

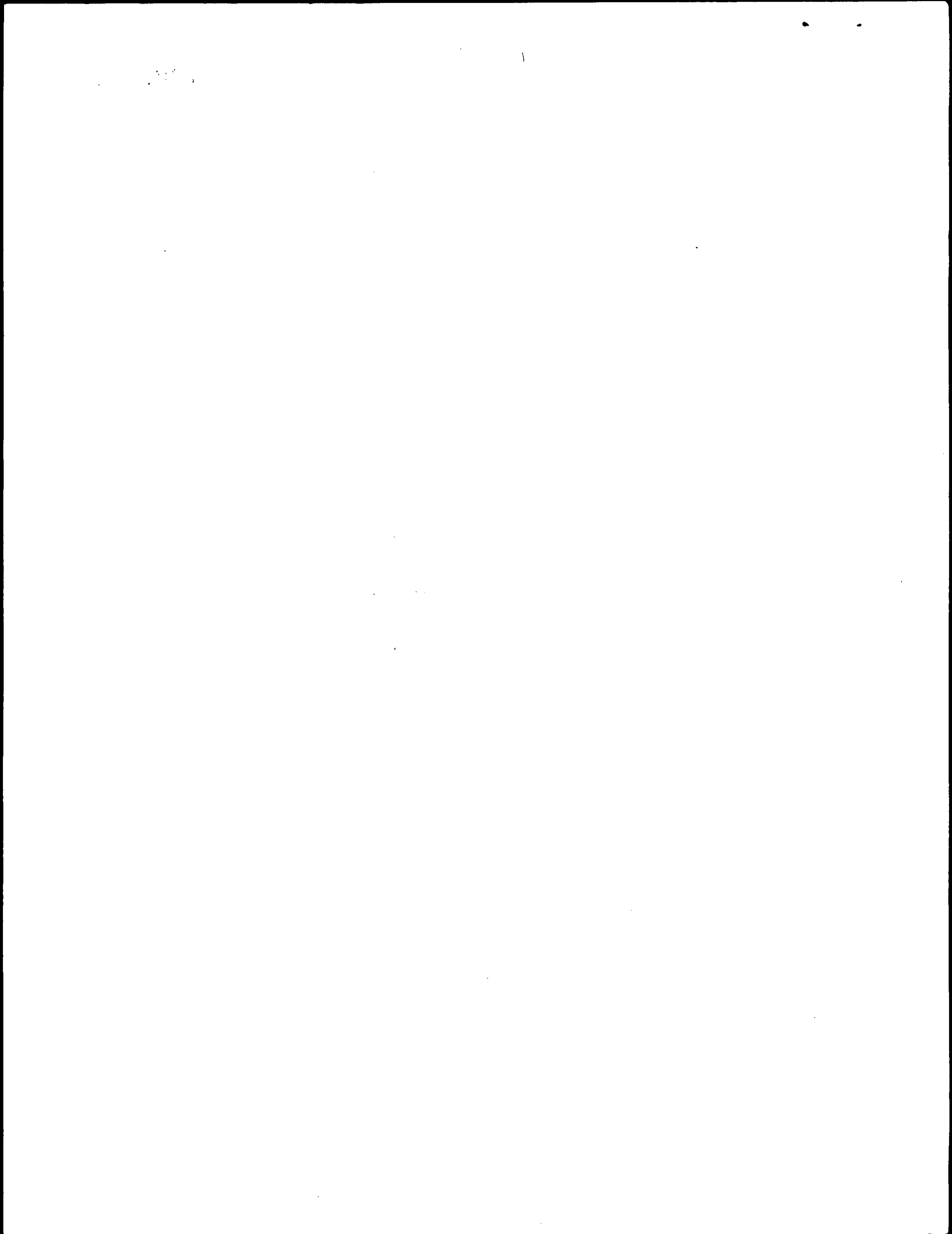
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STATE ETHICS COMMISSION

Fourth Annual Report

January 1, 1982 - December 31, 1982



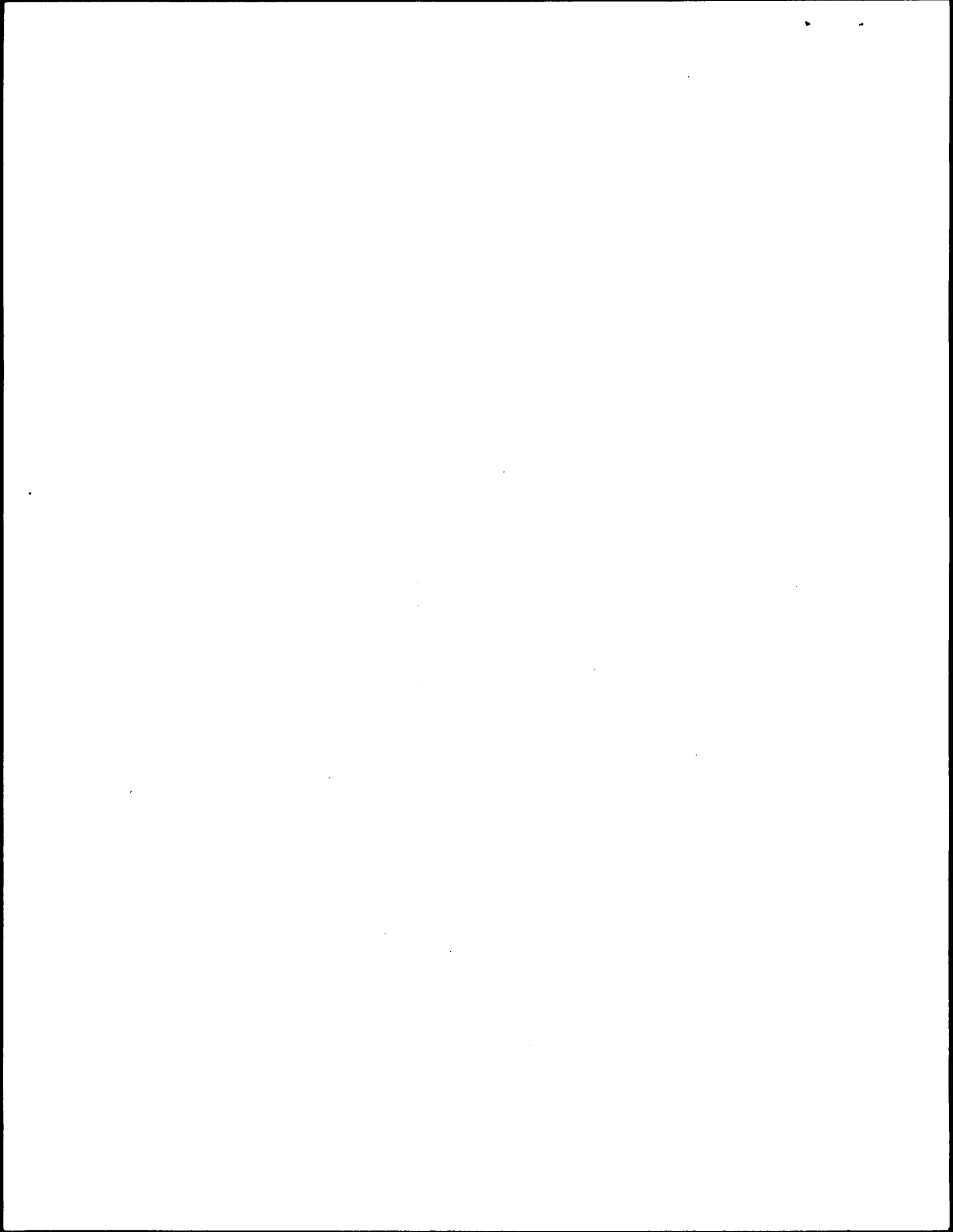
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GENERAL STATUTORY IMPLEMENTATION

