

December 8, 2023 Feedback to Vermont State Ethics Commission

January 19, 2024



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Ms. Christina Sivret
Executive Director
Vermont State Ethics Commission
6 Baldwin Street
Montpelier, VT 05633-7950

Dear Ms. Sivret:

As the Vermont State Ethics Commission completes its work to develop a proposed municipal ethics framework as called for in Act 53 of 2023, the Vermont League of Cities and Towns asks that the framework center ethics accountability at the municipal level, utilize VLCT's technical assistance and training capabilities to educate municipal officials about ethics, and

avoid creating a parallel enforcement mechanism outside of the judicial system to enforce ethics standards.

The Vermont League of Cities and Towns exists to serve and strengthen Vermont municipalities. All 247 cities and towns in Vermont are members of VLCT. We offer dozens of trainings a year, touching thousands of municipal officials. We answer more than 4,000 legal inquiries a year from elected and appointed local officials. We provide toolkits, model policies, guidance and FAQs on a variety of municipal topics, including ethics and conflict of interest policies. We provide this assistance with the help of a team of four lawyers with municipal expertise, a research assistant, a communications team, and several subject matter experts. In addition, VLCT provides property, casualty, liability, workers compensation, and unemployment insurance to nearly every Vermont municipality. These experiences give VLCT an unmatched understanding of municipal needs, and we offer the following recommendations.

Municipal ethics expectations and accountability should be centered at the municipal level. The fundamental core of any framework should recommend that municipalities adopt a code of ethics and be given the authority to enforce it. In 2019, all municipalities became legally-required to adopt a conflict of interest prohibition. The state codified the criteria required in the conflict of interest prohibition and municipal bodies then debated and adopted policies that, at the minimum, met these requirements. This process gave municipal boards buy-in, required purposeful conversations, and respected local control. The Commission may wish to recommend expanding the conflict of interest prohibition in 24 V.S.A. § 1984 to include additional criteria, potentially including those found in the state's code of ethics. VLCT does not support legislative action that simply makes municipalities automatically covered by the existing state code of ethics, as it does not afford local legislative bodies deliberative process.

Municipal officials should be held accountable to any such code at the municipal level. Elected officials should be accountable to the people who elected them. If an elected leader acts unethically, voters should determine their fate. Unfortunately, Vermont law does not currently allow for most municipalities to hold recall elections, so accountability often needs to wait until the end of an elected leader's term. The Legislature has granted about a dozen communities recall authority through individual municipal charters. Most Vermont communities do not have charters. The Commission may wish to suggest the Legislature allow

municipalities to adopt the ability to have recall elections, as it has for these dozen or so communities. Such a vote would occur at a Town Meeting, enabling citizens to implement this type of accountability.

The State should invest in VLCT's educational capabilities to inform municipal officials about ethical conduct. VLCT is considered the go-to resource by elected and appointed municipal officials for how to legally and effectively run a local government. We publish guidance on municipal ethics, have issued a model conflict of interest policy that has served as the foundation of dozens of municipal conflict of interest policies, and maintain additional ethics resources on our webpage. These include a Conflicts in Land Use FAQ, a Chart of Incompatible Offices, and several related model policies, such as social media, purchasing, finance, personnel, and rules of procedures. We offer regular conflict of interest and ethics trainings to our municipalities, and offer an on-demand webinar on the topic as part of the essential VLCT Transparency Series offered at our annual Selectboard Institute. Since March of 2023, VLCT's lawyers have helped 47 municipal officials answer ethics-related questions. We have nearly 400 other historical legal inquiries in our system.

The most effective way to train municipal officials on ethics is to use our proven delivery system. The Commission may wish to suggest the Legislature fund VLCT to deliver additional ethics trainings, produce specific ethics-related materials, and formally counsel municipalities on ethics related-issues. VLCT has successfully partnered with the Vermont Department of Taxes Division of Property Valuation and Review for years to provide training to selectboard members and other Board of Civil Authority officials about the reappraisal and appeals process.

VLCT discourages the creation of a parallel system to hear and investigate municipal ethics concerns outside of municipal government or the existing judicial system. The judicial system is the best place to hear complaints, investigate and enforce the law. The Vermont State Ethics Commission does not have the resources to enforce the state code of ethics on state officials, and should not be charged with expanding its authority to the thousands of elected and appointed municipal officials in the state (our database has more than 5,000 active municipal contacts in it). VLCT is also concerned that the work being undertaken by the Commission may conflate enforcement of existing laws with the enforcement of a new code of ethics. Many of the complaints about municipal ethics voiced at one Commission listening session I attended this fall focused on violations of existing law.

Most notably, violations of open meeting law and the Public Records Act. The judicial system already has authority over such infractions of the law.

We appreciate the Commission's attention to strengthening local democracy. Recognizing that the Commission has historically not been an authority on municipal issues, we'd welcome the opportunity to provide feedback on any draft report you produce before it is submitted to the Legislature. Like you, we agree that setting ethical standards and holding municipal officials accountable to those standards is important. Should you have any questions about our recommendations, or to share a draft copy of your report, please feel free to contact me directly at tbrady@vlct.org.

Sincerely,

Ted Brady
Executive Director

Attachments

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