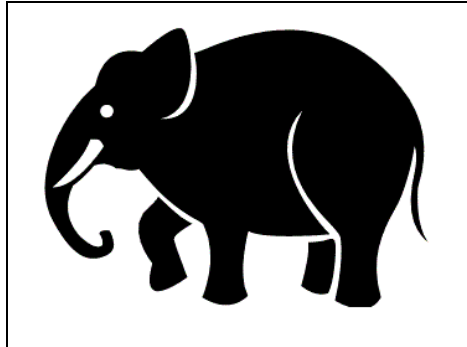# ELEPHANTS, ETHICS AND ENIGMAS
MUNICIPAL GOVERNMENT ETHICS
& ANTI-CORRUPTION PROGRAMS
IN THE UNITED STATES

The Blind Men and the Elephant: A Hindu Fable

The fable of the Blind Men and the Elephant became well known with the poem of John Godfrey Saxe in 1873.   The story has many versions in cultures across the world. Essentially, the story is about blind men who touch different parts of an elephant to find out what it is about; they each think they know the whole, when in fact, they have only experienced part of it. One feels the elephant's tail and thinks an elephant is a rope; one feels the tusk and thinks an elephant is like a spear, and so on.

> *It was six men of <u>Hindustan</u> to learning much inclined,*
> *Who went to see the Elephant (though all of them were blind),*
> *That each by observation might satisfy his mind.*

The fable underscores the need to have the "whole picture" of an activity to ensure success in the endeavor.

As noted by Menzel (2005), scholarly interest in the area of government ethics has increased significantly in the last several years. There has also been a corresponding increase in practitioners, mainly government attorneys, implementing and expanding government ethics programs in the United States. Ethics, compliance and oversight programs are typically created piecemeal, usually during, or right after, a crisis involving political corruption. Unfortunately, there can be a lack of comprehensive planning in implementing these programs. At best, this could be a result of limited budgetary resources; at worst, an effort to calm the public with ethics reforms that are illusory.

This article explores the following areas:

1. Definitional challenges;
2. Elements of ethics programs found across the United States;
3. Illustrative examples of the ethics programs from various sized U.S. cities.

Definitional Challenges

In order to develop a code of ethics for the American Society for Public Administration, Van Wart (2003) elaborated on the definitions for "ethics", "morals", "legality", "codes of ethics", and "codes of conduct".[i] It is the author's experience from training sessions conducted with thousands of public officials and employees that they are confused about basic concepts and words routinely used in ethics programs. For example, most cannot clearly distinguish between the concepts of law and ethics. An elected official who discusses an "ethics program" may understand this to mean that there should be more laws to govern certain behavior, whereas a Human Resources specialist will think this means a program to teach ethical decision-making. Employees, on the other hand, often become resentful that they have to participate in an ethics program because they believe that "ethics" is a matter to be dealt with by their families and/or church. Elected officials will also discuss how an action fits within the law as the sole inquiry as to the appropriateness of their behavior, eliminating the analysis of how the action impacts the public trust.

Mark Davies, the Executive Director of the New York City Conflict of Interest Board, in distinguishing "conflict of interest laws" and "ethics", states:

"In most countries, though not in all, a conflicts of interest system does not regulate morality. Often conflicts of interest laws are referred to as ethics laws, but that is a misnomer. In most countries, so-called ethics regulations are not really about ethics at all, in the sense of right and wrong, good and evil, moral and immoral. Rather, as noted above, they are about the reality and perception of divided loyalty, of conflicts, primarily financial conflicts, between one's private interests and public duties."

As a result of this reasoning, the "Ethics" body in New York City is specifically called the "The Conflicts of Interest Board" to avoid confusion between the two concepts.

Some of the terms that need to be clarified in the context of government ethics are: ethics, conflicts, corruption, law, codes of conduct, ethics codes, and ethics commissions.

ELEMENTS OF ETHICS PROGRAMS

Municipalities adopt combinations of the following elements in structuring an "ethics program". If a municipality states that it has an "ethics program," it can mean one or more of the below elements, illustrated in our fabled elephant.
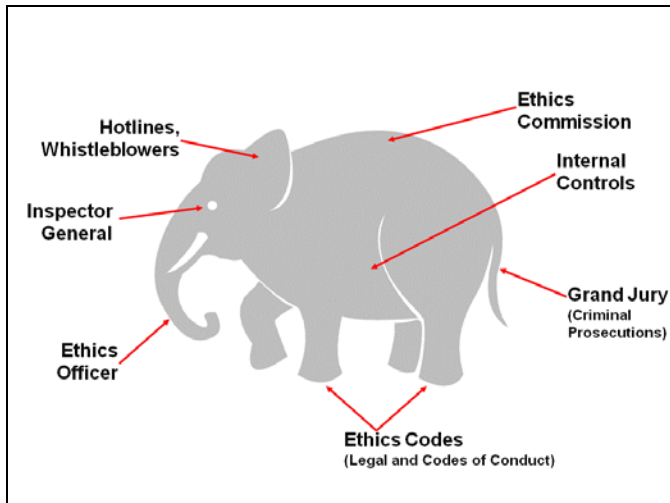
Ethics Codes. Numerous cities across the U.S. have implemented ethics codes. This is often accomplished by copying other city's codes in the same state (see Tampa, Florida Code[ii]) or by web research. The website for City Ethics has a model code that can be utilized by cities in this task: www.cityethics.org "Model Code"[iii]. The author's review of codes shows either a rule-oriented model with enforceable conflict of interest provisions, a values-oriented aspirational code of conduct, or a combination of the two.

