Commission Members

Herbert J. Belgrad, Chairman
Jervis S. Finney*
Reverend John Wesley Holland
Betty B. Nelson
Barbara M. Steckel

Staff Members

John E. O'Donnell, Executive Director
Nancy L. Speck, General Counsel
Robert A. Hahn, Staff Counsel

Room 1515, 301 West Preston Street
Baltimore, Maryland 21201
(301) 383-7813

* Jervis S. Finney resigned from the Commission in October of 1983.

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STATE ETHICS COMMISSION

Fifth Annual Report

January 1, 1983 - December 31, 1983

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GENERAL STATUTORY IMPLEMENTATION

The State Ethics Commission met fourteen times during Calendar Year 1983. During the year the Commission was involved in program activity relating to all areas of its statutory mandate. These include financial disclosure, conflict of interest, lobbyist disclosure, local government ethics laws, school board ethics regulations, advisory opinions, enforcement matters and public information activities.

Issuance of Advisory Opinions

The Commission issues advisory opinions in response to requests from officials, employees, and others who are subject to the Law. Additionally, the Commission may issue advisory opinions to other persons. During Calendar Year 1983 the Commission received 48 requests for advisory opinions. The Commission issued 42 advisory opinions in 1983. There were twelve requests for advisory opinions pending at the end of the calendar year. Forty of the opinions issued in 1983 dealt primarily with the conflict of interest provisions of the Law. Two opinions covered financial disclosure.

Financial Disclosure

The Commission implemented the first financial disclosure filing for part-time members of State boards and commissions under the provisions of the 1981 Ethics Law. This program had been delayed pending required approval of financial disclosure regulations by the Administrative Executive and Legislative Review Committee of the General Assembly. The regulations were originally proposed by the Commission in December of 1981. The Committee, after requesting significant reductions in the level of disclosure, approved revised regulations as of February 28, 1983. The first deadline for submissions was July 1, 1983.

The Public Ethics Law allows the Commission to exempt board and commission members from the financial disclosure filing requirement based on criteria established in the Law. In the first part of 1983 the Commission completed an exhaustive review of exemption requests received from departments and independent agencies. The Commission generally exempted boards whose powers are only advisory from the financial disclosure filing requirements.

Since the filing coverage requirements of the Law for elected officials and employees remained stable for a second year, the Commission was able to initiate a comprehensive filing compliance program. This program deals with failures to file, submission of incomplete forms and monitoring for conflicts of interest. A substantial amount of staff activity was devoted to design and implementation of this program.

Lobbyist Disclosure and Regulation

During the lobbying year which ended on October 31, 1983, 518 lobbyists registered with the Commission. Although the largest number of lobbyists are registered during the legislative session, registrations are beginning and ending throughout the lobbying year, which begins on November 1 and ends on October 31 of the following year.

The following expenditure data summarizes lobbying expenditures for the lobbying year indicated on the chart:

Type of Expense	Lobbying Year		
	11/1/80 to 10/31/81	11/1/81 to 10/31/82	11/1/82 to 10/31/83
1. Expenditures for meals and beverages for officials or employees or their immediate families.	$ 99,881	$ 120,044	$ 152,998
2. Expenditures for special events, including parties, dinners, athletic events, entertainment, and other functions to which all members of the General Assembly, either house thereof, or any standing committee thereof were invited. Date, location, group benefited, and total expense for each event are reported.	$ 118,278	$ 115,289	$ 109,855
3. Expenses for food, lodging, and scheduled entertainment of officials and employees and spouses for a meeting given in return for participation in a panel or speaking engagement at the meeting.	$ 7,122	$ 8,404	$ 10,131

