



VERMONT STATE ETHICS COMMISSION

2023 ANNUAL REPORT

Submitted to the General Assembly January 10, 2024

"Ethics is knowing the difference between what you have a right to do and what is right to do."

-Potter Stewart

6 Baldwin St.

Montpelier, VT 05633-7950

<https://ethicscommission.vermont.gov/>

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COMMISSION MEMBERS

Paul Erlbaum (Chair)

Appointed by the League of Women Voters of Vermont, term ending December 31, 2027

Christopher Davis, Esq.

Appointed by the Vermont Bar Association, term ending December 31, 2023

Sarah Biolsi Vangel, Esq.

Appointed by the Chief Justice of the Vermont Supreme Court, term ending December 31, 2023

John “Jack” Kennelly, Esq.

Appointed by the Chief Justice of the Vermont Supreme Court, term ending December 31, 2028

Michele Eid, CPA

Appointed by the Board of Directors of the Vermont Society of Certified Public Accountants, term ending December 31, 2026

Sarah Butson, Esq.

Appointed by the Vermont State Council of the Society of Human Resource Management, term ending December 31, 2027

EXECUTIVE DIRECTOR

Christina Sivret, Esq.

ADMINISTRATIVE ASSISTANTS

Erin Smith/Tina Wolk

For Commissioner biographies see: <https://ethicscommission.vermont.gov/about-us/commissioner-and-staff-bios>

INTRODUCTION

Pursuant to 3 V.S.A. § 1226, the Vermont State Ethics Commission (“Commission”) submits its seventh annual report to the General Assembly for calendar year 2023. As required by statute, this report summarizes the number and types of complaints made to the Commission and the disposition of those complaints; summarizes guidance provided by the Executive Director to State of Vermont public servants; provides an estimate of the number of trainings on the State Code of Ethics conducted by each branch of government; summarizes training activities undertaken by the Commission; and gives recommendations for legislative action to address governmental ethics.

ETHICS COMMISSION STAFF and RESPONSIBILITIES

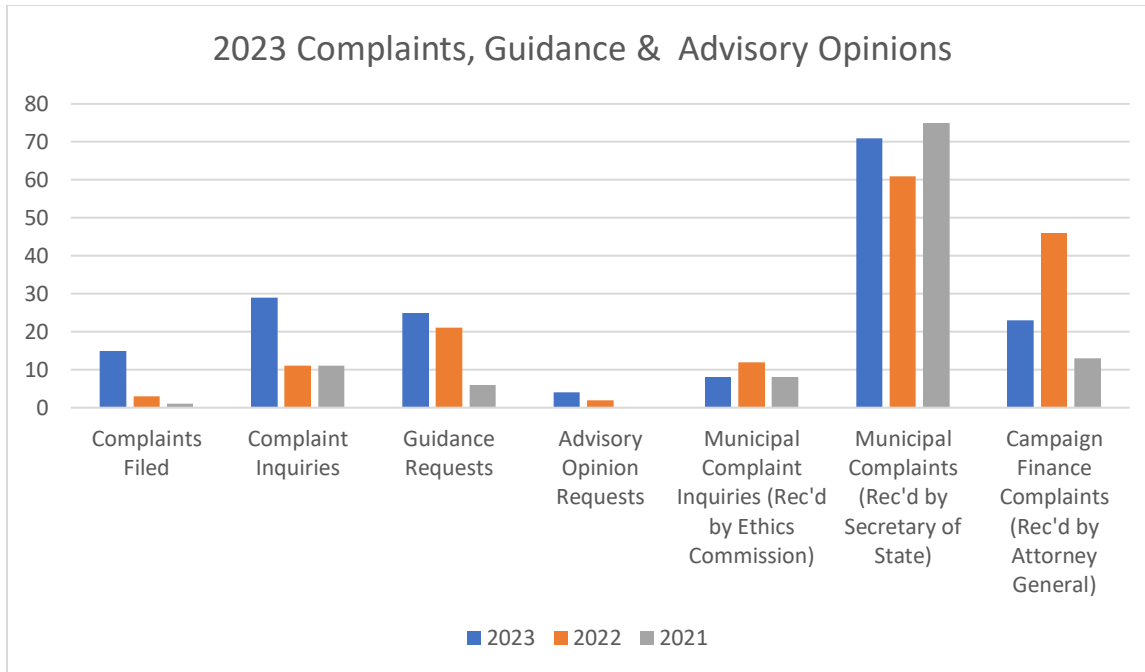
The Ethics Commission is made up of five volunteer commissioners, one part-time Executive Director, and one part-time Administrative Assistant. It holds regular, public meetings at 10 a.m. on the first Wednesday of each month. The Executive Director’s responsibilities include setting meeting agendas; responding to inquiries and requests for advice; drafting all Ethics Commission documents, including complaint-related correspondence to advisory opinions; engaging in strategic planning; formulating policy; providing ethics education; testifying before the Legislature; and responding to media inquiries. Prior to 2022, the Executive Director was the Commission’s only employee. In 2022, the Commission hired a part-time administrative assistant to handle the administrative tasks of the Commission, which allows the Executive Director to focus on the Commission’s core mission.