As stated by Van Wart (2003), "the blurring of the systems of ideals, norms, and actions is inevitable". He notes that codes become scrambled with provisions on self-dealing (conflict of interest, nepotism, gifts and use of public resources), with privacy provisions, whistleblower laws, and financial regulations. Some codes are purely aspirational with no clear guidance on behavior or penalties for violations. Swain and Duke (2001) argue for a "low-road" approach to ethics regulations, limiting rules solely to conflicts of interest and avoiding a values-based approach stating:

"A high-road approach is not possible because of the number and kind of participants in public policy; simply put, if they were pursuing a philosophic life, they would not be engaged in public policy, and public policy participants cannot be required to learn to be ethical in any higher fashion."

As a practitioner, the author would advocate the exploration and development of a combination approach, models described by Menzel (2007) and Lewis (2005) in the "fusion model". The City Ethics Model Code takes this approach.

Ethics/Integrity Officers. One of the first cities in the U.S. to establish the position of an Integrity Officer was Philadelphia, a position that is internal and answers directly to the Mayor. Recently, the city's Integrity Officer launched a new Integrity website.[iv] Following the example of Philadelphia, Jacksonville, Florida passed a law in 1999 requiring the Mayor to appoint an Ethics Officer who would be responsible for all ethics activities for the city, including training, compliance and coordination of a "departmental ethics officer" system in every department of the city.[v] Other cities that currently have Ethics/Integrity Officers include Miami-Dade, Florida, Tampa, Florida, Atlanta, Georgia,

Detroit, Michigan, Austin, Texas, San Antonio, Texas and many others. These positions, staffed by attorneys, are generally considered to be preventative in nature, with an emphasis on education and advice. Some Ethics Officers, such as the one in Atlanta, Georgia,[vi] are appointed by independent Ethics Boards and have enforcement duties as well.

Inspector General. Some ethics offices work with Inspector General Offices, as in Miami-Dade and Jacksonville, Florida. The Inspector General Offices investigate and coordinate cases that may violate criminal statutes, overlapping in jurisdiction with an Ethics Commission or Board that would consider the same act with a view towards non-criminal ethics code violations. As to the duties of this office, the Miami-Dade Inspector General mission statement is "to detect, investigate, and, where possible, prevent fraud, waste, mismanagement and abuse of power in County projects, programs or contracts. Above all, the principal objective is to promote ethics, honesty and efficiency in government, and to restore and promote the public's trust in government."[vii]

There are instances where a single action by a public official can initiate action by the Inspector General (for fraud and abuse of power), the Ethics Commission (for conflict of interest violations) and a prosecutor's office (for criminal violations).

Hotlines and Whistleblower Protection. Corporate America, as a result of the Enron crisis, now operates under federal laws and guidelines requiring the utilization of hotlines and protection for whistleblowers. (See the federal law commonly referred to as 'Sarbanes Oxley'[viii] and the 'Federal Sentencing Guidelines'[ix].) Municipalities historically have implemented fraud alert phone lines in city auditor offices, but some Ethics Offices now have confidential Ethics Hotlines for the reporting of conflict of interest cases and political corruption. Some of these are outsourced to companies that also handle corporate hotlines and some are handled internally by staff of the municipality.

Ethics Commissions and Boards. There are hundreds of Ethics Boards and Commissions across the U.S. They typically are volunteer citizen boards that may or may not have any budget or staff. For example, the city of Jacksonville, Florida's Ethics Commission has a zero budget, but can rely on assigned staff from General Counsel's office and the Ethics Officer to assist in accomplishing its duties. Miami-Dade's Ethics Commission is funded with a budget of $2.2 million and has 17 staff.[x] Commissions are set up to provide ethics advice and hear complaints of violations of local ethics codes and have widely divergent duties and enforcement mechanisms.

