CREATING AN ETHICAL LEGISLATURE

The culture of a legislature is affected by lawmakers, staff, lobbyists, ethics laws and even the role of social media.

BY PEGGY KERNS

ow much can one person influence the ethical culture of a legislature?

Washington Representative Mark Miloscia thinks quite a bit. His goal is to make Washington the most ethical and efficient state in the union.

Now in his seventh term, Miloscia's ethical quest began at the Air Force Academy where, as a cadet, he pledged the Cadet Honor Code: "We will not lie, steal or cheat, nor tolerate among us anyone who does."

"I try to model this behavior all the time," he says, "and I'm willing to sacrifice everything for a principle, no matter the consequences. Ethics and integrity are at the heart of everything"

Miloscia believes the "public trust deficit" is as bad as the budget deficit. He wants to strengthen oversight of legislators and staff by the Legislative Ethics Board, require agencies to develop annual ethics and integrity plans, and mandate that every employee attend annual ethics trainings. He sponsored a successful bill in 2005 that requires state agencies to evaluate themselves every three years using the Baldrige Criteria for Performance Excellence. The program aims to improve the competitiveness and performance of organizations.

Creating an ethical culture in the legislature takes individual efforts similar to those of Miloscia. Legislators come into office with their own set of values. They aspire to public service and generally say honesty, integrity, loyalty and commitment to family top their list. In addition to a legislator's individual values, the will of the chamber must be to make ethics a priority and to elect strong leaders to accomplish this.

Several legislative leaders recently have taken the ethics charge seriously. Utah Representative David Clark, the former speaker, led

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REPRESENTATIVE
MARK MILOSCIA
WASHINGTON

the effort to establish the Utah Ethics Commission. North Carolina Representative Joe Hackney was the first to issue an ethics tip of the day while he was speaker of the House. Indiana Representative Pat Bauer, as speaker during the 2009-2010 sessions, worked across the aisle and with the Senate to pass a major ethics

reform package.

There are forces beyond lawmakers, however, that influence a legislature's ethical culture. State Legislatures looks at four of them in the following articles.

Laws: Do ethics laws make public officials ethical? Some experts think they do little to correct

previous bad behavior, but do help boost public confidence.

Staff: They're the backbone of the legislative institution. Confidentiality, trust and integrity often guide their work and contribute to the institution's culture.

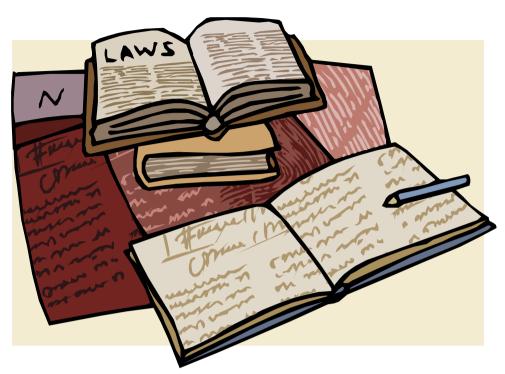
Commissions: There is a love-hate relationship between lawmakers and those who serve on the 48 ethics commissions around the country. **Lobbyists:** Sometimes called the Third House because of their role in the legislative process, lobbyists too, have a stake in ensuring legislatures operate ethically..

OSLONLINE

Learn about creating an ethical legislature at www.ncsl.org/magazine.

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DO ETHICS LAWS WORK?



BY PEGGY KERNS

When scandals erupt, legislatures pass laws. Usually, the laws have nothing to do with the scandal and would not have prevented it anyway.

Nothing new here. The Watergate scandal of the early 1970s prompted Congress to pass the Ethics in Government Act of 1978.

"Watergate was about burglary, cover-ups, lying and campaign irregularities," wrote G. Calvin Mackenzie in his book "Scandal Proof."

"Little in the bill would have prevented the kinds of activities that composed the Watergate scandal," wrote Mackenzie. "The ethics act sought to restore public confidence in government after Watergate by creating an array of new regulations that bore little relation to the scandal that inspired them."