COMMISSION AUTHORITY

The Commission has the authority to receive, review, and refer written complaints from any source regarding government ethics in any of the three branches of State government, as well as complaints about violations of the State’s campaign finance laws. 3 V.S.A. § 1223(a)-(b). It does not have investigatory or enforcement powers and complaints warranting further action are referred to other relevant entities for further review and investigation.

The Commission may also issue non-binding ethical Guidance and Advisory Opinions to State of Vermont employees and executive officers upon request. Guidance must relate to the requester’s own actions and is confidential unless the recipient chooses to disclose it. 3 V.S.A. §1225(a). Advisory Opinions must also relate to the requester’s own conduct, do not contain any personally identifying information, and are posted to the Commission’s website within thirty days of issuance. 3 V.S.A. §1225(b). Guidance and Advisory Opinions are formulated by interpreting and applying the State Code of Ethics, which went into effect on July 1, 2022.

The Commission also serves as an educational resource for State of Vermont employees and public servants, providing online ethics training and in-person trainings upon request.



COMPLAINTS

The Complaint Process

Any person can submit a confidential written complaint to the Ethics Commission regarding ethical conduct in State government or violations of campaign finance law. Complaints are filed using the [complaint form](#) found on the Commission’s website. Once received, the Executive Director performs a preliminary review of each complaint to determine whether the complaint should be referred for further action, closed, or whether additional information is required to make a determination. A complaint may be closed if the subject matter of the complaint does not implicate governmental ethics or campaign finance law. When a complaint is referred for further action, the receiving entity uses its own policies and procedures to investigate and to decide what, if any, action to take. Below are examples of the types of complaints the Commission might receive and refer to other entities for further action.

- Complaints alleging a crime, a violation of governmental conduct regulated by law, or a violation of campaign finance law are referred to the Attorney General or the relevant State’s Attorney.
- Complaints alleging a violation of the Department of Human Resources Personnel Policy and Procedure Manual are referred to the Commissioner of Human Resources.
- Complaints regarding conduct committed by a judicial officer are referred to the Judicial Conduct Board.
- Complaints regarding conduct committed by an attorney are referred to the Professional Responsibility Board.
- Complaints regarding conduct committed by a State Representative are referred to the House Ethics Panel.
- Complaints regarding conduct committed by a State Senator are referred to the Senate Ethics Panel.

Summary of Complaints

Fifteen written complaints were filed with the Ethics Commission in 2023.

- Two complaints alleged violations of campaign finance laws and were referred to the Attorney General.
- Three complaints were closed without being referred because there was no investigating and enforcement authority identified by statute to receive the complaints.
- One complaint was referred to the Senate Ethics Panel and was closed after additional review and inquiry.
- Two complaints alleged violations of the Vermont Rules of Professional Conduct by attorneys and were referred to the Professional Responsibility Board.
- Two complaints were referred to the Department of Human Resources for further action, where they were subsequently closed after additional review and inquiry.
- One complaint alleged violations of the Vermont Code of Judicial Conduct and was referred to the Judicial Conduct Board.

As in prior years, the Commission received more complaint inquiries than it did formal written complaints. In addition to the 15 complaints referenced above, the Commission received 29 complaint inquiries that did not result in the submission of a formal written complaint. Complaint inquiries covered a variety of topics, including municipal ethics; employment discrimination; falsification of government documents; conflicts of interest; and failure to comply with other state or federal laws, rules, or policies.

