

Governmental Ethics Laws In Louisiana: Public Trust or Private Gain?

Collaborative Effort By:



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EXECUTIVE SUMMARY

A widespread and pervasive distrust of government exists among Louisiana voters. To address this problem, the Bureau of Governmental Research (BGR) and the Public Affairs Research Council of Louisiana (PAR) have undertaken a collaborative in-depth review of Louisiana's laws related to governmental ethics.

The study examines the state's Code of Governmental Ethics (Ethics Code), Campaign Finance Disclosure Act, Lobbyist Disclosure Act and various gambling laws. Comparisons were made with laws in selected states and with nationally developed model laws.

BGR and PAR have concluded that the state's ethics laws are in many respects inadequate, ineffective and in need of major revision. The report examines three major problem areas (Conflicts of Interest, Ethics Administration and Enforcement, and Money and Influence) and recommends over fifty substantive changes in existing law. A summary of the report's major findings and key recommendations follows; see the text for detailed recommendations and explanation.

I. CONFLICTS OF INTEREST

Exceptions Undermine Ethics Code While Louisiana's Ethics Code is strict in many respects, it has been greatly weakened by numerous exceptions. These exceptions often favor elected officials, particularly legislators.

Legislators Receive Special Treatment Legislators may contract or do business with the state and local governments, vote on issues affecting their personal interests and be appointed to state positions immediately upon leaving the Legislature.

Lack of Income Reporting Obscures Potential Conflict The Ethics Code requires only the governor to report economic interests and significant income sources.

Key Recommendations

- Prohibit legislators and other state elected officials, their spouses and children or their businesses from contracting with the state or any political subdivision.
- Prohibit legislators and other public servants from receiving gifts, income, and food or drink from lobbyists or persons doing business with or regulated by the government.

OR:

Prohibit gifts and income, but allow food or drink for a public servant up to \$50 per occasion and \$200 in total per year from any one person.

- Require recusal from voting by legislators and other elected officials when they have a conflict of interest.

- Prohibit legislators and other elected officials, their spouses and children or their businesses from doing business with or being paid to assist others in doing business with their government.

- Prohibit former public servants from representing their own interests before their former agency or, for certain elected officials, their government, for two years.

- Prohibit appointment of legislators to state jobs for two years after leaving the Legislature.

- Eliminate Ethics Code exceptions; require future exceptions to expire after two years unless re-enacted.

- Require annual personal financial disclosure reports from all elected state officials, legislators, judges, salaried gubernatorial appointees, administrative heads of state agencies, constitutional elected and appointed parish officers, officials elected parishwide and candidates or nominees to all such positions.

- Require legislators and other state elected officials to report in detail anything of economic value that they, their immediate family or any business in which they have a 5% ownership derive from doing business with the state or any political subdivision.

II. ETHICS ADMINISTRATION AND ENFORCEMENT

Two Boards Split Ethics Administration Louisiana is the only state with separate ethics boards for elected officials and other public employees. Members of the two boards are selected differently, are not subject to term limits and are not restricted from political activities.

Ethics Enforcement Process is Flawed The Board cannot initiate ethics investigations involving elected officials unless a sworn complaint is filed. There are no defined time lines for Agency actions; "whistleblowers" are not fully protected; and complainants do not have the right to sue to force action on an ethics complaint.

Agency Lacks Resources for Enforcement The ethics Agency is underfunded, understaffed and lacking in the technological capacity needed to adequately monitor and provide citizen access to reported data.

Agency Lacks Authority to Impose Some Penalties The penalties and remedies for violation of the ethics-related laws are generally sufficient. In some cases, however, the ethics Agency must file a civil suit to impose the penalties.

Ethics Education is Minimal Louisiana's ethics Agency lacks sufficient resources to educate public servants and other citizens about ethics and campaign finance laws.

Key Recommendations

- Consolidate the Board and Commission into a single five-member body; limit each member to one five-year term and stagger the terms.
- Require governor to appoint all members from nominations made by a civic non-partisan panel.
- Prohibit appointment to the ethics body of persons who have been public servants or lobbyists within the previous six months.
- Prohibit ethics body members from political activities.
- Allow use of a hearing officer to hear cases, with the ethics body making final determination.
- Authorize the ethics body to initiate an investigation of any public servant by majority vote.
- Require complainant's name to remain confidential.
- Allow complainant to sue the accused in civil court if the ethics body fails to act timely or dismisses the case.
- Provide added investigatory, audit, technical and clerical staff along with funding for computer equipment and software.
- Develop a computerized data management system allowing selected reports to be filed on diskette.
- Authorize the ethics body to impose and collect any civil penalty provided in any law that it enforces without having to file civil suit.
- Authorize the ethics Agency to collect automatic late-filing fees for all reports.

III. MONEY AND INFLUENCE

Improper Campaign Funding is Permitted Legislators may accept contributions during a session; campaign funds may be used for purposes other than those for which they were given; candidates and officials may use their campaign funds to assist other candidates; citizen access to campaign finance information is impaired; and supervision by the Agency is hampered.

Lobbying Regulation is Limited and Fragmented Reporting requirements do not adequately identify those who hire legislative lobbyists or disclose their spending on lobbying. Implementation of the lobbying law is badly fragmented, leaving much of the administrative responsi-

bility with the Legislature, the body being lobbied. Lobbying of the executive branch is currently unregulated.

Gambling and Government Share Too Many Interests The apparent legislative intent to require a higher standard of ethical conduct regarding legalized gambling is undermined by allowing the gambling regulators to police themselves, allowing some public servants to do business with gambling interests, permitting political contributions by owners and key figures in the gambling industry and failing to specify penalties for violating the ethics provisions of the gambling laws.

Key Recommendations

- Prohibit legislators from soliciting or receiving campaign contributions during the period from 30 days prior to a legislative session to 15 days after.
- Require campaign finance reports to include occupational and employment information on any contributor and spouse when the contribution exceeds \$1,000.
- Prohibit PACs created or controlled by elected officials, transfers of campaign funds among political committees and the use of contributions to run for an office other than the one for which they were given.
- Extend lobbying law to cover lobbying of the executive branch.
- Consolidate responsibility for implementing the lobbying law in the state's ethics Agency.
- Require those who hire lobbyists to register and list their lobbyists; if an association, to list the organizations it includes; and to report their total lobbying expenditures on a semi-annual basis.
- Provide criminal penalties for knowing and willful filing of false lobbyist reports.
- Prohibit an owner, director, officer or key employee of a gambling interest from making political contributions.
- Prohibit state or local government elected officials and key appointed officials or employees, the spouses and minor children (all children of statewide elected officials) of such officials, and their businesses from doing business with, providing services to or being employed by a gambling interest.
- Provide gambling laws with consistent conflict of interest provisions.
- Authorize the state ethics body to interpret and enforce all ethics-related provisions of the gambling laws.
- Enact civil penalties for violations of standards of conduct specified in the gambling laws.

INTRODUCTION

The primary goal of governmental ethics laws is to promote confidence in the integrity of government by deterring public officials from using their public positions for personal gain.

Ongoing and recent events have provoked questions about the adequacy of Louisiana's governmental ethics laws and severely undermined confidence in government.

The Bureau of Governmental Research (BGR) and the Public Affairs Research Council of Louisiana (PAR) collaborated to examine the state's laws relating to governmental ethics and to recommend improvements.

Scope and Method of Study

BGR and PAR examined the Code of Governmental Ethics (Ethics Code), the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and the ethics-related provisions of the laws governing legalized gambling (the Louisiana Riverboat Economic Development and Gaming Control Act, Louisiana Economic Development and Gaming Corporation Act, Video Draw Poker Devices Control Law and the Louisiana Lottery Corporation Law). The research also included interviews with Agency officials and review by an advisory committee.

Recommendations are based upon comparisons of Louisiana's laws with those of other states as well as with model laws developed by the Council on Governmental Ethics Laws (COGEL) and the Center for Responsive Politics (CRP). COGEL is an organization of professionals whose work involves governmental ethics, elections, campaign finance and lobbying regulation. CRP is an organization that researches campaign finance issues and congressional operations.

Other state ethics-related laws such as a civil law on dual office holding; criminal laws on bribery, malfeasance in office, public contract fraud and extortion; and the Code of Judicial Conduct (the ethics code for judges) are not considered in this study.

The Report

This report is presented in three parts. The first focuses on the conflict-of-interest provisions in the Ethics Code.

