



VERMONT STATE ETHICS COMMISSION

2022 ANNUAL REPORT

Submitted to the General Assembly January 15, 2023

"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/>

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COMMISSION MEMBERS

Paul Erlbaum (Chair)

Appointed by the League of Women Voters of Vermont, term ending December 31, 2027

Christopher Davis, Esq.

Appointed by the Vermont Bar Association, term ending December 31, 2023

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, 2026

Sarah Butson, Esq.

Appointed by the Vermont State Council of the Society of Human Resource Management (SHRM), term ending December 31, 2027

EXECUTIVE DIRECTOR

Christina Sivret, Esq.

ADMINISTRATIVE ASSISTANT

Erin Smith

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

INTRODUCTION

Pursuant to 3 V.S.A. § 1226, the Vermont State Ethics Commission (“Commission”) submits its sixth annual report to the General Assembly for calendar year 2022. As required by statute, this report summarizes the number and types of complaints made to the Commission and the disposition of those complaints; summarizes guidance provided by the Executive Director to State of Vermont public servants; provides an estimate of the number of trainings on the State Code of Ethics conducted by each branch of government; summarizes training activities undertaken by the Commission; and gives recommendations for legislative action to address governmental ethics.

ETHICS COMMISSION STAFF and RESPONSIBILITIES

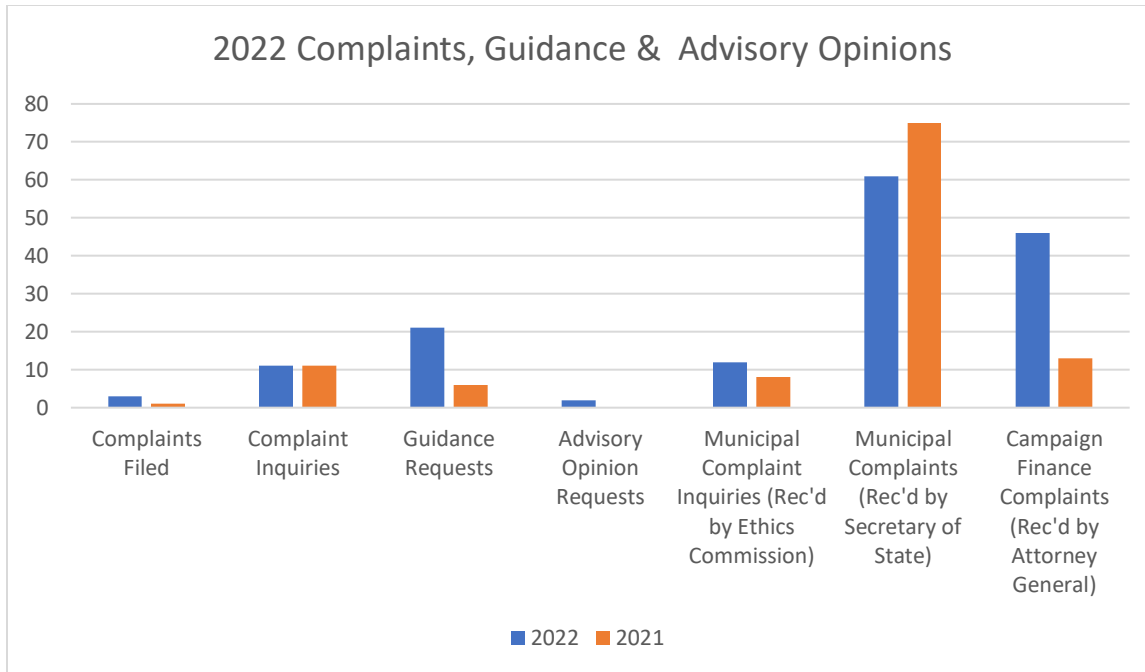
The Ethics Commission is made up of five volunteer commissioners, one part-time Executive Director, and one part-time Administrative Assistant. It holds regular, public meetings at 10 a.m. on the first Wednesday of each month. The Executive Director’s responsibilities include setting meeting agendas; responding to inquiries and requests for advice; drafting all Ethics Commission documents, ranging from complaint-related correspondence to advisory opinions; engaging in strategic planning; formulating policy; providing ethics education; testifying before the Legislature; and responding to media inquiries. Prior to 2022, the Executive Director was the Commission’s only employee. In 2022, the Commission hired a part-time administrative assistant to handle the administrative tasks of the Commission, which allows the Executive Director to focus on the Commission’s core mission.