Carol W. Lewis, a professor of political science at the University of Connecticut, agrees. "Ethics laws are misnamed. These laws forbid you from doing the last thing that someone else did," she says. "They come into play 'posthoc,' after the fact. They're a list to clean up dirty laundry."

Although Mackenzie believes government operates more ethically than ever, he says the "expansion of ethics regulations and enforce"Ethics laws provide the public with a benchmark, although the laws are only the floor of how we should conduct ourselves."

—IOWA REPRESENTATIVE SCOTT RAECKER

ment agencies and personnel has not produced a concomitant increase in public confidence in government integrity."

If ethics laws don't work, why pass them?

"What laws do best is to help change the culture of the legislature," says Alan Rosenthal, professor of public policy at Rutgers University. He cites Florida and Kentucky as two examples of where tougher restrictions on gifts and strong disclosure laws changed the tone of the legislature and helped reduce the incidence of abuse by legislators.

In the past five years, Southern states—Alabama, Georgia, Louisiana, North Carolina, Tennessee—have been the most active in strengthening and, in some cases, overhauling ethics laws. Even before then, South Carolina initiated a strong gift ban, and Georgia and Mississippi

strengthened their financial disclosure laws in response to a low rating by the Center for Public Integrity.

Rosenthal warns about over regulation, however. When laws are excessively restrictive and numerous they tend to lead to violations, he says. "Legislators who do not exercise extreme caution, checking



REPRESENTATIVE SCOTT RAECKER IOWA

their every move, may inadvertently step over a line they didn't know existed," he says.

In the past 10 years, states have instituted stricter gift laws—limiting or totally banning gifts from lobbyists to lawmakers. These laws have spawned some unintended consequences.

"Certain actions can affect the culture," says Iowa Representative Scott Raecker. Former members have told him how, after a \$3 gift ban passed following a scandal in the 1990s, social interactions among members declined.

"The result was the culture of civility diminished," he says. "Relationships that developed and were important in working together were not built in the same way."

Raecker acknowledges ethics laws are important, but they're not the whole answer. The culture of the legislature is tied to the ethics of the chambers and the character of the members, he says. "Ethics laws provide the public with a benchmark, although the laws are only the floor of how we should conduct ourselves."

For this reason, codes of ethics in the Iowa House and Senate each start with a description of the chamber's aspirations. "The preambles show the public that we intend to operate with high levels of ethics and accountability," he says.

Ethicists warn public officials not to rely on laws alone if they want to be ethical. "Ethics is concerned with moral obligations ... based on moral duties and virtues," says Michael Josephson, founder and president of the Josephson Institute of Ethics. "Laws establish standards of behavior that may or may not correlate with individual conscience. Laws coerce from the outside, ethics control from the inside."

Lewis urges public officials to understand there are two bases for ethical decisions—moral choice and moral judgment.

"Moral choice is about right and wrong. Moral judgment is about conflicting duties and principles," she says. "Codes and laws can address only moral choice. That's their limitation. They don't address the gray areas where someone has to rely on personal will and integrity."

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STAFF: MORE THAN A SUPPORTING ROLE

BY NATALIE O'DONNELL WOOD

egislative staff members encounter situations every day that place them at the crux of ethical dilemmas: Drafting a bill in support of an issue they personally oppose; being asked to run personal errands for a lawmaker; receiving a free meal from a lobbyist; or listening to a neighbor rant about the legislature and "all the bums who work there."

Core personal and institutional values influence not only how they respond in these difficult situations, but also reflect on the legislature's ethical culture.

Ask a bill drafter, a committee staffer or legislative counsel to list the principal values that guide their work, and you'll see some themes. Confidentiality. Trust. Integrity. Consistency. Objectivity. Dedication. Accountability. Teamwork. These provide the foundation upon which staff act.

By having a set of commonly respected and adhered to values, staffers conduct themselves in a way that demonstrates their commitment to serving the public..