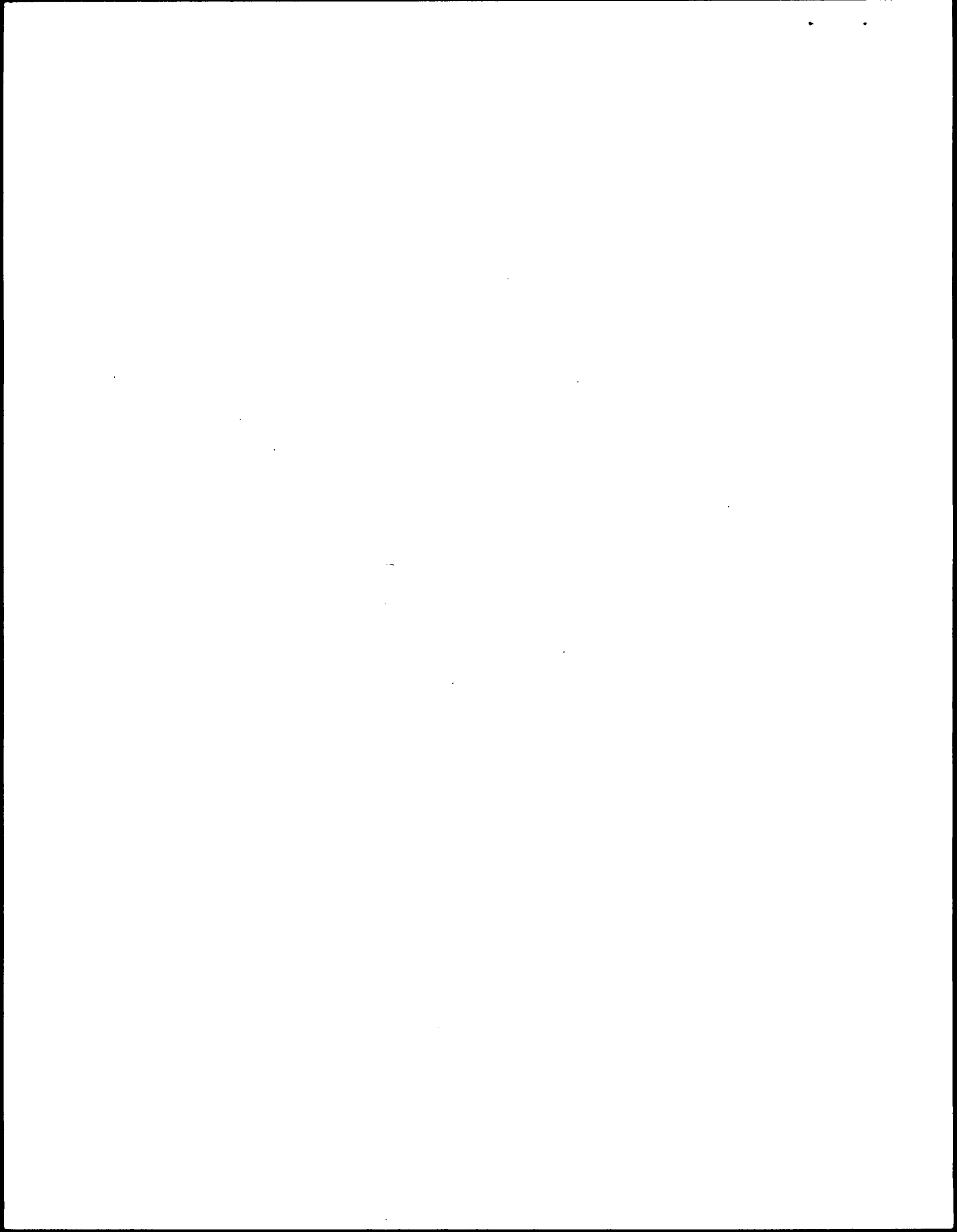
The State Ethics Commission met thirteen times during Calendar Year 1982. Major work areas included rendering advisory opinions, carrying out enforcement activities, issuing regulations, and considering matters relating to local government ethics laws. A significant part of the Commission's work in 1982 involved completing implementation of amendments to the Ethics Law by the 1981 and 1982 Sessions of the General Assembly. 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, advisory opinions, enforcement matters and educational 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 1982 the Commission received 36 requests for advisory opinions. Most of these requests primarily related to the conflict of interest provisions of the Law. The Commission issued 56 advisory opinions in 1982 and was able to reduce substantially the backlog of opinion requests that were pending at the end of 1981. There were eleven requests for advisory opinions pending at the end of the calendar year. Forty-nine of the opinions issued in 1982 dealt primarily with the conflict of interest provisions of the Law. Three opinions covered financial disclosure, one involved the lobbying law and three others related to jurisdictional issues.

