

'Dodge City without Wyatt Earp'

Ethics boards either absent or too weak to protect public

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They're supposed to be watchdogs, the guardians of public integrity.

But a Times Herald-Record investigation has found that most boards of ethics set up by county and local governments to keep public officials and employees from crossing ethical boundaries might be better described as lapdogs or slumbering hounds.

That's if they even exist.

A weak or non-existent ethics board means no neutral party to blow the whistle when an official does something egregious, such as award a contract to a spouse's company, or vote on a brother-in-law's development project.

It also means no independent group to steer honest public servants away from conflicts of interest or vindicate those who are wrongly accused of ethical transgressions.

The Record's findings come at a time of rampant land-dealing and development in the Hudson Valley. It's a time when lucrative deals can make for a bounty of conflicts of interest between developers and the officials who review their projects and regulate land use.

"The public needs a cop walking the beat," says Blair Horner, legislative director for the Albany-based New York Public

Interest Research Group. "It needs someone to patrol for the inevitable conflicts of interest that arise in government."

Without strong ethics boards in place, Horner said, "It's like Dodge City without Wyatt Earp."

Ethics boards are optional under state law. And many localities have chosen not to exercise that option.

Of 24 places surveyed by the Record in Orange, Ulster and Sullivan counties, 10 had no provisions in their laws to establish ethics boards. Five others do allow for such boards, but had none to speak of.

In Ulster County, for example, the Town of Ulster might as well post the faces of its ethics board members on a milk carton.

"There's probably a board out there that was appointed in 1970, and they never replaced them," said Town Clerk Jason Cosenza.

Not that anyone has sent out a search party during the six years Cosenza has been town clerk.

"I think you're the only person who's spoken to me about the board of ethics," he said.

Horner, whose organization is studying the ethics laws of 83 municipalities in New York with populations of more than 50,000, takes a dim view of ethics oversight in New York. He was not surprised by the Record's findings.

"The localities take ethics as seriously as the state does, which

is not at all," he said.

Only nine of the 24 governments surveyed by the Record had ethics boards that could be considered even marginally active.

Those numbers surprised government ethics expert Mark Davies, but only because they seemed slightly higher than he expected for a state he considers a "backwater" for ethical rules, compared with the rest of the country.

"In my experience," Davies said, "less than a quarter of municipalities [in New York] have active boards."

It's impossible to say how many conflicts of interest or other ethical lapses go unnoticed and unpunished in New York due to lax or non-existent boards of ethics.

But Davies, executive director of New York City's Conflict of Interests Board, suspects it's a significant number and believes most are inadvertent, the result of too many public officials and

employees simply not knowing what they can and can't do.

"I'm sure there are plenty of violations out there," Davies said. "People don't know. They don't know what the law is, and nobody tells them."

Port Jervis, an Orange County city of 8,860 people on the Delaware River, gets by without an ethics board. Mayor Ross Decker said any ethical questions arising in city government are referred to the city's lawyers, an approach that he said works well.

Decker, who took the helm almost two years ago, wasn't in office when the city adopted its ethics code and doesn't know why it opted not to create an ethics board. But the absence of a board hasn't been an issue since he's been mayor, he said.

"It really hasn't come up," he said. "We have so many boards right now that meet that I wouldn't want to add another."

Writing an ethics board into law is no guarantee a town will appoint one. In Orange County, the Town of Wallkill's board has only one member and has been inactive for a couple of years because the town can't find more volunteers to serve on it, said Supervisor John Ward.

The ethics board in Warwick, Orange County's second most populous town, is also inactive. Gerald Rubenstahl, its only member, told the Record he's had no company on the board for "10 to 15 years."

There were a few exceptions to the pattern of ethics board lethargy.

The New Windsor board, for example, meets at least four times a year. And it thrilled local activists last December when it voted to recommend that Planning Board Chairman James Petro recuse himself from all deliberations on two adjacent housing projects because of a conflict of interest. The ruling came after opponents of the projects hired a lawyer and filed an ethics complaint.

Meanwhile, in the neighboring Town of Newburgh, a newly activated ethics board has suggested changes in the town ethics code that would give it new powers that good-government groups would cheer.

Nonetheless, most of the ethics boards located by the Record don't exactly need to be fitted with choke collars.

All were purely advisory, existing mostly to peruse financial disclosure forms and dispense advice to officials who worry that they might face a conflict of interest on some matter.

Most of the boards could also investigate allegations of ethical misconduct. But once they've looked into a complaint, they can only report their findings to the governing bodies in their communities — not enforce the law on their own.

Davies, former executive director of the New York State Temporary Commission on Local Government Ethics, which dissolved in 1992, believes the weakness of such boards renders them fairly meaningless in the public's eyes.

"If you don't have the power to enforce the law itself, then nobody's going to pay much attention to you in the end," Davies said.

That may be one reason leaders of ethics boards in the mid-Hudson report fielding very few complaints.

The Town of Monroe ethics board is reviewing one complaint now, its first since 1996, said Chairman Fred Cocks. Sullivan County's board has investigated three since 1997 or 1998, said Richard LaCondre, one of its members. And Washingtonville's board hasn't had any, said its chairwoman, Valerie Prunty, who's in her third year on the board.

Prunty said she's perplexed by the inactivity, because people often raise concerns at Village Board meetings that — warranted or not — could lend themselves to ethics complaints.

