

Vermont State Ethics Commission 2019 Annual Report



VERMONT

STATE ETHICS COMMISSION

January 15, 2020

VERMONT STATE ETHICS COMMISSION

SECOND ANNUAL REPORT: 2019

*Ethics is knowing the difference between
what you have a right to do and what is right to do.*

-Potter Stewart

Pursuant to 3 V.S.A. § 1226, the Vermont State Ethics Commission submits its second annual report. This report covers the year 2019.

MISSION STATEMENT

The mission of the State Ethics Commission is to practice and promote the highest level of ethical standards and accountability in state government. The Ethics Commission provides governmental ethics training to all public servants, accepts complaints of governmental conduct, provides information to the public, and issues ethical guidance and advisory opinions by interpreting and applying state law, governmental codes of conduct, and the General Principles set forth in Section 1 of the State Code of Ethics.

The Ethics Commission accepts complaints from any source regarding government ethics in any of the three branches of State government or the State's campaign finance laws, 3 V.S.A. § 1223(a), and refers and tracks complaints of violations of governmental conduct regulated by law. 3 V.S.A. § 1221. The Commission serves as a resource to public servants and the general public.

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Submitted: January 15, 2020



Vermont State Ethics Commission

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PART I

THE COMMISSION: YEAR IN REVIEW

The State Ethics Commission: The Commission is created by Chapter 31 of Title 3 of the Vermont Statutes Annotated. It has five members and an Executive Director.

MEMBERS

- Julie Hulburd, Chair, appointed by the Vermont Human Resource Association;
- Christopher Davis, Atty., appointed by the Vermont Bar Association;
- Sarah Biolsi Vangel, Atty., appointed by the Chief Justice of the Vermont Supreme Court;
- Paul Erlbaum, appointed by the League of Women Voters; and
- Michele Eid, CPA, appointed by the Board of Directors of the Vermont Society of Certified Public Accountants.

EXECUTIVE DIRECTOR

- Larry S. Novins, Atty.

ETHICS COMMISSION OVERVIEW

2019 was a year of growth, reflection, and change for the Ethics Commission. The Ethics Commission would like to acknowledge the many people who contacted it or assisted it during the last year. Thanks to Vermonters who have contacted and supported the Commission, government attorneys, legislators, legislative counsel, town clerks, Agency of Administration Financial Services personnel, the office of the Secretary of State, the Agency of Digital Services, and many more throughout State government. Their questions, complaints, and supportive or critical comments, helped the Ethics Commission throughout its second year and as it contemplates the future.

THE ETHICS COMMISSION 2019 AGENDA

- Make Executive Officer financial statement forms ready and available;
- Post completed forms on the Ethics Commission website;
- Determine how the office can and should function; review and make recommendations about the advisory opinion process;
- Re-write and revise the Code of Ethics;
- Review and take appropriate action on new or pending ethics complaints;
- Begin ethics educational activities;
- Research how other jurisdictions address ethics in government;
- Draft proposed legislative changes to Chapter 31 of Title 3;
- Create a draft statutory Code of Ethics;
- Evaluate how the current Vermont ethics statutes function; and
- Constantly evaluate how the Ethics Commission is performing.

2019 PERSONNEL CHANGES

January brought the Commission's first meeting with its new Executive Director, Larry Novins. In March, the Commission selected Julie Hulburd to serve as its new chair replacing the Commission's first Chair who stepped down to assume a judicial branch position. As required by law, the League of Women voters appointed a successor to fill that empty position. It selected Paul Erlbaum who joined the Commission in March. Later in March, the Vermont Society of Certified Public Accountants appointed Michele Eid to succeed Suzanne Lowensohn who left the Commission because of other commitments.

REVIEW AND EVALUATION

During 2019, the Executive Director spent considerable time evaluating how the current statutory scheme works and reviewing ethics statutes and rules of other jurisdictions with an eye toward finding ways Vermont can achieve more meaningful ethics awareness, standards, and oversight.

CHANGES IN OFFICE ADMINISTRATION

In 2018, the Ethics Commission's first year, virtually all start-up and administrative work for the Commission, from drafting and printing pamphlets and hand-outs to legislative outreach, equipping the office, and composing the first annual report was performed by the five appointed Ethics Commissioners. In 2019, the Commissioners shifted these responsibilities to the Executive Director, a half time employee and its only paid staff member. Administrative responsibilities consume a large portion of his allotted time serving the Commission. Julie Hulburd, the new Chair, continued playing an enormous, but frequently behind-the-scenes role. In addition to regular Commission meetings and responsibilities, and supporting the Executive Director on a regular basis, Ms. Hulburd appeared for legislative hearings and budget meetings. Along with responding to ethics questions and complaints, drafting policies, codes, and proposals for statutes, the Executive Director now has responsibility for:

- Maintaining and updating the Ethics Commission website;
- Collecting all Executive Officer disclosure forms and posting them on the Commission website;
- Drafting policies and legislation;
- All aspects of running a state office, including IT; and
- Responding to public records requests.