Campaign Finance Complaints

The Ethics Commission received 2 campaign finance violation complaints in 2023 and referred them to the Office of the Attorney General. The Office of the Attorney General is required to report complaints it receives related to campaign finance violations to the Ethics Commission. 17 V.S.A. § 2904(a). In 2023, the Attorney General received 23 complaints. At the end of the year 22 complaints had been closed and 1 remained open. Additionally, one independent review was opened and closed in 2023.

Municipal Complaints

As in prior years, the Ethics Commission received numerous inquiries from both members of the public and municipal officials about the complaint process, as well as requests for ethics advice. In 2022, the Commission received 8 complaint inquiries regarding municipal ethics. The subjects of these inquiries included conflicts of interest, preferential treatment, open meeting law violations, and failure to follow municipal policies and procedures. Callers often expressed frustration with the lack of guidance, recourse, and oversight regarding municipal ethics, and many expressed the view that the State Code of Ethics should also cover municipal officials.

Although the Ethics Commission's jurisdiction does not cover municipal ethics, the Legislature has previously recognized municipal ethics as a topic of importance. Sec. 17 of Act 79 required the Secretary of State to accept written complaints regarding municipal governmental ethical conduct through December 15, 2020 and report those complaints to the Ethics Commission.

Although no longer required by statute, the Secretary of State’s office has continued to track inquiries related to municipal ethics. In 2023, their office received 71 municipal ethics inquiries, and noted this number is likely a low estimate, as many other types of inquiries may also touch on ethics issues.

GUIDANCE

Guidance Process

State employees and executive officers may request confidential ethics Guidance from the Executive Director of the Ethics Commission regarding the requester’s own actions, including actions related to managerial decision-making responsibilities. Guidance and requests for Guidance may be oral or in writing. 3 V.S.A. §1225(b).

Summary of 2023 Guidance Requests

Guidance requests increased significantly with the passage of the State Code of Ethics in July 2022 and the implementation of the Code of Ethics training requirements. The Commission received 25 Guidance requests in 2023, not including inquiries from municipal employees or members of the public. In some cases, requests touched on more than one topic within a single request.

- Preferential Treatment (6)
- Incompatible Outside Employment (6)
- Gifts (6)
- Conflicts of Interest and the Appearance of Conflicts of Interest (13)
- Post-Employment Restrictions (2)
- Other (4)



ADVISORY OPINIONS

Advisory Opinion Process

State of Vermont employees and executive officers may request an Advisory Opinion from the Executive Director regarding any issue related to government ethics and the requester's ongoing or prospective conduct. 3 V.S.A. §1225(b).

In 2023 the Commission adopted and published [Advisory Opinion procedures](#), created an [Advisory Opinion request form](#), and drafted [Advisory Opinion FAQs](#), all of which can be found on the Commission [website](#).

The Commission reviews every request for an Advisory Opinion. However, the Commission may decline to issue an opinion for the following reasons:

- The subject matter of the request does not relate to the State Code of Ethics, codified in 3 V.S.A. Chapter 31, §§ 1201-1205; presents a question that falls outside the jurisdiction of the Commission; or would necessitate the interpretation of a statute outside of the Commission's 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.

Requests for an Advisory Opinion are acknowledged within 5 business days of receipt. The Executive Director then reviews the request and notifies the requester whether it has been accepted, denied, or whether more information is needed to make a decision. If the request is accepted, the Executive Director will draft an Opinion for consideration by the full Commission. Draft advisory opinions may also be shared with third parties the Executive Director deems to have information, facts, and/or knowledge relevant to the formulation of the opinion. The Commission endeavors to finalize Advisory Opinions within 30 days of receiving all relevant information. Final Advisory Opinions are posted on the

Commission's website within 30 days of issuance, and do not contain the requester's personally identifying information. 3 V.S.A. §1225(b).

Summary of 2023 Advisory Opinion Requests

The Commission received four Advisory Opinion requests in 2023. All opinions can be found on the Commission's website and address the below topics.