The second part focuses on administration and enforcement of the Ethics Code. Recommendations would restructure and strengthen the ethics Agency, which consists of the Board of Ethics for Elected Officials (the

Board), the Commission on Ethics for Public Employees (the Commission) and their staff. All recommendations assume a sufficiently funded and staffed agency capable of handling the increased responsibilities recommended. The intent of the recommendations cannot be achieved if the agency lacks the needed resources to carry them out.

The third part of the report examines the campaign finance and lobbying laws that regulate the use of private money to influence governmental decisions and actions. Because of the recent advent of legalized gambling in Louisiana and the large sums of money involved, this part addresses the state's special ethics provisions for gambling.

Each section of the report discusses current problems in the Louisiana ethics laws, along with recommendations.

Throughout the text, boxes titled "IT MAY BE LEGAL, BUT IS IT ETHICAL?" show examples of reported events that are now legal but would be prohibited by this study's recommendations.

GLOSSARY

Agency—Board of Ethics for Elected Officials, the Commission on Ethics for Public Employees and their staff

Board—Board of Ethics for Elected Officials

COGEL—Council on Governmental Ethics Laws

Commission—Commission on Ethics for Public Employees

ethics body—Board or Commission (or their recommended successor)

Ethics Code—Code of Governmental Ethics

ethics staff—Board and Commission staff

gambling laws—Louisiana Riverboat Economic Development and Gaming Control Act, Louisiana Economic Development and Gaming Corporation Act, Video Draw Poker Devices Control Law and the Louisiana Lottery Corporation Law

immediate family—spouse, children, children's spouses, parents, spouse's parents, brothers and sisters

public employees—non-elected government workers at the local and state levels of government, including appointed officials

public servants—public employees, appointed board and commission members, and all elected officials in state and local government (except judges)

I. CONFLICTS OF INTEREST

Ethical behavior is difficult to define and even more difficult to legislate. Even an ideal ethics code could not address all potential conflicts of interest or perceived conflicts.

In some respects Louisiana's Ethics Code is stricter than the ethics laws of many states but in others, far more lenient. For example, the prohibitions to prevent public employees from using their public position for private gain are more stringent than those of many states. Exceptions and amendments, however, have substantially weakened the Ethics Code.

Louisiana Code of Governmental Ethics

In 1964 Louisiana adopted its first ethics code. It contained conflict-of-interest provisions that applied to the governor and other statewide elected officials, legislators, members of the Public Service Commission (PSC), state civil service employees and some unclassified state workers. No funding was provided for the administration of the law.

The 1974 Constitution mandated the Legislature to enact a code of ethics for all officials and employees of the state and its political subdivisions. It also required the Legislature to create a code of ethics to specifically prohibit its members from realizing personal gain by use of their public office. After several unsuccessful attempts, the current Ethics Code was adopted in 1979 but no funds were provided for implementation until 1981.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

A legislator who is an engineer provides engineering services to a city within his district.

The Ethics Code covers all state and local elected officials, all appointed members of state and local boards and commissions, state and local government employees, and certain private individuals and companies that provide governmental services by contract. Judges are excluded from the Ethics Code and are covered instead by the Code of Judicial Procedure, adopted by rule of and enforced by the state Supreme Court.

Provisions in the Ethics Code address areas of possible conflicts between the public duties and private interests of public servants. Activities that may result in such conflicts are prohibited. Violations may result in civil penalties, as

well as termination for public employees or censure for elected officials. In addition, if in investigating violations, the Agency finds that a criminal act may have occurred, the Agency must refer the case to the appropriate district attorney.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

A legislator who is a doctor and serves as the chairman of the House Health and Welfare Committee, also serves as a chairman of a medical enterprise board that receives Department of Health and Hospitals grants to build a rural health clinic.

The Ethics Code prohibits a public servant from:

- being paid by anyone other than the government for doing his governmental job
 - directing government business to a firm for pay
 - being paid to represent anyone before his agency
 - providing private services to persons or businesses regulated by his agency, or who have or want to have a business relationship with his agency
 - voting on or taking any official action that will affect his financial interests, or those of his immediate family members or a business in which any of the foregoing persons are involved
- (An elected official may vote on such matters if he files a statement explaining the situation. Appointed board or commission members must either terminate the relationship causing the conflict or resign.)
- entering into a contract or business transaction with his agency or one over which his agency has supervision or jurisdiction
 - soliciting or accepting anything of value (other than meals) from persons with whom he has official dealings
 - using his official position to acquire personal benefits for himself or anyone else
 - soliciting or accepting pay for aiding in the passage or defeat of legislation affecting his agency
 - hiring, promoting, supervising or otherwise participating in the employment of immediate family members
 - assisting others with matters in which he participated as a public employee for two years following termination of public employment

There are many exceptions and qualifications to the above prohibitions.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

A city pursues a government-backed loan on behalf of a legislator that allows him to build a restaurant.

Recommendations

Inconsistent treatment of public servants and exceptions that do not serve the public interest should be removed from the Ethics Code. Provisions should be added to ensure that current or previous public employment is not used to influence governmental decision making.

In the following recommendations the terms "legislator" and "elected officials" include newly elected members who have not yet taken the oath of office.

1) Prohibit legislators and other state elected officials, their spouses and children or any business in which any of the foregoing persons has an economic interest from entering into contracts or subcontracts with the state, its political subdivisions or any quasi-public entity. Prohibit all of the foregoing persons from receiving compensation for helping others obtain such contracts or subcontracts. This prohibition would not include teachers' contracts.

"Business" would include for-profit businesses and other entities such as nonprofit corporations but would not include publicly traded corporations.

This recommendation is intended to prevent legislators and state elected officials from inappropriately using their position to obtain contracts.

During the 1995 session, the Legislature amended the Ethics Code to prohibit legislators, their spouses, and any business in which any of the foregoing persons has an economic interest (except publicly traded companies) from entering into contracts with the state or quasi-public entities. Exceptions, however, allow them to enter into contracts awarded through a competitive bid or negotiation or some other competitive selection process. The exceptions essentially allow legislators to continue to contract with the state.

Prior to the 1995 change, legislators, their immediate family and businesses in which any of these had 25% or more interest could enter into contracts with the state and its political subdivisions (except the legislative branch).

Non-legislators cannot now enter into contracts with their agency or anyone over which their agency has jurisdiction or supervision. This recommendation would broaden the existing prohibition and provide more consistent treatment of legislators and non-legislators.

2) Prohibit legislators and other elected officials, their spouses and children or any business in which any of the foregoing persons has an economic interest from doing business with or being paid to assist others in doing business with their government. This provision would prohibit, among other things, receiving a grant, loan, loan guarantee, subsidy or any other benefit from any governmental action unavailable to everyone in a similar situation. This prohibition would apply to funds generated, allocated or guaranteed by the state, its political subdivisions or any quasi-public entity, for state elected officials, or by the local government for local elected officials.

"Business" would include for-profit businesses and other entities such as nonprofit corporations but would not include publicly traded corporations.

This recommendation is intended to prevent elected officials from inappropriately using their position to influence governmental decisions in their favor. This prohibition is not intended to prevent elected officials from benefitting from routine governmental decisions provided to all others in their profession, occupation or large class to which they belong. For example, it would allow them to be granted occupational licenses and automatic tax exemptions.

Currently, elected officials may help others with these activities when they involve the officials' government if they file a disclosure statement with the Board.

3) a) Prohibit legislators and state elected officials, for two years after leaving office, from doing business with the state, its political subdivisions and any quasi-public entity.

b) Prohibit members of a local governing authority, for two years after leaving office, from doing business with their local government.

c) Prohibit all other elected officials and agency heads, for two years after leaving office, from doing business with their agency.

d) Prohibit all other public servants, for two years after leaving public service, from doing business with their agency regarding work in which they were involved as a public servant.

"Doing business with" would include all activities that would affect the public servant's financial interests (e.g., contracting, or receiving grants or loans). It would not include routine governmental decisions equally affecting all others in their profession, occupation or large class to which they belong. For example, it would allow them to be granted occupational licenses and automatic tax exemptions.

Currently, public servants may not assist another person before their agency in matters in which they were involved for two years following termination of public service. The restriction on former elected officials and agency heads is stricter in that they may not assist others with any matters before the entire former agency for two years.

All public servants presently may act on their own behalf on such matters. This recommendation would no longer allow them to do so.

4) Prohibit public servants, their spouses and children and any business in which any of the foregoing persons has an economic interest from receiving income, gifts or food and drink from anyone who is a lobbyist, who hires a lobbyist, or who has or is seeking to have an economic relationship with or who is regulated by the public servant's government. For state public servants, the "government" is the state, its political subdivisions and quasi-public entities; for local public servants, it is the local government for which they work.