EXECUTIVE OFFICER BIENNIAL FINANCIAL DISCLOSURE OVERSIGHT, 3 V.S.A. § 1211:

The Ethics Commission, with assistance from the Secretary of State's office, created the Executive Officer and Ethics Commission financial disclosure forms to be filled out in 2019 for the 2018 calendar year. Completed forms were then posted on the Commission website. Under current law, the next disclosure statements are to be filed in January of 2021 covering the 2020 calendar year. Ethics Commission members' and Commission Executive Director's financial disclosure forms were also posted on the Commission website. 3 V.S.A. § 1212. Though not required, the Ethics Commission members and Executive Director will submit their financial disclosure forms annually.

ETHICS COMMISSION TRAINING

The Ethics Commission has offered to provide ethics training to members of the General Assembly for 2019 and 2020. No such training occurred in 2019. One is planned for 2020. The Executive Director provided five ethics training sessions during the year. Audiences included two groups of attorneys employed by the State and one State Commission. The Executive Director twice contributed as part of the ethics training programs provided to State employees by Department of Human Resources, Center for Achievement in Public Service. The Executive Director discussed the Ethics Commission's work and challenges on Vermont Public Radio's Vermont Edition and on a Campaign for Vermont interview on Onion River Community Access television. In October, the Executive Director and Ethics Commission Chair attended the October Vermont League of Cities and Towns annual fair at Killington as exhibitors. They provided information about the services the Ethics Commission offers. At the same time, they received useful information about ethics practices in municipalities.

ADVISORY OPINION PROCESS

Per 3 V.S.A. § 1225(b), "The Executive Director may issue advisory opinions that provide general advice or interpretation regarding this chapter or any issue related to government ethics." In 2019, the Ethics Commission received no requests for advisory opinions.

The Ethics Commission reviewed the process leading to the release of Advisory Opinion 18-01 in October of 2018. The review included hearing from legislative committees, discussions with legislators about the legislative intent of the statute, discussions with legislative counsel, review of the legislative proposals leading to the creation of the Ethics Commission, and research about advisory opinion practice in other states. The review convinced the Commission that its policy on advisory opinions should be changed.

In May, the Ethics Commission revised its policy and process for accepting requests for advisory opinions. The revision was made to conform the process to understood legislative intent. The new policy makes clear that only public servants may seek advisory opinions

regarding their own current or prospective conduct. No longer will the Commission accept “third party” requests for advisory opinions about the conduct of others. Under the new policy the Executive Director may seek comment from interested persons to ensure that an advisory opinion has the benefit of all arguments in favor or opposed to approving certain conduct. To ensure there is no question about the propriety of the policy and legislative intent, the Commission asks that 3 V.S.A. § 1225 be amended accordingly. A copy of the revised policy appears in the Appendix.

In September, the Commission continued its discussion of Advisory Opinion 18-01. Based on its review, the Commission accepted the Executive Director’s recommendation that the opinion be withdrawn. The withdrawal was necessary, the Commission concluded, because the process leading to its issuance was incorrect and not consistent with legislative intent.

ADVISORY OPINIONS AND THE CODE OF ETHICS: ISSUES

Behind the discussion of advisory opinions lies a troublesome issue. An advisory opinion’s purpose is to help to public servants act ethically. An advisory opinion may be based on the Code of Ethics: General Principles of Government Ethical Conduct. As mandated by statute, the Ethics Commission drafted the Code of Ethics in consultation with the Department of Human Resources. The Code of Ethics was revised in October 2019.

The Code of Ethics is not the product of formal rulemaking or legislative enactment. It lacks the force of law and is, therefore, unenforceable. To the extent an advisory opinion may be based on the Code of Ethics, it gives a sense of what ethical conduct should include, but not what is required. An advisory opinion based on an unenforceable code of ethics is illusory and cannot safely be used as precedent. It gives public servants no assurance that relying on the opinion will be safe or without consequence. A public servant requesting a formal advisory opinion receives little more than an ethical “weather report.”

CODE OF ETHICS REVISION

On November 6, 2019, the Ethics Commission, after consultation with the Department of Human Resources, adopted revisions to the Code of Ethics: General Principles of Governmental Ethical Conduct. The revised Code of Ethics eliminates unneeded terminology. It adopts use of the term “public servant,” and more clearly sets forth expectations of those public servants. A copy is appended to this report.

ETHICS COMMISSIONERS AND EXECUTIVE DIRECTOR EDUCATION

In December 2019, the two new Ethics Commissioners and the Executive Director attended the annual Council on Governmental Ethics Laws conference in Chicago. The conference provided education and perspective on all aspects of governmental ethics and ethics oversight both nationally and internationally. All left with many helpful tips and links to resources and a more vivid understanding of how Vermont governmental ethics oversight compares to other jurisdictions.