4.	Expenditures for gifts to or for officials or employees or their immediate families (not including sums reported in 1, 2, and 3).	$ 1,190	$ 841	$ 4,084
	Subtotal of items 1, 2, 3, & 4	$ 226,472	$ 244,578	$ 277,068
5.	Total compensation paid to registrant (not including sums reported in any other section).	$2,417,327	$2,627,181	$2,868,090
6.	Salaries, compensation and reimbursed expenses for staff of the registrant.	$ 223,187	$ 249,098	$ 283,327
7.	Office expenses not reported in items 5 and 6.	$ 223,719	$ 251,140	$ 254,125
8.	Cost of professional and technical research and assistance not reported in items 5 and 6.	$ 20,967	$ 63,253	$ 55,556
9.	Cost of publications which expressly encourage persons to communicate with officials or employees.	$ 64,255	$ 106,340	$ 153,167
10.	Fees and expenses paid to witnesses.	$ 14,783	$ 27,712	$ 5,942
11.	Other expenses.	$ 106,453	$ 107,846	$ 127,514
	Total of items 1 through 11	$3,297,170	$3,677,148	$4,024,789

Enforcement Activities

The Ethics Law and implementing rules of the Commission provide that any person may file a complaint with the Commission. Complaints must be signed and under oath, and allege a violation of the Law by a person subject to the Law. Additionally, the Commission may file a complaint on its own initiative, and may carry out preliminary inquiries at its discretion.

In Calendar Year 1983 the Commission issued forty-five complaints. Thirty-seven complaints involved financial disclosure matters, four complaints related to conflict of interest issues, and four complaints involved the lobbying law. Also, during this year action was completed on twelve complaints. All of these complaint cases were completed by accepting cure or settlement agreements. Twenty-nine complaints were still active at the end of the Calendar Year. The Commission initiated fourteen preliminary inquiries during 1982 in order to evaluate whether a complaint should be filed. Four preliminary inquiries were still in process at the end of the year. The thirty-seven financial disclosure complaints were the result of the new compliance review program instituted in 1983 to make ensure that all covered individuals comply with the filing requirement.

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Local Government Ethics Laws

Maryland counties and cities are required under Title 6 of the Ethics Law to enact local laws similar to the State law. Criteria for evaluating similarity to the State Law are defined in Commission regulations. Some municipalities, based on size and other factors, may be exempted from all or part of the requirement, though an exemption may be granted only in response to a written request. The Commission spent considerable effort during 1983 reviewing enacted laws. At the end of 1983 all counties had enacted ethics laws and submitted them for Commission review. Additionally, municipalities that either could not be exempted from the law or did not want to be exempted from the law had passed local ordinances. As a result of the exemption process 68 jurisdictions have been totally exempted from enacting a local ethics law. Additionally, 18 municipalities have been exempted from the requirement to enact the lobbying component of a local ethics law. Eighty-one municipal jurisdictions had enacted laws at the end of 1982.

The Commission had reviewed all county laws to determine if they met State standards by the end of 1983. Most of the municipal laws had also been reviewed. Twelve counties and twenty-five municipalities have enacted approved laws. It is anticipated that revised laws will be enacted and approved for most of the remaining jurisdictions in the first six months of 1984.

In addition to the requirement that counties and cities enact ethics laws, the 1983 Session of the General Assembly passed a law requiring local school boards either to promulgate ethics regulations similar to the State Law or be covered by county ethics laws. The Commission proposed regulations covering this requirement in July of 1983. Final action on these regulations was taken by the Commission in September. At the end of 1983 twenty-one school boards had submitted regulations. Three of these were approved in early December by the Commission. It is anticipated that all of the regulations will be revised where necessary and approved in the first six months of 1984.

Educational and Informational Activities

The Commission staff has been active in providing information to those covered by the Ethics Law, as well as other persons interested in its requirements. A very substantial staff workload has involved advising employees, officials, candidates, and lobbyists on how to complete forms and providing informal advice regarding possible conflicts of interest. The Commission staff has also assisted local and school board officials in drafting their ethics laws and regulations.

A briefing for lobbyists and those interested in the operation of the lobbying law was held in Annapolis during the 1983 Session of the General Assembly. The Commission has continued to maintain an office in Annapolis during the legislative session in order to provide assistance in the completion of lobbying or financial disclosure forms.

