



OFFICE OF THE LEGISLATIVE INSPECTOR GENERAL

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*"The qualities of a great man are vision, integrity, courage, understanding, the power of articulation, and profundity of character." -- Dwight D. Eisenhower*

*"The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter."-- John F. Kennedy*

To Honorable Member of the 97th Illinois General Assembly:

I write to urge the General Assembly to act to strengthen the provisions of the "Illinois Governmental Ethics Act"<sup>1</sup>. This Act, which was enacted in 1967, is not to be confused with the "State Officials and Employees Ethics Act"<sup>2</sup>, which was enacted in 2003.

The 2003 Ethics Act, as amended in 2009, represented a progressive attempt to implement ethics reforms in State government. This Act provided for, among other things, (1) Inspectors General, (2) Ethics Commissions (3) annual ethics training for State employees; (4) implementation of personnel policies for State Employees along with periodic submission of time sheets, (5) definition and ban of prohibited political activities, (6) revolving door prohibitions, (7) whistleblower protections, (8) ban on political contributions on state property, (9) gift bans for State employees and their spouses<sup>3</sup>; (10) prohibition against fundraisers in Sangamon County on session days, (11) restrictions on public service announcements and other promotional material, and (12) administrative fines and penalties for violations. Following the establishment of a joint legislative committee chaired by the four leaders, this law was strengthened in 2009 with important measures added to provide transparency and additional investigatory tools to Inspectors General. While the legislature is to be commended for taking these steps, the work is unfinished. Unfortunately, the 2003 legislation did not address the significant shortcomings of the 1967 Ethics Act, which established a code of conduct and ethical principles for legislators and required the disclosure of economic interests, but failed to provide sanctions for violations.

Recently, Randy Erford, the Executive Director of the Legislative Ethics Commission, and I were invited by the NCSL to speak in Springfield with a visiting delegation of South African legislative leaders on the subject of ethics and ethics reform in Illinois. The NCSL representative informed

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<sup>1</sup> 5 ILCS 420/1-101 et seq.

<sup>2</sup> 5 ILCS 430/1-1 et seq.

<sup>3</sup> Actually, the pre-existing Gift Ban Act was incorporated into the Act

us that the delegation was especially interested in Illinois due to the general perception held by the delegation that our State stands out as being one of the more corrupt. This revelation, of course, comes as no surprise. Many of our fellow Illinoisans, as well others throughout the country and around the world, hold the view that Illinois is a corrupt State. This perception harms the reputations of all elected officials including state legislators, the vast majority of whom are dedicated public servants who serve their fellow citizens at significant sacrifice to their own financial well-being. During my 33 years of public service, as a prosecutor, legislator, judge and Inspector General, I have been privileged to work with honest public officials including the overwhelming majority of the members of the Illinois General Assembly. Unfortunately, publicized reports of scandals and corruption in Illinois have been pervasive over the past several years.<sup>4</sup> As a result, the public's faith and confidence in State government has eroded.

In 1965, in a first step towards ethics reform, the 74th Illinois General Assembly created an *ad hoc* Conflict of Interest Laws Commission.<sup>5</sup> The Commission was created by a Senate Joint Resolution sponsored by such luminaries as Senator Russell Arrington, Rep. Adlai Stevenson III and Rep. Abner Mikva. The Commission consisted of leading senators, representatives and public members, including prominent civic leaders, a newspaper publisher and a law professor.

The Commission was given broad power to study the need for establishing conflict of interest laws, with a view toward making recommendations for legislation that would adequately protect the public interests.<sup>6</sup> The Commission completed its study in 1967 and it recommended, among other measures, legislative enactment of a Code of Conduct that would help maintain the reality and appearance of high ethical standards by state legislators.<sup>7</sup> The three-part Code consisted of (1) Rules of Conduct For Legislators, (2) Ethical Principles for Legislators, and (3) Ethical Principles for Persons With Legislative Interests, and for Persons who are Close Economic Associates of Legislators.<sup>8</sup> I have attached a copy of the Code of Conduct as it currently appears in the statutes.<sup>9</sup>

While the Code of Conduct was ultimately adopted by the General Assembly, the legislation contained no penalty clause for violations.<sup>10</sup> That omission was significant, especially in light of the Commission's recommendations for enforcement provisions including public reporting and censure. Ignoring the Commission's recommendations, the legislature not only provided no penalties but expressly stated that the ethical principles "are intended only as guides [for conduct], and not as rules meant to be enforced by disciplinary action."<sup>11</sup>

Forty-four years later, the Code of Conduct, as enacted by the General Assembly in 1967, has proven to be weak medicine, indeed. Violation of the Rules results in no remedial action whatsoever, because the legislation provided that the stated provisions are merely ideals toward which legislators *should* strive.

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<sup>4</sup> The Sun Times reported on September 7, 2006, that at least 79 current or former Illinois, Chicago and Cook County elected officials had been convicted of crimes since 1972, including three governors [four following the recent Blagojevich conviction], 15 state legislators, and two congressmen.

<sup>5</sup> See House Bill No. 97, 74th General Assembly.

<sup>6</sup> See *id.*

<sup>7</sup> See Report of the Conflict of Interest Laws Commission, p.20-22.

<sup>8</sup> See *id.*

<sup>9</sup> Part 1. Rules of Conduct for Legislators (5 ILCS 420/3-101 et seq.); Part 2. Ethical Principles for Legislators (5 ILCS 420/3-201 et seq. ); Part 3. Ethical Principles for Persons with Legislative Interest, and for Persons Who are Close Associates of Legislators (5 ILCS 420/3-301 et seq.).