OR:

Apply the general prohibition as provided above, but *limit the food and drink* a public servant may receive from one person, while a guest of that person, to a value of not more than \$50 per event and not more than \$200 per year.

This prohibition or limit would not include food or drink consumed at a charitable, civic, or community event which the public servant is attending in his official capacity.

This recommendation would expand the prohibition on receiving things of value. All public servants may now receive food, drink or refreshments from persons doing business with the state while a guest of that person. They may also receive private income from persons paid to influence legislation that affects the public servant's agency. Legislators are allowed to receive tickets and transportation to cultural and sporting events if the value is less than \$100 per event or \$500 per year per donor.

Such gifts and entertainment may not influence decisions but may erode the expectation of impartial decision making. They also allow public servants to benefit personally from their public office.

The option of limiting, rather than prohibiting, food and drink recognizes that legislators often rely on lobbyists for information on both sides of the issue and that the time available for communication during the session is limited. The "no cup of coffee" rule, adopted recently in several states, would eliminate lunch or dinner meetings.

5) Require legislators and other elected officials to abstain from voting on or participating in any action in which they have a greater financial interest than all others in their profession, occupation or large class to which they belong.

The Ethics Code has three standards of treatment for public servants regarding participation and voting. The strictest applies to appointed board or commission members who must resign from their position or terminate the relationship in question when a conflict arises. Other public employees may retain their jobs but may not take part in activities in which they have a financial interest. Elected officials are treated the most leniently. They may vote on issues with which they have a conflict of interest, provided they file a disclosure statement with the Board.

This recommendation would prohibit elected officials from voting when a conflict arises but would not require resignation as is required of appointed board and commission members. Appointed members do not have to face elections or recall petitions if they improperly trade votes. Although elected officials are just as likely as appointed officials to trade votes, the lack of citizen control over appointed members makes the different standards necessary.

Elected officials who serve on appointed boards and commissions would, however, be required to resign if a conflict arises except when such service is required by law.

6) Prohibit legislators from appointment to unclassified salaried positions for two years after leaving the Legislature.

A short period of service in a high paying position allows a former legislator to substantially boost his retirement benefits. This recommendation would prevent the governor from rewarding a legislator with a high-level position once the legislator leaves the Legislature.

7) Prohibit legislators' immediate family members from working in the legislative branch.

The Ethics Code does not allow an agency to hire the immediate family members of the agency head. It also prohibits people from working in a governmental agency when an immediate family member serves on the governing authority or as chief executive of the agency. Legislators are subtly excluded from the nepotism provisions.

8) **Eliminate the section on "Exceptions" in the Ethics Code. Require all future exceptions to expire after two years unless renewed by the Legislature.**

Most exceptions have weakened the Ethics Code. Removing the existing exceptions would allow the Legislature to begin with a clean slate. Any future exceptions should be drafted for a limited period to solve specific problems.

A "sunset" provision would provide for periodic review and debate on the merit of each exception.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

Legislators may accept free tickets to sporting and cultural events if the value does not exceed \$100 per event or \$500 per year per donor.

NOTE: One serious ethics problem not addressed by the Ethics Code or resolved by this study is cronyism, the appointing or hiring of close friends to fill positions regardless of their qualifications.

Some aspects of cronyism can be addressed through purchasing and procurement requirements. Elected officials might be required to disclose personal relationships that could create the appearance of a conflict of interest. However, the difficulty of defining the relationships to be disclosed would make such requirements extremely difficult to enforce.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

The Governor appoints to the New Orleans Dock Board a close friend who has significant financial interest in a company that receives a contract from two riverboat casinos which, in turn, lease space from the Dock Board. The appointee may serve as long as he abstains from voting on issues related to his company.

Personal Financial Disclosure

A majority of states require personal financial disclosure reports to give the public information on the economic interests of key public servants. The purpose of financial disclosure is to identify potential conflicts of interest.

Financial disclosure reports are commonly required of statewide elected officials, legislators, and state agency heads. (See Table 1.) The reports often are required of judges and members of state boards and commissions. At least half of the states mandate disclosure statements from county and municipal elected officials, but reporting by non-elected local officials is required less frequently.

Compared to most states, Louisiana requires minimal personal financial disclosure. The Ethics Code requires a statement of economic interests from only one elected state official—the governor. Several provisions require reports from public servants who do business with the state or receive outside income for certain purposes, but none of these requires full disclosure of all income. Other statutes or rules require limited reporting of economic interests by certain public servants.

TABLE 1
Officials Required to Disclose
Personal Finances

Office	Number of States ^a	Louisiana Law
Statewide elected officials	33	No ^b
Candidates for statewide elective office	36	No
Legislators	37	No ^c
Officers of state agencies or departments	32	No
Judicial officers and employees	34	No
Paid members of state boards and commissions	25	No ^d
County elected officials	28	No

a. Forty-seven states reporting.

b. Governor only.

c. Limited reporting by House members under House rules.

d. Casino and riverboat board members only.

NOTE: Seven of these states also require reports of state employees earning salaries above a certain level, ranging from \$21,000 to \$60,000.

SOURCE: COGEL data as of 1992.

The Ethics Code requires:

- an annual report including: business associations of the governor and spouse; the amount and services provided for each source of income over \$1,000; property valued over \$2,000; transfers of property over \$1,000; and most loans over \$10,000

The report is filed with the ethics Board, and a violation of the requirements is a misdemeanor. (The elections code extends this reporting requirement to gubernatorial candidates.)

- a sworn statement from an elected official who assists a person in a transaction with his governmental body for compensation

- disclosure of information regarding the amount and nature of any income or economic value derived by:

- a) a public servant (except legislator) or his immediate family through a transaction with his agency, or from a person regulated by or contracting business with his agency

- b) a legislator or his immediate family through a transaction with the Legislature or through another person's transaction with the Legislature

- c) an elected official, his spouse or a business in which he has a 10% ownership through a contract from the state or any political subdivision

- a statement by a public employee who contracts to provide certain policy studies

- an affidavit by a legislator who receives lodging, travel or other amenities related to giving a speech

In addition, House rules require members of the House of Representatives to file a much less stringent annual income statement than is required of the governor. This report need only show income exceeding \$250 in the prior year from the state or any political subdivision received by the member, the member's spouse or a business enterprise in which either of them has at least 10% ownership. Excluded from the reported income are legislative pay, spouse's regular salary, public retirement benefits and "income incidental to the receipt of Medicaid reimbursements." Most significantly, legislators' income from non-public sources is omitted from this requirement. The Clerk of the House receives the reports.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

A legislator who serves on the Transportation Committee is not required to disclose his income from transportation and disposal of hazardous waste.

Separate statutes require disclosure statements from members of the boards regulating casino and riverboat gambling. The Agency receives these reports but has no authority to enforce the requirements.

Recommendations

Public disclosure of private economic interests of elected and key appointed officials is essential to prevent conflicts of interest. Reporting makes officials aware of potential problems.

1) **Require annual personal financial disclosure reports from all elected state officials, legislators, judges, salaried gubernatorial appointees, administrative heads of state agencies, constitutional elected and appointed parish officers (Assessor, Coroner, District Attorney, Sheriff and Registrar of Voters), officials elected parishwide, and candidates or nominees to such positions.**

This recommendation would not require reports from non-salaried members of boards, school board members, or officials of parish and municipal governments except where they are elected parishwide (for example, the Mayor of New Orleans and presidents of home rule charter parishes). Requiring reports for district offices at the local level or for unpaid positions could discourage good candidates from serving. The executive secretary of the Ethics Administration Program should be considered an administrative agency head.

2) **Require personal financial reports to disclose the following:**

- **business associations of the person, his spouse and minor children**
- **the amount and services provided for each source of income over \$5,000**
- **property valued over \$10,000**
- **transfers of property over \$5,000**
- **most loans (as defined in the Ethics Code) over \$10,000**
- **amounts should be shown in categories of:**
\$5,000-\$9,999; \$10,000-\$24,999; \$25,000-\$49,999;
\$50,000-\$99,999; \$100,000-\$199,999; \$200,000-\$499,999; \$500,000-\$999,999; and \$1,000,000 or over

The proposed disclosure requirements are similar to those presently required of the governor. However, the reporting threshold amounts would be raised, minor children's interest added and two categories added to better show income sources over \$200,000.

3) Require disclosure reports to be filed with the ethics Agency and authorize the Agency to assess late fees and civil penalties similar to those for campaign finance reports.

4) Provide criminal penalties for false filing of disclosure reports.

5) Require legislators to report in detail anything of economic value that they, their immediate family or any business in which any of the foregoing persons has a 5% ownership derive from any permitted contract, subcontract or transaction with the state or any political subdivision.