- [AO 2 2023](#)
Outside Employment; Employment Restrictions; Misuse of Position; Misuse of Information; Misuse of Government Resources; Conflicts of Interest; Preferential Treatment
- [AO 3 2023](#)
Boards & Commissions, Conflict of Interest, Appearance of Conflict of Interest
- [AO 4 2023](#)
Boards & Commissions, Conflict of Interest, Appearance of Conflict of Interest, Good Cause, Rule of Necessity
- [AO 5 2023](#)
Conflict of Interest, Appearance of Conflict of Interest, Outside Employment, Employment Restrictions, Misuse of Position, Misuse of Resources, Boards and Commissions, Gifts, Core Legislative Functions

YEAR IN REVIEW

In the first half of 2023, the Ethics Commission focused its efforts on advocating for legislation related to financial disclosure and municipal ethics. In January the Commission began drafting language proposing financial penalties for the late and non-filing of executive officer and candidate financial disclosures, as well as language directing the Commission to submit recommendation for a municipal ethics framework for Vermont to the Legislature in January 2024.

Ultimately, legislation related to financial disclosure penalties was considered by the legislature in H.429 but didn't pass. However, the Legislature recognized the importance of financial disclosure in the governmental ethics framework, and in S.17 added sheriffs to the list of Vermont public servants who must file financial disclosures with the Ethics Commission. Financial disclosure requirements for additional categories of public servants were considered at the end of the session, and that discussion is expected to continue in 2024.

In anticipation of the future expansion of financial disclosure requirements, the Ethics Commission worked with Tyler Tech to develop and launch an online financial disclosure portal, allowing disclosures to be filed, reviewed, and posted in a fully electronic system. The new system was successfully launched in December 2023. The Commission plans to make the system available to other agencies and branches of government that handle financial disclosure filings, should they wish to use it.

During the second half of the year, the Ethics Commission turned its focus to research and development of a proposed municipal ethics framework for Vermont. Research included a survey of the municipal ethics systems in 16 other states similarly situated to Vermont, as well as November 2023 listening sessions with members of the Vermont public and Vermont municipal officials.

In December, Commissioner Michele Eid attended the 44th annual Council on Governmental Ethics Law (COGEL) conference in Kansas City, MO. COGEL is a professional organization for government agencies and other organizations working in ethics, elections, freedom of information, lobbying, and campaign finance. Commissioner Eid networked with government ethics professionals from other states and countries and attended multiple learning sessions on topics related to ethics education and training, enforcement, compliance, and professional development.

In addition to legislative advocacy, the Ethics Commission experienced an increased demand for its services, particularly from members of the public and public servants seeking to file ethics complaints and requests for advisory opinions.

Complaints	Complaint Inquiries	Guidance Requests	Advisory Opinion Requests
400% increase 2022 v. 2023	163% increase 2022 v. 2023	19% increase 2022 v. 2023	100% increase 2022 v. 2023

2023 Legislative Efforts

Financial Disclosure

In January 2023, after a large number of executive officer financial disclosures were filed past due, the Ethics Commission drafted language proposing late penalties for both the executive officer financial disclosures filed with the Ethics Commission, and the candidate financial disclosures filed with the Office of the Secretary of State. The proposed penalties were modest, ten dollars a day up to a maximum of one thousand dollars, but they would have represented the first enforcement protocol for ethics laws enacted since the establishment of the Ethics Commission in 2017.

In February 2023, the draft language was submitted to the Senate Committee on Government Operations and the language was discussed in Committee meetings in March and April as part of H.429. While the H.429 ultimately did not pass, the Legislature recognized the importance of financial disclosure in a governmental ethics framework, and, in S.17, added sheriffs as a category of Vermont public servants required to file financial disclosures with the Ethics Commission. The Legislature also confirmed that sheriffs are subject to the State Code of the Ethics. At the end of the session the expansion of financial disclosure requirements to other categories of public servants was under consideration, but due to time constraints did not make it beyond initial deliberations. It is anticipated the discussion will continue in 2024.

