



Tough Calls: States Tailor Ethics Oversight

By Susan Huntley and Peggy Kerns

Ethics laws govern the behavior of legislators and other public officials.

Who's Minding the Store? State legislatures pass ethics laws to govern the behavior of themselves and other public officials. To make sure these laws are followed, states and territories have established oversight mechanisms or entities to handle questions of legislators' ethical conduct. These ethics oversight mechanisms also often give the public a way to file ethics complaints when a violation is suspected. Because each state independently passes its own ethics laws and rules, the scope and procedures for handling ethics complaints or violations vary.

External, Internal or Hybrid. These variations include external or internal oversight or a combination of both. Some examples of external oversight include state ethics commissions, state ethics boards, attorneys general or secretaries of state.

State ethics commissions and boards are among those responsible for oversight.

Internal oversight may occur through a standing ethics committee—composed of selected members of the legislature—that responds to a filed complaint, or the filed complaint might go to the speaker of the house or president of the senate. Combination systems or hybrids using external and internal oversight might include ethics committees composed of both legislators and members of the public; ethics committees and ethics commissions with concurrent ethics oversight; or ethics committees and commissions that refer criminal violations to other enforcement agencies. The issue historically has been whether legislative ethics should be monitored from the inside by legislators or from the outside by appointed citizens or professionals. Lately, however, an increasing number of states have chosen a combination or hybrid system.

What Makes an Ethics Review System Credible? Regardless of the form of these oversight efforts, the challenge is to ensure the process has credibility and integrity. The public must believe the system can handle violations of ethics laws fairly and consistently. Choosing the best way to do this may well depend upon local or regional values, local or regional scandals, the efficacy of responses to these scandals, and any number of other variables.

Legislators may take responsibility for the actions of themselves and their colleagues.

Which System Is Best? Since legislators uphold the public trust, legislative committees that oversee the ethics of their members face a high level of scrutiny. The internal oversight approach may result in legislators taking responsibility for the actions of themselves and their colleagues. This is an approach used by some professions, including doctors and lawyers, who use peer review to discipline their members.

In Colorado, the speaker of the House or the Senate president appoints a committee after receiving an ethics violation complaint. Following an initial investigation, the proceedings can move to a hearing. The maximum penalty for a proven violation is expulsion.

Critics of the internal oversight approach say that “policing our own” means “protecting our own.” They prefer external oversight, contending that accountability is best accomplished through an independent review by legal professionals or appointed members of the public. Given these arguments, some states are combining external and internal oversight. These combination or hybrid systems vary widely.

Hybrids: Members and Process. One model of a combination or hybrid system involves both legislators and the public in the complaint review process once it reaches a certain level. For example, although most internal ethics committees are composed solely of legislators, in at least two states—Alaska and Virginia—the ethics committees include members of the public. Virginia specifies by statute that members of its ethics panels for both the House and the Senate each include five nonlegislative citizen members. Membership of both committees include former legislators and citizens who previously have not held office. The House also includes a retired justice or judge of a court of record.

Hybrid oversight systems may involve both legislators and the public.

Similarly, the process of filing, investigating and resolving an ethics complaint varies from state to state. Some states, such as Delaware, use a combination of external and internal oversight. The Delaware Public Integrity Commission has jurisdiction over legislators’ financial disclosure laws as well as the legislative lobbyist registration and expense reporting law. Other alleged ethical violations are handled by the respective House and Senate ethics committees. Each committee chair determines how to process a violation. Suspension or expulsion is the maximum penalty. Other possible penalties include censure, reprimand or a fine.

Complaints Sworn Under Oath. Some states require that complaints be sworn under oath or notarized. After determining that a complaint is valid, some states move directly into a hearing. Others move into a formal investigation phase. Most have the collective power to issue subpoenas for witnesses and documents. Not all these committees can impose sanctions. In Massachusetts, the Senate and House ethics committees have the power to investigate complaints and make any necessary recommendations in the form of advisory opinions.

Some states require complaints to be sworn under oath.

In Alaska, the external Alaska Public Offices Commission can investigate alleged violations, but matters are adjudicated by the internal Select Committee on Legislative Ethics.

Use of State Attorneys General. States’ involvement of the attorney general also varies. Idaho and Wyoming do not have standing ethics committees, but involve the state attorney general in the process. In Idaho, the attorney general provides the *Idaho Ethics in Government Manual* to legislators. In Wyoming, answers to ethical questions that are unclear in the Ethics and Disclosure Act or from previous decisions are referred to the attorney general. Pennsylvania and South Carolina have standing ethics committees and refer to the attorney general ethics violations that involve possible criminal law violations.

Selected Reference

Casal Moore, Nicole, and Peggy Kerns. “State Ethics Commissions.” *LegisBrief* 14, no. 23. Denver, Colo.: National Conference of State Legislatures, April/May 2006.

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