimate travel and related expenses. Any officer or employee who is informed by the Commission that engagement in the activity or receipt of the gift or other thing of value would not violate this Order, and who in good faith relies on an interpretation by the Commission issued before the activity is undertaken or the gift or other thing of value is received and upon the full disclosure to the Commission by the officer or employee of all the relevant facts, shall not be subject to discipline under Part VI of this Order.

(b) Enforce this Order as specified in paragraph (c) of Part VI of this Order.

(c) Recommend to the Governor, at least annually, such revisions to this Executive Order as may appear necessary to ensure the maintenance of high ethical standards within the state Executive Branch.

The Commission may employ a professional staff of up to two (2) individuals to assist the Commission in the exercise of its duties and responsibilities specified in this Order. The necessary staff shall be furnished by the Office of the Governor, the Virginia Department of Human Resources Management, and such other agencies and offices as are designated by the Governor. An estimated 2000 hours of staff time per year will be required to support the Commission's work The Commission shall remain assembled for one full calendar year following the signing of this Executive Order, unless reauthorized by further Executive Order.

Part VI -- Enforcement

(a) The head of each advisory or governmental agency of the state Executive Branch (the "agency head") shall enforce this Executive Order, receive any complaint that an officer or employee of his or her agency has violated this Executive Order, investigate such a complaint, and determine the need for and impose the appropriate discipline, using the normal, then-existing personnel policies, rules, and procedures of the officer's or employee's advisory or governmental agency, including the Virginia Personnel Act, Va. Code § 2.2-2900 *et seq.*, where the officer or employee is covered by that Act. If the officer or employee is not covered by the Virginia Personnel Act, the agency head shall use whatever normal, then-existing personnel policies, rules, and procedures that the agency normally uses for officers and employees who are not covered by the Virginia Personnel Act. Disciplinary action may include any action up to and including suspension or termination.

(b) With regard to an alleged violation by a Deputy Secretary, member of a Secretary's staff, or the head of an advisory or governmental agency of the state Executive Branch within a particular Secretariat, the Secretary shall be the "agency head" for purposes of the enforcement process set forth in paragraph (a) above.

(c) With regard to an alleged violation of this Order by the Governor or a member of the Governor's Cabinet, the Commission shall receive and investigate the complaint, and shall determine whether a violation occurred. The results along with a recommendation for appropriate discipline shall be forwarded to the Governor or his designee.

(d) Each agency head who determines whether or not a violation of this Executive Order by an officer or employee in his or her agency has occurred shall, within thirty (30) days of making that determination, report the facts on which that determination was made, and the discipline, if any, that was imposed, to the Governor's Cabinet Secretary under whose Secretariat that advisory or governmental agency falls. The Secretary shall forward such report, or a report prepared by him or her pursuant to paragraph (b) above, to the Commission within ten (10) days of receipt or completion. The Commission shall report to the Governor, on a quarterly basis, the results of all investigations of officers and employees conducted pursuant to this Executive Order.

Part VII – General

The funding to support this Executive Order shall be provided from the budget of the Office of the Governor and of such other state agencies as are designated by the Governor. The estimated direct costs for this Commission are $100,000.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in full force and effect for one full calendar year following its signing, unless amended or rescinded, or reauthorized, by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 11th day of January, 2014.

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Terence R. McAuliffe, Governor

Attest:

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Secretary of the Commonwealth