

Municipal Ethics and State Government:  
Four Approaches and Their Application  
To Connecticut State Government

October 31, 2006

## **STATEMENT OF PURPOSE**

At present, the Connecticut Office of State Ethics (OSE) does not play a role in the drafting or administration of municipal ethics Codes and Statutes in Connecticut. Nevertheless, the OSE receives complaints about alleged violations of municipal ethics codes at least weekly. The majority of these local-level complaints do not relate to problems that implicate ethics issues. Rather, in many instances, they concern conduct that may be actionable under civil or even criminal laws. In recent Connecticut General Assembly sessions, legislators have proposed that the OSE become involved with municipal ethics. At the request of State Representative Christopher L. Caruso (D-Bridgeport), the OSE examined how some other state governments address municipal ethics. OSE's findings will be reported to the General Assembly.

The methods employed by other states to address ethics on a municipal level generally fall into four categories that are discussed in detail in the following pages. These categories represent four approaches to municipal ethics: (1) state ethics law includes municipalities, (2) partial inclusion of municipal ethics by the state, (3) application of strictest code, and (4) model code.

## **INTRODUCTION**

### **Current Regulation of Municipal Ethics in Connecticut**

Connecticut cities and towns have recently dealt with myriad highly-publicized ethics problems. In response, in 2004, Connecticut Common Cause prepared a municipal ethics survey that looked at all 169 towns in our state. The survey revealed that 107 out of 169 total municipalities in Connecticut (i.e., 59%) have some version of an ethics code in existence for

their officials and employees. The report portion of the Common Cause survey states, “A code of ethics is only as strong as the provisions it contains.” Even with such a code in place, these municipalities experienced well-documented ethics troubles involving matters pertaining to school construction<sup>1</sup>, housing appraisals<sup>2</sup>, zoning board and selectman conflicts of interest<sup>3,4</sup> and gifts for, among other things, municipal soccer fields<sup>5</sup>.

Furthermore, there exists great variation among municipal codes regarding regulated conduct, prohibitions, investigations and enforcement. For example, in the Common Cause study cited above, only 10 (6%) of the municipalities with ethics codes were found to require statements of financial interests.<sup>6</sup> Approximately 54 percent of Connecticut municipalities’ codes contained gift provisions<sup>7</sup> and also required public officials to disclose conflicts of interest.<sup>8</sup> Only 38 percent of municipal codes prohibited employees subject to such codes from appearing before the city or town for their private interests.<sup>9</sup> Because of the very limited reach of some towns’ codes, Common Cause designated 17 of the 107 towns with municipal codes as having only partial codes.

#### **FOUR BASIC APPROACHES TO STATE INVOLVEMENT IN MUNICIPAL ETHICS CODES**

Some states<sup>10</sup> have employed oversight by their state-level ethics commission rather than solely rely on local governments to devise, administer and enforce their own ethics codes. There are four primary approaches by which state government has dealt with municipal ethics.

### **Approach 1: State Ethics Law Includes Municipalities (Alabama)**

In the first approach, the state government includes municipal public officials and/or employees in the pool of individuals subject to the state ethics code. Alabama's Code of Conduct, for example, defines those who are subject to such code as follows:

- (24) Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2

Alabama's Code of Ethics §§ 36-25-1 through 36-25-30 was enacted in 1975 and specifically includes all levels of government in its provisions. The primary advantage of this approach is that enforcement, education and disclosure regulations are applied uniformly across all levels of government. One disadvantage of the unified approach is the cost to the state. Another disadvantage is that applying ethics laws on both the state and local level can result in needless overlap and confusion, because of the unique ethics needs found at different levels of government. Finally, state administration of local ethics laws may cause local citizens to feel that they have little or no power in how their municipal ethics laws are administered.

### **Approach 2: Partial Inclusion of Municipal Ethics by the State (Massachusetts and Texas)**

The Commonwealth of Massachusetts subjects local jurisdictions only partially to the state ethics law. Included in the Massachusetts ethics law are provisions for gifts, post-state employment, financial disclosure, conflicts of interest and outside employment that pertain to

local and state-level public officials and employees.<sup>11</sup> Moreover, some provisions apply only to local governments and not to the state government. Just as in the first approach, although making municipalities subject to the state law ensures a measure of uniformity across the state, it creates an increased financial burden on the state. For example, in Massachusetts there are 351 municipalities. The Massachusetts State Ethics Commission (MASEC) alone interprets and enforces the ethics laws for both state and local compliance.

