



**Vermont State Ethics Commission**  
6 Baldwin St.  
Montpelier, VT 05633-7950

## **Advisory Opinion Procedures**

### 1. Advisory Opinion Subject Matter

- Advisory Opinions can answer a question regarding any issue related to governmental ethics and the requester's ongoing or prospective conduct. However, the Commission may decline a request for an Advisory Opinion for the following reasons:
  - The subject matter of the request does not implicate the State Code of Ethics, codified in 3 V.S.A. Chapter 31, §§1201-1205, and/or presents a question that falls outside the jurisdiction of the Commission, or would necessitate the interpretation of a statute outside of its jurisdiction;
  - Involves past conduct that is not ongoing;
  - Fails to provide sufficient factual background for the Commission to provide meaningful advice;
  - Provides facts that appear inaccurate, questionable, or in dispute;
  - Involves factual scenarios that are vague, highly unlikely, or overly speculative;
  - Concerns rights or conduct that are the subject of pending litigation involving the requester;
  - Involves an issue that is already answered by the plain language of the statute;

- The Ethics Commission determines that the advice sought would be inappropriate or not in the best interest of the public;
- The timeline specified in the request is too short to draft an opinion;
- For any other reason at the discretion of the Commission.

## 2. Legal Protections

- Advisory Opinions are intended to provide meaningful advice based upon analysis of State ethics laws and policies for the requester and those who may engage in materially similar activities. However, at this time, they do not provide legal protection for those who act in accordance with the opinion.

## 3. Requesting an Advisory Opinion

- Requests for an Advisory Opinion must be in writing and include the following information:
  - Contact information (i.e., name, address, phone number and email) of the requester.
  - The State affiliation (i.e., agency, board, commission, office) and position of the requester.
  - All necessary underlying facts that give rise to the question.
  - A statement or affirmation that the submitted facts are true, and that the question pertains to the ongoing or prospective conduct of the requester, and not someone else.
  - Where possible, the provision(s) of the Code of Ethics that the requester believes is implicated.
- Requests for an Advisory Opinion will be acknowledged within 5 business days of receipt of the request.

## 4. Draft Answers to Advisory Opinion Requests

- The Executive Director may begin drafting the responsive Advisory Opinion upon receipt of the request, as well as the receipt of necessary facts, from the requester.

- The Commission will endeavor to finalize a draft answer to an Advisory Opinion request by the 30<sup>th</sup> day after the Commission has received all relevant facts and other necessary materials (e.g., input from others affected).

#### 5. Commenting on Draft Answers

- Pursuant to 3 VSA § 1225, the Executive Director may consult with the members of the Commission, as well as the Department of Human Resources, in preparing the Advisory Opinion.
- Prior to finalizing a draft of the Advisory Opinion, the Commission will determine whether any other individual, group or agency may be directly and substantively affected by the Advisory Opinion. If the Commission determines that others may be directly and substantively affected, the Commission may solicit written comments from those affected. The deadline for comments on a draft advisory opinion is noon on the Monday before the meeting at which the Commission is scheduled to consider the draft advisory opinion.
- Where appropriate and necessary the Commission may seek input from experts, or others who may have specialized knowledge regarding the matter that is the subject of the Advisory Opinion.
- When the Executive Director completes a final draft of the Advisory Opinion, the Commission will inform the requester of the completion, and the opinion rendered. Where appropriate or necessary, the Commission may ask the requester to submit additional materials, comments, or concerns prior to finalization and publication of the Advisory Opinion. Where appropriate or necessary, the Executive Director may revise the final draft of the Advisory Opinion based on additional materials, comments, or concerns submitted by the requester.

#### 6. Issuing an Advisory Opinion

- The Executive Director shall present a final draft Advisory Opinion to the Commission, which may be considered during an Executive Session pursuant to 1 V.S.A. § 313(a)(1).
- Prior to a Commission vote on the final draft, the Commission may ask to hear from the requester.
- After considering the final draft Advisory Opinion, the Commission may, in a public meeting, by a majority vote of the members present and voting:
  - approve the final draft Advisory Opinion;

- approve the final draft with specified edits;
  - reject the final draft;
  - table the final draft for future consideration; or,
  - take any other action that the Commission deems is in the public interest.
- A requester may withdraw an Advisory Opinion request by submitting a written statement of withdrawal at any time before the Commission votes to approve the advisory opinion.
  - All Advisory Opinions are made available to the public on the Ethics Commission website after personally identifiable information has been removed.
  - Personally identifiable information, such as names and contact information, will be redacted prior to the publication of the advisory opinion.

#### 7. Reconsidering an Advisory Opinion

- At any time after the final vote to approve an Advisory Opinion, a Commissioner who voted in the majority to approve an advisory opinion can move to reconsider the opinion. Such reconsideration can be made in response to a written petition from the requester, or on the Commission's own initiative.
- If a majority of the Commissioners vote to reconsider the advisory opinion, that opinion is vacated, and the Commission will proceed to reconsider the substance of the original request.
- The Commission may reconsider an Advisory Opinion to:
  - correct any errors in the original;
  - ensure that the Advisory Opinion is consistent with any changes in law;
  - amend the opinion to accommodate newly presented facts, information, or argument;
  - withdraw the opinion; or,
  - take any other action that the Commission deems to be in the public interest.
- Any reconsideration by the Commission shall be at a public meeting.

- Prior to reconsideration, the Commission will undertake to notify the original requester. When the requester's contact information is unknown, the Commission will make good faith efforts to notify the requester through the most recent contact information provided by the requester to the Commission.
- If, following reconsideration, an Advisory Opinion is withdrawn or changed by the Commission, the Commission will undertake to notify the original requester. When the requester's contact information is unknown, the Commission will make good faith efforts to notify the requester through the most recent contact information provided by the requester to the Commission.