



VERMONT STATE ETHICS COMMISSION

2021 ANNUAL REPORT

Submitted to the General Assembly January 15, 2022

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

-Potter Stewart

6 Baldwin St.

Montpelier, VT 05633-7950

<https://ethicscommission.vermont.gov/>

This report: <https://ethicscommission.vermont.gov/reports>

COMMISSION MEMBERS

Paul Erlbaum, Esq. (Chair)

Appointed by the League of Women Voters of Vermont, term ending December 31, 2022

Christopher Davis, Esq.

Appointed by the Vermont Bar Association, term ending December 30, 2021

Sarah Biolsi Vangel, Esq.

Appointed by the Chief Justice of the Vermont Supreme Court, term ending December 31, 2023

Michele Eid, CPA

Appointed by the Board of Directors of the Vermont Society of Certified Public Accountants, term ending December 31, 2022

Susan “Ze” Anderson-Brown

Appointed on August 10, 2021 by the Board of Directors of the Society of Human Resource Management, term ending December 31, 2022¹

EXECUTIVE DIRECTOR

Larry S. Novins, Esq., through September 30, 2021

Christina Sivret, Esq., beginning November 8, 2021

For Commissioner biographies see: <https://ethicscommission.vermont.gov/about-us/biographies>

¹ On a leave of absence at the time of the writing of this report.

INTRODUCTION

Pursuant to 3 V.S.A. § 1226, the Vermont State Ethics Commission submits its fifth annual report to the General Assembly for the calendar year 2021. As required by statute, this report summarizes the number and types of complaints made to the Commission and the disposition of those complaints, summarizes the type and number of guidance documents issued by the Executive Director, and makes recommendations for legislative action to address State governmental ethics.

COMMISSION AUTHORITY

The Commission has the authority to accept, review, and refer written complaints from any source regarding government ethics in any of the three branches of State government and violations of the State's campaign finance laws. 3 V.S.A. § 1223(a)-(b). The Commission does not have investigatory or enforcement powers and complaints warranting further action are referred to other relevant entities.

The Commission may also issue non-binding Guidance and Advisory Opinions regarding any issue related to governmental ethics. Upon request, the Executive Director may issue ethical Guidance to an executive officer or other State employee as it relates to that person's duties. Guidance is confidential unless the recipient discloses it. 3 V.S.A. §1225(a).

The Executive Director may issue an Advisory Opinion to a State officer or employee regarding the requestor's ongoing or prospective conduct. 3 V.S.A. §1225(b). The Executive Director can also proactively issue Advisory Opinions in response to issues brought to the attention of the Commission via requests for Guidance or any other manner. Advisory Opinions are in writing, do not contain any personally identifying information, and are posted to the Commission's website within thirty days of issuance.

Guidance and Advisory Opinions are formulated by interpreting and applying state law, governmental codes of conduct, and the General Principles set forth in the Code of Ethics drafted by the Commission pursuant to 3 V.S.A. § 1202. The Commission's Code of Ethics covers subjects found in most state and federal codes of ethics, but it does not have the force of law.

The Ethics Commission also serves as a resource for public servants about governmental ethics and provides ethics trainings to State employees.

COMPLAINTS

The Complaint Process

By statute, complaints submitted to the Ethics Commission are confidential. Once received, the Executive Director performs a preliminary review of each complaint and decides whether the complaint should be referred for further action or closed. When a complaint is referred for further action, the receiving entity uses its own policies and procedures to investigate and to decide what, if any, action to take. Below are examples of the types of complaints the Commission might receive and refer to other entities for further action.

