



STATE ETHICS COMMISSION

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Via Email

July 22, 2019

The Honorable Phil Berger
President Pro Tempore of the Senate
16 West Jones Street, Room 2008
Raleigh, North Carolina 27601

**Re: Evaluation of Statement of Economic Interest Filed by Dr. Donald van der Vaart
Appointee to the Environmental Management Commission**

Dear Senator Berger:

Our office has received **Dr. Donald van der Vaart's** 2019 Statement of Economic Interest as an appointee to the **Environmental Management Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Environmental Management Commission is responsible for adopting rules for the protection, preservation and enhancement of the State's air and water resources, including adopting rules and regulations regarding air and water quality standards, emission control standards, and classifications for air contaminant sources. In addition, the Commission has the authority to grant, modify, and revoke permits controlling sources of air and water pollution, oversee and supervise local air pollution control programs, and conduct investigations. The Commission also has the authority to declare, delineate and modify capacity use areas, approve and disapprove applications for and halt dam construction, and has jurisdiction and supervision over the maintenance, operation and inspection of dams. The Commission governs underground storage tanks, including the certification of persons who inspect and test tanks, and has jurisdiction and supervision over oil pollution, dry-cleaning solvent use, contamination and remediation. The Commission administers the State's authority under the federal Clean Water Act, approves Coastal Habitat Protection Plans, and advises and assists local governments regarding floodways.

The Act establishes ethical standards for certain public servants, and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Dr. Donald van der Vaart fills the role of an at-large member on the Commission. He is a Senior Fellow for the John Locke Foundation, an organization that seeks to influence state and local policies; including those that involve environmental issues. In addition, Dr. van der Vaart serves as the director of the Environmental Science and Law Institute. Therefore, Dr. Donald van der Vaart has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues involving the John Locke Foundation or the Environmental Science and Law Institute come before the Commission for official action.

In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Mary Roerden, SEI Unit
State Ethics Commission

cc: Dr. Donald van der Vaart
Lois Thomas-Spence, Ethics Liaison
Attachment: Ethics Education Guide