Financial Disclosure

During Calendar Year 1982 the Commission was involved in implementing the first year of the financial disclosure program under the 1981 revisions of the Public Ethics Law. In order to meet the requirements of the Law, a close working relationship has been established with the Secretary of Personnel. Filing by employees of educational institutions was, however, delayed until the last part of the year pending approval of faculty disclosure regulations by the Administrative Executive and Legislative Review Committee of the General Assembly (AELR).



The filing of financial disclosure by members of State boards and commissions was not implemented during 1982 because regulations governing this disclosure had not been approved by the AELR Committee. The proposed regulations were submitted to the Committee in December, 1981 and published at the same time in the Maryland Register. On August 11, 1982 the Commission received recommended changes from the Committee. The requested changes were made and the regulations resubmitted to the Committee and the Maryland Register on October 1, 1982. However, in December the AELR Committee requested further changes in the regulations, and at the end of the year the regulations were still pending.

In order to prepare for implementation of the board and commission disclosure program, once the regulations were approved, the Commission did establish procedures for and receive requests from boards and commissions for exemption from the financial disclosure requirement. A survey of board and commission compensation required to determine the level of disclosure for certain boards was completed. The Commission also received and acted upon recommendations of the Secretary of Personnel as to which boards and commissions have members meeting the definition of public official who would therefore be covered by the financial disclosure law.

In the last part of 1982 the Commission approved tentative standards covering the nature and extent of staff financial disclosure statement review. These standards were being tested in December of 1982 and are envisioned for full implementation concurrent with the 1983 filing program.

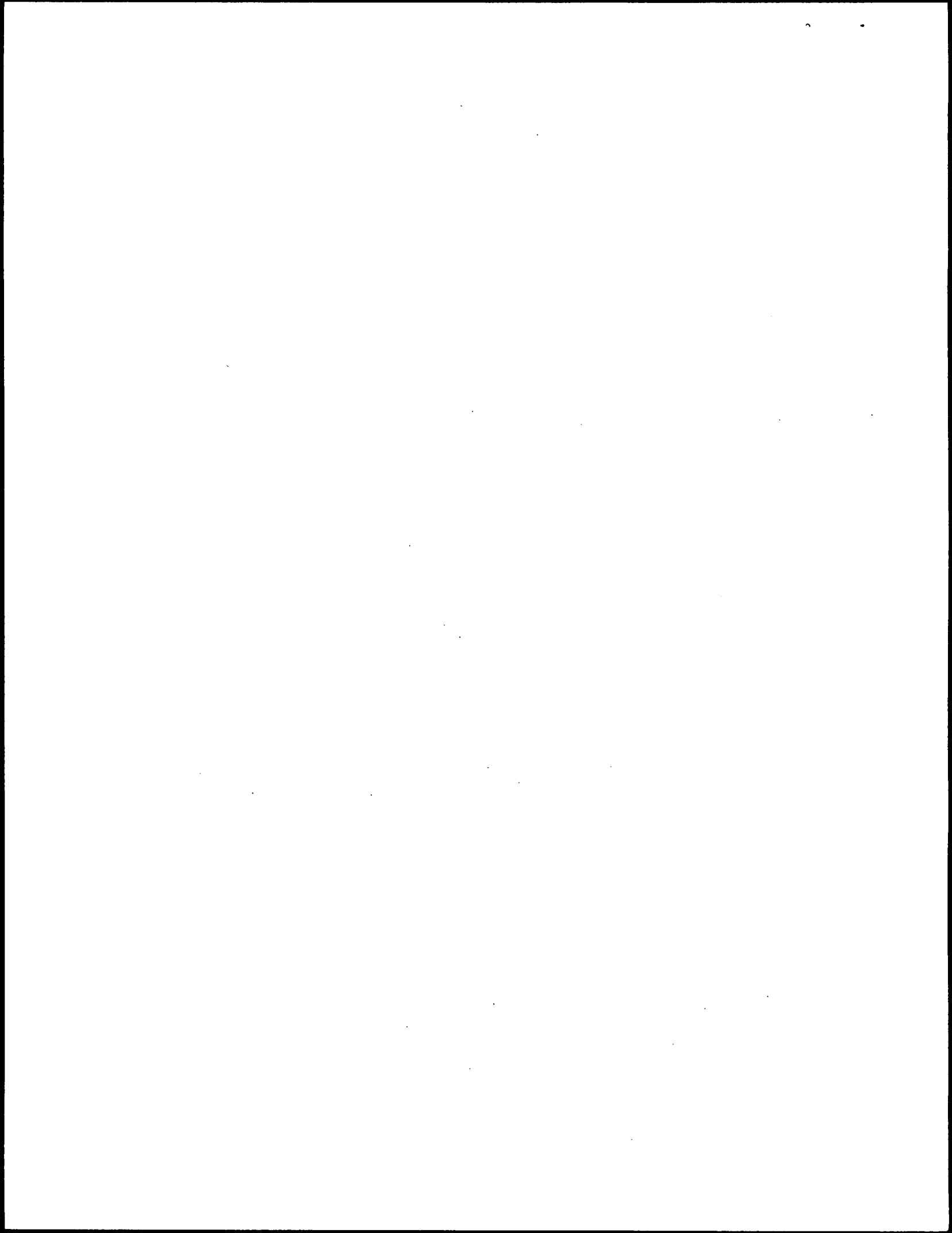
Calendar Year 1982 was the first State election year since the establishment of the Ethics Commission in 1979. Procedures developed in 1981 in cooperation with the State Administrative Board of Elections were implemented for the first time. During the last few days before the deadline for filing by candidates, Ethics Commission staff worked at the office of the State Election Board to assist in the completion and filing of disclosure statements by candidates.