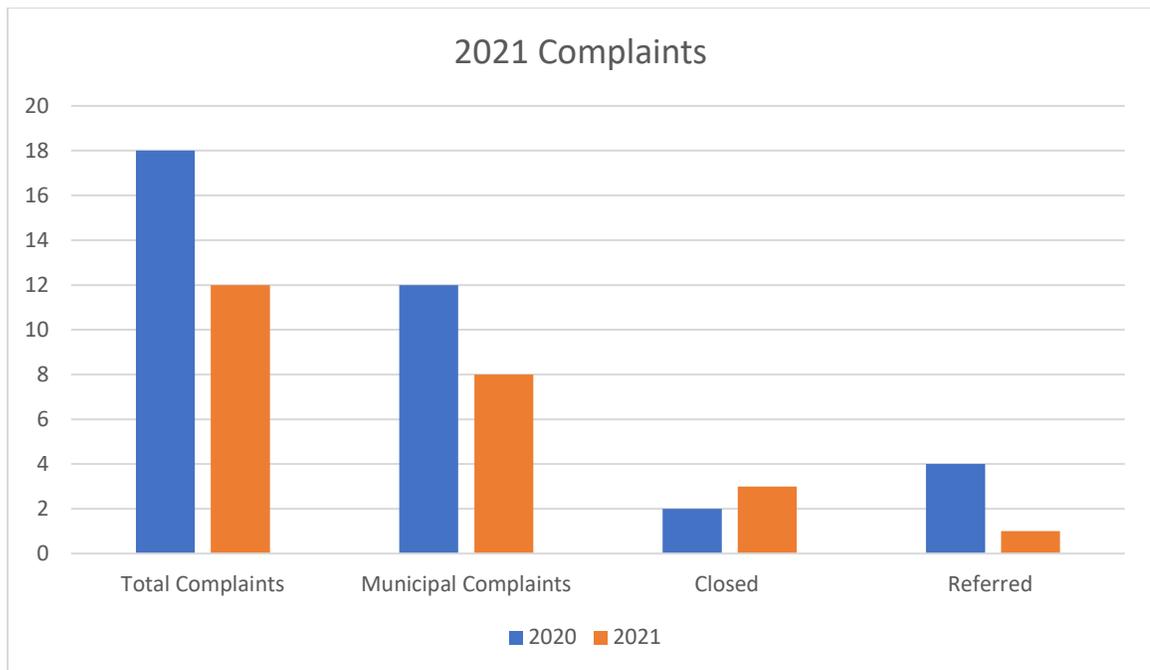
- Complaints alleging a crime, a violation of governmental conduct regulated by law, or a violation of campaign finance law are referred to the Attorney General or the relevant State's Attorney.

- Complaints alleging a violation of the Department of Human Resources Personnel Policy and Procedure Manual are referred to the Commissioner of Human Resources.
- Complaints regarding conduct committed by a judicial officer are referred to the Judicial Conduct Board.
- Complaints regarding conduct committed by an attorney are referred to the Professional Responsibility Board.
- Complaints regarding conduct committed by a State Representative are referred to the House Ethics Panel.
- Complaints regarding conduct committed by a State Senator are referred to the Senate Ethics Panel.

Summary Of Complaints

Twelve complaints were filed with the Ethics Commission in 2021

- Eight complaints were in reference to municipal conduct and were closed due to lack of Commission jurisdiction to address municipal issues.
- Three complaints were closed without being referred as the conduct alleged in the complaints did not meet the criteria for referral.
- One complaint was referred to the Department of Human Resources for further action.



As in prior years, the Commission received a far higher number of inquiries about the complaint process than it did formal written complaints. Frequently, potential complainants opted not to submit a complaint after learning the Commission would only be able to review and refer the complaint rather than serve an active role helping to resolve their issues. In some instances, complainants who submitted a formal complaint did not want it to be referred to receiving entities because perceived conflicts of interest would prevent those entities from responding to their complaint objectively.