"The most valuable asset you have is your reputation," says Mark Quiner of the Wyoming Legislative Service Office. "Once it's damaged or destroyed, your effectiveness will be greatly impaired. Do what you can to build and protect that reputation, and be someone who is trustworthy ... and try to protect and guard that arduously."

Codes of conduct can serve as both a mission statement and a resource for staff behavior. Manuals or handbooks that describe rules or policies concerning common ethics-related issues also are helpful. Periodic training, where laws and rules are reviewed and discussed, can be good reminders. Still other staff offices make it a point to have a running dialogue about ethical dilemmas.

"In our office, we serve the entire Legislature and have to protect many interests," says Jon Heining of the Texas Legislative Council. "When preparing to interact with a client, we spend a lot of time talking about what may be expected or asked of us. When working with a client, we try to clearly explain our duties and our function in the Legislature." That preparation, he says, helps them assist the client "effec-

Natalie O'Donnell Wood tracks ethics issues for NCSL.

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tively while honoring our other obligations."

Laura Hendrix of the Kentucky Legislative Research Commission agrees. "If a staffer has a question about something, they try to run it by either upper management or the legislative ethics office—it's a preemptive thing," she says. "It's better to educate people and get them to ask questions than to reprimand them after the fact."

Clearly defined processes to handle ethical lapses or sensitive situations help maintain an ethical culture. Staffers also benefit if they work in an environment where they can ask questions, seek advice and file complaints without retribution.

Senior staff and managers are integral to creating such a workplace. They often act as advisers and mentors and sometimes are ultimately

responsible for resolving ethical dilemmas.

"I don't expect my staff to take the bull by the horns," says CJ Leong of the Hawaii House Majority Office. "I let them know that if something doesn't sit right, they can come to me and we'll figure it out."

Leong tries to be open, positive and approachable, and tries to model the behavior she expects from her staff.

When legislative agencies and offices handle complaints or accusations in a timely, fair and serious manner it bolsters respect for how concerned the legislature is about its ethical culture.

"Whenever there's been a question raised, which is rare, immediate action is taken and the issue is resolved right away to the best of our ability—it's not swept under a rug," says Quiner. "We have tried to create a culture that is pretty open, where staff feel emboldened to talk about things, and where most feel free to raise issues and ask questions."

When it comes to a legislature's ethical culture, staffers feel the whole is greater than the sum of its parts.

"We are all public servants, along with the legislators," says Hendrix. "We all want the General Assembly cast in a good light."

COMMISSIONS RESTORE TRUST

BY MEGAN COMLOSSY AND PEGGY KERNS

Those who serve on ethics committees, commissions or boards have the unenviable job of enforcing ethics laws over public officials who often have created the boards, but would rather not be regulated by them.

Laws governing the behavior of government officials have been around since the early 1800s. During the next century, these regulations gradually increased, but the Watergate scandal of the 1970s caused an explosion of stricter ethics laws at all levels of government. As more laws were passed, it became apparent some degree of oversight was necessary to make sure they were obeyed.

"As were ethics laws, commissions also were post-Watergate reforms," says David E. Freel,

Peggy Kerns is the director of NCSL's Center for Ethics in Government. Megan Comlossy is an intern with the center. former executive director of the Ohio Ethics Commission. The early commissions oversaw the disclosure of public officials' financial, family and business interests, and other conflicts that could affect their duties, he says.

Hawaii and New Jersey established the first commissions in 1968. By 1980, 22 states had them, many created by constitutional amendment, and today, 41 states have ethics commissions. Utah voters established the most recent commission last year through a constitutional amendment referred by the Legislature. Alaska, Illinois, Indiana, Kentucky, New Jersey, New York and Washington have more than one commission, each with specific jurisdiction or authority.

