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ETHICS LAW REFORM**

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TIME IS RIPE FOR MEANINGFUL ETHICS LAW REFORM

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Time is Ripe for Meaningful Ethics Law Reform

Patricia E. Salkin



In response to the "Parking Violations Bureau Scandal" in the 1980s, New York enacted sweeping government ethics reform in 1987. The law, known as the Ethics in Government Act ("Act"), took effect on January 1, 1989. At only twelve years old, New York's ethics law is the subject of hundreds of formal and informal opinions issued by the State Ethics Commission, significant court opinions, and dozens of articles and chapters in books.

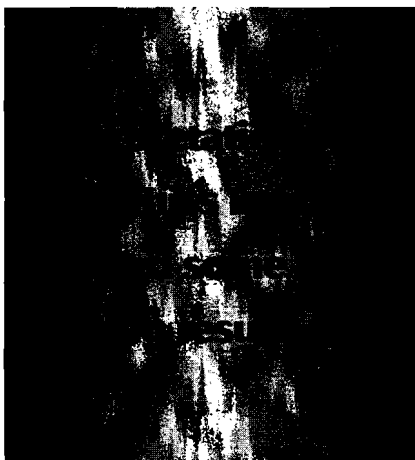
It is time to re-examine the law crafted in large part to address a now-past crisis, and a law that is often cited as an example of legislative compromise reached at the midnight hour.

Interpretation of the ethics laws has yielded some surprising results and critics calling for reform have made credible arguments about many of the Act's shortcomings and perhaps unintended results. One such concern is that the Act prevents the public sector from attracting a significant group of employees while the private sector loses the ability to recruit trained people from government. Talented young and seasoned professionals alike, those who might otherwise be inclined to lend their skills temporarily to benefit public service, quickly lose interest in public service. This is primarily due to the stringent revolving door provisions found in the Act that proscribe a strict two-year ban on employees appearing before their former agencies, and a lifetime ban on appearing on matters previously worked on while in government.

The devastation was not fully appreciated until certain Department of Transportation employees demonstrated their inability to pursue private sector employment after leaving public service. The net was cast wider with the change in administration from Governor Cuomo to Governor Pataki when Albany experienced a large turnover of government employees who were now seeking private sector employment. Ethics advocates have,

over the years, urged the Legislature to re-examine the blanket two-year ban applied to all employees, regardless of grade-level and job responsibilities. Authorization of a waiver provision has been offered as one option to address some of these difficulties.

Completion of the invasive lengthy financial disclosure form is not a pleasant experience. In fact, during a 1996 conference at Albany Law School, the present Counsel to the Governor suggested that for certain categories of civil servants - people who serve the State without compensation - the form should be scrapped. Articles have been written suggesting a variety of alternate ways to deal with transactional disclosure to accomplish the goals of public



disclosure.

With the exception of the revolving door provision, the Court of Appeals has determined that the jurisdiction of the Ethics Commission extends only to current state employees, leaving the door open for employees to terminate service for the purposes of avoiding the scrutiny of a Commission investigation. Attempts to close this loophole have, to date, failed.

Other issues ripe for legislative attention focus on municipal ethics. With the sunset of the Temporary State Commission on Local Government Ethics, New York's 1,600 localities have no place to turn for one-stop shopping

on ethics issues. The jurisdiction of the State Ethics Commission

does not include municipalities, and attempts to broaden this jurisdiction as well as attempts to re-establish a special municipal ethics office have failed to garner enough support over the last decade. Experimentation with privatization of certain government services and functions has butted up against the ethics law, with a legislative "quick fix" enacted to address the limited facts at hand, rather than crafting a far-reaching forward thinking approach to deal with future instances of privatization.

In government ethics, appearances are often what count. New York's so-called "gift provision" allows public employees to accept gifts, under certain circumstances, with a value of no more than \$75. While there may be valid political justifications to support differing interpretations of the law, it is difficult for the public to reconcile an opinion of the State Ethics Commission that says no more than \$75 from the same source in any one calendar year, and an interpretation of the same language by the Legislative Ethics Committee that finds the limit to be \$75 per occurrence. Different interpretations of the two-year revolving door provision have long irritated the executive branch agency employees who believe they are held to stricter standards.

Government ethics is a subject ripe for a blue ribbon commission to document the multitude of successes accomplished with the 1987 Act, and to offer meaningful recommendations for further reform that includes the tightening of loopholes in the current law.

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