This provision would not permit business transactions already prohibited under the prior section of this report.

II. ETHICS ADMINISTRATION AND ENFORCEMENT

The state's primary governmental ethics agency is the Ethics Administration Program. It is organized within the executive branch, as an independent board and commission under the Department of Civil Service. The Board and Commission oversee the Agency staff, which carries out the daily administrative responsibilities related to the Agency's jurisdiction.

Ethics Agency Jurisdiction

The ethics-related laws over which the Agency has jurisdiction, in different degrees, include the Ethics Code, the Campaign Finance Disclosure Act, the Elections Integrity Act and the Lobbyist Disclosure Act. (See Table 2.) Although the gambling laws include ethics-related provisions, the Agency has no jurisdiction over these provisions.

The Ethics Code The Ethics Code is administered and enforced by the Board and Commission. The Board interprets and applies the Ethics Code to elected officials while the Commission does the same for non-elected officials. Both have jurisdiction over state and local public officials. The Board and Commission are empowered to investigate, hold hearings, issue advisory and consent opinions, rule on cases, decide on penalties and issue rules and regulations to ensure the Ethics Code is enforced.

Campaign Finance Disclosure Act The Board serves as the Supervisory Committee on Campaign Finance to administer and enforce the Campaign Finance Disclosure Act. It is empowered to issue advisory opinions, receive

TABLE 2
Authority of Louisiana Ethics Bodies^a

	Issue rules	Investigate on own volition	Investigate on complaint	Conduct hearings	Impose fines or penalties	Impose late fees	File civil suit for penalty, recovery or remedy	Issue advisory opinions	Issue subpoenas
Ethics/Elected Officials	✓		✓	✓	✓		✓	✓	✓
Ethics/Public Employees	✓	✓	✓	✓	✓		✓	✓	✓
Campaign Finance	✓	✓	✓	✓			✓	✓	✓
Lobbyist Law	b		✓	✓	✓	c		b	✓
Elections Integrity	✓		✓				d		✓

^a Louisiana Commission on Ethics for Public Employees and Board of Ethics for Elected Officials.

^b Legislative Lobbying Commission makes rules and issues advisory opinions.

^c Secretary of Senate and Clerk of House impose late fees.

^d May file suit to contest election.

campaign finance reports and investigate apparent violations. The Board also is authorized to initiate civil lawsuits to assess penalties when candidates or political committees fail to file the required campaign finance reports. The Agency is required to make campaign finance reports available to the public and make copies upon request.

Lobbyist Disclosure Act Administration and enforcement of the Lobbyist Disclosure Act is split among four entities. The Board enforces the law, while the Legislative Lobbying Commission is required to develop rules for its administration. The Secretary of the Senate and the Clerk of the House have administrative responsibilities.

Elections Integrity Act The Board is also charged with administering and enforcing the Elections Integrity Act. The Board may investigate, based on a sworn complaint, allegations of error, fraud, irregularity or other illegal activity in an election. The Board has such jurisdiction over elections for the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, commissioner of elections, commissioner of agriculture, commissioner of insurance, public service commissioners, members of the state board of elementary and secondary education, justices of the Supreme Court and United States congressmen. The Board can initiate a lawsuit to contest an election if it determines that a violation of the law or other irregularity occurred.

Recommendations

Recommendations concerning the jurisdiction of the Agency are presented throughout this report.

The Ethics Commission and Board

Louisiana is the only state with separate ethics boards for elected officials and other public servants. The Board oversees elected officials and the Commission oversees non-elected public servants. Both interpret and enforce the Ethics Code. This situation creates a double standard because each may interpret the same section of the law differently.

Each body has five members who serve six-year staggered terms. The governor appoints Commission members who represent five sectors of the economy (organized labor, business or industry, agriculture, professionals and civil service employees). A current public employee or a person who worked as a public employee within the previous two years cannot be appointed.

The governor appoints one Board member while the Senate and the House of Representatives each appoint two. The governor's appointment must be a retired judge. The

legislative appointees may be from any profession excluding current public servants and legislative lobbyists. Board members cannot hold elective office within six months of appointment or become a candidate for office within six months of termination of their term on the Board. A person who has been a lobbyist within the prior two years cannot be appointed. Neither legislative house has a formal process for selecting appointees to the Board.

Louisiana ethics bodies spend most of their time addressing requests for advisory opinions and hearing cases. In some states, hearing officers are used to conduct hearings in lieu of the ethics body; and advisory opinions may be issued by consent agendas or at the discretion of the staff.

Among the states surveyed by COGEL, the appointment mechanisms, lengths of terms, and pay for the members differed widely. Compared to the COGEL model law, Louisiana has strict pre- and post-employment restrictions. Unlike the Ethics Code, the COGEL model requires term limits and filing of annual financial disclosure statements and restricts members' political activities. (See Table 3.)

TABLE 3
Membership of Ethics Bodies

	Louisiana Code	COGEL Model
Separate bodies oversee public employees and elected officials	Yes	No
Appointed by governor	Yes ^a	Yes
Panel recommends appointees	No	Yes ^b
Membership odd numbered	Yes	Yes
Term limits	No	Yes
Members required to be of different political party	No	No
Staggered terms	Yes	Yes
Members reimbursed for actual expenses	Yes	Yes
Members paid per diem	Yes	No
Restrictions on political activities	No ^c	Yes
Removal only for cause	Yes	Yes
Members required to file disclosure statements	No	Yes
Pre-employment restrictions	Yes	No
Post-employment restrictions	Yes	No

a. Appoints all members of the Commission and one member of the Board.

b. Panel composed of the justices of the state Supreme Court.

c. Board members are restricted from holding elective office six months before and after service.

Recommendations

The following recommendations would create a stronger, single ethics body that is free from undue influence by those subject to its regulation.

1) Consolidate Board and Commission into a single five-member body whose members are limited to one five-year term. Terms of members should be staggered to allow the appointment of one new member each year.

The current system of two ethics bodies, each with a different set of rules, reflects a double standard that holds public employees to higher standards than elected officials. The combined case loads of the two ethics bodies and the added functions suggested in this report would require the consolidated body to delegate some of its responsibility. The staff could handle the more routine advisory opinions, and hearing officers could handle fact finding. This change would allow the body to focus on the more complex issues and advisory opinions and on making final decisions.

Although term limits may keep capable members from being reappointed, the concern is that without term limits members may make decisions based on their desire to be reappointed.

2) Require the governor to appoint all members based on recommendations from a civic non-partisan panel.

Having one person appoint all members would improve accountability. A nominating panel would help distance the appointment process from influence by persons under jurisdiction of the ethics body.

3) Require, if a member resigns before the term ends, a replacement be appointed only to the remainder of the unexpired term and not be eligible for reappointment.

4) Prohibit appointment of a person who is a public servant or lobbyist.

5) Prohibit the ethics body members from participating in political activities: providing campaign financing; attending fundraisers; publicly supporting candidates; or working for candidates, political parties or political action committees (PACs).

Members should not participate in political activities because they regulate the activities of candidates and elected officials by administering the campaign finance laws and the Ethics Code.

6) Authorize the ethics body to use a hearing officer to hear cases and recommend determinations to the ethics body. Authorize the ethics body to accept, amend or reject the hearing officer's recommendations.

The hearing officer would reduce the administrative work load of the ethics body and decrease current concerns of the accused that the ethics staff investigates, argues cases and provides advice to the ethics bodies. Administrative judges from the newly created administrative law division within the Department of Civil Service may be a source of hearing officers.

7) Allow the ethics body to use consent agendas to issue advisory opinions.

The Board and Commission spend a substantial amount of meeting time addressing requests for advisory opinions. Often they address questions that have been addressed in previous decisions. It would be more efficient to allow the staff to create a consent agenda of proposed decisions on advisory opinions that the ethics body would only have to approve. Any decision with which a member disagreed could be discussed and changed as necessary.

Procedure and Due Process

To instill public confidence in the impartiality of enforcement of an ethics code, due process rights must be afforded to both the complainant and the accused. The public must also have certain rights regarding public records and open meetings. In addition, safeguards must exist to ensure that the Agency can and will act to enforce the Ethics Code and provide remedies should the Agency fail to do so.

Due process rights afforded by the Ethics Code and the COGEL model are similar. However, both codes have inadequate provisions in this area. (See Table 4.)

Louisiana does not allow the Agency staff to start investigations without prior approval of the Commission or the Board. The Board cannot initiate investigations without signed formal complaints, but the Commission may initiate complaints by majority vote. There are few requirements for timely actions and notification.