Another state that uses this partial approach is Texas, although with a slightly different administrative structure. In Texas, violations at the municipal level are handled by the Municipal Affairs section of the Office of the Attorney General, in accordance with the Texas Penal Code. The Texas Ethics Commission, which deals with state level ethics violations, does not get involved with municipalities, except that it has enforcement authority for campaign finance and political advertising issues at both the state and municipal levels. Even though there is an ethics code, the Texas Attorney General's office appears to rely primarily on the Texas Penal Code, Chapter 36, to deal with issues of Bribery, Gift and Honorarium laws, and Chapter 39, covering Misuse of Government Resources.

### **Approach 3: Application of Strictest Code (Delaware and New Jersey)**

A third approach, utilized in Delaware, requires municipalities to follow the state's ethics code only if the city or town has not developed a code of its own that is at least as stringent as the state's law. In 29 Del. C., Chapter 58 this "minimum standard" is clearly stated:

Code of Conduct – Ethical standards for all State Executive branch employees (rank and file), officers (Senior level & Elected officials) and honorary State officials (appointees to State Boards & Commissions). The standards apply to all local governments unless they adopt their own Code of Conduct which this Commission must approve as being at least as stringent as the State law.

By requiring that municipalities with their own codes adhere to a minimum standard (i.e., the state's code), the state encourages acceptable local ethics input and policies while minimizing state-level administration. But in fact, only seven of Delaware's 59 municipalities have drafted their own ethics laws, thus creating a burden on state government. In a conversation with a staff member at the Delaware Public Integrity Commission, a commonly-stated reason for this municipal inaction is the belief at the local level that a state agency will handle issues in a less biased manner than would local appointees.

A potential pitfall with this approach lies in the differences inherent between municipal and state ethics issues. For example, in Delaware, the Public Integrity Commission has had to address an abundance of land-use concerns which fall outside the realm of ethics law. Further, the Public Integrity Commission noted that enforcement often becomes backlogged due to insufficient attorney staffing. Attorney Janet Wright, Public Integrity Commission Counsel, stated that at the state-government level alone, she is responsible for education, compliance and enforcement for 58,000 employees and public officials. Because her staff consists of only one Administrative Assistant, it is unlikely that many (if any) ethical violations on the local level are addressed.

A similar approach is used in New Jersey, where municipalities and counties are addressed in N.J. Stat. § 40A:9-22.4. This separate statute tasks the Local Finance Board in the Division of Local Government Services, Department of Community Affairs, to "govern and guide" local government officers and employees. Here, as in Delaware, there is a caveat stating that the statute applies to: "local government officers and employees . . . who are not otherwise regulated by a county or municipal code of ethics promulgated by a county or municipal ethics board in accordance with the provisions of this act." In practice, only 42 out of 587 jurisdictions

in New Jersey have chosen to promulgate and enforce their own ethics codes. Paul Contillo, a prominent retired state legislator who also once served on the state's Local Government Finance Board, was quoted as calling the Board "a farce for enforcement."<sup>12</sup> Although it might seem that having a separate agency tasked only to administer municipal ethics codes and issues would result in efficiency and effectiveness, Contillo indicated in a newspaper interview that the opposite has occurred. Since 1991, the state Board has not pursued any complaints to completion relating to improper gifts received by city or town officials in exchange for influence. Echoing the Common Cause survey, Contillo further states, "The enforcement part of the law is the will. And there is no will on the Local Government Finance Board."

#### **Approach 4: Model Code (Tennessee)**

A fourth approach, only slightly different from the third, is being implemented currently in Tennessee. The new Tennessee law mandates that municipalities must adopt the Municipal Technical Advisory Service (MTAS) model code of ethics by July 1, 2007. Otherwise, they must draft a new local ordinance that meets the standards of the model code. The penalty for municipal governing bodies that do not comply is the ouster of local officials from office. The MTAS is a joint project of the University of Tennessee and the Tennessee Municipal League.

This model code gives municipalities substantive guidance without creating significant oversight burdens for the state. However, the mechanics of implementation have given rise to complaints from municipalities about duplication and waste of time and money. This is because municipalities cannot submit their existing codes for approval without significant readjustment to meet the state's standards and to adopt new effective dates."<sup>13</sup> Those localities that opt for accepting the MTAS Model Code must simply send in a written statement that they have adopted

said code and provide the date of adoption. Some municipalities have complained that reworking their existing ethics ordinances to comport with the MTAS Model Code is too onerous and almost “forces” them to choose the quicker, cheaper path of adopting the MTAS Code.