PART II

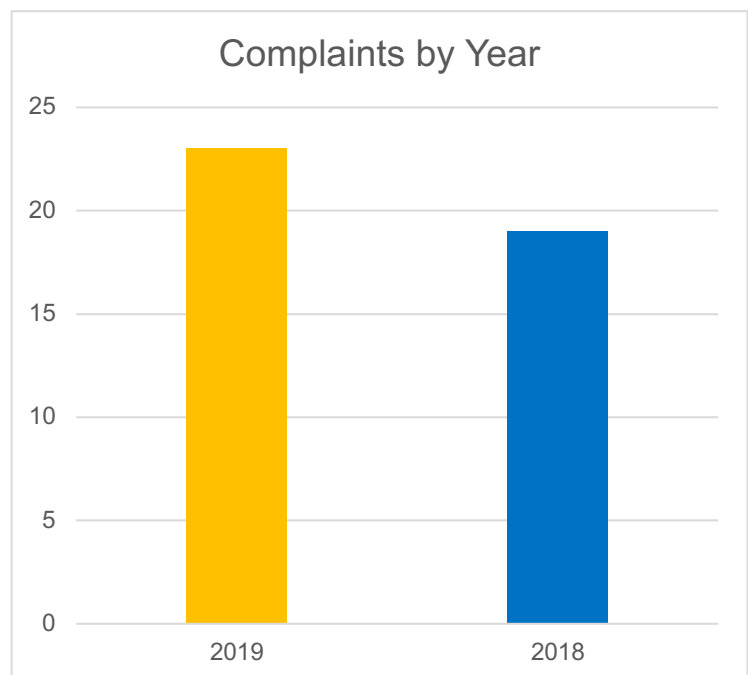
COMPLAINTS AND GUIDANCE

COMPLAINTS REGARDING GOVERNMENTAL ETHICS IN STATE GOVERNMENT

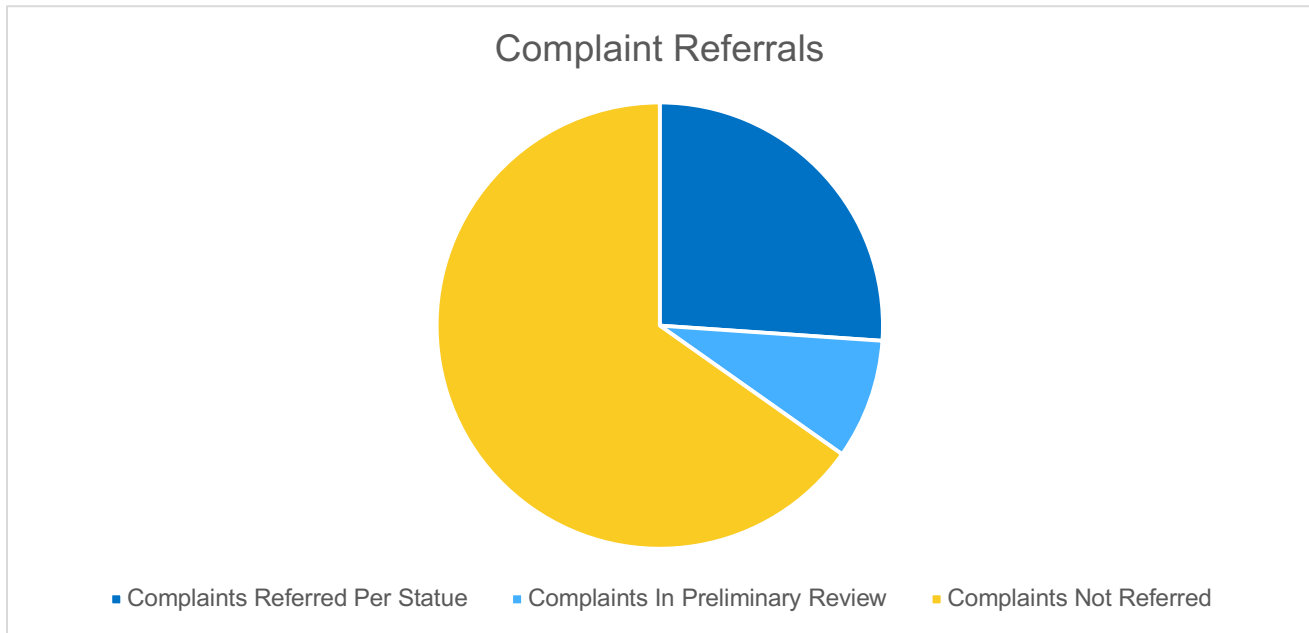
3 V.S.A. § 1223(a)(1).

By statute, complaints submitted to the Ethics Commission are confidential. Once received, the Executive Director performs a preliminary review of a complaint. The Executive Director speaks to all complainants before deciding whether complaints should be referred for further action or closed. When a complaint is referred for further action, the receiving entity uses its own policies to investigate and to decide what, if any, action to take.

In 2019, Vermonters made ethics complaints against State-wide officers, legislators, State employees, and members of State Boards or Commissions. They also made complaints against public servants who are not State government officials or employees. (See below). In total, the Ethics Commission received 23 new complaints in 2019. Three unresolved 2018 complaints were also reviewed in 2019. Two of those were closed without referral. The third was referred for further action.