There are limited provisions to protect complainants from reprisal, commonly called "whistleblower" protection. However, a person filing a frivolous complaint may be charged with a misdemeanor. The Ethics Code does not allow a citizen to sue if the Agency fails to act on a complaint.

TABLE 4
Procedure and Due Process Provisions

	<u>Louisiana Code</u>	<u>COGEL Model</u>
Allowed to issue advisory opinions	Yes	Yes
Advisory opinions are public records	Yes	No
Allowed to initiate complaints on own volition	Yes-Commission No-Board	Yes
Complainants given "whistleblower" protection	Yes	Yes
Accused notified of complaint	Yes, once a majority votes to investigate	Yes, upon receipt of complaint
Notification of dismissal of complaint given to the accused and complainant	Not required, but in practice	Yes
Notification of formal charge given to both the accused and complainant	Not required, but in practice	Yes
Formal charge made public after issuance	Yes	Yes
All hearings on formal charges public	Yes	Yes, unless vote for executive session
The accused and/or his counsel has right to appear and be heard at hearing	Yes	Yes
All hearing outcomes made public	Yes	Yes
Decisions appealable to higher court	Yes	Yes
Complainant has right to file a private suit in civil court if the Agency does not act and settle case in timely manner	No	Yes
Statute of limitations	Yes	Yes
Penalties for frivolous complaints	Yes	Yes

Investigation and Complaints

The Board and Commission do not have equivalent powers to initiate investigations of complaints. The Commission, by majority vote, may initiate an investigation based on information that comes to the staff's attention anonymously or otherwise. The Board, in contrast, must receive a signed, sworn-complaint before it may begin an investigation. The result is that a higher standard must be met to begin an investigation of an elected official than of a non-elected official.

Complaints to the Board or Commission must be based on alleged violations that occurred no more than four years before the complaint is filed. A person filing a sworn complaint must be willing to testify but is seldom required

to do so. Other evidence is usually sufficient to support a complaint.

When the staff receives written information about an alleged Ethics Code violation (must be sworn in the case of the Board), the appropriate ethics body considers the merits of the allegations in executive session at its next monthly meeting. It may dismiss the complaint or vote to initiate an investigation. If an investigation will occur, the staff mails a copy of the sworn complaint to the accused within five days.

At a subsequent meeting, the staff informs the Board or Commission, in executive session, of its investigator's findings. The ethics body votes to either issue a formal charge and conduct a public hearing or dismiss the complaint. If a formal charge is issued, the staff notifies the accused at least 60 days prior to the public hearing. The formal charge is public record.

At the public hearing, the ethics body reviews the evidence presented by the staff and by the accused and then determines whether a violation occurred. The Agency staff that acted as investigator in the earlier stages of the process acts as prosecutor at the public hearing. The accused is allowed to have an attorney present and subpoena and question witnesses. If the ethics body determines that a violation occurred, it then decides upon disciplinary action. An accused elected official may request a rehearing from the Board within 10 days or he may appeal to the First Circuit Court of Appeal within 30 days. Commission decisions must be appealed directly to the Court.

Advisory Opinions

When requested, the ethics bodies may issue non-binding, advisory opinions to public servants on whether a certain action would violate the Ethics Code. Advisory opinions generally are issued only to those involved in a situation or considering an action and will not be issued based on hypothetical situations or events that have already occurred. The opinions are public record.

Recommendations

Due process rights should include specific procedures with defined time lines for actions, notification requirements, "whistleblower" protection and private rights of action. The following are recommendations to improve due process in the Ethics Code.

1) Authorize the ethics body to initiate investigations, by a majority vote of its members, if there is sufficient evidence of wrongdoing.

If the two-body system is retained, the Board should be given the same power to initiate investigations as the Commission.

2) Provide the complainant the right to sue the accused in civil court if the Agency dismisses the case, does not act or fails to act within the established time frame.

The complainant should be able to sue to have the court impose penalties authorized by law and to recover any economic advantage gained by the accused. Any monies collected should go to the state; however, the successful complainant should be awarded legal costs.

3) Require the name of the complainant to remain confidential.

Currently the complainant's name is given to the accused upon notification of a sworn complaint. Complainants are often in positions vulnerable to reprisal

and should not be identified. Frivolous complaints are referred to the district attorney for misdemeanor prosecution.

4) Require the ethics body to set, by rule, deadlines for timely action and procedures for extending the deadlines when needed.

Deadlines should be set for dismissing or filing formal charges, notifying the complainant and the accused of decisions, holding the public hearing, ruling on a case and assessing penalties.

5) Require the accused and the complainant to be notified when the ethics body initiates an investigation, dismisses a case, decides to hold a public hearing or makes a final determination on a case.

Agency Resources for Enforcement

The Ethics Administration Program serves as the staff for both the Board and Commission. The Agency has administrative responsibilities in more program areas than do ethics agencies in most states. Louisiana is one of few states that combine the administration of ethics and campaign finance laws. In addition, the staff supports the Board's enforcement of lobbying and election integrity laws.

Differing agency responsibilities make it difficult to compare staffing and funding levels of state ethics agencies. Also, program scope differs greatly among states. Louisiana's ethics and campaign finance laws cover most public servants at both the state and local levels. Some states' ethics agencies have jurisdiction only at the state level, while others include only limited jurisdiction at the local level.

The ethics Agency was budgeted 13 staff positions and \$606,194 for fiscal 1995. Staffing has averaged about 13 positions since 1983. While its staffing and funding have remained stable, the Agency has been given added responsibilities in recent years (the elections integrity and lobbying laws).

In contrast, Massachusetts budgeted more than \$1.1 million and 24 positions for its ethics agency and about \$500,000 for a separate campaign finance agency for 1995. Massachusetts' laws cover approximately 280,000 public servants, only slightly more than Louisiana's 250,000.

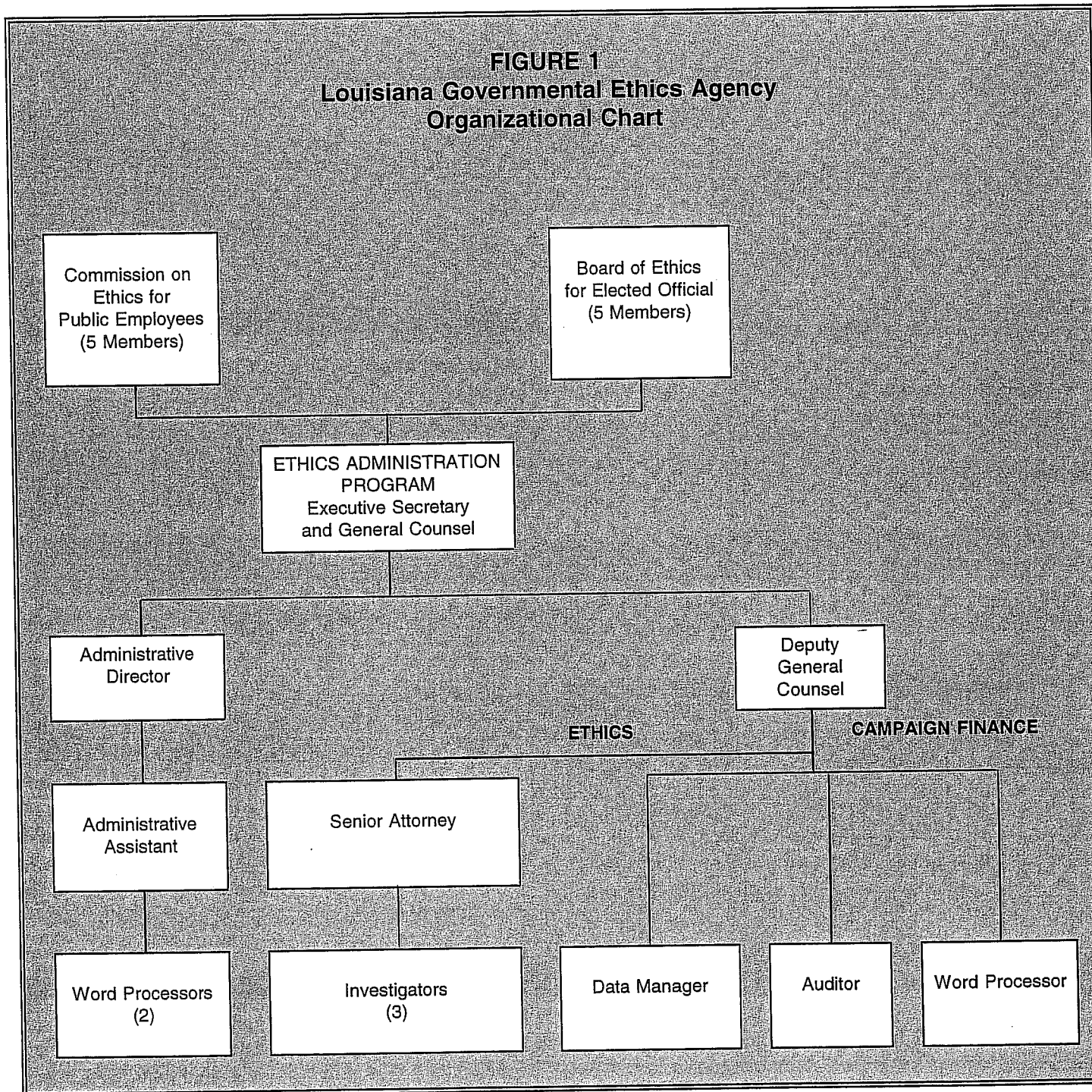
The Agency's three attorneys, including the executive secretary, handle extensive agendas for the Board and Commission. Three field investigators are responsible for approximately 150 active cases a year that require fact