Complaints that were closed because they could not be referred for further action alleged a variety of conduct. Some complaints alleged misconduct by State of Vermont public servants regarding decisions they made as part of their employment. Complainants believed that the conduct of the subjects of their complaint was unethical because it was unwise, ill-conceived, or in some cases harmful to individuals in their care. These complaints did not specifically regard the code of ethics, or any of the applicable executive order or DHR personnel policies, and therefore could not be acted upon under the Ethics Commission statutes. Other complaints, such as one alleging intentional misstatements of facts could not be referred for action because the misstatements were not violations of “laws” but rather a violation of a gubernatorial executive order prescribing acceptable conduct. The Commission believes that once a Code of Ethics with the force of law is in place, there will be an increase in the number of complaints submitted for review.

Campaign Finance Complaints

The Ethics Commission received no campaign finance violation complaints in 2021. The Office of the Attorney General is required to report complaints it receives related to campaign finance violations to the Ethics Commission. 17 V.S.A. § 2904a. In 2021 the Attorney General received 13 complaints, all of which were closed by the end of the year.

Municipal Complaints

As in prior years, the number of municipal ethics inquiries and complaints to the Ethics Commission far exceeded the number of complaints against State government public servants. The complaints include municipal public servants (MPSs) using town information for their own commercial purposes, speaking on behalf of towns with no authority to do so while at the same time contradicting other town officials, MPSs giving preferential treatment to friends and family, incivility, misuse of official position, and conflicts of interest.

Although the Ethics Commission’s duties under current Vermont law do not include addressing municipal ethics, the Legislature has previously recognized that municipal ethics are worthy of observation. Sec. 17 of Act 79 required the Secretary of State to accept written complaints regarding municipal governmental ethical conduct through December 15, 2020 and report those complaints to the Ethics Commission. In 2021, the Secretary of State’s office continued to track inquiries about municipal ethics and reported that it received 75 municipal ethics inquiries.

GUIDANCE

Guidance Process

State employees may request confidential Guidance from the Executive Director of the Ethics Commission regarding any issue related to governmental ethics as it relates to the requestor’s duties. Guidance and requests for Guidance may be oral or in writing.

Summary of 2021 Guidance Requests

The Commission received 6 requests for Guidance in 2021 on the following topics:

- Relationships between public servants and non-profit organizations
- Boundaries between State agencies and non-governmental constituent organizations

- Adoption of policies
- Real or potential conflicts of interest
- Criteria for hiring external speakers

ADVISORY OPINIONS

Advisory Opinion Process

State employees or officers may request an Advisory Opinion from the Executive Director regarding any issue related to governmental ethics and the requestor's ongoing or prospective conduct. Advisory Opinions are in writing, do not contain any individual's personally identifying information, and are posted to the Commission's website within 30 days of issuance.

Summary of 2021 Advisory Opinion Requests

There were no requests for formal Advisory Opinions in 2021.

As the Ethics Commission noted in prior annual reports,

The Code of Ethics [adopted by the Ethics Commission] was 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.

As such, demand for Advisory Opinions is low. The Commission expects requests for advice and guidance to increase once a statutory Code of Ethics is in place.

YEAR IN REVIEW

The focus of the Ethics Commission in 2021 was to advocate the passage of a statutory code of ethics applicable to all three branches of government. Vermont continues to be one of only five states without a statutory code of ethics. The Commission believes passage is a vital next step in building a governmental ethics framework in Vermont.² It will ensure that public servants across all three branches of government are held to the same standards and have a consistent understanding of what is expected of them, and what to expect, as they perform their duties. It will also serve to increase public trust in government. Vermonters will feel confident that Vermont places a high value on ethics in government.

2021 Legislative Efforts

After extensive research and drafting in 2020, the Ethics Commission submitted two draft bills to the Legislature for consideration in 2021. The first amended existing statutes to clarify who can request Guidance and Advisory Opinions, mirroring policies the Ethics Commission adopted in 2020. This draft

² The four other states without a statutory code of ethics are Arizona, Idaho, New Hampshire, and Wyoming.

bill became H.135, which passed the House and Senate, and was signed into law by Governor Scott, effective June 1, 2021.

H.135 also changed the Executive Officer Financial Disclosure form requirements. Executive Officers must now disclose financial information annually instead of biannually. Both blank and completed Disclosure forms are available to the public on the Commission's website.

