

Beyond the Law

***"The five most dangerous words in business may be:
'everybody else is doing it.' "***

~ Warren Buffet, quoted in "Financial Times," October 9, 2006



Alaska Senator Lesil McGuire and Hawaii Representative Marcus Oshiro respectively served as chair and vice chair of the CSG-WEST Future of Western Legislatures Committee's ethics forum.

Introduction

"The world's first campaign law didn't stem from Watergate. It was enacted around 300 BC in Rome. The law made it illegal to artificially whiten one's toga and so appear more attractive," writes Brad Rourke, the former vice president of public policy at the Institute for Global Ethics.

This Special Report on ethics is a product of the Committee on the Future of Western Legislatures, Council of State Governments-WEST (CSG-WEST). Information for the report was developed at an ethics forum held in Portland, Oregon, September 14, 2005.

Today's efforts to respond to real and perceived political misbehaviors are much the same as in Rome—have a scandal, pass a law, have another scandal, pass another law and so on.

News media throughout the nation report almost daily on ethical transgressions in the states. "The fix is in for the legislature" reports the Birmingham News. "Amid Scandals, States Overhaul Lobbying Laws" declares the New York Times. "Legislature seeks to recover from embarrassing sting..." writes the Tennessean. "States Offer Grim Look at Curb-ing Corruption," laments the Los Angeles Times.

And all the while public confidence in government declines. On May 25, 2005, the Annenberg Public Policy Center at the University of Pennsylvania published results from a public opinion survey on the ethics of journalists, lawyers, teachers, government officials and politicians. Teachers came out on top by a wide margin. How did politicians stack up? Fifty-two percent of those surveyed rated the ethics of politicians as either somewhat bad or very bad.

As part of its ongoing commitment to legislative institutions, the CSG-WEST Committee on the Future of Western Legislatures brought Western lawmakers and ethics experts together for a conversation about ethical conflicts and practical resolutions. The result was a growing sense that passing and complying with more ethics laws is not enough. Going “beyond the law” will be necessary to achieve high personal and institutional ethical standards.

What the Experts Say

Peggy Kerns is the director, Center for Ethics in Government, National Conference of State Legislatures (NCSL). Peggy is a former member of the Colorado General Assembly.



NCSL's ethics leader Peggy Kerns gives an overview of ethics laws to Western legislators.

When asked why ethics matters, former Colorado legislator Peggy Kerns responded that ethics matters because when the public is skeptical about public servants, representative democracy is undermined. Kerns briefed lawmakers on where legislatures are drawing their ethical lines in the sand. Al-

though ethics laws vary widely in the 50 states, they generally fall into four areas—gifts, financial disclosure, ethics oversight and conflicts of interest, reported Kerns.

Conflict of interest laws are especially tricky for legislators, many of whom hold outside jobs and

may find it difficult to separate public and personal interests. In Kern's view, it's impossible for public officials to avoid conflicts of interest, but how they are handled is critical.

Purists, for example, say that educators should

...ethics matters because when the public is skeptical about public servants, representative democracy is undermined.

~ Peggy Kerns, Director, Center for Ethics in Government, NCSL

never sit on education committees. Physicians should never carry legislation to help the medical profession. But, said Kerns, legislators run for office based on their backgrounds and professions. Nevertheless, “you should always be concerned about

where your personal interests and public interests overlap and stop and pause and think,” she advised.

Kerns noted that according to critics such as the Center for Public Integrity, the biggest loopholes in current state ethics laws pertain to lack of “cooling off” periods to regulate what lawmakers do when they leave office, legislators sitting on committees of their personal interests, weak financial disclosure reporting, limited public access to information and the power of the lobby sector.

Lawmakers at the forum queried Kerns about unfair media reports on legislative ethics. She indicated that part of this problem arises from inexperienced “cub” reporters in statehouses who have replaced seasoned journalists. The

Steps to Consider When Facing a Conflict of Interest

- ✓ Respect the legislative institution
- ✓ Follow the law
- ✓ Seek counsel
- ✓ Ask for advice
- ✓ Take a leadership role
- ✓ Meet your own standard
- ✓ Be aware of the appearance factor
- ✓ Prepare to defend your decision

Source: Peggy Kerns, director, NCSL's Center for Ethics in Government.



Lawmakers considered real-world ethics dilemmas as part of CSG-WEST ethics forum.

press, said Kerns, fails to see that legislating is a relationship building profession. That means working within your caucuses, working across party lines, working with the other chamber and in fact working with the lobbyist corps as well.

