In a representative democracy, lawmakers constantly face a critical ethical dilemma—deciding whether to represent the views of their constituents or to pursue their personal self-interest. Such ethical conflicts are an inherent part of the legislative process as elected officials work within the complex, multifaceted sphere of political and legislative ethics.\(^1\) It is within this complicated, ever-changing context that oversight agencies come into play. Ethics commissions work to ensure voters’ trust in policymakers and political institutions through external oversight and transparency.

**Introduction**

Following the Watergate scandal in the early 1970s, ethics laws received new attention at all levels of government. State governments have enacted stronger ethics laws and created an ethics infrastructure, including ethics training and oversight agencies to monitor compliance by public officials.\(^2\) Both internal and external oversight entities now provide that oversight.

*Ethics Committees* Comprised of state legislators, legislative ethics committees offer internal oversight of state legislators in some form in almost all states. Committee jurisdiction generally extends only to the legislature, and members are responsible for ensuring that their peers comply with state ethics laws and chamber rules. One of the greatest challenges to ethics committees is maintaining their credibility with the public.\(^3\)

*Ethics Commissions* State ethics commissions, on the other hand, offer external oversight of public officials. Forty-one states provide external oversight of their ethics laws through an ethics commission established in statute, constitution or, as in the case of the Illinois Executive Ethics Commission, through executive order. Seven states—Alaska, Illinois, Indiana, Kentucky, New Jersey, New York and
Washington—have more than one state ethics commission to oversee distinct branches of government. In the nine states that do not have ethics commissions—Arizona, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont, Virginia and Wyoming—oversight is provided through an internal ethics committee or other state entity such as the attorney general, inspector general or the secretary of state.

As regulatory agencies, ethics commissions serve a vital role in a democratic government. They work to ensure voters’ trust in policymakers and political institutions by monitoring compliance with ethics laws and ensuring ethical conduct by those under their jurisdiction. Ethics commissions represent the public’s interest and work to maintain public trust in government.

Based on a comprehensive survey of state ethics commissions by the National Conference of State Legislatures’ Center for Ethics in Government, this brief identifies key components of ethics commissions in the United States, their structure and role in monitoring ethical behavior—from providing ethics training and advisory opinions to investigating complaints and levying sanctions for violations of ethics law. It also discusses recent state legislative action and trends related to ethics commissions.

Significance

Since the first state ethics commission was created in Hawaii in 1968, 40 states have followed suit, establishing an additional 47 commissions. During the past four decades, state ethics commissions have continued to play an important role in monitoring ethics issues, including conflict of interest, campaign finance and financial disclosure. States clearly recognize the need for and value of external oversight agencies; state legislatures continue to consider, create and expand ethics commissions, their powers and responsibilities. Through a 2010 Legislature-referred constitutional amendment, for example, Utah became the most recent state to establish an ethics commission. In addition, during the 2010-2011 legislative session, New Mexico considered bills to create an external oversight board, and Illinois,
Massachusetts, Mississippi and Missouri successfully enacted bills broadening the authority of their ethics commissions.

**Structure**

While ethics commissions serve a distinctive purpose, no two are identical. Commissions generally consist of between five and nine private citizens who are appointed by the governor, legislative leaders and other state officeholders. Many ethics commissions prohibit commission members from being a public official, candidate, registered lobbyist or lobbyist principal, or employee of the state. However, restrictions vary: the Alaska Legislative Ethics Committee, Illinois Legislative Ethics Commission, New York State Legislative Ethics Commission and Washington Legislative Ethics Commission all allow or require that legislative members serve on their state ethics commissions.

*Term Length and Term Limit* The length of the term members serve ranges from two years in Florida and Kansas to seven years in Delaware; most commissioners serve four- or five-year terms. About half of ethics commissions limit members to one or two consecutive terms, although a least one in four commissions does not limit how many terms a commissioner can serve.

*Compensation* At least 34 commissions compensate their members, while another 10 do not compensate commissioners. Of those commissions that compensate members, all but two offer per diem compensation. The chairman of the California Fair Political Practices Commission and the Montana commissioner of Political Practices are salaried and serve full-time. Finally, whether or not commissions offer remuneration for ethics commission-related business, with the exception of Tennessee and Rhode Island, they typically reimburse commissioners for commission-related expenses.

**Jurisdiction**

*Purview of Jurisdiction* The jurisdiction of state ethics commissions vary, but often include legislators, executive officials, lobbyists, candidates, local officials and vendors with state contracts. In most states—
with the exception of Michigan, Ohio and South Carolina—the ethics commission has authority over legislators, who are considered “public officials.” In North Carolina, legislators are “invited” but not required to participate. Some commissions have only limited influence over legislators. In Iowa and Maryland, commissions enforce financial disclosure laws, but internal ethics committees enforce the ethics code.