The second draft bill submitted to the Legislature was the draft Code of Ethics. It was first submitted to the Legislature in November 2020, and in 2021 the resulting bill – H.384 - was referred to the House Committee on Government Operations. Meetings were held by the Senate Committee on Government Operations to discuss the bill, but it was not considered by either Chamber during the 2021 session. At the end of 2021, the Commission redoubled its efforts to ensure the bill would be heard during the 2022 Legislative session. At the time of writing, the bill is with the Senate Committee on Government Operations with hearings expected in mid-January 2022.

Ethics Education Outreach Activities

The Executive Director participated in several ethics trainings for government employees with the Center for Achievement in Public Service (CAPS). He also presented a government ethics overview to the Vermont Department of Libraries and the Cannabis Control Board and its Advisory Committee. In September 2021, he participated in two programs held under the auspices of the U.S. Department of State sponsored by the Vermont Council on World Affairs. Due to the lingering pandemic, there was no opportunity to participate in any legislative ethics trainings.

Executive Director, Substantive and Administrative Duties

The Executive Director, a half-time position, has been the Ethics Commission's only employee. The Executive Director arranges agendas; responds to complaints, inquiries, and requests for advice; drafts all Ethics Commission documents ranging from complaint-related correspondence to proposed statutes and annual reports; researches and analyzes legal issues; formulates policy; provides ethics education; testifies; and responds to media inquiries. In addition, the Executive Director is responsible for numerous Ethics Commission administrative duties. When Commission work is at its busiest, the administrative burdens are substantial. H.135 authorized the Ethics Commission to hire a part-time administrative assistant, but it did not authorize funding for the position. Using one-time funds from its budget, the Commission hired an administrative assistant who began work on January 3, 2022. The administrative assistant will handle many of the administrative tasks of the Commission, allowing the Executive Director to focus on the core mission of the Commission.

ETHICS CODE ENFORCEMENT

Once a statutory Code of Ethics is passed, it will need to be enforced. Some manner of enforcement power for the Ethics Commission will likely be considered in the future. However, enforcement powers for the Commission are not included in the draft bill submitted to the Legislature. Discussion of enforcement powers for the Commission should come only after the Legislature has agreed on exactly what Vermont statutory ethics standards will be, and public servants have had opportunity to be educated and trained on the standards. An initial period for ethics education and awareness will allow for a thoughtful evaluation of how the code is working. When enforcement powers for the Ethics

Commission are eventually considered, there should be a collaborative discussion to develop an enforcement model that works best for Vermont.

Compliance is the primary goal, and the Commission continues to believe the quickest, most effective way to achieve it is through ethics education and awareness.

RECOMMENDATIONS

- 1) The Ethics Commission recommends passage of a statutory Code of Ethics applicable to all three branches of government. A comprehensive governmental ethics framework with the force of law is essential for the equal application of consistent ethical standards across State government.
- 2) The Ethics Commission recommends that the Legislature ensure the funding of the Ethics Commission through June 30, 2023, including funding for a part-time Administrative Assistant.
- 3) The Ethics Commission recommends that the Legislature consider ways to provide ethics direction and assistance to municipalities. The number and frequency of complaints, both formal and informal, regarding municipal misconduct is concerning. The Commission believes passage of a statutory Code of Ethics will help fulfill the General Assembly's recommendation that "each town, city, and incorporated village adopt ethical conduct policies for its elected and appointed officials and employees." Sec. 16, Act 79. Some cities and towns lack independent resources to consult about basic ethical practices. A State statutory Code of Ethics would provide a comprehensive and vetted frame of reference for municipalities looking to develop their own ethical conduct policies.

CONCLUSION

The Ethics Commission firmly believes its most productive roles at this time are to raise awareness about governmental ethics and work towards the adoption of a statutory Code of Ethics. In the end, government integrity is recognized 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:



Vermont State Ethics Commission,
Christina Sivret
Executive Director

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