She told lawmakers to meet the challenge head on by also building relationships with the media. She recounted a conversation with a former Idaho speaker who said he avoided negative media by meeting with them and laying out a legislative agenda. “We invite them in, we don’t treat them as the enemy and...for the most part I think we get pretty good press, or fair press...” she quoted the former speaker.

...the problem with ethics laws is that they create the belief that if we follow the law, then we’re ethical.

*~ Pat Dobel, Professor
University of Washington*

In conclusion, Kerns noted that when scandals and controversies arise we see a flurry of ethics laws. “Ethics laws,” she said, “are usually put into place in response to something.” She recommended that legislators not rush

into reactive behavior by enacting more and more laws and regulations. Instead, lawmakers

should focus on ethics training and identifying core values.

For information about ethics laws, click on www.ncsl.org/ethics.

J. Patrick Dobel is professor and former associate dean of the Evans School of Public Affairs at the University of Washington. He is the author of “Public Integrity” and a leading thinker and practitioner of ethics in the public arena.



University of Washington Professor Pat Dobel talked with lawmakers about the importance of keeping promises.

University of Washington Professor Pat Dobel shared his unique perspectives on ethics in government as someone who is both an ethics scholar and an ethics practitioner in government and at the university.

Dobel said that the problem with ethics laws is that they create the belief that if we follow the law,

then we’re ethical. He told lawmakers that they live in extremely complicated world of multiple

demands from the party, the caucus, the media, constituents and colleagues. Legislators must look ahead to the next election, they must raise money, they must take care of family and friends and, by the way, hold a job.

In the eyes of the electorate, when a single lawmaker falls from grace, the entire legislature is tainted.

Dobel said he sees legislators as trustees over a unique set of institutions, but that it's easy to undermine that trust. The professor urged legislators to take personal responsibility for their actions. "Accepting personal responsibility

for your endeavors is fundamental to making the system work, and it's fundamental to your own integrity..." But personal responsibility, he said, isn't necessarily natural. It's something we have to teach ourselves.

We can keep three promises to help anchor our moral and ethical world, said Dobel. First we can keep the promises we make to the people we represent—not just those who voted for us, not

just people who gave money, but to all the people. Second we must keep the promises we make to the legislative institution and the people who serve there. "When I use this institution for my own personal gain," said Dobel, "I undermine not just the institution but everybody else in it."

One of the hats Dobel wears is keeper of ethics for the University of Washington's athletic program. He drew this sports analogy for lawmakers. "It's like when I talk to my student athletes, and I say when one of you cheats in the classroom, all eight hundred student athletes are automatically assumed to be cheaters by the professors." In the eyes of the electorate, when a single lawmaker falls from grace, the entire legislature is tainted.

The third promise that legislators must keep is the promise you make to yourself to maintain intense personal honesty. To help you keep that promise, said Dobel, "you need someone who is a friend and confidant and whose only interest is of you being the best person you can be." Dobel acknowledged that in the short-term world of re-election and fundraising, keeping the three promises for ethical behavior is not easy.



Representative Gruenberg (AK) and colleagues worked on an ethics case study.



New Mexico Representative Jeannette Wallace, a member of the CSG-WEST Future of Western Legislatures Committee, contributed to ethics discussions.



The CSG-WEST Futures Committee discussed legislative ethics.

Steven Maser teaches public management at the Atkinson Graduate School of Management at Willamette University where he directs the Atkinson Executive Development Center. Professor Maser is the co-research director of the “Oregon Ethics in Business Awards.” Maser has been an ethics trainer for the Oregon Senate Leadership Institute.



Willamette University Professor Steven Maser asked Western legislators to review scenarios based on actual ethics cases.

Professor Maser said that the basic elements of ethical decision making require lawmakers to: identify an ethical problem, reason toward an ethical solution, be motivated to do the right thing and have the character to implement and persevere.

Maser discussed the difference between ethics and laws.

While some things are clearly ethical and some are not, most of our lives are spent in the gray areas. According to Maser, the gray area is where the law ends.

State ethics laws and regulations are the beginning guide to ethics, not the end, said Maser. “If ethics matter in an organization...you have to manage it and managing something means more than appointing someone as your ethics czar.” Lawmakers must set ethics objectives, hire skilled people, engage in ethics training and monitor behavior.

Maser shared a model for ethical behavior based on action steps outlined by the Markkula Center for Applied Ethics at Santa Clara University. Key elements of the model are shown in the box to the right.

