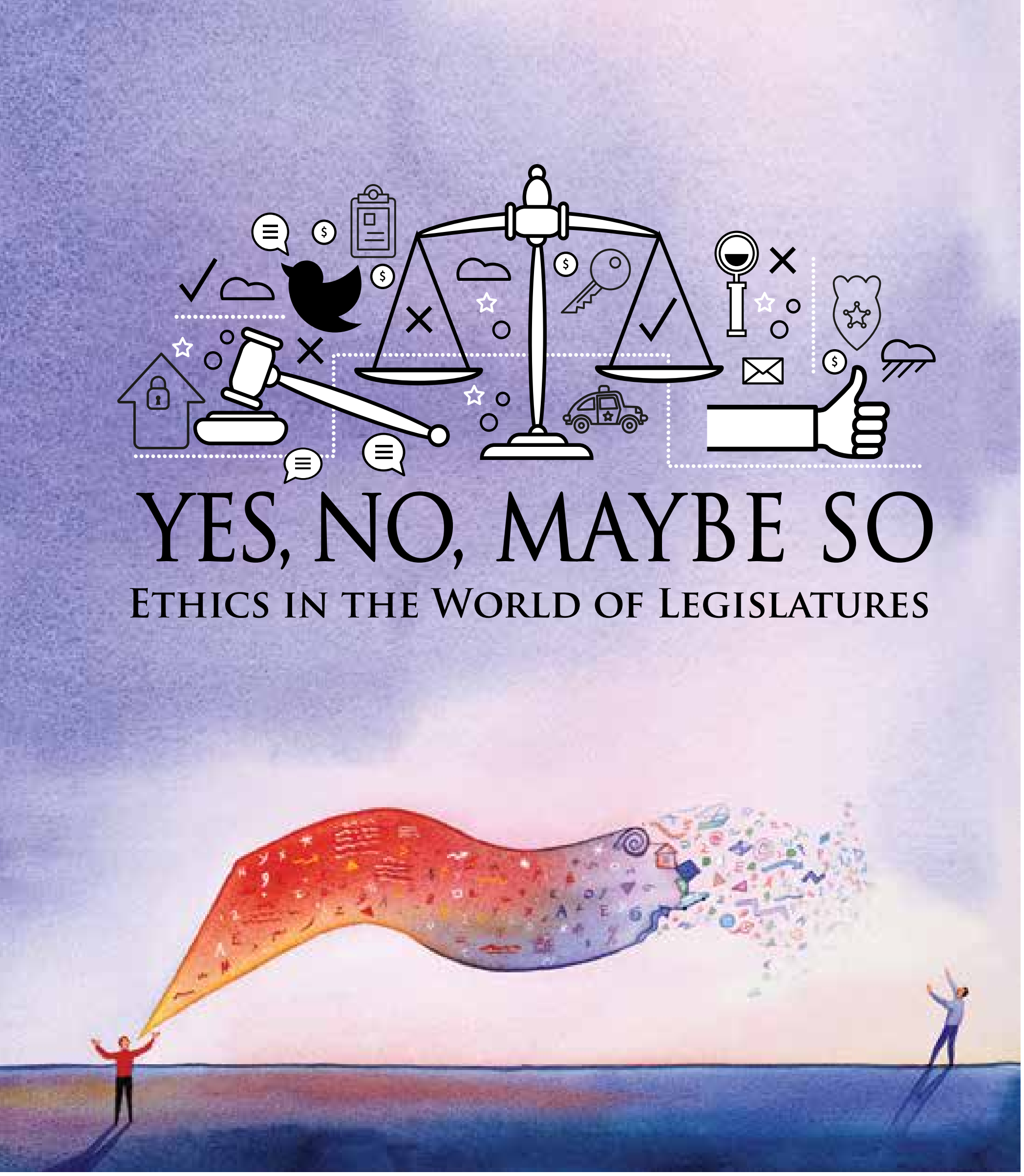

YES, NO, MAYBE SO

Ethics in the World of Legislatures

When should a legislator use a blind trust?

Trust in government is near historic lows. Only 20 percent of Americans believe the federal government does what is right "just about always" or "most of the time," according to a 2017 Pew Research Center survey. That number is down from more than 50 percent following the 9/11 terrorist attacks, but close to the level of public distrust during the recession of the early 1990s. State governments fare only slightly better, generally following the federal trend.

It doesn't take much for citizens to be concerned when it appears that personal interests drive lawmakers' decisions rather than the public good. Let's say, for example, a legislator persuades the state to contract with a business in which he or she owns stock, leading to an increase in the legislator's personal wealth. When the public learns of the connection, red flags go up. Citizens could reasonably assume that the lawmaker is placing the competition at a disadvantage and ripping off taxpayers.

Disclosure requirements and conflict of interest laws help protect against the perception of legislative self-dealing, but blind trusts provide a way for lawmakers to preserve personal financial interests while avoiding lengthy disclosures and the need for recusals.

A legislator can establish a blind trust by transferring control of his or her financial interests to an independent third party authorized to buy and sell assets without the legislator's knowledge. This gives the lawmaker the freedom to set about the work of legislating, "blind" to how decisions and actions taken would affect his or her personal wealth.

Federal law defines a trust as blind when:

• It is managed by an independent, unrelated party free from the influence of the beneficiaries.
• There are no restrictions on asset transfers or sales without prior approval by a governing ethics authority.
• There is no direct or indirect communication between the trustee and the beneficiaries, with a few narrow exceptions.

Some critics argue that it is nearly impossible to prevent communication between beneficiaries and trustees. Without a communication barrier, a legislator could unethically direct investments or design official actions to benefit trust assets. In some states, assets held in a blind trust are not subject to certain reporting and conflict of interest requirements, making it potentially more difficult to prevent the appearance of self-dealing.

Even if there is no inappropriate communication, setting up a blind trust can be complex and expensive. It may be less burdensome in some cases to simply disclose potential conflicts of interest as they arise.

With elected officials held in such low esteem, many are looking at all ideas for regaining the trust and respect the legislature deserves. Blind trusts offer one tool legislators can use to enhance public confidence in the institution.

—Nicholas Birdsong

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Have an ethical dilemma you want us to address? Contact Nicholas at nicholas.birdsong@ncsl.org.

For more information on state financial disclosure requirements, visit NCSL's 50-state ethics comparisons through our online magazine. Also visit www.ncsl.org/research/ethics.