COMMISSION AUTHORITY

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

The Commission may also issue non-binding ethical Guidance and Advisory Opinions to State of Vermont employees and executive officers upon request. Guidance must relate to the requester’s own actions and is confidential unless the recipient chooses to disclose it. 3 V.S.A. §1225(a). Advisory Opinions must also relate to the requester’s own conduct, do not contain any personally identifying information, and are posted to the Commission’s website within thirty days of issuance. 3 V.S.A. §1225(b). Guidance and Advisory Opinions are formulated by interpreting and applying the State Code of Ethics, which went into effect on July 1, 2022.

The Commission also serves as an educational resource for State of Vermont employees and public servants, providing online ethics training and in-person trainings upon request.



COMPLAINTS

The Complaint Process

Any person can submit a confidential written complaint to the Ethics Commission regarding ethical conduct in State government or violations of campaign finance law. Complaints are filed using the [complaint form](#) found on the Commission’s website. Once received, the Executive Director performs a preliminary review of each complaint to determine whether the complaint should be referred for further action, closed, or whether additional information is required to make a determination. A complaint may be closed if the subject matter of the complaint does not implicate governmental ethics or campaign finance law. 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

Three written complaints were filed with the Ethics Commission in 2022.

- One complaint was related to municipal conduct and was closed due to lack of Commission jurisdiction over municipal issues.
- Two complaints were referred to the Department of Human Resources for further action, where they were subsequently closed after additional review and inquiry.

As in prior years, the Commission received more complaint inquiries than it did formal written complaints. In addition to the 3 complaints referenced above, the Commission received 11 complaint inquiries. 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 investigate the complaint itself. In some instances, complainants opted not to submit complaints after learning that although the complaint process is confidential, there is no option to submit an anonymous complaint

Complaint inquiries that did not result in the submission of a formal written complaint covered a variety of topics, including employment discrimination; falsification of government documents; conflicts of interest; and failure to follow state and federal laws, policies, or procedures.

Campaign Finance Complaints

The Ethics Commission received no campaign finance violation complaints in 2022. 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. § 2904(a). In 2022, the Attorney General received 43 complaints. At the end of the year, 21 complaints had been closed, 19 remained open, and 3 had been withdrawn.

Municipal Complaints

As in prior years, the Ethics Commission received numerous inquiries from both members of the public and municipal officials about the complaint process, as well as requests for ethics advice. In 2022, the Commission received 12 complaint inquiries regarding municipal ethics. The subjects of these inquiries included misuse of office for personal gain; misuse of official position to intimidate others; and, most frequently, conflicts of interest. Callers often expressed frustration with the lack of guidance, recourse, and oversight regarding municipal ethics, and many expressed the view that the State Code of Ethics should also cover municipal officials.

Although the Ethics Commission's jurisdiction does not cover municipal ethics, the Legislature has previously recognized municipal ethics as a topic of importance. 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.

Although no longer required by statute, the Secretary of State’s office has continued to track inquiries related to municipal ethics. In 2022, they received 61 municipal ethics inquiries, and noted this number is likely a low estimate, as many other types of inquiries may also touch on ethics issues.