After review and evaluation of the 2019 complaints, six were referred for further action as set forth by statute. Two are in the preliminary review stage with the Ethics Commission. At the end of 2019, two referred ethics complaints remain pending. The remainder were closed.



Complaints of misconduct in State government included allegations that:

- State regulatory boards or commissions ignored conflicts of interest;
- Office holders engaged in non-office related misconduct;
- Legislators engaged in misconduct in and out of office;
- State agencies issued knowingly incorrect or misleading information to concerned members of the public;
- Unethical judicial conduct;
- A State’s Attorney improperly intervened in a “political” matter;
- State employees refused to recognize and cure conflicts of interest; and
- A State board or commission failed to follow its statutory mandate.

Not all communications to the Ethics Commission in 2019 regarding misconduct resulted in the filing of a formal complaint with the Commission. Among these were allegations of:

- The State of Vermont initiating baseless litigation and withholding exculpatory information;
- Time sheet cheating by State employees;
- Agency preferential hiring practices; and
- Anecdotal general allegations of State agency misconduct (not included in the complaint count).

COMPLAINTS AGAINST STATE OFFICERS

#1 Alleged conflict of interest. This complaint was referred to the Attorney General’s office and to the Department of Human Resources. Neither office took further action on this complaint.

Closed

#2 Alleged conflict of interest. Because this allegation did not involve “governmental conduct regulated by law” 3 V.S.A. § 1223(b)(1), it was referred only to the Department of Human Resources. As of December 31, 2019, disposition of this complaint was pending.*Pending*

#3 Alleged activity which occurred long before the named subject assumed office. Because there was no possible enforcement action, this matter was not referred to the Attorney General’s office or to the Department of Human Resources.

Closed

#4 Alleged violation of conflict of interest, alleged violation of Public Records Act, possible violation of office procedures. This matter is in the preliminary review stage. *Pending*

COMPLAINTS AGAINST LEGISLATORS

Two complaints (one carried over from 2018) about legislators were sent to the appropriate House or Senate Ethics Panels.

#1 (from 2018) Complaint referred to the appropriate Ethics Panel. Closed in March 2019 with no action taken. *Closed*

#2 Alleged conduct outside of legislative duties. The legislative ethics panel involved dismissed this complaint, citing actions taken by the respondent. The panel reserved its “ability to reopen this complaint in the future, if necessary.” *Closed*

COMPLAINTS AGAINST ATTORNEYS

#1 and #2. Complaints about attorneys employed by the State, 3 V.S.A. § 1223(b)(4) were referred to the Professional Responsibility Board with a request for a report back regarding the final disposition of the complaints. No further action was taken. *Closed, Closed*

#3 Complaint about conduct occurring several years ago by an attorney who had since left State government. No action taken. *Closed*

COMPLAINTS AGAINST JUDICIAL BRANCH MEMBERS

#1 The only complaint received regarding a judicial branch member was closed with no action because the subject was no longer in the judicial branch. *Closed*

COMPLAINTS AGAINST STATE BOARDS OR COMMISSIONS

#1 Alleged violations of public records act and open meetings laws. Referred to the Attorney General’s office. No action taken. Insufficient evidence. *Closed*

#2 Alleged conflict of interest. This December 2019 complaint is in the preliminary review stage. *Pending*

COMPLAINTS AGAINST STATE EMPLOYEES

1 This December 2019 complaint alleges possible violation of laws or rules regarding directions given to a state employee. Preliminary review is not complete. *Pending*

COMPLAINTS BEYOND ETHICS COMMISSION JURISDICTION

Some of the complaints received in 2019 but not referred for further action alleged improper conduct by people outside of State government. Title 3, Chapter 31, setting forth the Government Ethics statutes, applies only to individuals working with State government, not to municipal employees or officers.

Vermonters submitted complaints of serious misconduct by municipal employees, elected officials, and by semi-autonomous municipal utility and regulatory bodies. The Commission tracked these complaints.

These complaints included allegations of:

- Enforcement of “unwritten rules” governing town affairs;
- Selectboard racial discrimination;
- Violation of residents’ privacy rights - improperly disclosing residents’ personal information outside of normal municipal channels, town officials making disparaging ethnic or racial comments;
- Violations of open meeting laws, improper docking of salaries, acting inconsistently with publicly warned matters;
- Quasi-autonomous boards or commissions failing to comply with statutory duties and mandates and having conflicts of interest; and
- Using private property for municipal purposes against owner’s wishes.

The Commission also received several anecdotal accounts of municipal ethical misconduct. These were not counted as complaints.

The complainants in these cases were, where possible, advised of alternative avenues to lodge their complaints or seek redress.

OTHER MUNICIPAL COMPLAINTS

Sec. 17 of Act 79 requires that the Secretary of State accept complaints in writing regarding municipal governmental ethical conduct and report those complaints to the Executive Director in the form requested by the Executive Director. The Secretary of State's 2019 report contained two written complaints and a caveat: *"We would like to note that many individuals with complaints opted not to submit these complaints in writing, citing concerns about our office's obligation to report to municipalities and the lack of any investigation or enforcement mechanism."* Email from Chris Winters, Deputy Secretary of State, to Larry Novins, Executive Director, December 30, 2019.

