

5/1/24. Vermont State Ethics Commission Comments on H.875

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;
DISCLOSURE FORM

Sec. 1. 17 V.S.A. § 2414 (a)(6):

(6) a generalized description, but not amount, to the best of the candidate's knowledge, of the following investments held by a candidate or the candidate's spouse or domestic partner:

- (A) ~~publicly traded assets valued at \$25,000.00 or more, which a candidate exercises control over or has the ability to exercise control over,~~ which shall be listed individually;
- (B) ~~interests in investment funds valued at \$25,000.00 or more, in which a candidate neither exercises control over nor has the ability to exercise control over the financial interests held by a fund, which shall be listed individually;~~
- (C) interests in trusts valued at \$25,000.00 or more, which shall be listed individually; ~~and~~
- (D) municipal bonds issued in the State of Vermont of any value, which shall be listed individually; and

Sec. 1. 17 V.S.A. § 2414 (a)(6) is amended to read:

(6) a description, but not amount, to the best of the candidate's knowledge, of the following investments held by a candidate or the candidate's spouse or domestic partner:

- (A) **individual stock holdings** valued at \$25,000.00 or more, which shall be listed individually;
- (B) interests in investment funds valued at \$25,000.00 or more, **which a candidate or the candidate's spouse or domestic partner exercises control over or has the ability to exercise control over, which shall be listed individually;**
- (C) **interests in virtual currencies valued at \$25,000 or more, which shall be listed individually;**
- (D) interests in trusts valued at \$25,000.00 or more, which shall be listed individually;
- (E) municipal or **state bonds** issued in the State of Vermont of any value, which shall be listed individually; and
- (F) **the details of any loan made to the candidate or the candidate's spouse that is not a commercially reasonable loan made in the ordinary course of business; and**

Comment: We suggest the above language changes to provide further clarity to the financial disclosure requirements. The addition of (F) would close a loophole that was inadvertently opened in the draft that was approved by the House. New section 17 V.S.A. § 2414 (3) (B) was moved in the bill on the final draft in the House Gov Ops Committee. The provision now would require that the candidate disclose any commercially unreasonable loans that are given to companies owned by the candidate. In the migration, however, the language inadvertently omitted that the candidate, and spouse, must also disclose such loans if given directly.

Sec. 2. 3 V.S.A. § 1201(6)

(6) "County officer" means an ~~individual holding the office of high bailiff or State's Attorney.~~

Sec. 2. 3 V.S.A. § 1201(6) is amended to read:

(6) "County officer" means **the office of assistant judge of the Superior Court, high bailiff, judge of Probate, sheriff, or State's Attorney.**

Comment: Strongly suggest not creating a new definition of County officer for the purposes of exempting certain categories of county officers but not others which is contrary to the purpose of ethics legislation. County office is defined in the bill as: "County office" means the office of assistant judge of the Superior Court, high bailiff, judge of Probate, sheriff, or State's Attorney." The Ethics Commission sees no constitutional issues with this provision.

Sec. 12. 3 V.S.A. § 1229 (f)(2)(A)

1) Notwithstanding any provisions of this chapter to the contrary, the Commission may, by a majority vote of its current members who have not recused themselves, enter into a resolution agreement with ~~the~~ a public servant.

(2) A resolution agreement shall:

- (A) include an agreed course of remedial action to be taken by the public servant;
- (B) be in writing;
- (C) be executed by both the public servant and Executive Director; and
- (D) shall be a public record subject to public inspection and copying under the Public Records Act.

Sec. 12. 3 V.S.A. § 1229 (f)(2)(A) is amended to read:

(1) Notwithstanding any provisions of this chapter to the contrary, the Commission may, by a majority vote of its current members who have not recused themselves, enter into a resolution agreement with ~~the~~ a public servant who is the subject of a complaint or investigation.

(2) A resolution agreement shall:

- (A) include an agreed course of remedial action to be taken by the public servant;
- (B) be in writing;
- (C) be executed by both the public servant and Executive Director; and
- (D) shall be a public record subject to public inspection and copying under the Public Records Act.
- (E) provided that, where the resolution agreement is entered into prior to a hearing or investigation, the resolution agreement be summarized by the Commission, and only the summary shall be public record subject to public inspection and copying under the Public Records Act.

Comment: We suggest the above language change to give respondents the opportunity to engage in resolution agreements during the early stages of the complaint process and maintain confidentiality as it relates to personally identifying information.

Sec. 13. 3 V.S.A. § 1230(d)

(d) Subpoenas and oaths. The Commission, the Executive Director, and the Commission's legal counsel and investigators shall have the power to issue subpoenas and administer oaths in connection with any investigation or hearing, including compelling the provision of materials or the attendance of witnesses at any investigation or hearing. The Commission, the Executive Director, and the Commission's legal counsel and investigators may take or cause depositions to be taken as needed in any investigation or hearing.

Sec. 13. 3 V.S.A. § 1230(d) is amended to read:

(d) Subpoenas and oaths. The Commission, the Executive Director, and the Commission’s legal counsel and investigators shall have the power to issue subpoenas and administer oaths in connection with any investigation or hearing, including compelling the provision of materials or the attendance of witnesses at any investigation or hearing. **Except in cases where the Commission or staff reasonably believes that materials will not timely be produced, the Commission or staff shall seek voluntary compliance prior to the issuance of a subpoena.** The Commission, the Executive Director, and the Commission’s legal counsel and investigators may take or cause depositions to be taken as needed in any investigation or hearing.

Comment: In response to concerns raised on 4/16/24 regarding the Commissions subpoena powers, we suggest the above language. The Commission intends to seek voluntary compliance whenever possible, due to the procedural hurdles in issuing and enforcing subpoenas. However, on rare occasion, there will be realistic concern that documents or witnesses will otherwise become unavailable if voluntary compliance is sought before a subpoena issues. On these occasions, the Commission seeks authority to issue a subpoena prior to seeking voluntary compliance. Any recipient of such subpoena would still have all opportunities to challenge such subpoena. The Commission notes that it is unaware of any other situation in the Vermont Statutes where an agency must seek voluntary compliance prior to issuance of a subpoena (likely because the recipient maintains the ability to challenge the subpoena in whole or in part). The Commission is also unaware of such restriction in any other state Code of Ethics among the 50 states.

Sec. 25 is added to read:

Sec. 25. REPORT ON ENFORCEMENT OF THE MUNICIPAL ETHICS CODE

On or before January 15, 2025, the State Ethics Commission shall research and draft a report for the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations regarding options for enforcement of Title 24, Chapter 60 of the Vermont Statutes (“Municipal Code of Ethics”). The report will also propose a committee of stakeholders, to be chaired by the State Ethics Commission, to further develop proposed legislation based on the report’s findings.

Comment: Discussions continue as to how to create a foundation for enforcement of the Code of Ethics for Municipalities. The Commission proposes that the most efficient way to proceed in this regard is for the Commission to draft a preliminary report for presentation and recommendation to the House and Senate committees of jurisdiction. In addition to a proposal, the report will propose a committee – made up of stakeholders (such as VLCT and the Office of Secretary of State) – to further develop the proposal into legislation upon which the General Assembly can act.