GUIDANCE

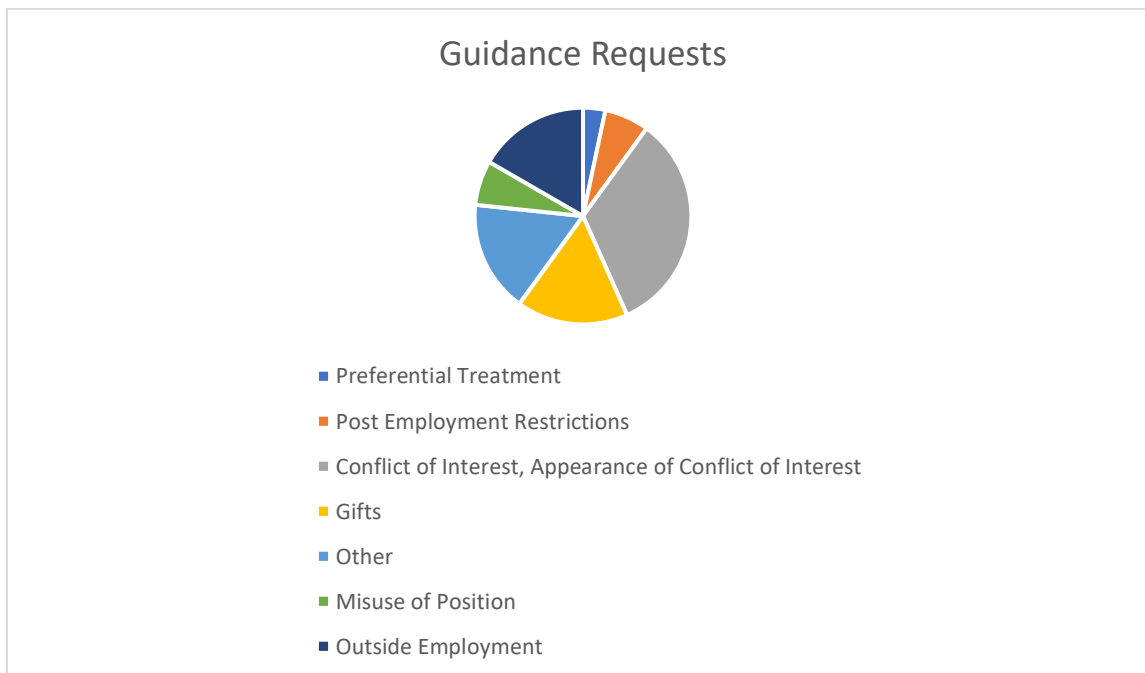
Guidance Process

State employees and executive officers may request confidential ethics Guidance from the Executive Director of the Ethics Commission regarding the requester’s own actions, including actions related to managerial decision-making responsibilities. Guidance and requests for Guidance may be oral or in writing. 3 V.S.A. §1225(b).

Summary of 2022 Guidance Requests

Guidance requests increased significantly in the second half of 2022, coinciding with the implementation of Code of Ethics training requirements. The Commission received 23 Guidance requests in 2022, not including inquiries from municipal employees or members of the public. In some cases, requests touched on more than one topic within a single request.

- Preferential Treatment (1)
- Outside Employment (5)
- Gifts (5)
- Conflicts of Interest and the Appearance of Conflicts of Interest (10)
- Post-Employment Restrictions (2)
- Misuse of Position (2)
- Other (5)



ADVISORY OPINIONS

Advisory Opinion Process

State of Vermont employees and executive officers may request an Advisory Opinion from the Executive Director regarding any issue related to government ethics and the requester's ongoing or prospective conduct. 3 V.S.A. §1225(b).

In 2022, in anticipation of increased requests for Advisory Opinions after the passage of the State Code of Ethics, the Commission adopted and published [Advisory Opinion procedures](#), created an [Advisory Opinion request form](#), and drafted [Advisory Opinion FAQs](#), all of which can be found on the Commission [website](#).

The Commission reviews every request for an Advisory Opinion. However, the Commission may decline to issue an opinion for the following reasons:

- The subject matter of the request does not relate to the State Code of Ethics, codified in 3 V.S.A. Chapter 31, §§ 1201-1205; presents a question that falls outside the jurisdiction of the Commission; or would necessitate the interpretation of a statute outside of the Commission's jurisdiction;
- Involves past conduct that is not ongoing;
- Fails to provide sufficient factual background for the Commission to provide meaningful advice;
- Provides facts that appear inaccurate, questionable, or in dispute;
- Involves factual scenarios that are vague, highly unlikely, or overly speculative;
- Concerns rights or conduct that are the subject of pending litigation involving the requester;
- Involves an issue that is already answered by the plain language of the statute;
- The Ethics Commission determines that the advice sought would be inappropriate or not in the best interest of the public;
- The timeline specified in the request is too short to draft an opinion;
- For any other reason at the discretion of the Commission.

Requests for an Advisory Opinion are acknowledged within 5 business days of receipt. The Executive Director then reviews the request and notifies the requester whether it has been accepted, denied, or whether more information is needed to make a decision. If the request is accepted, the Executive Director will draft an Opinion for consideration by the full Commission. Draft advisory opinions may also be shared with third parties the Executive Director deems to have information, facts, and/or knowledge

relevant to the formulation of the opinion. The Commission endeavors to finalize Advisory Opinions within 30 days of receiving all relevant information. Final Advisory Opinions are posted on the Commission's website within 30 days of issuance, and do not contain the requester's personally identifying information. 3 V.S.A. §1225(b).

