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Linda Sullivan: Transparency and ethics under the golden dome

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By Linda Joy Sullivan

I have had the good fortune to work with many very fine legislators in Montpelier — individuals who, from all walks of life, serve the public without compensation beyond the receipt of a modest stipend and expenses to cover the costs of dedicating four or more months each year to their duties in Montpelier.

Fortunately, we have not heard recently of any significant suggestion that individual members of the House or Senate have used their offices for private gain or have otherwise acted unethically. Still, I not infrequently see legislators vote on measures in which they have an indirect

financial interest; others have voted on matters in which they owe potentially conflicting obligations to third party employers or to boards on which they serve. Some legislators receive full pay from public money for jobs they are largely not performing while they are in legislative session; others serve or seek to serve on legislative committees that effectively provide oversight over entities in which they have a personal interest.

While I've seen nothing I thought in any way "corrupt" or unlawful, there is a lot about the work of being a legislator in Vermont that could be better influenced by the existence of a strong, independent ethics watch dog.

After the U.S. Supreme Court issued its notorious Citizens United decision — essentially declaring that the influence of money in politics deserves constitutional protection — there has been every reason to be especially vigilant to watch for abuses by elected officials.

Although we like to think of Vermont as somehow untouched by the problem of officials who engage in self-dealing or act under the influence of hidden conflicts of interest, we in fact enjoy no immunity from such.

It's important not just to believe we conduct our institutions honestly, but that we aggressively police ourselves against dishonest government. Regrettably, Vermont has for many years ranked among the ten states in the country having the least institutional protections against unlawful activities by elected officials.

Two years ago our Legislature passed an ethics bill that appeared, at least at first glance, to accomplish a lot — it tightened rules on post-public service lobbying, it enhanced financial disclosure requirements, it called for the adoption of a statewide Ethical Code of Conduct and it established a State Ethics Commission. In operation, however, it appears we did not go far enough.

Consider this: While establishing an Ethics Commission, the Legislature expressly made the executive director position a part-time job, unsupported by any staff. Imagine starting up an entire ethics organization for a State in a job that pays 10-15 hours a week.

The commission is further directed under our law to operate only in a gatekeeper function — if it receives a complaint concerning a public official the commission has no choice but to send it to the Legislature or to the affected state agency to act on pursuant to their own processes. Of course, those processes are typically subject to the many exceptions to the state's public records laws, exceptions that effectively shield from the public allegations of personal wrong-doing even when substantiated.

The commission reported last year that it received 36 complaints about legislators — but it tells us, too, that under the law it cannot reveal what or whom they were about.

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The commission also has no power to investigate complaints. My colleague, Sen. Anthony Pollina, who has led the way in this area, initially proposed that the commission have authority to investigate, armed with subpoena power. The Legislature disagreed and the law as enacted permits the Commission only to issue largely anonymous "advisory opinions" without ability to investigate.

As for the creation of a Code of Conduct that instills respect and commands compliance, the commission issued in 2017 a Code of Conduct without opportunity for public comment, and one that confusingly duplicated existing state ethics rules.

The commission hasn't apparently been shielded, either, from political influences — an absolutely indispensable element of any credible ethics organization. In its only "advisory opinion," the commission allowed itself effectively to be manipulated by a political action group into issuing, just weeks before our last election, an opinion declaring Gov. Phil Scott to have operated under a conflict of interest — based on ownership interests made very public by the governor himself years before.

When the now former executive director cried foul, the commission's now former chair chose to publicly denigrate the work ethic of the part-time director.

The ethics function in our state badly needs, in the opinion of many, to be led by an official having more authority, more independence, greater insulation from political influence, expanded jurisdiction and increased transparency into the work he or she does.

Sen. Pollina has introduced a Senate Bill 97 to do just that. Unfortunately, the House Government Operations Committee is considering only a proposal that would further shield the work of the commission from disclosure while relegating the commission's new Code of Conduct as an

"[un]enforceable ... resource to help guide ... ethical decision making."

Many states have established ethics officials under an Office of Inspector General model — the inspector general under this framework is established as a truly independent public officer, having power to compel the production of books and records and testimony, having obligation to make meaningful public disclosures of substantiated instances of misconduct, having authority to recommend or directly sanction officials in appropriate cases, and having jurisdiction over municipal officials.

While the ethics bill we passed in 2017 genuinely sought the creation of a politically-neutral ethics authority, we have failed to create a truly robust and independent ethics function.

The bills we pass are seldom perfect and I not infrequently hear the refrain that, "If this doesn't work we can come back next year and fix it." This is one of those occasions. We can, and must, do better. Failing that, one could reasonably question whether we have in fact the collective will to undertake the exercise of self-policing against official abuses or whether the new law we passed two years ago was so much "window dressing."

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