Lobbyist Disclosure and Regulation

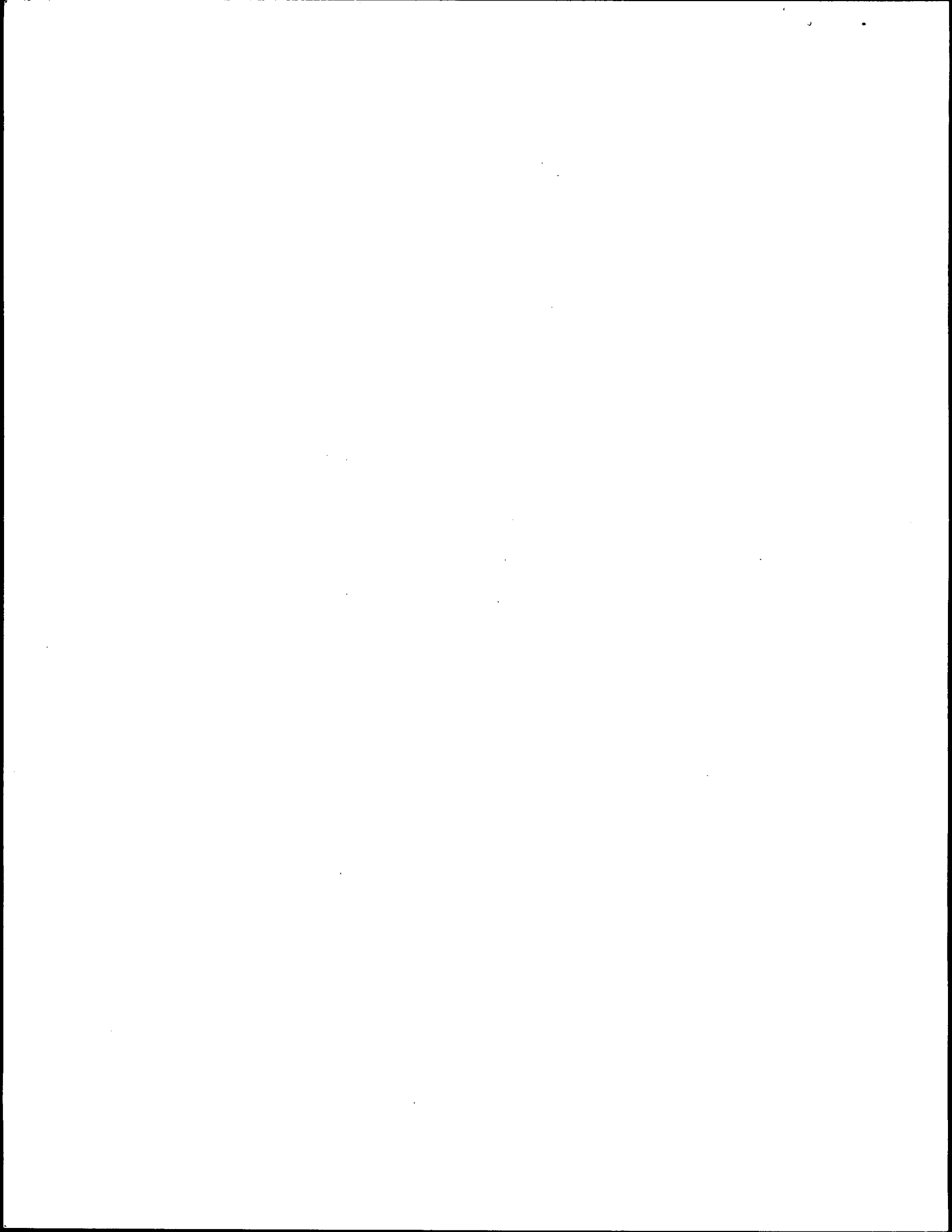
During the 1982 session of the General Assembly 457 lobbyists were registered with the Commission. Although more lobbyists are registered during the legislative session, registrations are beginning and ending throughout the lobbying year, which begins on November 1 and ends on October 31 of the following year.

The following expenditure data summarizes lobbying expenditures for each lobbying year since the establishment of the State Ethics Commission:

	<u>Type of Expense</u>		
	11/1/79 to 10/31/80	11/1/80 to 10/31/81	11/1/81 to 10/31/82
1. Expenditures for meals and beverages for officials or employees or their immediate families.	\$ 106,520	\$ 99,881	\$ 120,044



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.	\$ 97,488	\$ 118,278	\$ 115,289
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.	\$ 7,874	\$ 7,122	\$ 8,404
4.	Expenditures for gifts to or for officials or employees or their immediate families (not including sums reported in 1, 2, and 3).	\$ 1,204	\$ 1,190	\$ 841
	<u>Subtotal of items 1, 2, 3, & 4</u>	<u>\$ 213,085</u>	<u>\$ 226,472</u>	<u>\$ 244,578</u>
5.	Total compensation paid to registrant (not including sums reported in any other section).	\$2,175,193	\$2,417,327	\$2,627,181
6.	Salaries, compensation and reimbursed expenses for staff of the registrant.	\$ 146,902	\$ 223,187	\$ 249,098
7.	Office expenses not reported in items 5 and 6.	\$ 158,988	\$ 223,719	\$ 251,140
8.	Cost of professional and technical research and assistance not reported in items 5 and 6.	\$ 25,898	\$ 20,967	\$ 63,253
9.	Cost of publications which expressly encourage persons to communicate with officials or employees.	\$ 43,638	\$ 64,255	\$ 106,340
10.	Fees and expenses paid to witnesses.	\$ 3,376	\$ 14,783	\$ 27,712
11.	Other expenses.	\$ 97,374	\$ 106,453	\$ 107,846
	<u>Total of items 1 through 11</u>	<u>\$2,864,454</u>	<u>\$3,297,170</u>	<u>\$3,677,148</u>



Conflict of Interest Exemptions and Exceptions

The 1981 amendments to the Ethics Law included expanded areas for possible exemptions or exceptions from the strict prohibitions in section 3-103(a). This section generally prohibits employees and officials (except members of the General Assembly) from being employed by or having a financial interest in an entity subject to the authority of the official or employee or the agency with which he is affiliated, or any entity which is negotiating or has entered a contract with that agency. The Commission has developed regulations regarding exceptions to these employment and financial interest prohibitions. The employment exceptions became final in 1982 and the interest exceptions were scheduled for final action by the Commission in early 1983.

