

4/19/24. 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)

(a) Each candidate for State office, county office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with his or her the candidate's consent, a disclosure form ~~prepared~~ by the State Ethics Commission that contains the following information in regard to the previous calendar year 12 months:

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

(a) Each candidate for State office, county office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with his or her the candidate's consent, a disclosure form **drafted** by the State Ethics Commission that contains the following information in regard to the previous calendar year 12 months:

Comment: This wording has led to confusion over the years regarding the Ethics Commission's responsibilities regarding the form. We'd like to clarify that our role is to draft the underlying form that is to be filled out.

Sec. 1. 17 V.S.A. § 2414 (a)(B):

B) if self-employed, a description of the nature of the self-employment ~~without needing to disclose any individual clients, including the names of any clients, known to the candidate or the candidate's domestic partner, whose principal business activities are regulated by or that have a contract with any municipal or State office, department, or agency, provided that the disclosed information is not confidential information;~~

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

(B) if self-employed, a description of the nature of the self-employment, **including the names of any clients whose principal business activities are regulated by the State or who have a contract with any municipal or State office, department, or agency, where such information is known to the candidate or the candidate's spouse or domestic partner**, provided that the disclosed information is not confidential information;

Comment: The above suggestion is in response to testimony on 4/16 which suggested further clarity regarding the requirements of this provision.

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, **in 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 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. 9. 3 V.S.A. § 1223(c)

c) Consultation on unethical conduct. If the Executive Director refers a complaint under subsection (b) of this section, the Executive Director shall signify any likely unethical conduct described in the complaint. Any entity receiving a referred complaint shall consult with the Commission regarding the application of the State Code of Ethics to facts presented in the complaint. The consultation shall

occur within 60 days after an entity receives a referred complaint and prior to the entity making a determination on the complaint, meaning either closing a complaint without further investigation or issuing findings following an investigation.

Sec. 9. 3 V.S.A. § 1223(c) is amended to read:

(c) Consultation on unethical conduct. If the Executive Director refers a complaint under subsection (b) of this section, the Executive Director shall signify any likely unethical conduct described in the complaint. Any entity receiving a referred complaint shall consult with the Commission regarding the application of the State Code of Ethics to facts presented in the complaint. The consultation shall **be in writing and** occur within 60 days after an entity receives a referred complaint and prior to the entity making a determination on the complaint, meaning either closing a complaint without further investigation or issuing findings following an investigation.

Comment: Under the statute, the Commission has various record-keeping duties with regard to tracking complaints – particularly those that raise bona fide issues under the Code of Ethics. As such, the Commission believes it is appropriate to have consultations be reflected in writing.

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 Commission's 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. 15. 3 V.S.A. § 1221(b):

(b) Membership.

(1) The Commission shall be composed of the following ~~six~~ members:

(F) ~~one member, appointed by the Vermont League of Cities and Towns.~~

Sec. 15. 3 V.S.A. § 1221(b) is amended to read:

(b) Membership.

(1) The Commission shall be composed of the following **seven** members:

(F) **one member, appointed by the Legislature, who shall be a former municipal officer.**

(G) **one member, appointed by the Governor, who shall be a former municipal officer.**

Comment: The Ethics Commission asks that the reference to the Vermont League of Cities and Towns (VLCT) and replacing it with appointing authority for the Legislature and the Governor for two additional commissioners, both of whom shall be former municipal officers. The Commission initially suggested that VLCT be given an appointment to the Commission. We have since come to understand that VLCT is an insurer that insures 95% of municipalities in VT, which creates a direct and immediate

financial conflict with the Ethics Commission's work. We instead propose the Governor and the Legislature each be given one appointment, provided that the appointee be a former municipal official. This has the effect of doubling municipal representation on the board (something municipalities raised during House testimony); maintaining an odd number of commissioners (the two additional commissioners can be absorbed into our existing budget); and helps resolve constitutional questions re the privatization of government functions. The Ethics Commission voted to make this request March and it is a top priority for the Commission.