

STATE ETHICS COMMISSION COMMENTS; Draft No. 1.3 – S.17; § 314 CONFLICT OF INTEREST; APPEARANCE OF CONFLICT OF INTEREST

- The Ethics Commission supports amending § 314(a) as it relates to the State Code of Ethics in furtherance of parity and consistency in government ethics standards.
- The Ethics Commission has not had time to fully research this issue, first raised in testimony by former Senator Jeanette White, but we believe that at least some categories of sheriffs and sheriffs’ deputies (such as those who perform state duties while being paid by the State of Vermont) may already be subject to the State Code of Ethics and the jurisdiction of the Ethics Commission, based on the plain language of the Code.¹ We suggest the Committee research this issue further to avoid inadvertently setting up parallel definitional and jurisdictional tracks for the same categories of public servants.
- Alternatively, we believe this potential conflict can be avoided entirely by clarifying language in either 3 V.S.A. § 1202(1) or § 314 (a) stating dispositively that all sheriffs and deputy sheriffs are public servants for the purposes of 3 V.S.A. § 1202(1).
- The Ethics Commission suggests the Committee consider including a **financial disclosure requirement** for sheriffs, either with their consent of candidate forms or as a separate, annual filing requirement. Financial disclosure is an important tool to identify conflicts of interest, both for the members public and for officials themselves. Please see the attached 50 state financial disclosure rules chart as a reference point, as well as the financial disclosure form currently required for executive officers and candidates for statewide and legislative office.

§ 314 (a) The State Code of Ethics and associated definitions set forth under 3 V.S.A. §§ 1201–1205 shall be applicable to sheriffs and deputy sheriffs. A conflict of interest may **also** exist when a **member** of sheriff’s or deputy sheriff’s immediate family or **household**, or the sheriff’s or deputy sheriff’s business associate, *or an organization of which the sheriff or deputy sheriff is affiliated, interferes with the proper discharge of a lawful duty.* **“Conflict of interest” does not include any interest that is not greater than that of other individuals generally affected by the outcome of the matter.**

3 V.S.A. §§ 1203(a)(3). “As used in this section, “conflict of interest” means a direct or indirect interest of a public servant or such an interest, known to the public servant, of a member of the public servant’s immediate family or household, or of a business associate, in the outcome of a particular matter pending before the public servant or the public servant’s public body, or that is in conflict with the proper discharge of the public servant’s duties. “Conflict of interest” does not include any interest that is not greater than that of other individuals generally affected by the outcome of a matter.”

¹ 3 V.S.A. §§ 1202(1) “Unless excluded under this section, the Code of Ethics applies to all individuals elected or appointed to serve as officers of the State, all individuals elected or appointed to serve as members of the General Assembly, all State employees, all individuals appointed to serve on State boards and commissions, and individuals who in any other way are authorized to act or speak on behalf of the State. This code refers to them all as “public servants.”

Comment 1: The Ethics Commission suggests the underlined language be changed to “Sheriffs and deputy sheriffs are considered public servants for the purposes of 3 V.S.A. § 1202(1).”

Comment 2: The Ethics Commission suggests the word, “also”, be added to highlight the language: “an organization of which the sheriff or deputy sheriff is affiliated, interferes with the proper discharge of a lawful duty, is in addition to the State Code of Ethics’ definition of conflict of interest. We also suggest the language in **bold** be added for consistency with the State Code of Ethics definition.

Comment 4: The Ethics Commission suggests “an organization of which the sheriff or deputy sheriff is affiliated” be further defined for clarity. Should the Committee decide to add a financial disclosure requirement, we recommend the definition of and “affiliated organization” include those organizations that are required to be disclosed on the financial disclosure form.

§ 314 (b) A sheriff or deputy sheriff shall avoid any conflict of interest or the appearance of a conflict of interest. **Except as otherwise provided in subsection (c) of this section**, when confronted with a conflict of interest or an appearance of a conflict of interest, a sheriff or deputy sheriff shall disclose the conflict of interest to the Sheriff’s Executive Committee, recuse themselves from the matter, and not take further action on the matter.

Comment: If the intention is to deviate from 3 V.S.A. § 1203(b)(4), which provides a course of action under which public servants can take official action despite a conflict of interest, the Ethics Commission suggests clarifying language here.

§ 314 (c) The Department of State’s Attorneys and Sheriffs shall establish procedures for forwarding ethics complaints from any source to the State Ethics Commission based on the procedures set forth in 3 V.S.A. § 1223.

Comment: 3 V.S.A. § 1223 states the Ethics Commission “shall accept complaints from any source regarding governmental ethics in any of the three branches of State government or of the State’s campaign finance law.” It contains no provision or procedure for the Ethics Commission to accept complaints against county or municipal officials. We suggest 3 V.S.A. § 1223 be amended to allow the Ethics Commission to accept complaints against sheriffs and deputy sheriffs from any source. In addition, an investigating authority would need to be established as the Ethics Commission does not have investigatory or enforcement powers.

§ 314 (d) Nothing in this section shall require a sheriff or deputy sheriff to disclose **confidential information or information that is otherwise privileged under law**.

Comment: Suggest defining confidential information, if it hasn’t been defined elsewhere in the bill, and in line with 3 V.S.A. §§ 1201(3): “Confidential information” means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.