ETHICS COMMISSION LIMITATIONS: COMPLAINANT RESPONSES

People who send municipal complaints to the Ethics Commission do so out of frustration and desperation. They feel that town officers act with virtual impunity. Complainants are anxious to have someone independent of their town or municipal organization hear their complaints. One complaint from a family alleging serious confidentiality violations wrote:

"I thank you for the time in reading this email, and I thank you for anything you can do to ensure that the behavior of those who hold a position in this town's governmental office are adequate and align with what's expected of them, and if that is not the case, that someone in authority can correct the situation."

When complainants learn there is no place for municipal complaints, the following sentiment has been heard more than once in the past year: *"No one knows what they are doing. If you can't do anything about them, no one will know what they are doing. They aren't accountable to anyone."*

From the Secretary of State’s report and from what the Ethics Commission has seen, municipal malfeasance does indeed exist, and the ballot box appears to be an insufficient remedy.

NO REMEDY FOR CODE OF ETHICS VIOLATIONS

Not all complaints regarding governmental ethics can be referred to the Attorney General’s office for further action. The Executive Director of the Commission can accept complaints, “from any source regarding governmental ethics in any of the three branches of State government or the State’s campaign finance law.” 3 V.S.A. § 1223(a)(1). The Executive Director’s authority to refer complaints is, however, narrower. The Executive Director may refer complaints alleging “a violation of governmental conduct regulated by law.” 3 V.S.A. § 1223(b). Thus, while the Executive Director of the Ethics Commission may *accept* simple Code of Ethics violation complaints, he or she cannot *refer* them to the Attorney General because the Code of Ethics does not regulate by law standards of ethical conduct. The Executive Director cannot refer Code of Ethics violations to DHR, only violations of DHR rules.

No one, not the Attorney General’s office, the State’s attorneys, the Department of Human Resources, or even the Ethics Commission has authority to enforce Code of Ethics violations. The Code of Ethics is unenforceable. A public servant can ignore the Code of Ethics and advice about it without consequence.

**WHY DO SOME REFERRED
COMPLAINTS
RECEIVE NO ACTION?**

COMPLAINTS AGAINST STATE-WIDE OFFICE HOLDERS

REFERRED TO THE ATTORNEY GENERAL’S OFFICE

One reason complaints against state-wide office holders referred to the Attorney General's Office may receive no action is that the Attorney General's Office sometimes represents those same state-wide office holders in litigation. When an ethics complaint's subject matter might overlap with litigation involving an Attorney General's client, accepting that ethics referral would present an obvious conflict of interest. The Attorney General's office would be unable to investigate or initiate enforcement action against its own client.

Un-investigated complaints containing allegations of misconduct without sufficient supporting documentation can result in a case closing for "insufficient evidence."

COMPLAINTS AGAINST STATE-WIDE OFFICE HOLDERS REFERRED TO THE DEPARTMENT OF HUMAN RESOURCES:

These complaints are not acted upon because the DHR has no authority over elected officers. They are not "employees" over whom DHR may act. No specific code of ethics applies to them.

COMPLAINTS AGAINST STATE BOARDS AND COMMISSIONS

Those referred to the Department of Human Resources are not acted upon because DHR has authority over State employees only. Members of State Boards and Commissions who are not State employees are not under DHR purview. There are approximately 175 Vermont State Boards and Commissions. Governor's Scott's Executive Order 17-79 sets ethical expectations for gubernatorial appointees (boards and commissions) with enforcement reserved to the Governor. The Executive Order does not have the force of law and can be revised at any time. No State Board or Commission is subject to an enforceable code of ethics or independent ethics oversight.

COMPLAINTS AGAINST LEGISLATORS

Complaints against legislators are judged against the rules and standards of the House and Senate. A complaint that a legislator violated the Ethics Commission's Code of Ethics would not

be grounds for legislative sanction. What conduct would justify a legislator's discipline is determined by the Vermont House or Senate.

COMPLAINTS AGAINST ATTORNEYS

Complaints against attorneys employed by the State may be referred to the Professional Responsibility Board (PRB). The PRB's jurisdiction is limited. It can discipline attorneys for violating the Vermont Rules of Professional Conduct. For example, the PRB may discipline an attorney for a "serious crime," or for conduct involving dishonesty. However, the PRB cannot discipline an attorney for violating the Code of Ethics Adopted by the Ethics Commission. Nor can it sanction violations of the Department of Human Resources requirements for State employees. Conduct for a State-employed attorney that would be considered a violation of government ethics alone, for example giving preference to a friend in rendering services, or not devoting full time to State employment, or using State position for personal gain would not be a violation of the Rules of Professional Conduct.