Tennessee’s state provisions cover municipalities in two main areas: rules relating to gifts and disclosure of personal interests. On the enforcement side, the Model Code (Section 10) provides for enforcement by the City Attorney of the municipality raising the issue. A concern here is providing smaller jurisdictions with an alternative if they do not have a City Attorney. It should also be noted that the potential for conflicts of interest is great within smaller municipalities.

## **CONCLUSIONS**

In all the states reviewed, as well as in the Common Cause study, citizens’ preference appears to strongly favor local government control of the formation and administration of ethics laws. Many local council members have also debated whether jurisdiction concerning ethics matters should rest with an independent regional or local ethics commission.<sup>14</sup> Finally, trying to adopt a workable system to draft statutes, resolve local ethics issues and enforce a statewide code can create expense and confusion when regulators at the state level must take into account the disparities among the ethics concerns of large urban areas, affluent suburbs, and small rural towns.

## **QUESTIONS THAT MUST BE ANSWERED BY THE GENERAL ASSEMBLY**

In dealing with the issue of the involvement of state government in local ethics regulation, the General Assembly must consider the following questions:



1. Would a system controlled by a state agency such as the Office of State Ethics be considered an interference rather than an assistance to municipal governments?
2. Would any state agency intervention or oversight interfere with or diminish already existing municipal ethics ordinances?
3. Who would bear the burden of the costs of municipal ethics administration, which, among others, include:
  - a. drafting the statutes;
  - b. educating the regulated parties;
  - c. administering the regulations; and
  - d. enforcement (auditing, investigating, holding hearings and collecting fines).

### **OSE PRELIMINARY RECOMMENDATIONS**

The Office of State Ethics recommends that hearings be held to give the public at large an opportunity to contribute to this debate. Besides the general public, those encouraged to participate in these hearings should include representatives from similarly situated states, such as Massachusetts, experts from the college and university communities, and civic-minded members of the Connecticut bar. In addition, all affected branches of state government should also be consulted – notably the State’s Attorney and Attorney General’s Offices. We suggest that the hearings be completed by December 31, 2007, so that the best recommendations can be made to the General Assembly. The hearings would serve to develop a workable format for the relationship between state government and municipalities relating to the administration of ethics codes.

Beyond hearings for public comment and debate, it is the opinion of the Office of State Ethics that a workable solution may lie in OSE’s development of a “best practices” ethics code, which municipalities may voluntarily adopt. This will provide the guidance towns and municipalities need in order to move towards more transparency and consistency of standards in

municipal government. The voluntary nature of this approach would allow local governments to retain their autonomy while avoiding a costly impact at the state level.

### Footnotes

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<sup>1</sup> Bill Cummings, *Court Decision Points to Corruption in School Deal*, CONNECTICUT POST, June 7, 2006.

<sup>2</sup> Joseph Hachey, *Conflict of Interest*, JOURNAL INQUIRER, June 6, 2006.

<sup>3</sup> Tommy Valuckas, *Watertown Council Gets Involved in Ethics Issue*, WATERBURY CONNECTICUT REPUBLICAN AMERICAN, May 18, 2006.

<sup>4</sup> *In Case Against Marilyn Gould*, WILTON BULLETIN, July 13, 2006. (Second Selectman Gould was found not to have violated the municipality's Code of Ethics.)

<sup>5</sup> Brian Gioiele, *Soccer Field Lights: Policy Troublesome But Boars OKS*, WESTON FORUM, May 17, 2006.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> A study from the Council on Governmental Ethics Laws (COGEL) Blue Book 2005 serves as the basis of some of the following information. The COGEL study sample included only those state government agencies that self-reported their direct involvement in municipal ethics. The sample also purposely excluded states whose primary involvement in municipal ethics dealt with campaign finance. The final sample in the COGEL study included 15 states, several of which are selected for discussion below based on their implementation of one or more of the four models of approach considered worthwhile for exploration in Connecticut.

<sup>11</sup> See MASS. GEN. LAWS ch. 268A §§ 1-25 (2006).

<sup>12</sup> Camden Staff COURIERPOST ONLINE, *Former Officials Say Whole Political System Corrupted by Campaign Fundraising*, Oct. 22, 2000. <http://www.southjerseynews.com/camden/m102200c.html>.

<sup>13</sup> Under Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly, each municipality must newly adopt an ethics code unless it opts to endorse the MTAS model code.

<sup>14</sup> Lisa Backus, *Town Council Members Take a Close Look at Ethics Code*, FARMINGTON POST, July 7, 2006, at 1.