Internal Controls. Programs for anti-corruption efforts, ethics and avoidance of conflicts of interest can also be tucked away into various other departments in municipalities. They can show up in a city auditor's office and reflect an accounting viewpoint; or a Human Resources department which tend to take a values-based ethics approach. A fruitful area for oversight activities is in any department that handles procurement or contract activities. Ethics provisions (conflicts of interest, gifts, and nepotism) can be found in civil service and employee manuals and can be administered

by the Human Resources departments. Many times, the entire ethics program is administered by the Legal Office of the city.

Whenever there is a codification of ethics and conflict laws, it flows from the legal department. It does appear from initial research that larger cities tend to have dedicated ethics departments and do not rely upon other internal departments to develop and implement their ethics programs.

Grand Jury/Prosecution. If a municipality fails to implement a structure to handle essential advice, education, and monitoring controls for the development of ethical cultures and the avoidance of corruption, the end result could be that questionable actions flow to the local prosecutors to look at as potential criminal cases. If they don't meet the evidentiary standards to be charged as crimes, then acts go "unpunished", which tends to decrease the public trust. The establishment of an ethics system that can issue minor fines and letters of reprimand can be useful in resolving issues and establishing closure for citizens.

EXAMPLES OF MUNICIPAL ETHICS PROGRAMS

In studying the Pennsylvania State Ethics Commission, Bradbury (2007) described state commissions as the "street level enforcers of ethics". Actually, the municipalities, rather than states, are closer to the "street level" in formulating ethics programs and enforcement mechanisms. And if Bradbury concludes that the 50 state commissions have numerous differences in structure and enforcement, one can only imagine the myriad forms that thousands of municipalities have adopted to implement their ethics programs.

In order to examine a wide cross section of cities in the U.S. for types of ethics programs, the 200 top cities by population were sorted into 4 quadrants. Cities in each quadrant were selected to analyze ethics program components and training needs. The Director of each of the programs was personally interviewed by the author. Numerous aspects of these cities' ethics programs were studied and tabulated, and additional reports will be issued in the future. The initial inquiry was to see what type of structure (what parts of the "Ethics Elephant") had been implemented in that municipality as to ethics and to ascertain their training needs. One city in each of the quadrants will be described for this article.

Quadrant A (Cities by population, group 1-50)

1. **New York, N.Y.[xi]**
   Population: 8,391,881 (Rank: 1/200 cities)
   New York has implemented one of the most sophisticated ethics programs in the United States. In fact, with the number of municipal employees over 300,000 in 70 agencies, New York City government is larger than the entire government of many countries. The ethics program, under the name of the "Conflicts of Interest" board, is a separate city division with a staff of 20 and a budget of $1,882,779 (FY 2009). Their activities cover enforcement of the city conflict of interest codes, ethics advice,

monitoring the city's financial disclosure system, and training, which includes publications and newsletters. The first Ethics Advisory Board in New York was legislated in 1959 and now, the city has in place all the elements of an ethics program, including a dedicated ethics staff, an Inspector General, a helpline, and internal controls. They train on not only the legal codes, but on values-based ethics concepts.

The top 3 areas of concern for training are as follows: 1. misuse of city resources; 2. misuse of one's city office and 3. inappropriate superior/subordinate relationships.

Research shows that the largest cities in the United States have evolved intricate, expensive, structures for the administration of ethics programs. The key question is how this impacts on the ethical culture of the government and, ultimately, the public trust.

Quadrant B (Cities by population, group 51-100)

2. New Orleans, Louisiana[xii]

Population: 311,853 (Rank: 59/200 cities)

New Orleans implemented its ethics code in 2007 and hired an Inspector General; this office handles an anonymous hotline for the reporting of violations. In 2009, the first Ethics Counsel for the newly formed Ethics Review Board was hired. Training is done by the State Ethics Commission, not the local Board. The history of the ethics structure is interesting. This is an excerpt from the program's website (emphasis added by the author):

"*In **1996**, citizens of New Orleans voted to amend the Home Rule Charter to mandate the Council to establish by ordinance an Ethics Review Board. Under that ordinance the Board is empowered to issue advisory opinions, promulgate rules … retain counsel and impose fines. The inspector general and the Ethics Review Board worked to secure a…budget in the amount of $3.4 million.*"

It should be noted that Hurricane Katrina flooded New Orleans in August of 2005. This had a devastating impact on the local economy and infrastructure. What effect did this disaster have, with the resulting influx of federal money, on the implementation of the ethics program which had been established in the Charter a decade earlier?

The main areas of interest for training in New Orleans are: 1. gift laws of the state; 2. contract and financial relationships of employees and officials; and 3. nepotism issues.

