



House Government Operations Testimony

Ethics Legislation Relative to S.8 - April 6, 2017

As the committee has dug into S.8 you have discovered that perhaps some of these ethics issues are not quite as simple as they first appeared. In my previous testimony I said that an ethics commission must be independent, nonpartisan, and quasi-judicial to act as a meaningful enforcement mechanism.

After yesterday's testimony there were a number of questions about the jurisdiction of an ethics commission and where the line is for separation of powers between the Legislative and Executive Branch. This is a question that has been debated for a few years now and the Secretary of State, CFV, VPIRG, and others had argued that there are ways to handle perceived delegation of power issue.

States handle ethics in a variety of different ways, and Vermont is certainly not the only one with a constitutional problem. Several have multiple commissions that handle executive and legislative issues separately. Many levy financial penalties instead of censoring or removing legislators from office. As part of our 2013 report, we put together a [chart that compared all 50 states](#)¹ and how they handle various ethics issues.

Because Vermont already has legislative ethics committees, we believe the hybrid approach is best. Going back to the concept that an ethics commission must be independent in order to maintain impartiality and confidence in the process: the state ethics commission should be the entity to receive and investigate complaints against both executive and legislative branch officials. Legislative ethics committees are not set up for this process, neither do they have the time to fully and impartially investigate complaints. Further, having them be the only ethics oversight mechanism for legislators fails the independence test for ethics enforcement.

Also at issue here is the "core legislative functions" test. Private sector employment, investments, gifts, disclosures, and post service employment are not "core legislative functions," thus having an independent commission investigate these issues would not pose a problem. You have heard testimony is that imposing censorship or removal from office would trigger a separation of powers issue. There are two ways to deal with this: first, allow the commission to levy financial sanctions instead of censorship, the second is for the House and Senate ethics panels to take on enforcement action. Our preference would be to have the commission carry out the investigation and the House and Senate panels provide the enforcement. Several states and the Federal government handle it this way.

¹ <http://www.campaignforvermont.org/ethicschart>

This also brings up another issue, there are no clearly defined penalties for violating the state code of ethics. We recently saw a situation where broad or ill-defined penalties resulted in an excessive fine for a statewide candidate. To prevent a situation where personal discretion of a state's attorney or individual legislator could subject a potential violator to either excessive or inconsequential penalties, I would recommend that you clearly define, or task the commission with clearly defining, what the penalties should be for various violations.

In addition, the commission should have the power to sanction executive branch officials for certain offenses – except for the Governor, who constitutionally can only be removed by the Legislature. I would also point out that nearly every other state who has a commission also gives it subpoena powers. While the primary function of the ethics commission should be educational, it must also have real authority to investigate potential ethical violations. The commission in S.8 is set up to do neither, it is under-resourced, over-tasked, and has a funding mechanism that expires in two years. It is set up to fail.

I strongly encourage you to give the commission more staff, a longer-term funding mechanism, and the tools to be effective.

Thank you very much,

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