Executive branch officials fall under the jurisdiction of ethics commissions, Utah is the exception. In at least 30 states, ethics commissions enforce lobbying laws. Both Indiana and New York have specific commissions that regulate lobbyists and lobbyist activities. The Iowa Campaign and Disclosure Board and the Florida Commission on Ethics have authority over executive branch lobbyists; the Florida commission also has limited authority over legislative lobbyists, who are required to register with the Legislature. Commission influence also may extend to officials and employees in more than one branch of government.

Commission Location Within Government Often, though not always, the location of a commission within the government is indicative of its jurisdiction. At least 25 commissions are located in the executive branch, and at least 11 are part of the legislative branch. However, a commission’s official location may be a matter of budgeting, rather than jurisdiction. Commissions in Alabama and California receive funding from—and thus technically fall under—the executive branch, but are considered to be independent agencies. An additional six ethics commissions either do not fall clearly within the executive or legislative branches of government, or identify themselves as independent agencies. Initially in the executive branch of government, the Colorado Independent Ethics Commission relocated to the judicial branch of government. The commission’s unique relocation was made in an effort to better maintain its independence and autonomy.

States With More Than One Commission Seven states have more than one entity which could be considered an ethics commission. Each commission is generally responsible for monitoring officials in
distinct branches of government or regulating compliance with specific laws (such as elections, financial
disclosure or lobbying laws). Alaska, Illinois, Indiana, Kentucky, New York and Washington have ethics
commissions in both the executive and legislative branches of government. In most cases, the location of
these commissions corresponds to their jurisdiction, although there are instances in which their
jurisdictions overlap.⁹

Powers and Duties

State ethics commissions are entrusted with various powers and assigned numerous duties in order to
ensure that public servants and others under their jurisdiction are held accountable and behave ethically.
Although variation exists across states, some of the most essential responsibilities are common to many
ethics commissions. Duties range from administrative—developing forms and manuals and issuing
advisory opinions—to monitoring compliance with financial disclosure and campaign finance
requirements, conducting ethics training, issuing advisory opinions, initiating investigations and
investigating complaints of alleged ethics violations, subpoenaing witnesses, prosecuting violators and
imposing sanctions, if necessary.¹⁰

Purview of Responsibility More than 30 commissions regulate financial disclosures of both legislators and
lobbyists, while at least 20 oversee campaign finance laws. At least 41 ethics commissions oversee
violations of ethics laws. The handful of state ethics commissions that do not monitor ethics violations
gen erally regulate a specific subset of the ethics code, such as financial disclosure and/or election and
campaign finance matters.

Ethics Training For state legislatures, training on ethics laws is of paramount importance. Ethics training
provides an opportunity for public officials and lobbyists to be introduced to, or to review, state-specific
ethics laws and rules. Although the type and methods vary, ethics training typically explains what one
can and cannot do. For public officials, there is no dearth of potential situations of conflicts of interest; an
unknowing legislator or lobbyist might easily violate ethics laws. In some states, for example, accepting
a cup of coffee from a lobbyist is a prohibited. Ethics training is a fundamental tool for ethics commissions to proactively address possible ethics violations and conflicts of interest.  

Training requirements vary greatly by commission. At least 28 ethics commissions are required by statute to conduct ethics training, although many others do so by tradition. With the exception of the Michigan State Board of Ethics, the New Jersey Election Law Enforcement Commission and the Washington Public Disclosure Commission, most commissions do, in fact, offer ethics training voluntarily. Training topics generally consist of ethics laws, ethics rules and value-based ethics, although this may depend upon the commission’s jurisdiction. The Minnesota Campaign Finance and Public Disclosure Board provides training only on campaign finance and lobbyist disclosure.

Depending on the commission, training typically is offered to some combination of executive officials, executive branch employees, legislators, legislative employees, lobbyists, and local government officials. At least 30 commissions offer training to both legislators and executive branch officials, and at least 27 offer training to executive and legislative employees. Only about half of commissions offer ethics training for lobbyists. Relatively few commissions require attendance at ethics trainings; only 16 require that certain individuals participate in training courses. The Alaska Legislative Ethics Committee requires all legislators and legislative employees to take training within 10 days of the first day of the first regular session, and the Alaska Public Offices Commission requires training for all registered lobbyists and lobbyist employers. In most cases, less than half the commissions that offer ethics training offer it online. However, online training represents a growing trend.

Advisory Opinions In addition to offering training on state ethics laws, ethics commissions also serve as advisory bodies, providing counsel to individuals on ethical issues under their jurisdiction. Based on real or hypothetical circumstances, public officials can request advice on the application of any provision of laws over which the commission has authority. This opportunity to seek guidance to avoid committing a potential violation complements ethics training by encouraging public officials to comply with ethics laws.
through better understanding of their application to specific situations. In some states, an advisory opinion from the state ethics commission may serve as a defense against allegations of criminal action.

