



Reinforcing Government Ethics with Layered Oversight

BY NICHOLAS BIRDSONG

Before Watergate, the only state ethics commission was Hawaii's. It was established in 1967, eight years after the islands achieved statehood. The Hawaii State Ethics Commission remained a novel form of government oversight until the scandal unfolded at the White House. But by the end of the 1970s, 24 states and the federal government had followed in Hawaii's footsteps. Now, all but three states have some form of ethics commission, with four created between 2016 and 2019.

Efforts to preserve public confidence in state legislatures extend beyond commissions, however. Systems of checks against unethical behavior act as reinforcing layers that protect the authority of legislatures as institutions that are **of, by and for the people**. Oversight mechanisms exist within indi-

vidual chambers or legislatures, in other branches of government, or by way of the electoral process.

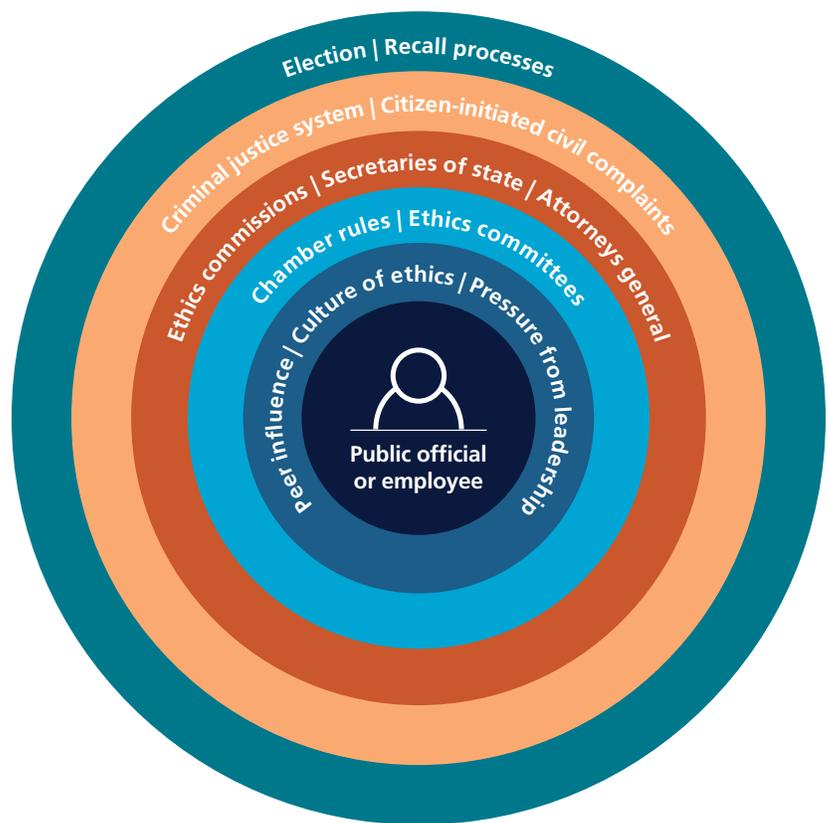
Legislative chambers encourage members to behave ethically through formal and informal mechanisms. Informally, the culture within a legislature and the examples set by peers reinforce good decision-making. Leaders may wield discretionary committee appointment authority to discourage bad acts that could harm the reputation of the institution or their political party. More formally, each chamber has rules of conduct. Chamber leaders may also have direct authority to review ethics complaints, most often in the absence of an ethics committee or commission.

Ethics committees operate in 29 state senates, 30 statehouses, and as joint committees in nine states. Responsibilities vary but may include reviewing

Did You Know?

- Among state ethics commissions with jurisdiction over the legislature, 16 are within an executive branch and 12 are under the legislative branch. Twelve are not clearly in any of the three traditional branches of government.
- Colorado has the only state ethics commission within the judicial branch.
- Watergate was the only time a spike in state ethics laws was directly attributable to a federal controversy.

Layers of Ethics and Oversight



ethics-related bills, issuing advisory opinions, providing ethics training, accepting financial disclosures, receiving ethics complaints, issuing findings based on complaint investigations, and recommending sanctions where appropriate. Committee responsibilities are more substantial in legislatures that lack an ethics commission, but all legislatures maintain the right to discipline their members.

Commissions operate as an additional layer of ethics oversight in 47 states, with a range of authority similar to ethics committees. However, commissions operate outside the core legislative process and, in six states, lack jurisdiction over legislators. Even in the 12 states where an ethics commission exists within the legislative branch of government, membership includes or is limited to non-legislators. Ethics commissions may be responsible for issuing advisory opinions, providing ethics training, accepting financial disclosures, administering lobbying rules, receiving ethics complaints, issuing findings based on investigations, and recommending or imposing sanctions when appropriate. Duties may also encompass election law compliance and oversight.

Other state offices commonly contribute to ethics oversight in limited circumstances. Attorneys general provide ethics advisory opinions in states lacking legislative ethics commissions and, in cases of severe misconduct, may investigate and prosecute criminal ethics violations. Secretaries of state accept legislators' personal financial disclosures in two states that lack ethics commissions.

The electoral process acts as a final check against unethical government. Voters can choose a replacement if the conduct of a public official is viewed as self-serving or otherwise improper. Nineteen states allow for citizen-initiated recall of state officials, so even officials not otherwise up for election may be subject to removal by voters.

Ultimately, however, ethical government begins and ends with the individual. Public officials and employees bear primary responsibility for ensuring that their own actions do not violate the public trust. Ethical decision-making may be driven by value structures, political sense, and knowledge of ethics rules. These positive internal motivations may be reinforced through external means, such as training, peer support or threat of consequences.

State Action

Exactly half of all U.S. states established ethics commissions by the end of the 1970s. Rhode Island and West Virginia created commissions in the 1980s, followed by another nine states before the end of 1994. Five additional states established commissions during the 2000s. Utah and Virginia created commissions in the first half of the current decade.

Voters in South Dakota approved an initiated measure in 2016 that created a new ethics commission with authority over state officials and employees in the legislative and executive branches, as well as made other changes to ethics and elections laws. The Legislature amended several parts of the voter-approved statute the following legislative session, including limiting commission jurisdiction to the state's executive branch. A voter-initiated constitutional amendment that would have reverted most of the law back to its 2016 form failed during the November 2018 election.

The Vermont legislature created a state ethics commission during the 2017 session. News reports leading up to the creation of the commission referenced a 2015 report by the Center for Public Integrity that gave the state a D-minus rating for government transparency and accountability.

Ballot measures amending the constitutions of New Mexico and North Dakota to create ethics commissions both passed in 2018. New Mexico's constitutional amendment was referred to voters by the Legislature, while North Dakota's amendment was voter-initiated and included a range of ethics and election reforms. Both state commissions are expected to begin operating at some point after 2020.

Additional Resources

- ["States Continue to Turn to Ethics Commissions," NCSL LegisBrief](#)
- [Ethics Commissions and Committees, NCSL](#)

NCSL Contact

Nicholas Birdsong
303-856-1451

Mark Quiner
303-856-1485