<sup>10</sup> See 5 ILCS 420/3.

<sup>11</sup> See 5 ILCS 420/3-206 and 5 ILCS 420/3-304.

The time has come for the Illinois General Assembly to revisit the provisions of the 1967 Ethics Act, to modernize and strengthen its provisions, and to add penalties for violations. In addition, the Statement of Economic Interests requirements set forth in that Act should be revised to include more detailed reporting requirements such as those now required for Judges.

In conclusion, I believe that the General Assembly should act swiftly to expand and clarify the provisions of the Code of Conduct, provide penalties for violations, and enhance the level of reporting required for the Statements of Economic Interest. Our current inability to address alleged and recurring conflicts of interest, due to weak or non-existent laws, threatens to undermine effective action to curb abuses and that of the General Assembly to win vital public support for important legislative initiatives. Even the *appearance* of conflicts of interest by legislators perpetuates public cynicism.

Meaningful reform will help to prevent both actual and perceived conflicts of interest in State government. To accomplish this end, violations of the Code of Conduct should be modernized and be made punishable by fines, public reporting and censure. These rules should not be merely aspirational goals. Requirements for Statements of Economic Interest should be expanded to mirror those requirements now required for judges. Moreover, legislators should be precluded from profiting in any way from their legislative initiatives and action. Strong new ethics laws and effective enforcement provisions will help to restore public confidence in State government.

I have appreciated the opportunity to serve as your Inspector General and look forward to working with you to strengthen and enforce the ethics laws of our great State. Thank you for your cooperation and support.

Sincerely,

Thomas J. Homer  
Legislative Inspector General

Encl.

## **ARTICLE 3. CODE OF CONDUCT**

### **PART 1. RULES OF CONDUCT FOR LEGISLATORS**

Sec. 3-102. No legislator may accept any economic opportunity, under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties.

Sec. 3-103. No legislator may charge to or accept from a person known to have a legislative interest a price, fee, compensation or other consideration for the sale or lease of any property or the furnishing of services which is substantially in excess of that which the legislator would charge in the ordinary course of business.

Sec. 3-104. No legislator in order to further his own economic interests, or those of any other person, may disclose or use confidential information acquired in the course of his official duties.

Sec. 3-105. No legislator may accept a representation case where there is substantial reason for him to believe that it is being offered with intent to obtain improper influence over a State agency.

Sec. 3-106. No legislator may use or attempt to use improper means to influence a State agency in any representation case in which the legislator or any person with whom he maintains a close economic association is participating.

Sec. 3-107. No legislator may engage in other conduct which is unbecoming to a legislator or which constitutes a breach of public trust.

### **PART 2. ETHICAL PRINCIPLES FOR LEGISLATORS**

Sec. 3-201. Where feasible, and taking into account the fact that legislative service is part-time, a legislator should avoid accepting or retaining an economic opportunity which presents a substantial threat to his independence of judgment.

Sec. 3-202. When a legislator must take official action on a legislative matter as to which he has a conflict situation created by a personal, family, or client legislative interest, he should consider the possibility of eliminating the interest creating the conflict situation. If that is not feasible, he should consider the possibility of abstaining from such official action. In making his decision as to abstention, the following factors should be considered:

a. whether a substantial threat to his independence of judgment has been created by the conflict situation;

b. the effect of his participation on public confidence in the integrity of the legislature;

c. whether his participation is likely to have any significant effect on the disposition of the matter;

d. the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature.

He need not abstain if he decides to participate in a manner contrary to the economic interest which creates the conflict situation.

If he does abstain, he should disclose that fact to his respective legislative body.

Sec. 3-203. When, despite the existence of a conflict situation, a legislator chooses to take official action on a matter, he should serve the public interest, and not the interest of any person.

Sec. 3-204. No legislator should accept a representation case unless he believes there is merit to the position he is asked to represent.

Sec. 3-205. A legislator participating in a representation case shall, wherever feasible, arrange for other persons to make appearances before the State agency.

Sec. 3-206. Sections 3-201 through 3-205 are intended only as guides to legislator conduct, and not as rules meant to be enforced by disciplinary action.

### **PART 3. ETHICAL PRINCIPLES FOR PERSONS WITH LEGISLATIVE INTEREST, AND FOR PERSONS WHO ARE CLOSE ECONOMIC ASSOCIATES OF LEGISLATORS**

Sec. 3-301. No person with a legislative interest should offer or confer an economic opportunity on a legislator with intent to influence that legislator's official conduct, or to create good will on the part of the legislator toward any person with a legislative interest. Those in positions of counsel to, or agents of, such persons should restrain them from violation of this ethical principle.

Sec. 3-302. No person with whom a legislator maintains a close economic association should accept an economic opportunity when he knows, or should know, of the substantial possibility that it is being offered with intent to influence that legislator's official conduct. Where feasible, a person with a close economic association with a legislator should also decline to accept an economic opportunity which presents a substantial threat to the legislator's independence of judgment.

Sec. 3-303. No person with whom a legislator maintains a close economic association should accept a representation case where there is substantial reason for him to believe that it is being offered with intent to obtain improper influence over a State agency.

Sec. 3-304. Sections 3-301 through 3-303 are intended only as guides to conduct, and not as rules meant to be enforced by penalties.