RESPONSES FROM COMPLAINANTS

The Executive Director has spoken with every person who filed a complaint in 2019. He ensured that the full nature of each complaint was understood, then kept in regular communication with complainants. When there was no avenue for complaints, he explained the extent and limitations of ethics oversight in Vermont. Complainants, even those whose complaints were not forwarded for action, were grateful that there was a place for them to go. Frequently heard comments: "At least I got to speak to a real person," or "I am glad to have someone listen who cares." However, many shared frustration that there was no available remedy for their complaints.

GUIDANCE REQUESTS

Per 3 V.S.A. § 1225(a), the Executive Director may issue to an Executive officer or other State employee, upon his or her request, guidance regarding any provision of this chapter or any issue related to governmental ethics.

The Executive Director received only one request from State employees or officers for written ethics guidance in 2019. Four others contacted the Commission with verbal requests for ethics guidance.

GENERAL ETHICS INFORMATION

The Executive Director received ethics-related general information inquiries from within and outside Vermont ranging from:

- Who can make gifts to office holders, and who is required to report those gifts;
- When and to whom must State officials, legislators, State employees report offers of travel related to State government service;
- The meaning of terms used in ethics and campaign finance statutes;
- What honoraria, if any, may be offered to legislators who are asked to travel to participate in panel discussions;
- Who is considered a government employee for ethics purposes;
- The propriety of individuals holding multiple positions in State government;
- How municipal conduct fits within the State Code of Ethics;
- How conflicts of interest in municipalities can be addressed;
- How State Boards or Commissions should approach potential conflicts of interest;
- Who exactly is subject to Vermont ethical standards and oversight; and
- Where are requirements for government conduct found.

Where answers were readily available, they were provided. The Executive Director was clear that the Ethics Commission cannot provide legal advice.

PART III

ETHICS COMMISSION RECOMMENDATIONS

News stories about ethics in government appear daily in virtually all national media. In Vermont, media coverage and special reports portray ethics oversight in the State as incomplete and ineffective. This report highlights some of the gaps.

Effective government requires public trust. Without real assurance that government ethics and complaints are taken seriously, public confidence in the integrity of government can yield to simmering distrust and cynicism.

RECOMMENDATIONS

The Ethics Commission recommends the following changes:

1. Statutory Code of Ethics: Vermont needs a statutory Code of Ethics. The Ethics Commission seeks legislative approval to include in its responsibilities the duty to submit to the General Assembly a draft Vermont Code of Ethics that can be statutorily adopted. Meaningful and enforceable ethics standards are best set by statute. More than 40 states have ethics codes adopted by statute. A basic ethics code should apply to all in state government.

The Commission has a draft statutory Code of Ethics available now to begin that discussion.

2. Executive Officer and Ethics Commission Disclosure Forms: Make executive officer financial disclosure annual. Every other year financial reporting defeats the goal of disclosure. No other state found has biennial disclosure.

3. Guidance and Advisory Opinions: Amend 3 V.S.A. § 1225(a and b) to clarify that guidance requests and advisory opinions may only be requested by State public servants regarding their own current or prospective conduct.

4. Staffing: Authorize the Ethics Commission Executive Director to hire administrative/clerical assistance. The only employee of the Ethics Commission, the Executive Director, holds a 20 hour per week position and frequently works more hours. Numerous administrative and clerical duties consume too much of that time. No additional appropriation has been requested for FY 2021. However, should Commission responsibilities be expanded in any way, the current staffing level will be unsustainable.

Other: The Ethics Commission has submitted a draft of possible changes to Title 3, Chapter 31, Governmental Ethics, suggesting minor revisions to the current statutes.

CONCLUSION

The Ethics Commission firmly believes that its most productive role is to raise awareness of governmental ethics. Ethics education and advice helps public servants avoid ethical dilemmas. The mark of a successful ethics program is, quite simply, ethical conduct. Visible attention to government ethics helps public servants do their jobs. Ethics awareness in government should decrease ethics complaints.

In the end, government integrity is achieved only when the public is confident that its servants are “doing the right thing.” The Ethics Commission is committed to its role in that effort.

Respectfully submitted by Vermont State Ethics Commission,

Larry S. Novins
Executive Director

APPENDIX

Appendix:

- Policy on Advisory Opinions (May 2019).
- Code of Ethics - General Principles for Governmental Ethical Conduct (Rev. Nov. 2019)



Vermont State Ethics Commission

Executive Director Guidance and Advisory Opinions

Guidance

1. Pursuant to 3 V.S.A. §1225(a) the Executive Director may issue Guidance to an executive officer or other state employee upon request.
2. Guidance shall be with regard to any provisions of Act 79 or any issue related to governmental ethics.
3. To provide Guidance the Executive Director may consult with the members of the Commission and the Department of Human Resources.
4. Guidance shall be confidential and exempt from public inspection and copying under the Public Records Act, unless the recipient has publicly disclosed it.
5. Following a request, the Executive Director shall provide the Guidance as promptly as reasonably possible under the circumstances.
6. The Executive Director shall track how often the Executive Director has provided Guidance and the dates thereof and shall maintain this information as part of the Commission's Information File. This information shall not be confidential.