"The public has greater confidence in legislators if ethics issues are reviewed by people outside of the legislative process," says Judge Anthony Wilhoit, executive director of the Ken-

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—JUDGE ANTHONY WILHOIT, EXECUTIVE DIRECTOR OF THE KENTUCKY LEGISLATIVE ETHICS COMMISSION

tucky Legislative Ethics Commission. "At the same time, ethics commissions relieve legislators of the frequently onerous duty of investigating and judging one of their colleagues."

Are they effective?

It's difficult to measure, but Robert W. Smith at Clemson University thinks they are. "Ethics commissions ... offer symbolic assurances that ethics are being preserved," he writes in an article in Public Administration Review, simply because they exist and have the tools to uncover and punish unethical behavior.

"Even if it is underfunded, understaffed or irrelevant, the commission reassures the public by its existence," he says.

Many similarities exist among state commissions, but there are significant differences in jurisdictions, membership, enforcement and the complaint process. In addition to elected and appointed officials, commissions also may have oversight of staff, candidates or lobbyists.

There have been two recent challenges to the authority of ethics commissions. In *Nevada Commission on Ethics v. Carrigan*, the U.S. Supreme Court in June ruled that recusal rules that limit legislators' votes in matters where they stand to gain personally do not interfere with their First Amendment rights. The Nevada Supreme Court had previously ruled the ethics statute violated lawmakers' free speech rights when conducting their "core legislative functions such as voting and, by extension, disclosure of potential conflicts of interest."

A Rhode Island Supreme Court ruling restricts the state Ethics Commission from prosecuting core legislative actions, such as "proposing, passing or voting upon a particular piece of legislation." The legislature is considering a constitutional amendment to restore the commission's power to investigate and prosecute members of the General Assembly.

Tight budgets exacerbate the tensions that often exist between the legislature and the commissions as lawmakers look for any opportunity to trim spending. Saving money is one of the reasons lawmakers in North Carolina and Washington, and the governor of Connecticut, propose combining the functions of the state ethics commissions, lobbying and campaign finance regulatory entities into single oversight agencies.



ETHICS COMMISSIONS BY THE NUMBERS

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Can investigate complaints against public officials and lobbyists.

35

Can advise public officials on ethical issues such as conflict of interest or financial disclosure.

30

Have the power to prosecute violations of ethics law.

25

Are required by statute to conduct ethics training.

ETHICAL LOBBYING IS NOT AN OXYMORON

ike it or not, lobbying is important to the legislative process. Although the public may view lobbying negatively, not all lobbyists are paid hired guns. They can be average citizens who are simply expressing their views.

One thing is certain: The way lobbying is done affects the ethical culture of the institution.

There seems to be an inverse relationship between the growth of lobbying and its effects on how citizens view government, according to "The Ethics of Lobbying," a handbook from the Woodstock Theological Center at Georgetown University.

"As public participation in politics has declined, the power and influence of lobbyists have increased," the authors write. "Public confidence in the integrity and effectiveness of ... government is eroding."

The lobbyist industry is concerned about this trend. The American League of Lobbyists, a national organization for lobbyists and public policy professionals, updated its Code of Lobbying Ethics in 2010 to more thoroughly outline the guidelines and describe the standards for conduct.

These guidelines include conducting lob-

bying activities with honesty and integrity, avoiding conflicts of interest, educating the public about lobbying, and exhibiting proper respect for government institutions. Members of the league forfeit their membership if found guilty of a moral crime or of violating a law directly related to any professional lobbying or political campaign activity.

In addition, the league offers the Lobbying Certification Program, which consists of 11 classes that cover essential elements of lobbying, including ethics.

Many state lobbying organizations use this model or have adopted similar codes. The Tennessee Lobbying Association's Standards of Conduct includes a challenge to lobbyists to preserve and advance public trust by always acting "in the highest ethical and moral manner in their dealings with all parties."

"Our code is more than words on paper," says Howard Marlowe, executive director of the American League of Lobbyists. "It reflects the day-to-day challenges of our profession that require the conduct of each of our members to be above reproach. That's a tough standard, but it's meant to be that way."

—By Peggy Kerns

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