finding and investigations on complaints and advisory opinions. A single auditor monitors campaign finance and financial disclosure reports (about 9,000 during the current election year). A data manager, two administrative positions and three word processors provide staff support. (See Organizational Chart, Figure 1.)

Interviews with staff indicate that two additional investigators and an assistant auditor for campaign reports are needed to meet the demands of the current agency workload.

The Agency does not have the computer hardware and software to adequately manage and analyze the numerous and often voluminous disclosure reports it now receives. Anything more than a cursory review of these reports now requires extensive manual data entry before analysis can begin. Several states have developed computerized systems to store, analyze and provide citizen access to reported data. A number of states currently have or are moving to electronic report filing.

FIGURE 1
Louisiana Governmental Ethics Agency
Organizational Chart



Ethics agencies do not have a large constituency and do not enjoy a high budget priority in most states. The agencies must look to officials whose behavior they are monitoring for their funding. California avoided this problem by constitutionally dedicating funding for its agency. In some states the agency submits its budget directly to the legislature outside of the regular executive budget. Several states provide for automatic annual budget increases tied to formulas based on cost inflation and other factors.

Recommendations

Adequate administration of the Agency's responsibilities requires added staffing, an investment in technology and secure funding.

1) Fund the Agency to provide the staff and technological capacity necessary to administer fully the existing responsibilities and the additional ones recommended in this report.

Agency funding requests should receive high priority. However, as important as secure funding for ethics administration is, dedicated funding or separation from the executive budget is not desirable.

Additional investigatory, audit, technical and clerical staff is required. A sizeable initial capital outlay is required to replace and upgrade existing computer equipment and develop appropriate software.

2) Develop a computerized data management system to handle each type of report required to be filed with the Agency. Design the system to permit electronic filing of reports, in-house review and analysis and citizen access by computer.

The campaign finance, lobbyist and financial disclosure reports recommended in this study will substantially increase the workload of the Agency, making computerized storage a necessity. The data management system must be flexible enough to permit reviews. For example, citizens should be able to aggregate the value of contributions made by a single contributor over a series of reports or determine how much a major contributor has given to all candidates in a given year or election.

3) Authorize the ethics body to require that reports be filed with the Agency in a prescribed format on computer diskette as well as by paper copy. Give first priority to achieving campaign finance reporting by diskette for statewide and district offices. As the data management system is developed, extend this requirement to other filers.

Having campaign finance and financial disclosure reports filed on diskette or electronically by modem would be a vast improvement over the present paper-based system.

4) Authorize the Agency to offer a data entry service, at cost, as an option for those required to report by diskette.

5) Allow the Agency to retain the automatic late-filing fees it would collect (recommended in the Penalties section of this report) in a fund for technological improvements (computers and software development).

If the Agency were permitted to retain late-filing fees as a fund for technological improvements, general fund appropriations for capital outlay then would be needed only to cover any shortfall in funding for technology purchases. As technology purchases are not annual requirements, the fund should be allowed to accumulate.

Penalties

When an ethics agency determines that a law it administers has been violated, appropriate action must be taken to prevent the violation from continuing, to make restitution to the public and to punish the violator adequately.

The agency should have some discretion in dealing with violations. However, flexibility in assessing penalties must occur according to established rules and guidelines to avoid the appearance of arbitrariness or favoritism. Penalties need to be sufficient to serve as a deterrent.

The penalties provided in Louisiana's ethics-related laws are relatively high, compared to those in the COGEL model law. (See Table 5.) The model law, however, would give the ethics body greater authority to impose those penalties directly. Currently, the Agency must file a civil suit to recover the economic benefit gained by violating the Ethics Code, to require forfeiture of illegal gifts or to impose penalties under the campaign finance law—even for late filing of reports.

In addition to adequate authority, an ethics body must be willing to exercise the sanctions available. A review of Board and Commission rulings indicates a willingness to consider mitigating circumstances such as lack of intent or knowledge, historical practices, gray areas in the laws and hardships. As a result, maximum penalties are seldom assessed and many are suspended partially.

TABLE 5
Existing Penalty Provisions

Code of Governmental Ethics For a violation of the Ethics Code, the appropriate ethics body may:

- order an agency head to take action regarding a current employee or bar a former public servant from appearing before the agency or doing business with it
- cancel or rescind a government contract, permit or license
- censure an elected official or other person, impose a fine up to \$5,000 or both
- remove, suspend, or order pay cut or demotion of a public employee or other person; or impose a fine up to \$5,000; or both
- file a civil suit to recover illegal payments up to \$5,000
- file a civil suit to recover an amount equal to the economic advantage gained by the violation

The ethics body must forward any finding of criminal wrongdoing to the district attorney for prosecution.

Campaign Finance Disclosure Act The Board, functioning as the Supervisory Committee, may:

- file a civil suit to collect civil penalties:
 - for "knowingly" failing to file or file timely (penalties differ depending on office):
 - Major office—\$100 to \$500 per day, up to \$10,000
 - District office—\$30 to \$300 per day, up to \$5,000
 - Other office—up to \$100 per day, up to \$3,000
 - for other violations (penalties range, depending on the level of office, from \$100 to \$500 per violation per day)
- forward information to district attorney to prosecute, at his discretion, a case involving a "knowing, willful and fraudulent" violation (criminal penalty is up to \$500 fine and or six months in jail)

Lobbyist Disclosure Act The Board may impose civil penalties of:

- up to \$1,000 for failing to register
- up to \$1,000 for filing a report 11 or more days late (Secretary of the Senate and Clerk of the House shall assess late fees of \$10 per day for the first 10 days late)
- up to \$5,000 per violation for knowingly failing to register or file reports, or knowingly and willfully failing to register or file accurately (the Legislature may also prohibit lobbying for up to one year)
- up to \$5,000 per violation for any other violation of this law

Recommendations

The existing civil penalties for violations of the Ethics Code and other laws enforced by the Agency are generally in line with those imposed in other states. However, the Agency lacks authority to impose fees and penalties or to recover unlawful gains without bringing civil suit.

1) Authorize the ethics body to impose any civil penalty provided for in any law enforced by the ethics body without having to file civil suit.

This would allow the ethics body to directly assess penalties under the campaign finance and lobbying laws that presently require civil suit or are collected by another entity.

2) Authorize the ethics body to order full recovery and restitution in the amount equal to any economic advantage gained through a violation of the Ethics Code. Provide that such recovery be in addition to civil penalties that may be imposed.

3) Authorize the ethics body to order the forfeiture of any gifts or payments made in violation of the Ethics Code.

4) Authorize the ethics body to set automatic late-filing fees for failure to meet legal deadlines for filing campaign finance, financial disclosure, lobbyist or other required reports. Allow the fees to be set within the existing legal ranges provided for campaign finance disclosure. Require higher fees for late filing of reports due within 10 days of an election.

5) Authorize the ethics staff to impose and collect the automatic late-filing fees without requiring a prior finding or order by the ethics body. Provide that such fees not be subject to appeal, but authorize the ethics body to waive such fees for good cause in accordance with procedural rules it adopts.

Education

Educating the public and public servants about ethics-related laws is essential for promoting compliance. With adequate education, inadvertent violations can be avoided and violators unable to plead ignorance. Education programs generally consist of seminars and publications that explain specific areas of law in straightforward language.

The Agency educates public servants by giving 40 to 50 seminars each year, distributing two pamphlets on the Ethics Code and the Campaign Finance Disclosure Act, and publishing a quarterly report summarizing Agency decisions.