An important part of the Commission's public information activity involves distribution of lists of registered lobbyists and provision of assistance to persons inspecting various forms filed with the Commission. A pamphlet describing the Ethics Law was distributed to management level employees in all State agencies during 1983.

In order to assist local officials in implementing their ethics laws, the Commission held a one day seminar for local ethics commissions. This program was attended by county and municipal officials representing jurisdictions throughout the State.

Litigation

In 1980 several suits were filed by faculty, administrative and medical personnel at some educational institutions, alleging that the financial disclosure law in effect at that time was unconstitutional. The Law was substantially revised in 1981. All of the suits were dismissed during 1983.

LEGISLATIVE RECOMMENDATIONS AND ISSUES

The Commission has reviewed the adequacy of the Public Ethics Law as required by the statute. As a result of its review the Commission believes that the following areas need legislative consideration. The recommendations listed below include both new recommendations and some previously made recommendations which the Commission continues to believe would be appropriate based on its experience in administering the ethics program.

School Board Ethics Regulations

In the 1983 session of the General Assembly the Legislature enacted a change in the Ethics Law requiring that local school boards either enact ethics laws or be covered by the county laws. This program is now moving quickly, with twenty-one school boards having promulgated regulations as of December 31, 1983. There is a weakness not addressed in the new law in that school boards do not have the same powers to assess penalties as counties and cities. Although the boards do have available some personnel sanctions regarding employees, sanctions for violations by board members and lobbyists who violate the regulations are very limited. Statutory authority regarding candidates for school board positions also needs to be strengthed. The Commission recommends that the General Assembly pass legislation to assure adequate sanctions for violations of school board ethics regulations by board members and lobbyists.

Financial Disclosure by Candidates

In 1982 the Commission had its first opportunity to administer the part of the State law dealing with the filing of financial disclosure by candidates. With the cooperation of the State Administrative Board of Elections, the program went smoothly. It has, however, become clear that there is a need to clarify the application of the Law to candidates that file incomplete or improper disclosure forms. It is possible to read the Law to provide that incomplete or improper disclosure results in withdrawal of the certificate of candidacy. It is also possible to read the Law to provide for fines or other sanctions generally provided in the Law for violations. However, the current language in sections 4-102 and 1-201 (cc) of the Law is not clear on these issues.

The Commission recommends that if withdrawal of a certificate of candidacy is to be a consequence of either improper or incomplete disclosure by a candidate, then this consequence should be clearly written into both the ethics and elections laws. Additionally, if the sanctions currently set forth in the Law are also to be applied to candidates, then the definition of respondent in section 1-201(cc) should be modified to expressly include candidates.

Confidentiality Requirements

The Public Ethics Law requires a high degree of confidentiality in the investigation and enforcement process. This confidentiality is outlined in section 2-105(e) of the Law and applies to all proceedings, meetings, and activities regarding the complaint. Although these provisions do not prevent disclosure that is necessary in order to complete investigations, these provisions can operate to prevent agency managers, Department Secretaries and heads of branches of government from knowing about on-going investigations, or even of final cure or settlement agreements accepted in lieu of formal adjudication. This lack of knowledge could result in situations contrary to the public interest and the goals of the Ethics Law.

In view of administrative and legal developments since the enactment of the Public Ethics Law, the Commission recommends that the provisions of sections 2-104 (e) and 2-105(e) of the Ethics Law be reviewed for possible changes. Since there also have been legal issues raised regarding the ability to maintain advisory opinion confidentiality, the provisions contained in section 2-104(e) of the Law should be reviewed.

Disclosure by New Officials

Sections 4-101 and 4-102 of the Ethics Law provide that new officials are to file a financial disclosure statement within 30 days of appointment and that these statements are to cover the preceeding calendar year. The Commission has received comments from new officials that disclosure of activity for the preceeding year (which may have occurred outside Maryland) is an unnecessary intrusion into their affairs. These filers have suggested that their disclosure should be of interests held, etc., as of the time of their appointment. The Commission originally made this recommendation in September, 1980 and subsequent experience continues to support this view.

