



States Continue to Turn to Ethics Commissions

By Ethan Wilson and Peggy Kerns

State ethics commissions are charged with enforcing ethics laws, although their jurisdictions—which can include elected and appointed officials, staff, candidates and lobbyists—vary. The number of states without some form of a legislative oversight entity is steadily becoming smaller. Fifty-four ethics commissions or oversight boards exist in 42 states, and the number is growing.

The Watergate scandal of the early 1970s was the catalyst for passing ethics laws at all levels of government. State governments, in particular, began to create ethics infrastructures that included stronger laws for public officials and lobbyists. To ensure these laws were enforced, legislatures established oversight entities that include external ethics commissions, internal ethics committees or a combination thereof.

State ethics commissions vary greatly in structure, powers and jurisdiction. David Freel, retired executive director of the Ohio Ethics Commission, says it is difficult to compare and contrast state ethics agencies due to "...differences in authority, subject matter, breadth of application in jurisdiction among different groups of public officials and the private sector, and in the types and ranges of assistance and accountability to public officials and the public." Geographic differences, past experiences and scandals in the state or region also reflect how a board or commission functions, he says.

The most important function of an ethics oversight agency is handling [complaints of ethics violations](#). Depending on the commission, complaints can be initiated by members of the commission, public officials, staff, the general public or a combination. In 14 commissions, members must recuse themselves if they file a complaint; in 10 others, they need not do so.

When an ethics complaint is filed, commissions balance the rights of the accused with the goal of operating in a transparent manner. Most first determine if the complaint is valid. Some commissions have defined what frivolous complaints entail and have set up procedures for dealing with them. Missouri and Pennsylvania define "frivolous" as a complaint clearly lacking in any basis in fact or law. California adds to its definition "the harassing of an opposing party." Texas has a similar definition. With the exception of the Louisiana Board of

Did You Know?

- Virginia's legislature adopted an ethics commission in 2015.
- Only eight states do not have independent ethics commissions.
- State ethics commissions vary greatly in structure, powers and jurisdiction.

Ethics commissions

- Are executive branch entities
- Generally consist of citizens and others appointed by government officials
- Can vary in jurisdiction and powers, including ability to conduct investigations and issue subpoenas and binding adjudications

Ethics committees

- Are legislative branch entities
- Generally consist of sitting legislators appointed by majority and minority leadership
- Can conduct investigations, hear testimony and levy punishment

Ethics and the Mississippi Ethics Commission, most commissions make complaints public, although timing varies.

The authority of state ethics commissions to enforce ethics laws regulating legislators was called into question in 2009 by two state supreme court decisions. The supreme courts in Rhode Island and Nevada determined that lawmakers, while performing certain legislative acts and functions, are immune from prosecution by state entities outside the legislative branch. This includes executive branch ethics commissions.

The [Rhode Island Supreme Court ruling](#) limits the Rhode Island Ethics Commission from prosecuting core actions of legislators, identified as “proposing, passing, or voting upon a particular piece of legislation.” The [Nevada Supreme Court](#) barred the Nevada Commission on Ethics from conducting disciplinary proceedings regarding a legislator’s conduct if it involves “core legislative function such as voting and, by extension, disclosure of potential conflicts of interest, prior to voting.” In other states, when ethics commissions find there has been an ethics violation, some can levy punishment on the legislator, but others provide (or refer) the decision to the legislative branch ethics committee to determine punishment/censorship.

State Action

Virginia lawmakers passed legislation in 2015 creating the [Virginia Conflict of Interest and Ethics Advisory Council](#). It was designed to “encourage and facilitate compliance with the State and Local Government Conflict of Interests Act, the General Assembly Conflict of Interests Act” and the state’s lobbying laws, according to the council’s website.

So far in 2016, New Mexico lawmakers debated whether it should be the next to adopt an ethics commission. [House Joint Resolution 5](#) proposed an amendment to Article 5 of the New Mexico Constitution, creating an independent state ethics commission with jurisdiction to investigate and issue advisory opinions; however, Senate lawmakers could not agree on the commission’s jurisdiction and powers. Any further developments on an ethics commission in New Mexico will have to wait until 2017.

In the eight states that have no ethics commission—Arizona, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont and Wyoming—oversight is provided by other state agencies, such as the offices of the secretary of state, attorney general or inspector general—or an internal ethics committee.

Federal Action

Congress created the Office of Congressional Ethics in 2008. While this independent panel has no authority over states, it is empowered to investigate federal lawmakers and refer ethics cases to the internal House Ethics Committee.

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