The appointments to State boards and commissions made in late 1981 and in 1982 were the first to be covered by exemptions from section 3-103(a) applying specifically to members of boards and commissions. The exemption applies to conflicting interests or employment existing at the time of appointment and disclosed to the appointing authority, the Ethics Commission and the Senate (where confirmation is required). Implementation of this process involved cooperation with the Governor's office and other appointing authorities. Several advisory opinions have been issued to clarify the process and to deal with issues that arose during initiation of the process.

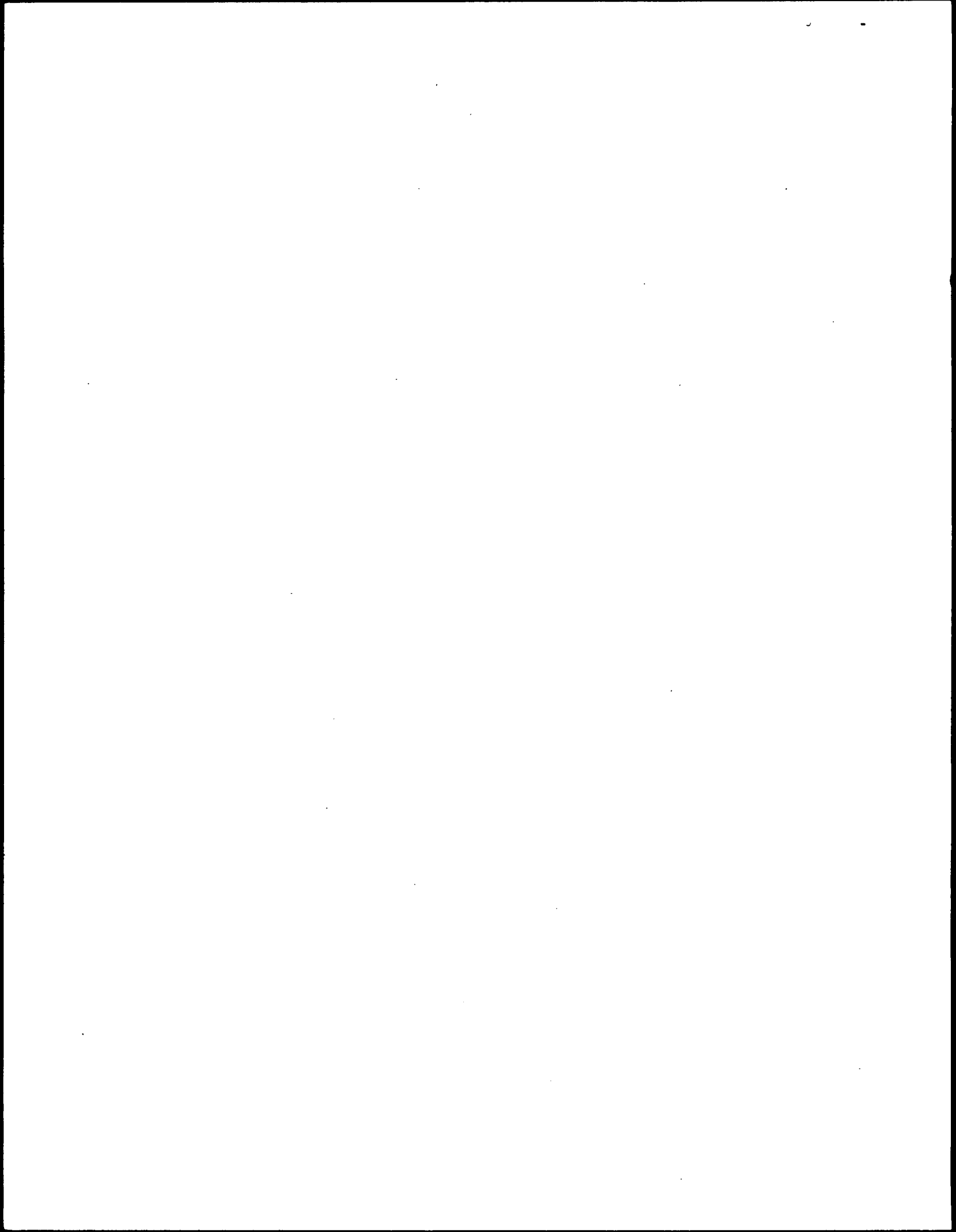
Enforcement Activities

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 1982 the Commission issued five complaints; all of these involved conflict of interest matters. Also, during this year action was completed on six complaints. Five complaint cases were completed by accepting cure and settlement agreements. One complaint was terminated because the evidence did not support the complaint. Two were still being considered at the end of the Calendar Year. The Commission initiated fifteen preliminary inquiries during 1982; seven were still in process at the end of the year.

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 standards. 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 1982 assisting localities in drafting laws, reviewing draft laws, considering exemption requests, and reviewing enacted



laws. At the end of 1982 all counties had enacted ethics laws and submitted them for Commission review. Additionally, all 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 were totally exempted from enacting a local ethics law. Additionally, 18 municipalities were 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 process of reviewing submitted laws began during 1982 and was scheduled for completion in the first half of 1983.

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 significant 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 officials in drafting their ethics law. A briefing for lobbyists and those interested in the operation of the lobbying law was held in Annapolis during the 1982 Session of the General Assembly.