Municipal Ethics

The Ethics Commission routinely hears from members of the public seeking to file municipal ethics complaints, as well as from municipal officials seeking ethics advice and guidance. Since its inception, the Commission has regularly raised the need to address municipal ethics with the Legislature, and in 2023 the Legislature passed H.125 (Act 53), which requires the Commission to submit a proposed municipal ethics framework to the Legislature on or before Jan. 15th, 2024. The authorizing language states:

On or before January 15, 2024, the State Ethics Commission shall report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with its recommendations for creating a framework for municipal ethics in Vermont. The report shall include a summary of the issues related to creating a framework for municipal ethics in Vermont and a summary of any relevant input received by the Commission in drafting the report. The report shall include specific recommendations on how to best provide cities and towns with informational resources about basic ethics practices. In drafting the report, the Commission may consult with any person it deems necessary to conduct a full and complete analysis of the issue of municipal ethics, including the Vermont League of Cities and Towns and the Office of the Secretary of State.

During the summer and fall of 2023, the Commission focused its efforts on researching and drafting a recommended municipal ethics framework. The Commission began by conducting a research survey of the municipal ethics frameworks of 16 states that share similar characteristics with Vermont. Those states were: Arkansas, Connecticut, Delaware, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Rhode Island, South Carolina, Virginia, and Wyoming.

The survey found that the majority of the states analyzed have one or more of the following common attributes with respect to their municipal ethics frameworks:

1. Municipal ethics are governed either exclusively, or predominantly, by provisions in state statute (either as the de jure code, or as a set of minimum standards for municipal code of ethics);
2. In a plurality of the analyzed states, the state ethics body retains an ongoing role in enforcing and interpreting the municipal codes of ethics. In the plurality of states, the state ethics entity maintains jurisdiction over interpretation and enforcement of the state’s code with respect to municipalities; ¹
2. Municipal <u>elected officials</u> are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). All the states with meaningful municipal ethics regulation; ² include elected officials among those who should be subject to an ethics code. The statutes state this explicitly, and mostly without exception.
4. Municipal <u>appointed officials</u> are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). Most of the states (12 of 16) have provisions in the code that equally apply to most or all appointed government officials at the municipal level. ³
5. Municipal <u>employees</u> are subject to the code of ethics (irrespective of whether it is a state-imposed, or local-imposed code of ethics). Of the 16 states analyzed, 11 expressly include most or all of municipal employees within the scope of most or all of the ethics rules. ⁴

¹ In these states, the state ethics body also has regulation or rule making authority with respect to the code of ethics. Among these states are: Massachusetts, Mississippi, Nebraska, Nevada, Rhode Island, and South Carolina.

² Based on the minimal rules for municipal employees, neither Connecticut nor New Hampshire are considered to have meaningful municipal ethics regulation.

³ Rhode Island’s statute, for example, includes “any individuals serving in any appointed state or municipal position.” The rules typically cover appointments irrespective of who the appointing authority is, or what the specific appointed position is. None of the states make a distinction between paid appointees and volunteer appointees.

⁴ Rhode Island, for example, applies its Code to “any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation.”

The initial research findings helped the Commission to develop a draft proposed municipal ethics framework, with primary elements including a statewide municipal code of ethics; a centralized source for ethics training, advice, guidance; and a designated body or bodies granted the authority to receive, investigate and enforce municipal ethics complaints.

The Commission next set up listening sessions to hear from members of the public and municipal officials regarding their concerns and comments regarding municipal ethics generally, as well the draft framework. Listening sessions were held on November 7, 23, and 28, 2023. The input received during those sessions was incorporated into the Commission’s proposed municipal ethics framework. In particular, the Commission noted the need for municipal whistleblower protections and in December, drafted proposed municipal whistleblower protection language to incorporate into the municipal ethics framework.

Ethics Training

Section 1205 of the State Code of Ethics requires all State of Vermont public servants take State Code of Ethics training within 120 days of State service and every three years thereafter. The Ethics Commission is one of five statutorily approved training providers, and in 2022 the Commission partnered with the Center for Achievement in Public Service (CAPS), another approved training provider, to develop a comprehensive ethics training available to all State of Vermont public servants through the State Learning Management System (LMS) and on the Commission website.

Pursuant to § 1226(2)(B) of the Code, the Commission is required to provide an estimate of Code of Ethics trainings conducted by each branch of government in its annual report. The below numbers, broken down by branch of government, are derived from the number of people who have taken the training through LMS and the Commission website. The CAPS/Commission training is currently the only Code of Ethics training available to public servants in the executive and judicial branches of government, therefore the below numbers represent the total number of State of Vermont employees and public servants in the executive and judicial branches of government who completed the training in 2023.

