Ethics Reform in the States

By Peggy Kerns

Virginia’s interest in restricting lawmakers’ gifts and creating an independent ethics commission is part of a national trend in ethics reform. States continue to limit or ban gifts given to or received by lawmakers. And the public’s interest in an outside independent entity to monitor ethics violations continues to gather steam.

The Myriad Details of Gift Laws

In some cultures, citizens thank public servants with a gift. To refuse this gift would be disrespectful. But in the United States, giving gifts to public officials may be misinterpreted as a quid pro quo, where something is expected in return. Even if none is intended, the appearance of impropriety is an important ethical consideration.

All states prohibit lobbyists from giving gifts and legislators from receiving them, if the gifts are meant to influence official actions. Increasingly, states restrict or ban gifts even where there is no hint of a quid pro quo. Only 10 states still have no restrictions on gift-giving (“Legislator Gift Restrictions”).

Due to the myriad exceptions, gift laws are difficult to categorize. The National Conference of State Legislatures’ Center for Ethics in Government divides them into three loose categories: zero tolerance, no gifts valued over a certain threshold, and no gifts intended to influence official action.

Zero Tolerance—or, No Cup of Coffee: Nine states ban lobbyists from giving gifts to lawmakers with some exceptions (“Legislator Gift Restrictions”). In Wisconsin, legislators can accept anything of value if the item is also available to the public.
Colorado bans gifts from lobbyists, except for unsolicited items of less than $50 (“Legislator Gift Restrictions”).

**Monetary Thresholds:** Thirty-one states specify a monetary threshold on each gift, including food and beverages (“Legislator Gift Restrictions”). Limits per gift range from $10 in Arizona to $500 for gifts and $500 for entertainment per year in Texas (Kerns, “Legislator Gift Restrictions”).

**No Gifts That Influence Official Action:** The 10 states that place no monetary limits on gifts use language similar to Alabama’s: “No person shall offer or give to a public official or a member of his household a thing of value if it influences official action” (Kerns, “Legislator Gift Restrictions”). Georgia recently moved from this category to the monetary threshold category by passage of a law in the 2013 session (House Bill 142).

**Disclosure:** At least 32 states require public officials and lobbyists to either disclose all gifts or just those over a certain amount (“Gift and Honorarium Requirements”). Indiana legislators must report any cash gift from a lobbyist and any single gift valued over $100 (“Gift and Honorarium Requirements”). Proponents of disclosure rules say they emphasize transparency and allow the public to decide if gifts influence policy. Opponents believe that disclosure sets a “low bar” and takes responsibility away from the legislator and lobbyist.

**To Eat or Not to Eat:** Dining out is another cultural norm that can create the appearance of impropriety for legislators. More than half the states exempt food from their gift laws in certain situations (“Legislator Gift Restrictions”). Alaska, Michigan, Nebraska, and North Carolina exempt food and beverages if they are consumed immediately (“Legislator Gift Restrictions”). In Ohio, South Carolina, and Tennessee, legislators can dine if all legislators were invited to the event (“Legislator Gift Restrictions”). In Colorado and Minnesota, legislators can eat at events if they give a speech or answer questions (“Legislator Gift Restrictions”).

**Other Requirements:** Alaska is among states that ban gifts during legislative sessions (“Legislator Gift Restrictions”). Five states exempt informational material from their gift definition (“Legislator Gift Restrictions”). Minnesota’s strict gift law exempts trinkets and mementos (“Legislator Gift Restrictions”).

Most states include the lobbyist’s principal—the person or firm who hires the lobbyist—in their gift restrictions (“Legislator Gift Restrictions”). At least seven states restrict vendors who are bidding for state contracts from giving gifts (“Legislator Gift Restrictions”).

**Ethics Oversight and Independent Scrutiny**

After the Watergate scandal in 1972, state governments began to create an ethics infrastructure that included stronger laws for public officials and lobbyists. To ensure these laws were enforced, legislatures established oversight entities that included external ethics commissions, internal ethics committees, or a combination of the two. Hawaii and Wisconsin were the first to form independent ethics commissions (“State Ethics Commissions”); today, 50 commissions or oversight boards exist in 42 states (“State Ethics Commissions”). In 2010, Utah voters created the most recent commission by approving a constitutional amendment referred to them by the legislature (“State Ethics Commissions”).

**Different States, Different Models**

State ethics commissions are charged with enforcing ethics laws. The 50 ethics commissions, however, vary greatly in structure, powers, and jurisdiction. David Freel, former executive director of the Ohio Ethics Commission, said it is difficult to
compare and contrast state ethics agencies. According to Freel, these commissions differ in authority, subject matter, jurisdiction, and accountability to public officials and the public (Freel 366). In the eight states with no independent ethics commission—Arizona, Idaho, New Mexico, North Dakota, South Dakota, Vermont, Virginia, and Wyoming—oversight of ethics laws may be provided by an internal ethics committee or other state agencies, such as offices of the secretary of state, attorney general or inspector general ("State Ethics Oversight Agencies").

In 2009, supreme courts in Rhode Island and Nevada considered cases on the jurisdiction of ethic commissions and the separation of powers. Both rulings limited the authority of the ethics commissions to discipline legislators when the lawmakers vote on issues that may present a conflict of interest (Hardy and Irons).

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Work Cited