Advisory opinions not only serve to educate those who request them, but also typically are published, augmenting the resources available to others who are interested in application of ethics laws. Specific information released is determined by the commission; at least 14 commissions omit the identity of the person who requested the advisory opinion. In Pennsylvania and South Carolina, advisory opinions can be requested to remain confidential, and in Delaware, Hawaii and Nevada, only an edited synopsis of the opinion is released unless the subject waives confidentiality.¹³

**Ethics Complaints**

Despite efforts to educate and advise public officials through training and advisory opinions, ethics violations inevitably occur. State ethics commissions play a vital role in uncovering such offenses by initiating, investigating and prosecuting complaints of alleged ethics violations and, in some cases, levying sanctions on violators.

*Filing a Complaint* Commissions have diverse regulations for identifying who is permitted to file an ethics complaint. At least 37 commissions allow anyone to file a complaint, although Ohio limits this to “anyone with factual knowledge.” To initiate a complaint in Texas, an individual must be a resident or own real property in the state. More than half of all commissions allow individual commission members to file a complaint, and at least 20 commissions permit the commission to file a complaint of its own motion. With few exceptions, ethics commissions accept complaints filed by the general public and public officials.¹⁴ In the Office of the Indiana Inspector General and the Indiana State Ethics Commission, anyone alleging a violation of the code of ethics can file a complaint with the inspector general; however, only the inspector general may file a complaint with the ethics commission.¹⁵
Frivolous Complaints  Upon receiving a complaint, most commissions have the authority to dismiss it if the complaint is determined to be “frivolous.” Although it varies by commission, “frivolous” is often defined as lacking basis in fact or law. Ethics commissions approach frivolous complaints in a variety of ways: at least 10 commissions promptly dismiss a complaint found to be insufficient or frivolous on its face. If a preliminary review or initial investigation determines that a complaint is frivolous, at least nine commissions will dismiss it; other commissions dismiss a complaint after finding “no probable cause” that a violation has occurred, on grounds of insufficient facts, or if the complaint fails to comply with standard complaint filing requirements. At least seven commissions—those in Connecticut, Hawaii, Missouri, Pennsylvania, Rhode Island, West Virginia and Wisconsin—require individuals who knowingly file a frivolous, groundless or false complaint to pay the attorneys’ fees of the accused.16

Investigating, Prosecuting and Levying Sanctions for Ethics Violations  Once a complaint is received and determined not to be frivolous, an investigation begins. While most ethics commissions are authorized to investigate complaints against individuals under their jurisdiction, a few do not have investigatory power. For these commissions, the responsibility falls to another authority. In Delaware, ethics commission counsel is responsible for the investigation; in Illinois and Tennessee, the duty belongs to the attorney general. With the exception of commissions in Michigan, North Carolina, Ohio and Utah, most ethics commission investigations are allowed by law to subpoena witnesses.

While some commissions have the power to prosecute violations of the ethics code, others have only the authority to refer violations to the appropriate authority, legislative body or governor for prosecution. The Louisiana Board of Ethics refers findings of violations to the Ethics Adjudicatory Board, a three-member panel of administrative law judges from the Division of Administrative Law.

When ethics commissions find that a violation has occurred, nearly all have the power to levy sanctions. Civil fines and penalties are the most common of sanctions and are assessed for violating conflict of
interest, campaign finance, financial disclosure, lobbying or ethics laws. Most maximum fines generally range between $2,000 and $5,000, but can be as high as $25,000 for certain offenses in a few states, and up to $40,000 per violation in New York. Sanctions vary by commission and also may include letters of reprimand, requirements to pay treble damages, cease-and-desist orders, suspension or expulsion from office or employment, or license revocation. Ethics commissions in Florida, Michigan, Ohio and Oklahoma do not have the power to impose sanctions for ethics violations. 17

Trends

Ethics commissions are tasked with working to ensure voters’ confidence in policymakers and political institutions by ensuring that the groups under their jurisdiction follow state ethics laws. While some state legislatures are restricting powers, merging agencies and reducing agency funding, others are expanding commission authority, establishing new oversight entities and guaranteeing commission funding.

Consolidation Tight budgets and tough fiscal times are prompting legislative action that affects state ethics commissions in various ways. During the 2010-2011 legislative session, Connecticut, North Carolina and Washington policymakers proposed bills that would consolidate the functions of various oversight agencies. In 2009, Tennessee consolidated the management and administrative functions of two commissions to increase efficiency and reduce costs without compromising either agency’s independence or authority. Given this trend, however, critics are concerned about the potential loss of autonomy for ethics agencies that merged with agencies which fall under the authority of those they are intended to regulate.