Summary of 2022 Advisory Opinion Requests

The Commission received two Advisory Opinion requests in 2022, one related to income from outside employment, and one related to conflicts of interest. The first resulted in [Advisory Opinion AO 1 2023](#), which can be found on the Commission's website. The second request was converted to a request for Guidance due to the time-sensitive nature of the inquiry.

YEAR IN REVIEW

In the first half of 2022, the Ethics Commission focused on research and legislative advocacy in support of the passage of a State Code of Ethics applicable to all State of Vermont employees and public servants. In April 2022, the Code of Ethics was unanimously passed by the Legislature, and was signed into law by Governor Scott on May 3, 2022, going into effect on July 1, 2022.

During the second half of the year, the Commission's efforts shifted to developing a comprehensive Code of Ethics training that could be accessed online by all State employees and public servants. The training, developed in conjunction with the Center for Achievement in Public Service (CAPS), went online in late June. As State of Vermont employees and public servants began to take the training, the Commission saw a corresponding increase in demand for Commission services, particularly requests for ethics advice.

In December, the Executive Director and Commissioner Chris Davis attended the 44th annual Council on Governmental Ethics Law (COGEL) conference in Montreal, Quebec, Canada. COGEL is a professional organization for government agencies and other organizations working in ethics, elections, freedom of information, lobbying, and campaign finance. Commissioner Davis and the Executive Director networked with government ethics professionals from other states and countries and attended multiple learning sessions on topics related to ethics education and training, enforcement, compliance, and professional development.

2022 Legislative Efforts

The Commission started work on a draft Code of Ethics in 2020, submitting it to the Legislature for consideration in November 2020. 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 focused its efforts on ensuring the bill would be heard during the 2022 Legislative session.

In January 2022, the Senate Government Operations Committee started deliberations on the draft Code, and after several weeks of testimony and debate, it was voted out of Committee for consideration by the full Senate. Fittingly, for legislation meant to promote public trust in government, the Code of Ethics

eventually passed both the House and Senate unanimously. On May 3rd, Vermont’s first State Code of Ethics was signed into law by Governor Scott.

The Code addresses important basics of governmental ethics: it defines and prohibits conflicts of interest; details acceptable and unacceptable gifts to public servants; prohibits the misuse of government resources; gives “whistleblower” protection for public servants who report waste, fraud, abuse of authority, or violations of law; and requires ethics training for all State public servants. It covers all public servants in the three branches of government, including elected and appointed state officials, legislators, State employees, members of State boards and commissions, and anyone else authorized to act on behalf of the State of Vermont.

Ethics Training

Section 1205 of the State Code of Ethics requires all State of Vermont public servants to take Code of Ethics training. The Ethics Commission is one of five statutorily approved training providers, and once the Code was signed into law in May 2022, the Commission turned its attention to developing an online training that would be available to all State of Vermont public servants by the time the Code of Ethics went into effect on July 1, 2022.

To achieve this goal, the Commission partnered with the Center for Achievement in Public Service (CAPS), also an approved training provider, to develop a comprehensive training and make it available to all State of Vermont public servants through the State Learning Management System (LMS), as well as on the Commission website. Under the Code, all new State of Vermont public servants are required to take the training within 120 days of the start of service, and existing employees are required to repeat the training every three years. Although no initial deadline was given by which existing employees had to complete the training, the three branches of government - the Judiciary, Executive Branch, and Legislative Branch – each instructed all public servants under their authority to take the training by the end of 2022.

Pursuant to § 1226(2)(B) of the Code, the Commission is required to provide an estimate of Code of Ethics trainings conducted by each branch of government in its annual report. The below numbers, broken down by branch of government, are derived from the number of people who have taken the training through LMS and the Commission website. The CAPS/Commission training is currently the only available Code of Ethics training, and LMS and the Commission website are the only available training platforms, therefore the below numbers represent the the total number of State of Vermont employees and public servants who completed the training in 2022.