CAPS/LMS TRAINING DATA

Department Agency	Completed	In Progress	Grand Total	Percentage Complete
Administration Agency	12	1	13	92.31
Agriculture, Food & Mrkts Agency	28	1	29	96.55
Attorney General's Office	13	1	14	92.86
Auditor of Accounts' Office	1		1	100.00
Buildings & General Services	64	6	70	91.43
Cannabis Control Board	3		3	100.00
Children and Families	221	27	248	89.11
Clerk of the House	1		1	100.00
Commerce & Community Dev Agency	19	2	21	90.48
Corrections	213	31	244	87.30
Defender General's Office	7	1	8	87.5

Dept of Human Resources External Users	1		1	100.00
Digital Services Agency	36	6	42	85.71
Disabilities Aging Ind. Living	55	7	62	88.71
Education Agency	21	5	26	80.77
Enhanced 911 Board	3		3	100
Environmental Conservation	72	21	93	77.42
Executive Office	8		8	100.00
Finance & Management	3		3	100.00
Financial Regulation	24	4	28	85.71
Fish & Wildlife	17	7	24	70.83
Forests, Parks & Recreation	20	3	23	86.96
Green Mountain Care Board	10	1	11	90.91
Health	126	9	135	93.33
Human Resources	22		22	100.00
Human Rights Commission	2		2	100.00
Human Services Agency	18	1	19	94.74
Joint Fiscal Office	2		2	100.00
Judiciary	42	1	43	97.67
Labor	39	1	40	97.50
Labor Relations Board	1		1	100.00
Legislative Offices	11		11	100.00
Libraries	2		2	100.00
Liquor and Lottery	16	3	19	84.21
Mental Health	46	4	50	92.00
Military	23	2	25	92.00
Natural Resources Agency	8	2	10	80.00
Natural Resources Board	8		8	100.00
Office of the Child, Youth	1		1	100.00
Public Safety	133	8	141	94.33
Public Service Department	14		14	100.00
Public Utility Commission	12		12	100.00
Secretary of State's Office	4		4	100.00
State Treasurer's Office	5	1	6	83.33
State's Attorneys and Sheriffs	4	1	5	80.00
Taxes	18	3	21	85.71
Transportation Agency	118	5	123	95.93
Vermont Criminal Justice Council	4		4	100.00
Vermont Health Access	53	6	59	89.83

Vermont Veterans' Home	31	9	40	77.50
Grand Total	1615	180	1795	89.97

ETHICS COMMISSION WEBSITE TRAINING DATA

Vermont Climate Council	7
Vermont Fish & Wildlife Hunter Education Program	15
Department of Libraries	11
VHFA	7
Vermont Bond Bank	5
Department of State's Attorneys & Sheriffs	3
Natural Resources Board	15
Other	2
Grand Total	75

In addition to online training development, the Commission's Executive Director participated in five ethics trainings for government employees, including VTLEAD classes with the Center for Achievement in Public Service (CAPS), a training organized by the House Ethics Panel for House members, and a training for the Human Rights Commission.

RECOMMENDATIONS

- 1) The Ethics Commission recommends that the Legislature implement the recommendations for a municipal ethics framework for Vermont, including the adoption of a municipal code of ethics, expanding the jurisdiction of the Ethics Commission to include municipal ethics, and the adoption of whistleblower protections for municipal complaints.
- 2) The Ethics Commission recommends the Legislature continue to consider the issue of an independent enforcement protocol for the State Code of Ethics, as well as for a potential future Municipal Code of Ethics.
- 3) The Ethics Commission recommends that the Legislature ensure the funding of the Ethics Commission and, taking into consideration its increasing workload, include funding for a full-time Executive Director and one Staff Counsel.

CONCLUSION

The Ethics Commission firmly believes its most productive role at this time is to continue to advocate for the passage meaningful ethics legislation that includes an independent mechanism to investigate and enforce ethics law, as well as to raise awareness about the Code of Ethics through training and the continued provision of ethics advice and guidance. In the end, government integrity is recognized only

when the public is confident that its servants are doing the right thing. The Ethics Commission is committed to its role in that effort.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Christina Sivret". The signature is fluid and cursive, with a large initial "C" and "S".

Vermont State Ethics Commission,
Christina Sivret
Executive Director

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