Advisory Opinions

1. Pursuant to 3 V.S.A. §1225(b) the Executive Director may issue Advisory Opinions that provide general advice or interpretation of Chapter 31 of Title 3 or any issue related to governmental ethics. An advisory opinion shall not contain any individual's personal identifying information.
2. The Executive Director may issue an advisory opinion 1) on the request of a state officer or state employee regarding that person's on-going or prospective conduct only or 2) on behalf of the Ethics Commission, without a specific request, to address issues brought to the Commission in requests for guidance or other matters of general interest.
3. In preparing an Advisory Opinion Executive Director may consult with the members of the Commission and the Department of Human Resources. The Executive Director may provide public notice of the consideration of an Advisory Opinion so that affected persons can provide information relevant to the subject.

4. The Executive Director may at any time determine that a requested advisory opinion should not be issued.
5. An Advisory Opinion shall be in writing and shall not be confidential.
6. Advisory Opinions shall be posted on the Commission's website within thirty days of issuance.

Adopted May 1, 2019



Vermont State Ethics Commission
State Code of Ethics: General Principles of Governmental Ethical Conduct

Mission Statement

The mission of the State Ethics Commission is to practice and promote the highest level of ethical standards and accountability in state government. The Commission provides governmental ethics training to all public servants, accepts complaints of governmental conduct, provides information to the public, and issues ethical guidance and advisory opinions by interpreting and applying state law, governmental codes of conduct, and the General Principles set forth in Section 1 of this State Code of Ethics. Pursuant to 3 V.S.A. § 1202, the Ethics Commission adopts this State Code of Ethics.

Section 1 - General Principles

Public service is a public trust, requiring public servants to uphold the Vermont Constitution, the law, this State Code of Ethics, and other governmental codes of conduct, and to put public service above personal and financial interest. The following general principles of governmental ethical conduct apply to every person elected, appointed, or employed to serve the State of Vermont.

- (1) Public servants shall not have a conflict of interest or engage in any business, employment, transaction or professional activity, or incur any obligation that is in conflict with the performance of their duties as public servants.
- (2) Public servants shall avoid actions that create a potential for, or the appearance of, a conflict of interest with their official duties.
- (3) Public servants shall not engage in financial transactions using nonpublic government information or disclose any confidential information learned during the course of state employment for their own or anyone else's personal or financial gain.
- (4) Gifts: Public servants shall not solicit, accept, or receive directly or indirectly, a gift under circumstances in which it can reasonably be inferred that the gift is intended to influence them in the performance of their official duties or is intended as a reward for any official action or inaction on their part.

- (5) Public servants shall not make unauthorized commitments that obligate State government in any manner.
- (6) Public servants shall not use their positions for personal or financial gain.
- (7) Public servants shall not give preferential treatment to any person in the course of state business.
- (8) Public servants shall protect and conserve government property and resources, and use official time and government property only for official business.
- (9) While in State service, public servants shall not seek or negotiate in any manner employment that potentially or actually conflicts with their official government duties and responsibilities.
- (10) Public servants shall be free to disclose waste, fraud, abuse of authority, violations of law or of this or other applicable codes to the Ethics Commission without fear of intimidation or retaliation.
- (11) Public servants shall meet personal legal obligations and comply with state and federal laws and regulations, these General Principles of Governmental Ethical Conduct, and other governmental codes of conduct.
- (12) Public servants who have a conflict of interest shall not authorize or permit those under their direction or control to engage in conduct which they themselves cannot undertake.

Section 2 – Definitions

As used in these General Principles:

- (1) “Confidential information” means information that is exempt from public inspection and copying or is otherwise designated by law as “confidential.”
- (2) “Conflict of interest” means a direct or indirect personal or pecuniary interest or obligation of a public servant, or public servant’s family member, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the public servant or before the agency or public body in which the public servant holds office or is employed. A "conflict of interest" does not arise in the case of votes or decisions on matters in which a public servant has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision.

(3) "Family member" means a spouse or domestic partner and any dependent children of any public servant as well as a person who is related to them whether by blood, adoption or marriage, as: father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.

(4) "Pecuniary interest" means a financial interest.

(5) "Gift" means: anything of value, tangible or intangible, that is bestowed for less than adequate consideration, including travel expenses such as travel fare, room and board, and other expenses associated with travel.

(a) Examples of gifts may also include;

(1) a meal or alcoholic beverage;

(2) a ticket, fee, or expenses for or to any sporting, recreational, or entertainment event;

(3) a speaking fee or honorarium, except actual and reasonable travel expenses;

(4) a loan made on terms more favorable than those made generally available to the public in the normal course of business.

(b) Not Considered "Gifts:"

(1) A permitted campaign contribution is not considered a "gift."

(2) An item which would qualify as a gift, but which is not used, *and* which within 30 days after receipt, is returned to the donor, or for which the donor is reimbursed for its fair market value will not be considered a "gift."

(3) anything given between immediate family members;

(4) printed educational material such as books, reports, pamphlets, or periodicals;

(5) a devise or inheritance.

(6) "Person" as used in these General Principles means any individual, group, business entity, association or organization.

