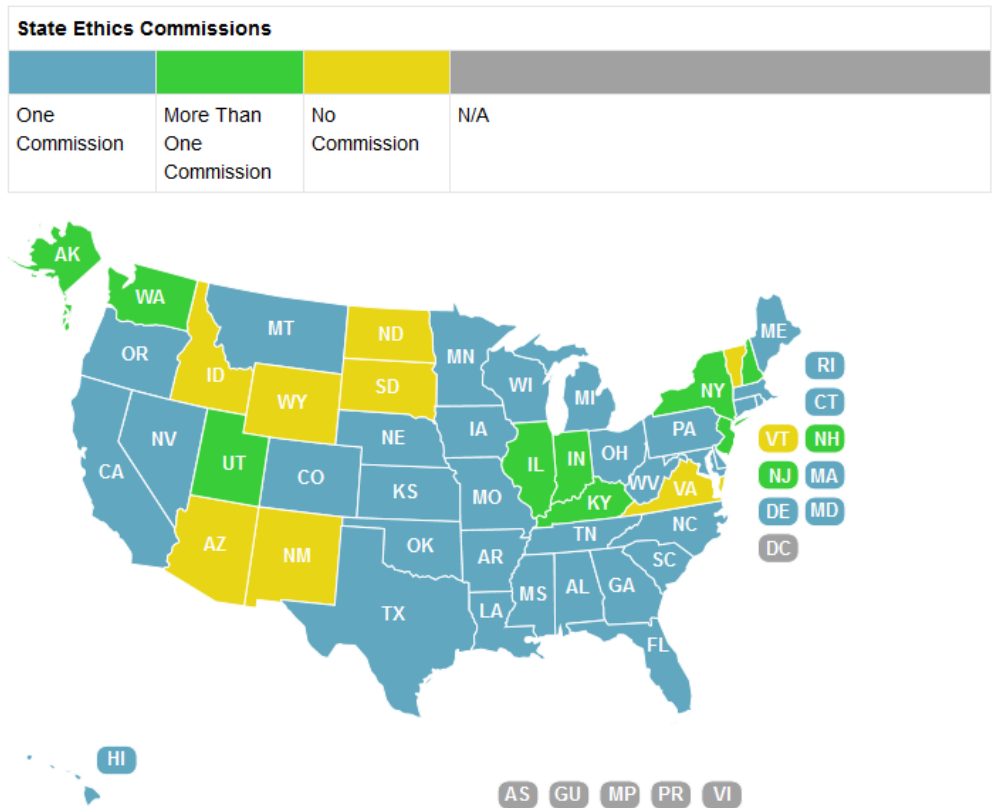


TO: Members of the Integrity Commission
FROM: David Jonas, Office of the Counselor to the Governor
RE: Potential Downsides to an Independent Ethics Commission
DATE: 11/3/2014

Background

Virginia is one of nine states that does not have an independent ethics commission (IEC).¹ “Independent” generally means that members are not state legislators and that oversight is conducted outside of the regular committee system.² The literature often draws the distinction between ethics commissions and ethics committees, the latter of which is usually overseen by legislators and their staffs. Below is a map of which states have independent, hybrid, or no ethics commissions. Hybrids typically have more than one commission that oversee the executive and legislative branches.



Source: NCSL, 2014³

¹ <http://www.ncsl.org/research/ethics/state-ethics-commissions.aspx>

² <http://www.ncsl.org/research/ethics/committees-amp-commissions-whats-the-differenc.aspx>

³ <http://www.ncsl.org/research/ethics/state-ethics-commissions.aspx>

Potential Advantages of an Independent Ethics Commission

IECs are generally recognized to have the following advantages over an ethics committee:

1. **More expansive enforcement and oversight.** Because they are not a part of the committee system, IECs tend to operate “all hours.” In the case of part-time legislatures like Virginia’s, IECs tend to perform more investigations, more actively monitor conflicts of interest, and review more complaints.
2. **Reduced influence by legislators/officials.** Committee staff may be less likely to pursue investigations if they are political allies with those they are overseeing. An independent commission ideally removes some of the incentives to “go easy” on investigations that might affect people of certain political affiliations. This largely depends on how appointments to the commission are handled.
3. **Encourages more people to run for office.** One study has shown that states that have introduced IECs have seen more legislative candidates run for office.⁴
4. **Public perception of good governance.** Anecdotally, citizens prefer “watchdogs” that are far removed from influence of those they are overseeing. “Independence” suggests to people that they are free from undue influence.

Potential Disadvantages of an Independent Ethics Commission

- **If poorly structured, likely to underperform.** Like any regulatory body, effectiveness will likely be compromised if an IEC is structured poorly, improperly staffed, underfunded, or not given the regulatory tools to complete its mission. Likewise, an ethics commission may initiate unworthy investigations in order to show that they are “doing something” about perceptions of malfeasance.
- **Possibility of overzealous investigations.** It should be noted that instances of overzealous ethics investigations are infrequent, especially at the state level. Most of the horror stories come from municipal and city ethics commissions. For example, a member of a Zero Waste Advisory Commission in Austin, Texas was asked to resign from her commission position and by her employer after a city ethics committee issued a report citing her for conflict of interest violations.⁵ A follow-up investigation found that the violations were based on a false, anonymous complaint.

⁴ <http://prq.sagepub.com/content/59/4/619.short>

⁵ <http://www.austinchronicle.com/news/2014-05-30/then-theres-this-the-witch-hunt-of-a-commissioner/>

- **Politicization of the commission.** Commissions can develop their own political agendas and unevenly target legislators or public officers. For example, a lobbyist may put up a fight against violations of improper disclosure, and ethics staff may start issuing further violation notices against his or her colleagues.
- **Regulatory capture.** Lobbyists or other interested parties may mobilize to have sympathetic members appointed to the commission. This risk also applies to any kind of legislative ethics committee.
- **Budgetary impact.** The IECs of most states have annual budgets in the hundreds of thousands of dollars into the millions. Massachusetts, which has one of the most active IECs in the country, had an annual budget of roughly \$1.8 million in 2010. Colorado's IEC, by contrast, had an annual budget of roughly \$228,000 in 2010.