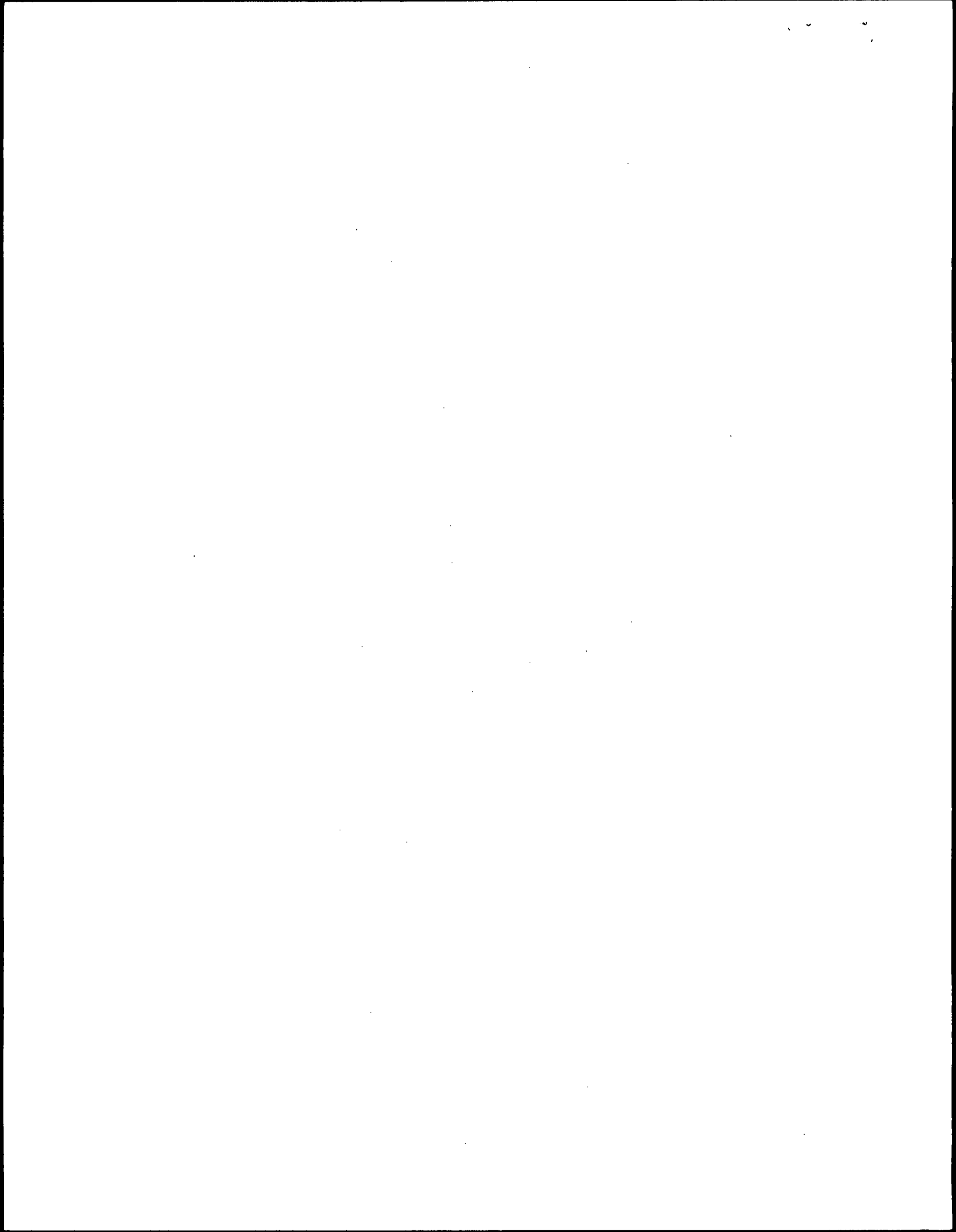
An important part of the Commission's public information activity involved distribution of lists of registered lobbyists and provision of assistance to persons inspecting various disclosure forms filed with the Commission. A pamphlet for distribution to officials and employees was developed and printed in 1982. This publication will be used as part of educational efforts in 1983.

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 still pending at the end of 1982.

Listing of Businesses Doing Business with the State

The 1982 session of the General Assembly added section 3-108 to the Ethics Law, requiring the Ethics Commission to compile annually lists of businesses that do business with the various agencies of the State in the amount of \$5,000 or more in a year. The Commission has received cooperation from the Comptroller's Office in implementing this program and as a result a computer program was designed and tested during 1982. The first listing of businesses will be available prior to March 1, 1983 as required by the Law. The listing will assist those filing disclosure statements to comply with the requirements of the Law. Additionally, the listing will be invaluable in monitoring disclosure forms for potential conflicts of interest and compliance with the financial disclosure law.



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.