Louisiana does not consistently require that public servants be informed of the Ethics Code when they assume their positions. Such a requirement exists for state and local elected officials as well as local board and commission appointees, but not for state and local public employees. Individuals and companies are not informed of the Ethics Code provisions which apply to them when doing business with the government.

Louisiana offers a less comprehensive ethics education program than several comparison states. Some states' ethics agencies include education divisions, typically consisting of several staff positions that provide extensive educational services and numerous publications

applicable to different public servants. In Louisiana, the Agency's staff attorneys double as educators, conducting seminars in addition to their other responsibilities. Spending on education cannot be determined from the Agency's budget.

Recommendations

Education is essential to promote compliance with the ethics-related laws. Louisiana does not require that public servants and others who come under the laws' jurisdiction be informed of the law. The Agency also lacks the resources for an education program.

1) **Require and provide resources for the Agency to conduct educational activities and seminars and produce publications that focus on specific areas of the law and explain it in straightforward language.**

2) **Require the Agency to educate public servants about the Lobbyist Disclosure Act and the ethics provisions of the gambling laws.**

Currently, no training is provided in these areas.

3) **Require state and local agencies to inform current and new public employees about the Ethics Code and the Agency.**

Currently, agencies are not required to inform employees of the Ethics Code. New employees should be informed when hired. Current employees could be given brochures.

4) **Require local and state agencies to provide information about the Ethics Code to those who do business with them.**

Appropriate brochures should be prepared by the Agency.

III. MONEY AND INFLUENCE

In a representative democracy, it is essential that all citizens have an equal right to express their points of view and to communicate their positions to public officials. Campaign finance and lobbying laws are designed to level the playing field among competing interests. The laws reduce the role money can play in gaining access to and influencing public officials. They give the public access to information concerning efforts made to influence decisions.

Massachusetts: A Model Education Program

Massachusetts' ethics agency, which has jurisdiction over 280,000 public servants (compared to 250,000 in Louisiana), has an education division with two full-time employees.

- The division
 - published 62 brochures that include hypothetical situations to explain the law
 - distributed a brochure about the ethics law with state employees' paychecks
 - published numerous one-page fact sheets on specific topics
 - held 97 seminars for public servants and distributed 18,000 copies of educational materials in 1994

While Louisiana's campaign finance and lobbying laws have addressed many problems, a number remain. In addition, the rapid growth of the state's gambling industry has raised serious concerns about the political influence the gambling industry may wield. The recently publicized federal investigation into gambling-related campaign finance and lobbying activities highlights these concerns.

Campaign Finance

The Board serves as the Supervisory Committee for the Louisiana Campaign Finance Disclosure Act, and the ethics staff administers it. The Act requires candidates, political committees, and other persons who receive contributions or make independent expenditures to file information on all contributions and expenditures. As many as four campaign finance reports are required before a primary election, as well as one report before and another after a general election. Special reports of specified late contributions and expenditures are also required. An annual report must also be filed until a deficit has been paid or if the candidate or committee has received contributions or made expenditures during the year.

Contributions are limited to \$5,000 to a candidate for major office (e.g., statewide elected office), \$2,500 for district office (e.g., legislator), and \$1,000 for other offices. Limits are per candidate, per election. Cash contributions are restricted, anonymous contributions generally are prohibited, and public employees may not be solicited. Legislators must give 30-day advance notice of fundraisers held during a legislative session.

The objectives of Louisiana's campaign finance law are to:

- reduce the potential for wealthy contributors to control or have a disproportionate influence on election outcomes
- eliminate situations wherein elected officials are beholden to contributors
- eliminate elected officials' ability to pressure potential contributors
- allow citizens timely access to information concerning major supporters of candidates and the spending of campaign funds

Overall, Louisiana has a strong campaign finance law that is similar to the COGEL model law in many respects. Most major provisions of the Louisiana law also are similar to those adopted in the majority of the other states. However, the limits and the thresholds at which reporting must occur vary from state to state.

As strong as Louisiana's campaign finance law is, problems still occur. For example, it was not illegal to hand

out campaign contributions from a riverboat owner during the session in the Senate chamber. Under the COGEL model law, this situation would not have occurred, since COGEL bans contributions to legislators during sessions.

Recommendations

The following recommendations would address omissions in the present campaign finance law, limit the use of campaign funds to the purposes for which the contributions were given, improve citizen access to campaign information and allow closer supervision.

1) Prohibit legislators from soliciting or receiving campaign contributions during a period beginning 30 days before a legislative session and ending 15 days after adjournment.

Allowing contributions during sessions creates a potential for abuse and fuels the perception that special consideration can be purchased.

2) Require campaign finance reports to include the name, address, occupation and employer (if self-employed, the name and place of business) of each individual contributor and his spouse contributing \$1,000 or more in the aggregate during the reporting period. The report should also include the date, amount and year-to-date total.

The law now requires the name and address of all contributors but no information on their occupation or employer. As a result, it is difficult to ascertain the interests of those providing the major support for a candidate. Requiring employment data on the contributor's spouse reduces the opportunity for circumvention by contributing in the spouse's name.

3) Authorize the ethics body to require campaign finance reports to be filed by computer diskette (or electronically) as well as by paper copy.

The Agency should have the discretion to determine which reports should be filed in this way and to set the format to correspond with its data management system.

4) Require candidates to file a statement of financial interests for the preceding calendar year when filing their candidacy or petition for nomination to a salaried gubernatorial appointment.

Basic information concerning sources of income would be very useful in assessing a candidate's economic interests and concerns.

See the Financial Disclosure section of this report for details on this requirement.

5) Prohibit transfers of campaign funds from one candidate to another or among candidates' political committees.

This change would prevent a politician from using his campaign "war chest" to influence the election of another candidate. State law currently permits limited transfers.

6) Prohibit elected officials from creating or controlling political committees that make campaign contributions to other elected officials or candidates for other offices.

This prohibition should eliminate PACs controlled by legislative leaders and prevent the creation of legislative caucus PACs. This prohibition is not intended to affect political party committees.

7) Require subsidiary or related PACs, committees and individuals to be treated as one committee and their contributions aggregated for the purpose of applying limits.

This requirement would safeguard against the use of subsidiaries to exceed limits. The law currently requires consolidated reporting only for subsidiary committees designated by principal candidate committees.

8) Require contributions by minor children to be counted as contributions by parents.

Currently, the law prohibits giving contributions in the name of another but does not specifically prohibit giving by minor children.

9) Limit the amount that can be repaid after an election to a candidate or his immediate family for loans they made to the candidate's campaign prior to the election.

The objective of this recommendation is to reduce the potential for winning candidates to exert pressure on others to repay campaign debts. COGEL sets limits ranging from \$10,000 to \$50,000 depending on the level of office.

10) Prohibit the use of contributions in a campaign for an office other than the one for which the contribution was made.

11) Require a simple one-page statement of inactivity on regular reporting dates from committees to verify there was no activity other than interest earnings.

Currently an annual report is not required if there is no activity. This omission makes it difficult to determine whether there was no activity or a failure to report.

See also the Gambling section for related recommendations.

Lobbying

The intent of most lobbying laws is to preserve the individual's right to express opinions on governmental action and to maintain the integrity of the governing process by regulating and requiring disclosure of those hired to influence such action.

Some states, including Louisiana, define "lobbying" as communication with a legislator in an attempt to influence the passage or defeat of legislation. Other states have a broader view of lobbying that includes attempts to influence both legislative and executive branch action. Under either definition, lobbyists are considered persons who engage in lobbying for compensation.

Lobbying laws are closely related to governmental ethics since they are designed to help ensure that public servants make decisions in the public interest rather than in the interest of those with privileged access to the political process.

Louisiana's current lobbying law was enacted in 1993. It requires that lobbyists register with the Secretary of the Senate and the Clerk of the House and provide brief yearly expenditure reports. In addition, the law mandates that legislators provide one-month written notice before holding fundraisers during a legislative session.

Four separate entities are involved in implementing the lobbying law. The Legislative Lobbying Commission is responsible for developing rules, the Secretary of the Senate and the Clerk of the House are charged with administering the law, and the Board is responsible for enforcing the law.

The law provides penalties including a civil fine of up to \$5,000 for a "knowing and willful" violation of the act. These penalties are enforceable by the Board. The Board also may recommend to the Legislature that a lobbyist be censured and prohibited from lobbying for up to one year.

Louisiana's lobbying law differs in a number of respects from both the COGEL model law and provisions common to many other states. For example, the COGEL model law includes lobbying of the executive branch, prohibits campaign contributions during a legislative session and requires detailed expenditure reporting.