(7) "Public servant" means: a person elected or appointed to executive, or legislative branch offices or positions, an employee of the State of Vermont, and any person authorized to act on behalf of the State of Vermont.

Adopted by the Vermont State Ethics Commission on November 6, 2019

Vermont State Ethics Commission
Summary of 2nd Annual Report: 2019 In Review

Office Administration: Executive Director now responsible for all aspects of running this state office.

2019 In review: Executive Officer Financial Disclosure Forms provided, collected, posted on Ethics Commission website, Advisory Opinion Policy Changes, Advisory Opinion withdrawn, trainings provided, complaints received, evaluation of ethics oversight in Vermont and its gaps.

Ethics Trainings: No legislative ethics trainings were provided in 2019. One is planned for 2020. Executive director provided or participated in 5 ethics trainings for State employees and one State Commission.

Advisory Opinion Process: The Commission reviewed over several months its advisory opinion process. The process was revised in May 2019. New advisory opinion policy: Only state public servants may request an advisory opinion. Advisory Opinions will be limited to discussing the current or prospective conduct of the public servants requesting the opinion. "Third-party" requests for Ethics Commission opinions about public servants are no longer accepted. Advisory Opinion 18-01 was withdrawn in September. The process leading to its issuance was incorrect and not consistent with legislative intent.

Advisory Opinions and the Code of Ethics: The Code of Ethics adopted by the Ethics Commission in consultation with the Department of Human Resources (DHR) is not legally binding on anyone in State government. It can be ignored without consequence. Ethics Code violations cannot be sanctioned. Ethics advice rendered based on the Code of Ethics is of limited value.

Code of Ethics Revision: The Commission revised the Code in November to clarify its provisions.

Ethics Commissioner and Executive Director Education: Two commissioners and the Executive Director participated in the Council of Governmental Ethics Laws annual conference gaining perspective, information, and understanding of ethics oversight in other states and countries.

Complaints and Guidance: The Commission received 23 complaints in 2019 an increase of 22% from 2018. Six of the complaints were referred to other entities as permitted by statute for further action. Two of the cases remain pending. The remainder were closed with no action. See below. Complaints were made against: State officers, legislators, State regulatory boards or commissions, judicial branch members, attorneys employed by the State. Also received: Several complaints against municipal employees, officers and governing bodies.

Complaints Against State Officers: Complaints referred to the Attorney General's office and DHR were closed. See, Annual Report for explanation of enforcement limitations.

Complaints Against Legislators: Two complaints referred to the appropriate body's ethics panels were closed.

Complaints Against Attorneys: The complaints referred to the Professional Responsibility Board have been closed.

Complaints about Judicial Branch Members: The one complaint received was closed without referral. The subject of the complaint was no longer a judicial branch member.

Complaints against Boards and Commissions: One complaint was referred to the Attorney General's office. No action was taken citing insufficient evidence. The second complaint is under preliminary review.

Complaints against State Employees: One complaint regarding possible illegal directives given has been referred to DHR.

Complaints Beyond Ethics Commission Jurisdiction: The Ethics Commission received six complaints of municipal and semi-autonomous municipal regulatory organization misconduct. Some allege very serious and disturbing conduct. The Secretary of State reports that their office hears of similar misconduct. These are beyond the purview of Title 3, Chapter 31. A common refrain: "If you can't do anything about them [selectboards], no one will know what they are doing. They aren't accountable to anyone."

No Remedy of Ethics Code Violations: The Ethics Commission can report violations of "conduct regulated by law." 3 V.S.A. § 1223(a)(1). The Ethics Code lacks the force of law, so violations of it cannot be acted upon when complaints are referred to DHR.

Why Do Some Ethics Complaints Receive No Action? The Attorney General's Office may have conflicts of interest when some complaints are referred to it. If the AGO represents an individual in litigation, then receives a complaint referral from the Ethics Commission, a potential conflict of interest can prevent it from pursuing the ethics complaint.

- Complaints referred to DHR about the Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, or Auditor of Accounts cannot receive any DHR action. DHR has no authority over State Office Holders. Complaints regarding the approximately 175 State Boards and Commissions – same result. DHR has no authority of them when they are not "state employees." Complaints against legislators are heard first by the House and Senate Ethics panels who have authority to enforce only their own rules. The Professional Responsibility Board cannot sanction conduct violating the State Ethics Code unless it violates attorney disciplinary rules which are narrower. Many complainants express frustration about gaps in ethics oversight.

Guidance Requests and General Information: Five requests for guidance provided. One was in writing. The Executive Director responded to numerous requests for information about ethical implications of government conduct.

Recommendations: The Ethics Commission recommends: (1) An ethics code adopted by statute, (2) Make Executive Officer Financial Disclosure annual, not biennial, (3) Amend statute to clarify Advisory Opinion parameters now expressed by Commission policy, (4) Permit additional Ethics Commission Staffing when budgeted, (5) other minor changes to 3 V.S.A. Chapter 31 submitted to the legislature.

Submitted January 15, 2020