Status of Local School Systems

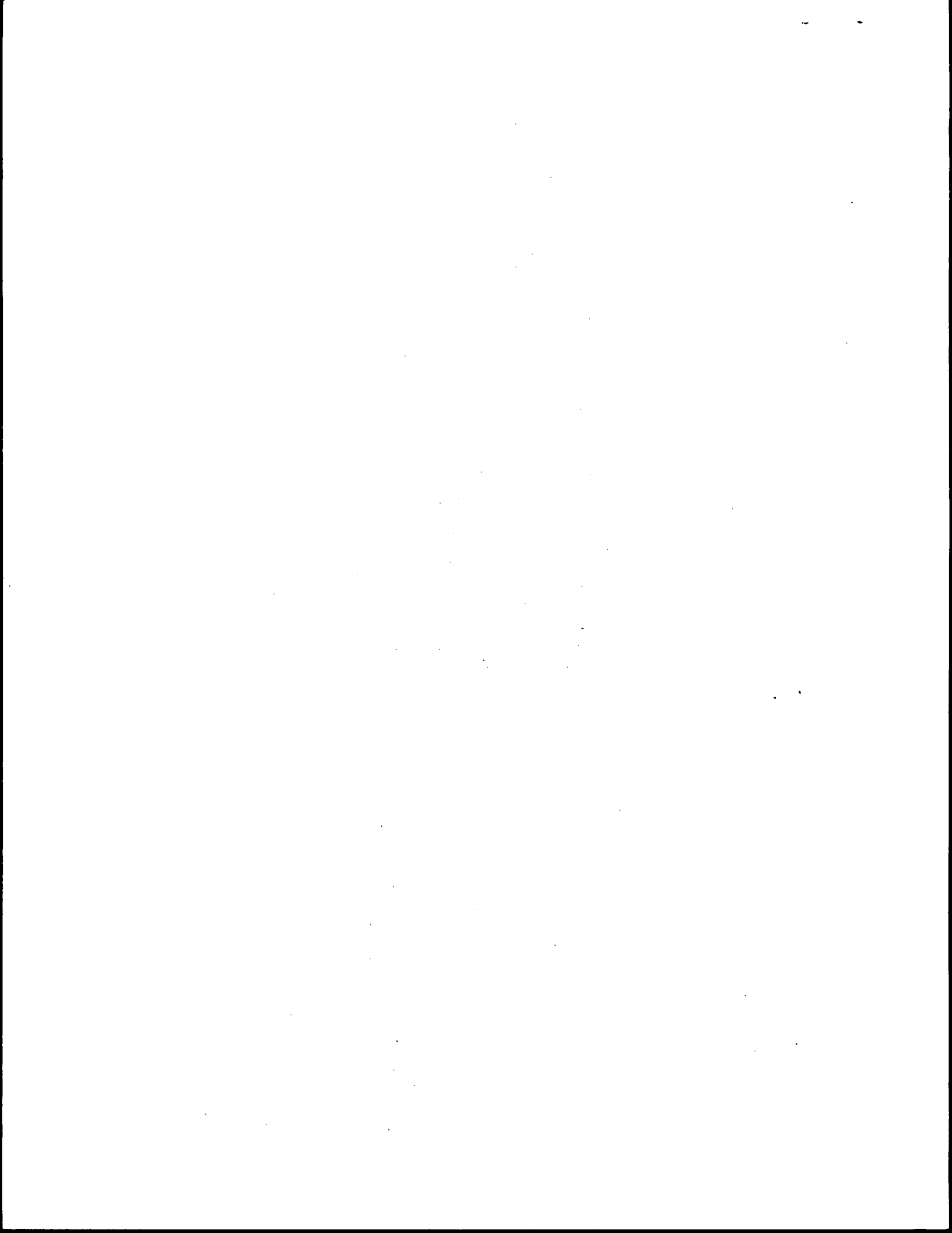
There have been many questions raised regarding whether employees of local school systems and members of county boards of education are to be covered by the county ethics laws required by the State law. It has been the position of the Ethics Commission that local school systems are subject to local ethics laws. An opinion issued on November 26, 1980 by the Attorney General also supported this view. However, subsequent to the Attorney General's Opinion the Anne Arundel County Circuit Court ruled that the Anne Arundel County Board and its employees could not be subject to the County's local ethics law. The case was not appealed.

The Commission still believes that local school systems are not executive agencies in State government, and there is sufficient authority in the Ethics Law to require local boards of education and their employees to be subject to county ethics laws. However, in view of the current legal uncertainty, the Commission has told counties that they may defer including the school systems in their laws until July 1, 1983, in order to give the General Assembly an opportunity to clarify the legal status of the local school systems and set new policy if necessary. To date a slight majority of counties include local school systems in their laws. The Commission recommends that the General Assembly pass legislation during the 1983 to clarify the status of local school systems.

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 a consequence of either improper or incomplete disclosure by a candidate, then this consequence should be clearly written into the law. 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.

The Commission recommends that the provisions of section 2-105(e) of the Ethics Law be reviewed for possible changes, and that the status of agency managers, Department Secretaries, and heads of branches of government be clarified as to the information that may be made available to them at various points in the process.