"If people really think that there was something wrong, why didn't we get something in writing?" Prunty asked.

The answer, she suspects, is that people don't know her board exists.

Orange County's ethics board doesn't even have the power to investigate complaints, much less sanction an employee or official for a violation, according to its chairman, Gordon Rauer.

"Legally, we have no jurisdiction over that," Rauer said. "Frankly, it's a police matter."

His board mainly answers questions from county lawmakers who wonder if they should recuse themselves from a particular vote because of a potential conflict of interest.

The board gets four or five such letters each year. And in most cases, Rauer said, the questioners are assured that no conflict exists.

Rauer said he sees no need to sharpen his board's teeth. Investigating complaints would require the help of outside professionals, which would be costly, he said. And he fears malcontents would use the board to attack opponents.

"It would be a free-for-all for someone who doesn't like somebody," Rauer said.

Davies concedes that ethics boards can get pulled into political disputes. His own board fields complaints intended to discredit a political opponent, such as when Rudolph Giuliani and Ruth Messinger lodged allegations against each other during the 1997 contest for mayor of New York.

But he denies that strong ethics boards will necessarily become political tools.

"Bad complaints wash out," as they did in the 1997 mayoral race, Davies said. "Most of the complaints we receive, we do nothing with them."

Despite the slim roster of active ethics boards in mid-Hudson, it appears the

lapdog days of ethics oversight may soon conclude in a few communities where officials have nudged their dozing mutts.

Middletown, for example, has energized its fledgling ethics board since the Record revealed a year ago that the panel had never met. The board has now assembled several times to hammer out the disclosure form it will distribute to public officials and employees, said Chairwoman Gertrude Mokotoff.

And in the Town of Newburgh, Supervisor Wayne Booth made it a priority when he took office in 2002 to fill the vacancies on an ethics board that had been allowed to slide into dormancy.

He also charged the new board with reviewing the town ethics code and recommending revisions. The panel returned with suggestions that include new provisions allowing the board to initiate investigations of suspected ethical violations - rather than wait for a complaint - and subpoena witnesses during its investigations.

The proposal, which is now under review, would also direct complaints straight to the ethics board without first going through the Town Board.

Booth, explaining his interest in reviving the ethics board, said he sees it as an essential part of the government, as important as the rules it enforces.

"If you don't have that," he said, referring to the board, "you pretty much render the code useless. If you have the law, you need the enforcement mechanism."

UPPER LEVEL
COUNTY EXECUTIVE
19th DISTRICT CONGRESS
COUNTY ATTORNEY
BUDGET
EMPIRE ZONE
EHTICS
FINANCE/TAXES
LEGISLATURE
PERSONNEL
PURCHASING
MAIN LEVEL

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Do they have an ethics board?	Yes	No	Yes, but inactive
Orange County	X		
Sullivan County	X		
Ulster County	X		
Middletown	X		
City of Newburgh		X	
Port Jervis		X	
Town of Monroe	X		
Town of Warwick			X
Town of Newburgh	X		
Town of New Windsor	X		
Town of Wallkill			X
Kiryas Joel		X	

A directory at the Orange County Government Center and its perhaps ironic spelling of ethics as "ehtics."

Village of Monroe		X	
Washingtonville	X		
Monticello		X	
Town of Fallsburg		X	
Town of Bethel		X	
Town of Mamakating		X	
Town of Thompson		X	
City of Kingston			X
Town of Saugerties		X	
Town of Ulster			X
Town of Wawarsing		X	
Town of New Paltz	X		

A user's guide to best ethics practices

Q: What makes a good ethics board?

A: Well, in New York, simply creating one would be a fine start. Most municipalities that have done so followed a model provided by the state, says Mark Davies, executive director of the New York City Conflicts of Interest Board. And that model leaves much to be desired, in Davies' view and those of past reform advocates.

Here are a few qualities a board should – or should not – have, as recommended by Davies.

► **The power to punish.** "I would strongly advise against an ethics board that is purely advisory and doesn't have any enforcement power of its own," Davies says. But "purely advisory" is what local boards usually are, because state law says they should be. However, the state attorney general's office has issued opinions saying municipalities can overrule that provision, Davies says. New York City's board, formed in 1959, can punish any employee or official except for City Council members and their

staff. It imposed its largest fine in 1998 when it fined former Sheriff Kerry Katsorhis \$84,000 for conducting private business while supposedly working for the city.

► **The power to initiate investigations.** "The biggest problem with some ethics boards is they have to wait for a complaint," Davies says. "They should have the power to initiate investigations on their own." Most boards in this area don't. The Town of Newburgh is considering bestowing that authority on its board.

► **No seats for government officials or employees.** State law says boards must have at least one local official or employee. And so they do. The Town of Monroe's board, for instance, has as three of its five members the highway superintendent, town historian and Zoning Board chairman. Davies argues that having any municipal players on the board just introduces politics into the deliberations.

► **Don't leave ethics decisions to the legislative body.** The Town of Thompson, which has no ethics board, says in its code that the Town Board will answer ethical questions. Even in places that do have ethics boards, those bodies merely make recommendations to the elected officials. But that's unlikely to inspire public confidence, Davies argues. "The public is certainly not going to believe that whatever decision they come up with is acceptable," he says.