IT MAY BE LEGAL, BUT IS IT ETHICAL?

A lobbyist with an issue pending before the Legislature makes campaign contributions to several legislators during the legislative session.

Wisconsin is an example of a state with a stringent lobbying law. Its "zero tolerance" policy forbids certain public servants (including both legislators and executive branch officials) from receiving anything at all (including food and drink) from lobbyists. In contrast, Louisiana lobbyists are not limited in what they can spend on food, drink, and certain types of transportation and entertainment.

Recommendations

Needed reforms in the Lobbyist Disclosure Act would strengthen existing registration and reporting requirements, add important regulatory provisions, adopt stricter penalties and restructure administrative and enforcement provisions.

1) Extend the Louisiana lobbying law to cover lobbying of the executive branch.

The lobbying of officials and employees in the executive branch is not covered now by the Louisiana lobbying law. Twenty-five states and the COGEL model include paid efforts to influence executive action in their lobbying laws.

The COGEL model law defines "executive action" as an action regarding a "rule, regulation, order, decision, determination or other quasi-legislative or quasi-judicial proceeding." A lobbyist would be anyone paid to represent another to influence such actions. Routine communication with an official's office or communication by a private citizen expressing a view on an issue would not be considered lobbying. Communication by an attorney would not be considered executive lobbying if the communication were entered in a public record (e.g., a communication by an attorney of record in a docketed case pending before an administrative agency).

Drafting of this provision should draw on the experience in other states and on the model law.

2) Consolidate responsibility for implementing the state's lobbying law (including the administrative, enforcement and rule-making authority) in the state's ethics Agency.

3) Require principals (lobbyists' employers or clients) to register and list all of their lobbyists.

4) Require any principal that is an association to list the organizations that make up the association.

This requirement would prevent several organizations of special interests from forming yet another association to avoid disclosing the true nature of their lobbying activities. It would not require the basic organization to list members who are individual persons or firms.

5) Require principals to list total lobbying expenditures on a semi-annual basis.

Currently, principals file no expenditure reports. These reports would allow the public to view the amount of money a principal is spending on lobbying.

6) Prohibit lobbyists and principals from making campaign contributions during a period beginning 30 days before a legislative session and ending 15 days after adjournment.

A ban on all campaign contributions during legislative sessions is recommended in the Campaign Finance section of this report. In the absence of a general ban, contributions by lobbyists and principals should be prohibited. The potential for, or perception of, lobbyists purchasing legislative access and influence is too great.

7) Increase the penalties for the filing of false reports under the lobbying law. Provide that the knowing and willful filing of false reports subject the violator to criminal sanctions including a jail term and/or fine of up to \$10,000 and/or a prohibition against lobbying for up to three years.

8) Prohibit lobbyists or principals from spending on or giving to any public servant anything which that individual is prohibited from receiving.

Legalized Gambling

Historically, government has prohibited gambling. The Louisiana Constitution requires that "gambling shall be defined by and suppressed by the Legislature." Recently, the Legislature determined that certain forms of gambling could benefit the state economically and redefined them as "gaming" and, therefore, permissible.

At the same time, the Legislature recognized the need for strict regulation of the industry. For example, the casino gambling law states:

Public confidence and trust can only be maintained by strict regulation of all persons, practices, associations, and activities related to the operation of the official gaming establishment....

Since the Legislature considered "gaming" a "unique activity" subject to "strict regulation," it adopted ethics provisions in the legalized gambling laws that are stronger than the state Code of Governmental Ethics. In addition, the Legislature mandated an extensive licensing and suitability process that sought to subject those involved in the industry to higher standards of conduct and more stringent controls than existed for other industries.

The gambling laws have failed to achieve the desired high level of ethics regulation due to a lack of adequate enforcement mechanisms, omissions and inconsistencies among the laws, and inadequate penalties.

Rather than give the Board and Commission jurisdiction over the ethics-related provisions in the gambling laws, the Legislature allowed the gambling regulators to police themselves.

For example, the casino and riverboat gambling laws both mandate the respective regulatory bodies to adopt and enforce codes of ethics more stringent than the state Code of Governmental Ethics. While the casino board has at least adopted its mandated code, the Riverboat Gaming Commission has failed to do so. A 1992 Attorney General's opinion suggests that the mandated codes of ethics in the gambling laws are inoperative until adopted by the appropriate regulatory body.

Omissions and inconsistencies in the ethics provisions of the gambling laws lead to confusion, unequal treatment and a lack of public confidence in the regulatory process.

For example, both the riverboat and casino laws prohibit business relationships between certain public servants and gambling interests. Loopholes in both laws allow exceptions for municipal officials, businesses owned by elected officials, and subcontractors of gambling interests. In addition, the riverboat and casino laws are inconsistent as to the types of public servants who are restricted from activities with gambling interests.

IT MAY BE LEGAL BUT IS IT ETHICAL?

The Governor's son provides legal services to a gambling interest.

The gambling laws often fail to specify penalties for violations of the ethics-related provisions. For example, both the riverboat and casino laws place restrictions on certain public servants. While under the casino act a public servant may be held liable for the court costs and attorney fees, the riverboat act sets no penalty whatsoever. In contrast, New Jersey law specifies that gambling interests who illegally contribute to a political campaign may be fined up to \$250,000.

IT MAY BE LEGAL BUT IS IT ETHICAL?

A slot machine company seeking to do business with the New Orleans casino is represented by the law firm of a legislator who chairs a legislative committee that oversees gambling.

Recommendations

The apparent intent of the Legislature to require a higher standard of ethical conduct with regard to legalized gambling has been undermined in a number of ways. Many of the problems can be traced to gambling laws that are inconsistent, deficient, vague or unenforced. The following recommendations are designed to remedy these shortcomings.

1) Prohibit gambling interests from making any political contributions (including those to a political action committee, political organization, political party or candidate). Define gambling interest to include:

- any applicant for or holder of:
 - the casino operating contract
 - a riverboat gambling license
 - a video-poker truck stop, pari-mutuel or off-track wagering facility license
 - a gambling manufacturer, distributor, service or device-owner license or permit
 - a lottery device vendor's license
- any owner, director, officer or key employee of any of the above
- spouses and minor children of those listed above

Singling out one segment of the state's economy for the application of stringent limits on political activity raises questions of equal protection and free speech. The special nature of gambling-based enterprises, however, suggests that the state has a compelling interest in regulating the industry's political influence.

2) Prohibit any person from making political contributions on behalf of any person prohibited from making contributions.

3) Prohibit the following persons from being employed by, contracting with or engaging in any business activity with a gambling interest, both during the time they are in the following positions and for two years thereafter:

- anyone holding elective office in state or local government and the spouse and minor children of such official
- children (of any age) of statewide elected officials
- anyone holding a key classified or unclassified position in state or local government who is involved in gambling-related matters, and the spouse and minor children of such a person

This provision would prevent, for example, a mayoral assistant who helps negotiate a contract with a gambling interest from doing business with the gambling industry.

- anyone holding a key appointive position in state or local government who may become involved in gambling-related matters, and the spouse and minor children of such an official

This prohibition is intended to prevent those who may not have direct regulatory responsibility over gambling, but could exercise significant influence, from having gambling-related business dealings (for example, members of a city planning or zoning commission).

- business concerns in which anyone listed above has an ownership interest

4) Amend the current gambling laws to provide consistent and thorough conflict-of-interest provisions. Among the needed changes:

- require ethics provisions in the video-poker law similar to those in other gambling laws
- apply the same restrictions to those seeking gambling licenses as to those holding gambling licenses
- require that suitability hearings be open meetings
- provide strong, consistent pre-employment restrictions for gambling regulators

5) Authorize the state ethics body to interpret and enforce the ethics-related provisions in the gambling laws.

This authorization would include provisions applying to gambling regulators, the gambling industry and public servants restricted from having business relationships with gambling interests.

6) Enact civil penalties for violations of standards of conduct specified in each of the gambling laws.

CONCLUSION

Confidence in government is quickly eroded when public servants use their positions for private gain and monied interests obtain special favors from the government. Unethical behavior can never be entirely eliminated by legislation. Strong ethics laws and active enforcement, however, can reduce greatly the opportunity for an occurrence of wrongdoing.

This study highlights a number of significant problems with Louisiana's present Ethics Code, campaign finance law, lobbying law and ethics provisions in the gambling laws. The numerous changes recommended in this report form a major program for ethics reform in Louisiana.

By electing officials who are committed to high standards of governmental ethics, Louisiana citizens can take a major step toward ensuring that the political process serves public, not private, interests.

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