What Can Ethics Codes Accomplish?

Richard Rifkin
New York State Bar Association

The article “Managing Politics? Ethics Regulation and Conflicting Conceptions of ‘Good Conduct,’” by Richard Cowell, James Downe, and Karen Morgan, is one of the few efforts to measure the impact of governmental ethics codes. Its main value is that it looks at the effectiveness of these codes. Clearly, this type of review of any government program is important so that we understand whether the program’s objectives are being met.

However, in reviewing any program, there needs to be agreement on its objectives. The article addresses the resistance of government officials to the ostensible effort of ethics code makers to impose “coercive state power” by examining multiple examples of local governments in England. From my experience in New York, I suggest that if the primary objective of ethics codes is to change behavior by imposing rules on reluctant government officials, these codes will inevitably be seen as a failure.

Those who enter into government service with a view toward enhancing their own personal interests in some manner will not be deterred by an ethics code, whatever the penalties for violations may be. They will resist, and if resistance to these codes, as described in the article, is seen as a failure of the effort to change behavior, the evaluation will almost always be that the objective has not been met.

I submit that ethics codes have a more limited purpose. They are intended to guide the behavior of government officials who are disposed toward acting in a manner that is consistent with serving the public. In New York, more than 250,000 individuals are governed by the state’s ethics laws. From my 30 years of experience in state government, I believe that, overwhelmingly, state officials and employees want to conduct themselves in an ethical manner. Ethics codes are intended to help them in this effort.

Government employees are not monks who, when not working, spend their time tending their gardens. Nor should they be. The people are best served by government officials and employees who are part of the community and have experience in business, law, health care, academics, or other fields. However, that experience creates potential conflicts between their work and outside activities, and these individuals need guidance as to what is permissible and what is not. It is here that codes, opinions, training, and so on, all of which are part of an ethics program, are valuable.

Ethics principles are, of necessity, vague, and government officials need assistance in trying to understand them. This is where ethics regulatory bodies serve their most important function. A good ethics body offers both informal advice to those who inquire as to specific circumstances and more formal advice through a published set of opinions. This advice function allows these regulatory bodies to educate the workforce on the application of the general ethical statutes as they apply to specific situations. It is like the courts interpreting the statutes of a particular jurisdiction, adding definition to the more general language. Beyond advice, training programs are commonly a part of an ethics regime, further increasing the understanding of those subject to the code.

In New York, as in many other jurisdictions, financial disclosure and enforcement are part of the ethics program. Disclosure is certainly useful, as it informs the public of the other activities and financial interests of government officials and employees. To the extent that codes are intended to enhance public confidence in the integrity of government officials, disclosure plays an important role. However, disclosure requirements will hardly ever result in an enforcement body finding a violation of law.

If the assumption is that disclosure will change behavior, the effort will fail. Those who view government service as a means of advancing their own interests, despite ethical restrictions, will not hesitate to hide activities and interests that violate the law. Clearly, if they are prepared to violate ethical rules with more...
serious consequences, they will have little hesitancy in failing to disclose information required on their personal statements. Thus, mandated disclosure will not change behavior.

The final common function of a body that regulates ethics is enforcement. Usually, it is empowered to impose monetary penalties, which makes it appear that ethics codes are intended to change behavior. In some instances, these penalties may, in fact, have that result. However, that is the unusual case. The penalties are often relatively modest and, in many circumstances, may be less than the financial benefit received by the people on whom they are imposed. Thus, if a government official is to consider an action based solely on his or her personal financial interests, it may benefit the official to violate the law and accept the penalty if caught.

More significantly, ethics regulatory bodies are almost always significantly underfunded and unable to enforce the law in a serious manner. For example, when I served as executive director of the New York Ethics Commission, we had 20 employees to carry out all of the commission’s functions overseeing 250,000 individuals. With these limited resources, the commission could not possibly have the type of vigorous enforcement that changes behavior through compulsion. And, at least in the United States, the New York experience is typical. If the expectation is that mandated ethics codes will change behavior, a great deal more in the way of resources would be required.

In sum, I think that before any evaluation of the success of ethics codes can be useful, we first need to understand the limited objectives of these codes. It is here that I would like to see the authors of “Managing Politics?” take an admittedly difficult next step: a study to determine whether government employees subject to an ethics code better understand what is expected of them in order to act in an ethical manner.

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