

WHY WE NEED A NEW STATE ETHICS LAW
FOR MUNICIPAL OFFICIALS

By

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Henry G. Miller and Mark Davies*

In June 1991 a historic ethics bill was introduced in the State Legislature (S.6157/A.8637). Crafted by the Temporary State Commission on Local Government Ethics and its Local Government Advisory Board, which was composed of representatives of the State Association of Counties, Association of Towns, and Conference of Mayors, that bill would have completely overhauled the hodgepodge of disgracefully inadequate ethics rules for municipal officials contained in Article 18 of the General Municipal Law.

Despite unprecedented support from state and local municipal associations, good government groups, individual municipalities and municipal officials throughout the state, the NYSBA Municipal Law Section, the Retail Council, and over 40 newspaper editorials, the bill died in committee. But rumor now has it that an early supporter of the bill—the Hon. George Pataki—may have an interest in reviving it. We need this law, and we need it now. Here's why.

Code of Ethics. The vast majority of municipal officials are honest and want to do the right thing. But they need guidance. They also need protection—against unscrupulous vendors, outside employers, overbearing superiors, and officious friends and relatives who want a little favor or a little help on a bid or application. A simple, understandable code of ethics provides that protection and guides the public servant through the ethical jungle by spelling out exactly what he or she may and may not do. In contrast, an employee without a clear code of

ethics is just waiting to be accused by a supervisor, a disgruntled citizen, the media, or a self-proclaimed ethics "expert" of violating some unwritten ethics "rule."

The Commission's bill contains a clear and comprehensive code of ethics, an understandable list of do's and don't's. It is simple, straightforward, and short. As its centerpiece, it prohibits a municipal official from taking an action that would financially benefit the official, a relative, an outside employer or business, a customer or client, or a major campaign contributor. Instead the official would disclose the possible conflict of interest and recuse himself or herself. The bill would remove the current prohibition against a municipal official having an interest in a contract with the municipality, a prohibition that has produced devastating and absurd results in many small communities.

The code of ethics also contains a bright-line gifts rule, restrictions on a municipal official representing a private person before an agency of the municipality, restrictions on soliciting non-political subordinates for political contributions, and a one-year revolving door provision. The bill would prohibit private citizens and businesses, as well as officials, from inducing an official to violate the ethics law. For example, an outside vendor could no longer with impunity cost municipal employees their job by inducing them to commit an ethical violation. A court could debar such a company from doing business with any governmental entity in the State for up to three years.

The bill provides minimum, uniform statewide standards. A municipality could enact more stringent provisions.

Disclosure. The public has been sold a bill of goods on lengthy annual financial disclosure forms. They do little

more than collect dust while driving good people, particularly volunteers, out of local government. What we really need is transactional disclosure: disclosure (and recusal) when a conflict actually arises. In the Commission's bill, this pin-point disclosure takes its rightful place as the most important type of disclosure.

The Commission's bill does preserve, in a vastly reduced form, annual disclosure, which serves three purposes: (1) a check on transactional disclosure, (2) an annual reminder to officials of where their potential conflicts of interest lie, and, (3) a means thereby of preventing those conflicts from actually occurring. These purposes do not require the current 21-page form. The Commission proposes a two-page form with three questions: the location (not the value) of the real property of the official and his or her immediate family; the source (not the amount) of the official's earned income; and the source (not the amount) of the earned income of the official's spouse. The Commission's bill also requires applicants for municipal permits or contracts to disclose the interest of officials in the application, to the extent the applicant knows.

Enforcement and Administration. The purpose of ethics laws is not to catch crooks but to improve both the reality and the perception of integrity in government by preventing conflicts of interest *before* they occur. So ethics laws must focus not on punishment but on prevention. Indeed, in the Commission's experience, municipal officials most often violate an ethics rule because they don't know what the rule is. Therefore, training and education comprise the most important responsibilities of an ethics board. For that reason the Commission's bill would mandate that the State provide technical services, training,

education, advisory opinions, and advice to municipal officials and local ethics boards.

An effective ethics law also requires effective enforcement and a broad range of penalties, which the Commission's bill provides. By contrast, current law contains penalties that are either non-existent or excessive (misdemeanors) and no enforcement at all. Furthermore, ethics laws must be enforced locally. The State should step in only when the locality requests it or when the local ethics board is accused of being crooked. Finally, ethics laws must be easy and inexpensive to administer and enforce. Local government cannot afford another expensive, complicated mandate. The Commission's bill offers municipalities the option of setting up their own ethics boards, forming joint or regional boards, contracting out their ethics enforcement, or throwing everything on the back of the State ethics board.

Conclusion. The Commission bill thus affords an effective, common sense approach to municipal ethics reform and offers critical assistance to municipal officials and their attorneys traversing a foggy and dangerous road. The bill would also reduce officials' exposure to false claims of ethical impropriety while, at the same time, setting a high but reasonable standard for ethical conduct and providing an effective and efficient means of enforcing that standard.

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