**Vermont State Ethics Commission**

**Minutes of April 3, 2019 Meeting**

**6 Baldwin St. Rm. 315, Montpelier, VT**

1. **Call to Order:** The meeting was called to order by Commission Chair Julie Hulburd at 10:07 a.m. Present also were Commissioner members Christopher Davis, Paul Erlbaum, Sarah Biolsi Vangel and Executive Director Larry Novins in person. Attending by telephone were Commission member Michele Eid and her predecessor, Suzanne Lowensohn.
2. **Public Comment:** At the suggestion of Chair Hulburd “Public Comment” was added to the Agenda to be taken up after “Introductions.” In the future “Public Comment” will appear as a regular agenda item.
3. **Minutes:** On the motion of Paul Erlbaum, second by Christopher Davis, the minutes of the March 6, 2019 meeting were approved. Commissioners Eid and Biolsi Vangel, who were not at the last meeting, abstained.

1. **Introductions:** The Commission welcomed Michele Eid who succeeds Suzanne Lowensohn whose term expired. Ms. Eid outlined her professional experience in Vermont including 23 years of public accounting. Her biography will appear on the Commission’s website soon. Chair Hulburd and the Commissioners thanked Ms. Lowensohn for her contributions to the Commission and wished her well.
2. **Public Comment:** None. Christopher Davis mentioned, in general terms, a telephone call he received from a possible complainant. That discussion was saved for the Executive Session discussion of Complaints.
3. **Executive Director Report.** Larry Novins reported about 2019 legislation which was or is pending in the House and Senate Committees on Government Operations. The House Government Operations amendment to the Commission regarding advisory opinions was withdrawn after Mr. Novins’ and Ms. Hulburd’s testimony (See below). Novins reported on his and Ms. Hulburd’s testimony before the Senate Government Operations Committee about proposed S.157.

Novins described office organization moves including: installation of a mail slot for direct-to-office mail delivery, reorganizing the office computer files, creating more easily accessible information about pending complaints and requests for guidance. The Commission will discontinue getting mail at a P.O. box once this years’ P.O. box lease ends.

Some aspects of the computer Sharepoint file system are problematic. Novins suggested that he would explore other options and report back to the Commission. He also discussed office needs including an appropriately sized conference table with chairs, a lap top and projector. Since funding for these items is in the budget, the Commission (Motion by Christopher Davis, second by Paul Erlbaum) authorized Novins to purchase furniture (up to $1,200) and electronics (up to $2,000) as discussed and authorized Novins to get an office credit card for use when necessary.

1. **Strategies and Priorities:**  The Ethics Commission was created in part to provide ethics training. The Commission’s educational role is the one best-suited at this time to promoting ethics in government through raising awareness by government officials and employees of ethical practices and approaches to the challenges public servants encounter. To this end the Commission wishes to enhance at this time its efforts to provide government ethics education. The Executive Director has already consulted with CAPS in the design of an ethics training program directed toward legislators. Education for other state public servants can be enhanced by encouraging them to use the Commission as a resource. The Executive Director will continue to work with CAPS to spread the word about the Commission’s services to state officers and employees. An ethics video will soon be posted on the Ethics Commission website. It will be important to emphasize that ethics is cultural and not always a black and white choice of options.
2. **Operating Procedures:**  This overlaps with Agenda item #9, below.
3. **Advisory Opinion Process:** The Commission resumed the discussion begun last month (when two Commission members could not be not present) of last year’s Advisory Opinion - how and when, through the Executive Director, Advisory Opinions should be issued. The Commission concurred that Mr. Novins’ and Ms. Hulburd’s testimony to the House Government Operations Committee after the Commission’s last meeting accurately reflected the Commission consensus at the time that; 1) though well-intentioned and thought appropriate at the time, the issuance of the Commission’s first Advisory Opinion was, for several reasons, ill-advised, and 2) the better policy is to take requests for advisory opinions only from those who are subject to the State’s ethics requirements regarding their own on-going or prospective conduct.

The entire Commission reviewed the factors leading to last month’s conclusion and had further discussion of policy considerations. In December, three Commission members and new Executive Director Novins attended the Council on Governmental Ethics Laws (COGEL) meeting in Philadelphia and learned how Ethics Commissions in other states operate. They learned that no other state’s ethics commission issues advisory opinions like or in the manner leading to last year’s Advisory Opinion. A review of the legislative history presented earlier this year by Legislative Council indicated that, despite arguably permissive language in 3 V.S.A. § 1225, the statute was not intended by legislators to sanction the issuance of Advisory Opinions as AO 18-01 was issued. Advisory Opinions, legislative council said, were intended to provide general education, not to address conduct of one individual based on facts alleged to the Commission by a third party. Issuing them on untested allegations is not good policy. It is hard to investigate underlying facts. Requests can be submitted to harass, discriminate, or retaliate against a state employee. Our statute does require that Advisory Opinions provide general advice or interpretation regarding the ethics statutes chapter or any issue related to governmental ethics. Against this backdrop the Commission reviewed arguments favoring permitting requests for Advisory Opinions by anyone, including that Advisory Opinions may be the only way for the public to seek a spotlight on unethical practices, and the implications of making a change. The consensus of the full Commission is that the policy on Advisory Opinions should be amended. The Executive Director drafted amending language for the Commission’s consideration. This change is consistent with the position taken in the Commission’s Annual Report submitted to the General Assembly in January.

The draft to be considered:

“Pursuant to 3 V.S.A. §1225(b) the Executive Director may issue Advisory Opinions ~~to~~ which provide general ~~advise~~ advice or interpretation of ~~Act 79~~ Chapter 31 of Title 3 or any issue related to governmental ethics. An advisory opinion shall not contain any individual’s personal identifying information. ~~An Advisory Opinion can be requested by any person or can be issued by the Executive Director on his or her own initiative.~~  The Executive Director may issue an advisory opinion 1) on the request of a state officer or state employee regarding that person’s on-going or prospective conduct only or 2) on behalf of the Ethics Commission, without a specific request, to address issues brought to the Commission in requests for guidance or other matters of general interest.

The Executive Director may at any time determine that a requested advisory opinion should not be issued.”

The Commission will review the draft amending language and take up the matter again at its May meeting. It should be noted that a change to the policy on Advisory Opinions will in no way lessen the public’s ability to file complaints of government ethical violations.

1. **Complaints and Guidance Update:** Paul Erlbaum moved and Sarah Biolsi Vangel seconded a motion, to go into Executive Session to discuss confidential complaints and requests for guidance. 3 V.S.A. §§ 1221(d), 1223(c), 1225(a)(3). On their motions the Commission concluded the executive session.
2. **Other Business:** Commission members discussed ethical expectations for themselves.
3. **Adjournment:** Paul Erlbaum moved to adjourn, second by Sarah Biolsi Vangel. The meeting adjourned at 12:11 p.m. The Commission’s next meeting is scheduled for Wednesday, May 3, 2019 at 10:00 a.m.