Resource Reduction Georgia’s Government Transparency and Finance Commission also is facing an extreme financial situation, raising questions about whether the commission will be able to carry out its responsibilities given available resources. The commission’s budget has experienced a 40 percent cut over the past three years, and seven out of eight positions have been cut, including all commission lawyers, investigators, and the executive and deputy secretaries.
Authority Restriction Other ethics commissions have been fighting to regain power eliminated by state supreme courts. Rulings in Rhode Island and Nevada in 2009 effectively limited these state ethics commissions’ authority to discipline legislators who vote on issues in which they have potential conflicts of interest. The Rhode Island Supreme Court decision restricted the ethics commission from prosecuting core legislative actions, defined as “proposing, passing, or voting upon a particular piece of legislation.” In Nevada, the Supreme Court essentially barred the Commission on Ethics from conducting any disciplinary proceedings related to the conduct of a legislator if it involved “core legislative functions such as voting and, by extension, disclosure of potential conflicts of interest.”

However, a victory for the Nevada ethics commission in June came in the form of a unanimous U.S. Supreme Court ruling, which upheld the state law prohibiting legislators from voting when they have a personal interest in the outcome and rejecting all arguments that such laws infringe on legislators’ First Amendment rights. The court determined that, when lawmakers vote, they do not exercise a personal right but, rather, one that belongs to the people. This decision by the U.S. Supreme Court may send a message to all states that restrictions of authority must not reduce oversight of the public right of voting as an elected representative of the people.

While the case may be closed in Nevada, Rhode Island’s travails continue. The General Assembly is considering a constitutional amendment to restore the commission’s power of investigation and prosecution.

Expansion Despite the fiscal challenges that most states are facing, promising steps are being made for legislative ethics and state ethics commissions. A law passed by the Alabama Legislature and signed by Governor Robert Bentley guarantees funding for the Alabama Ethics Commission. In New York, lawmakers and Governor Andrew Cuomo recently reached a much-acclaimed agreement on ethics reform negotiations. The ensuing bill, among other things, creates a 14-member bipartisan Joint Commission on
Public Ethics that has jurisdiction over both the legislative and executive branches of government and the authority to initiate investigations and recommend penalties to existing oversight agencies.  

Conclusion

The work of ethics commissions clearly is crucial in a complex political world. Although the structure varies from state to state and the jurisdiction over ethics is clear yet diverse, the power and responsibilities of ethics commissions remain embedded in the values and promises espoused by the founding fathers of this nation. However, the challenges of limited resources including money and time; conflicting priorities in various states and sectors; and prevailing political preferences will have an effect on all elements of ethics commissions. Looking forward, the trends of limited resources, divergent priorities and the public’s demand for transparency and oversight will influence not only work done by commissions, but also their composition and responsibilities. Considering technological advances, ethics commission work may continue to evolve and increasingly rely on Web-based resources for training and other responsibilities. Voter confidence in policymakers and public institutions is as crucial now as ever. So long as America remains a representative democracy, lawmakers will face ethical dilemmas and, although their roles may change, oversight entities such as ethics commissions will help ensure the public trust.

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4 Outliers include Montana’s single commissioner of political practices; the Louisiana Board of Ethics, which has 11 members; the West Virginia Ethics Commission, which is made up of 12 part-time citizen members; and New York’s Commission on Public Integrity, consisting of 13 members.
5 Based on the information from the Center for Ethics in Government’s survey of state ethics commission, term limits are fairly evenly split. At least 25 percent of commissions allow members to serve only one term; another 25 percent of commissions permit members to serve two consecutive terms; an additional 25 percent do not have any limitations on the number of terms commissioners may service; and the remaining 25 percent of ethics commissions did not respond to this question.
6 Commissions whose members are not compensated include those in Colorado, Hawaii, Michigan, New York-Pub, New York-Leg, North Carolina, Oklahoma, Rhode Island, Tennessee and Texas.
8 The Washington Public Disclosure Commission and commissions in Massachusetts and Nevada do not fall clearly within either the executive or legislative branches of government. Commissions in Connecticut, Maine and Pennsylvania identified themselves specifically as independent agencies.
9 For example, Washington’s State Legislative Ethics Board is located in the legislative branch, which directly corresponds to its jurisdiction over legislators, while the purview of the state’s Executive Ethics Board extends only to the executive branch.
14 At least 26 commissions allow individual ethics commissioners to file a complaint, at least 44 commissions allow the general public to do so, and at least 42 allow complaints from public officials. At least 39 commissions allow staff to file complaints, and in at least 20 commissions, the commission itself may file a complaint of its own motion. From National Conference of State Legislatures, “Ethics Commissions: Who Can Initiate a Complaint?” (Denver: NCSL, February 2011); http://www.ncsl.org/default.aspx?tabid=22276.