The Commission recommends that financial disclosure for new officials (not having a statement on file for the preceeding Calendar Year) cover their holdings at the time of appointment and not the preceeding calendar year.

Disclosure of Representation Before State Agencies

The Ethics Law contains a provision prohibiting representation for contingent compensation before State agencies that are not judicial or quasi-judicial in nature. The Law also prohibits the use of the prestige of their office by public officials and employees for their own personal gain or that of another. Section 3-102 of the Ethics Law requires disclosure by members of the General Assembly of representational activities for compensation before State agencies other than

judicial agencies. No similar requirement exists for employees and non-legislative elected officials. Disclosure of representational activity would enhance the ability to monitor compliance with the Ethics Law.

The Commission, therefore, recommends that officials who appear before State agencies for compensation include on their annual disclosure form, at a minimum, the identity of any agencies involved in this compensated representation.

Disclosure of Interests in Mutual Funds

The Commission has received suggestions that disclosure of interests in mutual funds be eliminated. Many of these funds are money market funds that did not exist at the time the financial disclosure law was first enacted. Although disclosure of these funds may be of some value in monitoring increases in wealth, they are more like interests in bank accounts and insurance policies that are currently exempted from disclosure. The Commission has no experience to date suggesting that these types of interests are very likely to result in violations of the Ethics Law. Also, due to the existence of multiple transactions, disclosure of these types of interests often constitutes a burden to the filer.

The Commission recommends that the current requirement for disclosure of interests in mutual funds be reviewed by the Legislature and that the disclosure requirements for these types of money funds either be reduced or eliminated.

Attributable Trust Interests

The Commission has received comments indicating that the current language in section 4-104(c) regarding attributable interest creates difficulties for financial disclosure filers, particularly as to small interests in testamentary trusts. As a result of this difficulty, it is possible that some filers may be unable or unwilling to fully comply with the Law.

The Commission recommends that section 4-104(c) be modified to reduce or eliminate current disclosure requirements as to small shares of testamentary trusts.

Other Legislative Issues

The Commission suggests that consideration be given to or that action be taken regarding the following additional legislative issues:

- The law should be formally clarified to deal with fund raising by employees and officials that is not clearly regulated by the State election laws.

- There is a need to review whether the requirement that a lobbyist must be in the physical presence of an official in order to be required to register should be retained in the Law.

- Some consideration should be given to removing the current language dealing with Commission review of forms in section 2-103(e), and substituting a provision for review consistent with standards to be established by the Commission.

- The word "minor" should be removed from the participation prohibitions in section 3-101(a) of the Law to avoid situations where different results occur depending on whether the adult employee involved is the child or the parent of the person having the interest.

- There is a need to consider adding former officials and employees to the persons prohibited from using confidential information under section 3-107 of the Law.

- The bi-county agency ethics regulation requirements should be reviewed to make sure that sufficient penalty provisions are provided and that the regulations as drafted meet the intent of the Law.

- In order to avoid uncertain and confusing application and administration of the Law, the special provisions of section 6-202 making members of State boards funded in whole or in part by Baltimore County subject to the county disclosure law should be considered for elimination.

- The current law seems to suggest that gifts from foreign governments are excluded from the gift and lobbying provisions of the ethics law. There is a need to review this issue and clarify the law.

- The Ethics Law does not specifically cover issues relating to nepotism. There are, however, provisions in section 3-101 of the Law which impact on actions that can be taken by an official or employee where certain relatives are involved. A review of financial disclosure statements indicate a significant number of situations where spouses or other relatives are working in the same agency, often within the same program. If the legislature believes the question of nepostism should be more comprehensively addressed, the Commission believes this should be within the personnel law and not the Ethics Law.

- The criteria for financial disclosure by Executive and legislative branch officials utilize qualitative considerations in addition to salary. The financial disclosure standards for Judicial branch employees utilize only a salary standard. As a result of this standard, certain Judicial personnel such as court reporters are included in the filing requirements. The Commission believes the Judicial financial disclosure standards should be amended to include qualitative criteria in addition to salary.