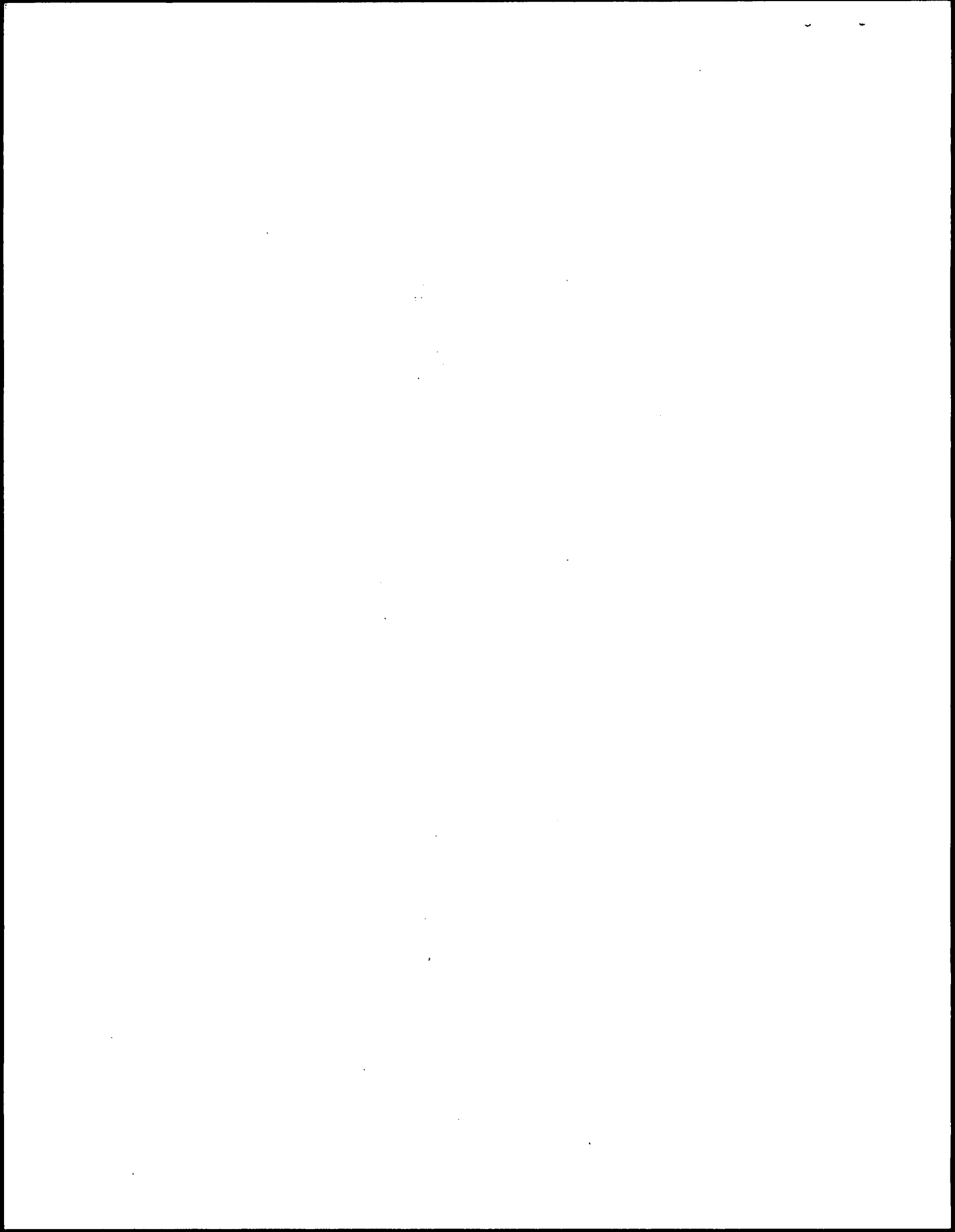
Disclosure by New Officials

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 previously 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 Interest 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 likely to result in violations of the Ethics Law. Also, due to the existence of multiple transactions, disclosure of these types of interests often constitute 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

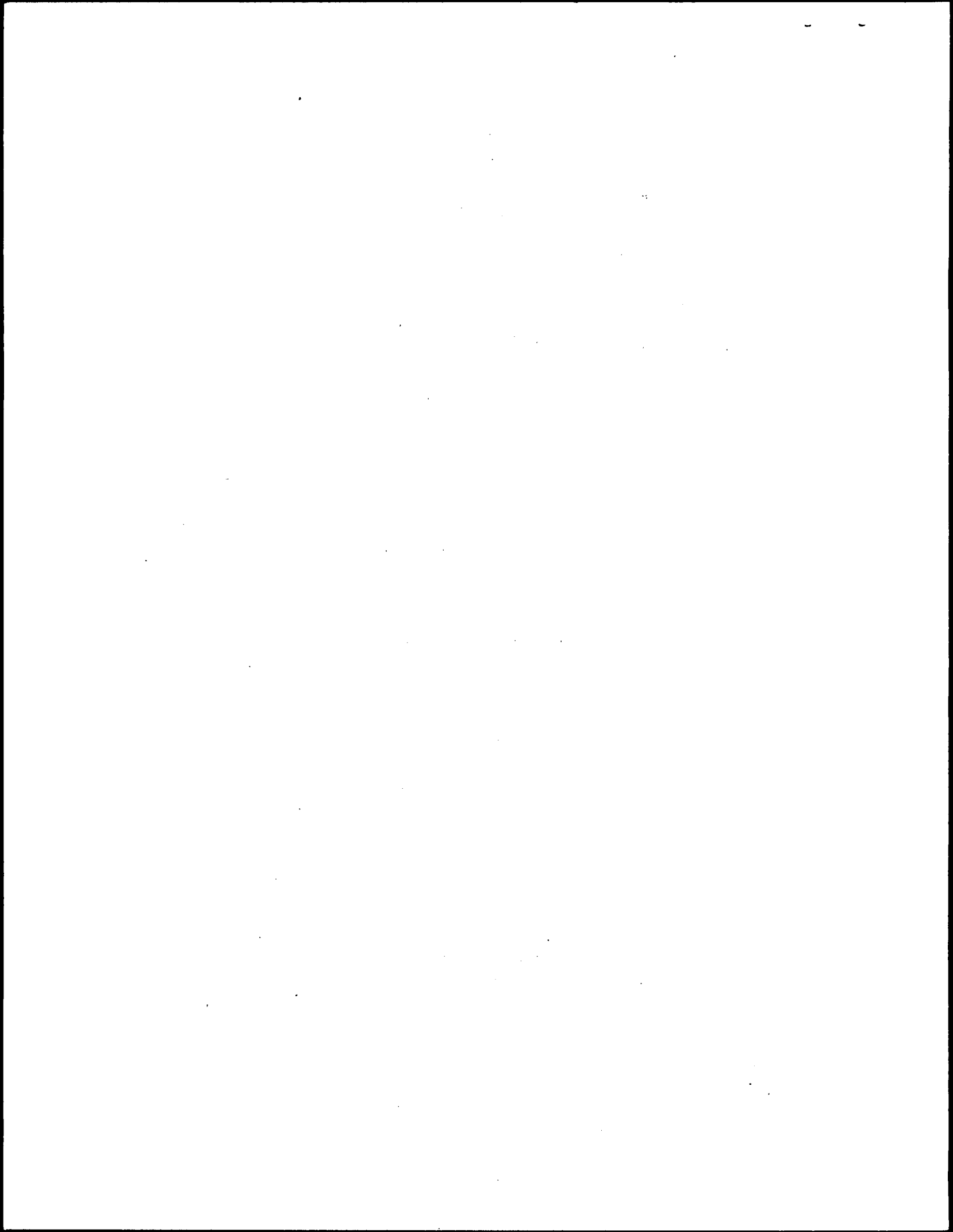
The Commission has received comments indicating that the current language in section 4-104(c) regarding attributable interest creates difficulties for financial disclosure filers, particularly as to small interests in testamentary trusts. As a result of this difficulty, it is possible that some filers 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 definition of "gift" in section 1-201(p) could be clarified to deal with fund raising by employees and officials that is not clearly regulated by the 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.



- 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.