While some things are clearly ethical and some are not, most of our lives are spent in the gray areas.

~Steven Maser
Atkinson Graduate School of Management
Willamette University

A Framework for Ethical Decision Making

- **Recognize a Moral Issue**

Is something wrong personally, interpersonally or socially? Is there conflict that could damage other people, society or institutions? Does the issue go deeper than legal concerns?

- **Get the Facts**

What are the relevant facts? Who are the stakeholders? What are the options for acting? If you showed your options to someone you respect, what would that person say?

- **Evaluate Alternative Actions from Various Moral Perspectives**

Which option produces most good and least harm? Even if everyone doesn't get all they want, will everyone be treated fairly? Which option promotes the common good? Which option deepens or develops virtues or character traits we value as individuals, as professionals, as a society?

- **Make a Decision**

If you told someone you respect why you chose this option, what would that person say?

- **Act, Then Reflect on the Decision Later**

How did it turn out for all concerned? If you had to do it again, what if anything would you do differently?

Source: Markkula Center for Applied Ethics, Santa Clara University



Wyoming Representative Marty Martin listened to ethics experts.

Ethics Homework

The ethics forum convened by the CSG-WEST Committee on the Future of Western Legislatures concluded with practical case scenarios that lawmakers were asked to review. Take time by yourself or with colleagues and family to work on the cases in this report.

Work Sheet

1. You are a newly elected senator and practicing attorney. On behalf of a client of your law firm, you intend to introduce a bill to amend state land use regulations, permitting a real estate development that would not otherwise be allowed. You can draft the bill so as not to attract widespread opposition by using language such that the only beneficiary will be your client.

a. Does the scenario raise an ethical problem and if so, what is it?

b. What additional information would you like to have if any, before deciding whether an ethical problem has arisen?

c. What would you do and why?

2. By virtue of your position on a legislative committee, a major trade association whose members are affected by your committee's legislative jurisdiction invites you to address its conference in the Virgin Islands. The association has offered to provide you with an honorarium, as well as to cover travel expenses, room and board for you and your family. (Would your analysis change if the conference were held in Washington, D.C.?)

a. Does the scenario raise an ethical problem and if so, what is it?

b. What additional information would you like to have if any, before deciding whether an ethical problem has arisen?

c. What would you do and why?

for Lawmakers

The ethics cases in this assignment are based on actual cases in state legislatures around the U.S. Regardless of whether a scenario raises issues of compliance with appropriate laws, think about the ethical issues raised. Cases were written by Professor Steven Maser at Willamette University.

Work Sheet

3. Your state's ethics commission has prosecuted a member of your party for violating the state's ethics code. The commission's budget is now before your committee for review and approval. You are considering demanding reductions in the commission's budget.

a. Does the scenario raise an ethical problem and if so, what is it?

b. What additional information would you like to have if any, before deciding whether an ethical problem has arisen?

c. What would you do and why?

4. Recently elected to the senate, you are a manager at a public university. If the legislature enacts legislation you have sponsored favorable to the university, the university will give you a salary bonus. (Would your analysis differ if you were an employee of a private corporation and sponsored legislation favorable to your employer?)

a. Does the scenario raise an ethical problem and if so, what is it?

b. What additional information would you like to have if any, before deciding whether an ethical problem has arisen?

c. What would you do and why?



"Serving Western Legislatures"

The Council of State Governments-*WEST*

The Council of State Governments-*WEST* is a nonpartisan, nonprofit association serving legislatures in the 13 Western states. CSG-*WEST* promotes excellence in state legislatures through regional cooperation and professional development.



■ 2007 Officers:

Representative Jeff Morris, Washington - Chair
Senator Lesil McGuire, Alaska - Chair-Elect
Representative Jose Campos, New Mexico - Vice Chair
Senator Kate Brown, Oregon - Immediate Past Chair

■ Staff:

Kent Briggs, Executive Director
Martha Casteñada, Staff Assistant, Border Legislative Conference
Mary Lou Cooper, Director, Legislative Leadership Training
Cheryl Lee Duvauchelle, Director, Finance and Development
Rich Lindsey, Policy Consultant
Carolyn Orr, Policy Consultant
Edgar Ruiz, Director, Border Legislative Conference and Special Projects
Lolita Urrutia, Director, Administration and Meetings

CSG-*WEST*

- 1107 Ninth Street
Suite 650
Sacramento, CA 95814
- Phone: (916) 553-4423
- Fax: (916) 446-5760
- Email: csgw@csg.org
- Web: www.csgwest.org