CAPS/LMS TRAINING DATA

Department Agency	Completed	In Progress	Registered	Grand Total	Percentage Complete
Administration Agency	14	2	10	26	53.85
Agriculture, Food & Markets Agency	93	13	38	144	64.58
Attorney General's Office	72	2	12	86	83.72
Auditor of Accounts' Office	12		4	16	75.00

Buildings & General Services	210	16	111	337	62.31
Cannabis Control Board	6	1	13	20	30.00
Children and Families	566	42	386	994	56.94
Clerk of the House	4		1	5	80.00
Commerce & Community Dev Agency	48	6	82	136	35.29
Corrections	372	63	441	876	42.47
Defender General's Office	55	8	14	77	71.43
Dept of Human Resources External Users	9	1	11	21	42.86
Digital Services Agency	276	18	49	343	80.47
Disabilities Aging Ind. Living	238	13	84	335	71.04
Education Agency	100	9	46	155	64.52
Enhanced 911 Board	6	1	3	10	60.00
Environmental Conservation	165	18	123	306	53.92
Executive Office	4		9	13	30.77
Finance & Management	18	1	7	26	69.23
Financial Regulation	53	6	41	100	53.00
Fish & Wildlife	86	4	78	168	51.19
Forests, Parks & Recreation	90		63	153	58.82
Green Mountain Care Board	18	2	10	30	60.00
Health	425	34	180	639	66.51
Human Resources	81	1	17	99	81.82
Human Rights Commission	3	2		5	60.00
Human Services Agency	33	7	24	64	51.56
Joint Fiscal Office	14		3	17	82.35
Judiciary	436	7	23	466	93.56
Labor	198	5	16	219	90.41
Labor Relations Board	1		2	3	33.33
Legislative Offices	39	1	24	64	60.94
Libraries (18)	15	2	1	18	83.33
Lieutenant Governor's Office			2	2	0.00
Liquor and Lottery	27	3	46	76	35.53
Mental Health	136	6	56	198	68.69
Military	44	5	108	157	28.03
Natural Resources Agency	17		17	34	50.00
Natural Resources Board	19		7	26	73.08
Public Safety	427	31	269	727	58.73
Public Service Department	52	2		54	96.30

Public Utility Commission	18	1	7	26	69.23
Secretary of State's Office	39	5	30	74	52.70
Secretary of the Senate	2		4	6	33.33
Sergeant at Arms' Office	11		3	14	78.57
State Ethics Commission	4	0	3	7	57.14
State Treasurer's Office	25	2	15	42	59.52
State's Attorneys and Sheriffs	2			2	100.00
Taxes	120	9	19	148	81.08
Transportation Agency	1172	5	65	1242	94.36
Vermont Commission on Women	2			2	100.00
Vermont Criminal Justice Council	9		3	12	75.00
Vermont Health Access	277	18	61	356	77.81
Vermont Veterans' Home	35	11	117	163	21.47
VOSHA Review Board	1			1	100.00
Grand Total	6195	384	2756	9335	66.36

ETHICS COMMISSION WEBSITE TRAINING DATA

Vermont Legislature	1
Board & Commission Members (Judiciary)	64
Board & Commission Members (Municipal – Voluntary Participation)	3
Natural Resources Board	20
VT Treasurer's Office	6
Occupational Safety and Health Review Board	2
Enhanced 911 Review Board	3
Citizens Advisory Committee on Future of Lake Champlain	1
Grand Total	100

In addition to online training development, the Executive Director participated in four in-person ethics trainings for government employees, including VTLEAD classes with the Center for Achievement in Public Service (CAPS), and an ethics-focused Department of Forests, Parks, and Recreation Supervisors Meeting.

RECOMMENDATIONS

- 1) 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. Many cities and towns lack independent resources to consult about basic ethical practices. The Commission recommends the Legislature consider whether the State Code of Ethics should also cover municipal officials, as is the practice in other states, to provide a comprehensive and uniform ethics standard for all public officials in Vermont.

2) The Ethics Commission recommends the Legislature continue to consider the issue of an enforcement protocol, including how to best ensure compliance with existing requirements.

3) The Ethics Commission recommends that the Legislature ensure the funding of the Ethics Commission, taking into consideration its increased workload with the passage of the Code of Ethics, including funding for the part-time Administrative Assistant.

CONCLUSION

The Ethics Commission firmly believes its most productive role at this time is to raise awareness about the Code of Ethics through training and continuing to build the ethics advice and guidance framework. 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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