Quadrant C (Cities by population, group 101-149)

3. Boise, Idaho[xiii]
   Population: 205,314 (Rank: 100/200 cities)
   Boise created an Ethics Commission in 2005 that works with the city's Legal and Human Resource Departments. This Commission was the first in the State of Idaho. Ethics training is conducted and advisory opinions issued to employees, officials and the public. Interestingly, there is no state ethics commission in Idaho and so the conflict of interest laws are local only. The city does have an anonymous Ethics Hotline that has been outsourced to a professional hotline company. Although training is not required by the city's code, constant training sessions are offered for all employees. The training is on law and values with exercises in ethical decision making. Creating an ethical culture was, and a newly elected Mayor was credited for pushing the implementation of the new ethics code and program.

   The three top topics for training are as follows: 1. transparency and appearance issues; 2. abuse of position; and 3. misuse of city property.

   In this quadrant, there are many variations of programs. For example, one city has focused on the creation of an ethical culture, advocated from the "top down" by the Mayor; one city relies upon a state system with a heavy legal emphasis and the third has the Inspector General acting in many respects as an Ethics Officer.

Quadrant D (Cities by population, group 150-200)

4. Sioux Falls, South Dakota
   Population: 154,997 (Rank: 150/200 cities)
   The local ethics law for Sioux Falls was created in the Charter in 1995. There is no state Ethics Commission in South Dakota, so the local laws are the only ones that apply to officials and employees. The Ethics Commission in Sioux Falls only has an advisory function and no enforcement duties. The system for handling ethics complaints against City Council members is different from that for handling complaints against employees. The Ethics Board meets as needed and is coordinated by the General Counsel's office. The city does not have an Inspector General but does have a hotline for the filing of complaints. Although ethics training is not required, the General Counsel conducts training on the ethics laws.

   The top topics for training are as follows: 1. conflicts of interest and 2. gift and entertainment issues.

   Research shows that in this quadrant, State law and State Ethics Commissions have a significant role to play in the local ethics programs. Sometimes ethics training is required by the state; sometimes it is required locally and most often it is put together by the local General Counsel's office and is heavily based on conflicts of interest laws.

Conclusion

Ethics programs are emerging throughout the United States. Some are tightly controlled by existing state law, while other cities create unique programs. Cities of essentially the same size can have extremely divergent approaches in their ethics structures. Ethics programs are mainly dependent on lawyers and offices of General Counsels, and training places a heavy emphasis on the study of conflict of interest laws. Effective ethics programs, tailored to the needs of the community, enhance public trust. Programs that are poorly defined and implemented are a disservice to the public. Ethics programs should be created that are not just for show, but designed to improve the municipality's ethical climate.

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i Definitions: **Ethics:** "Ethics is derived from the Greek term *ethos,* which refers to character and conduct. Ethics is generally defined as the study of moral judgment and the practice of high standards of conduct. Its strongest roots lie in philosophy."
Morals: "Derived from the Latin term *moralis* which refers to manners or customs; making or being capable of making, distinctions between right and wrong conduct at the individual level."
Legality: "derived from the Greek term, *legein,* which means to collect, and the Old English term *lag,* which refers to something laid down and settled." It has an emphasis on authority and preciseness, its strongest roots are with politics/rule-making and jurisprudence.
Codes of Ethics: "generally articulates aspirational principles, such as forthrightness."
Codes of Conduct: "generally asserts aspiration values or sets minimum expectation values."

ii http://www.tampagov.net/dept_human_resources/files/City_of_Tampa_Ethics_Code.pdf Accessed August 13, 2010.

iii http://www.cityethics.org/content/model-code-introduction Accessed August 13, 2010.

iv http://www.phila.gov/integrityworks/index.html Accessed August 13, 2010.

v Section 602.1101-1104, Jacksonville Ethics Code.
http://www.coj.net/Departments/Ethics+Office/Ethics+Code+.htm Accessed August 13, 2010.

vi http://www.atlantaga.gov/government/boards/boardofethics_about.aspx Accessed August 13, 2010.

vii http://www.miamidadeig.org/ Accessed August 13, 2010.

viii The Sarbanes–Oxley Act (Public Law 107-204, enacted July 30, 2002 and known as the 'Public Company Accounting Reform and Investor Protection Act' set standards for all U.S. public companies and accounting firms. There are penalties for interfering with whistleblowers-- 18 U.S.C. § 1513(e).

ix http://www.ussc.gov/orgguide.htm Accessed August 13, 2010.   Section 8B2.1, Guide to Effective Compliance and Ethics Programs requires an organization under section 5C: "to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance…without fear of retaliation."

x http://www.miamidadeethics.com/Publications/annual2009.pdf Accessed August 13, 2010.

xi http://www.nyc.gov/html/conflicts/html/home/home.shtml Accessed August 13, 2010.

xii http://nolaethics.org/main/inside.php?page=mission   Accessed August 13, 2010.

xiii http://www.cityofboise.org/CityGovernment/EthicsCommission/ Accessed August 13, 2010.

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