

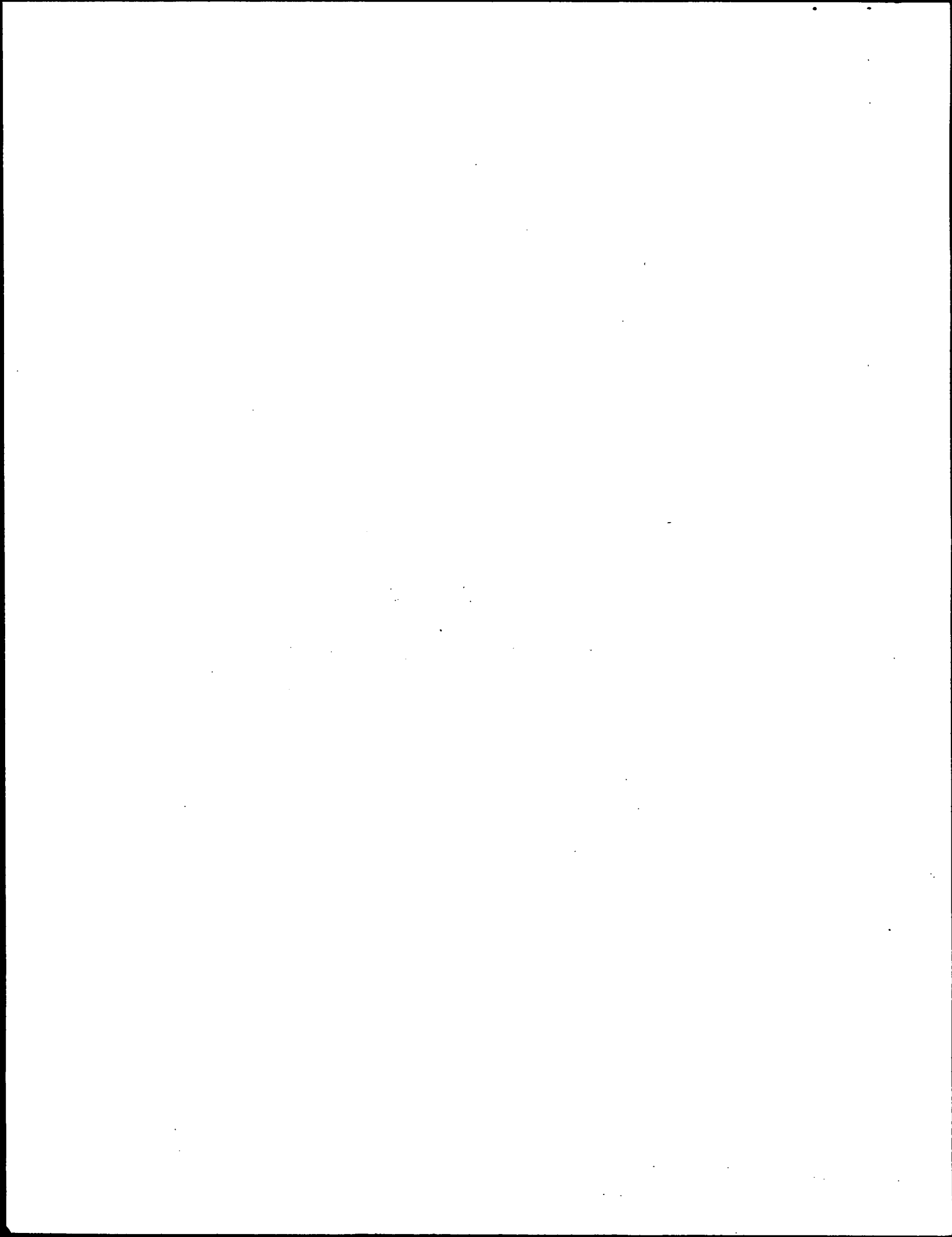
2-4-8-38

851071
SPDDP

STATE ETHICS COMMISSION

Sixth Annual Report

January 1, 1984 - December 31, 1984



State Ethics Commission

Sixth Annual Report

January 1, 1984 - December 31, 1984

GENERAL STATUTORY IMPLEMENTATION

The State Ethics Commission met eleven times during Calendar Year 1984. 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 1984 the Commission received 40 requests for advisory opinions. The Commission issued 33 advisory opinions in 1984. There were six requests for advisory opinions pending at the end of the calendar year. Thirty-two of the opinions issued in 1984 dealt primarily with the conflict of interest provisions of the Law. One opinion covered lobbying issues.

Financial Disclosure

The administration of the financial disclosure program continued to involve the identification of and those required to file, providing technical assistance to filers and monitoring compliance with the Law. A comprehensive review of legislative financial disclosure forms was conducted as part of a phased program for review of the forms of all officials and employees. Steps were also taken to implement a new provision of the Law passed by the 1984 General Assembly which requires officials leaving their position to file a financial disclosure form within 60 days of their departure.

Lobbyist Disclosure and Regulation

During the lobbying year which ended on October 31, 1984, 560 lobbyists registered with the Commission. This represents an increase from the 518 registered in the previous year. 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 expenses reported for the period of October 31, 1984 represent a 26% increase over the previous year. This is the largest increase in expenditures since the Ethics Commission started to administer the program in 1979. An analysis of individual reports indicates that fifty-eight lobbyist employers reported having total lobbying expenditures of \$25,000 or more. Reports covering individual lobbyists registered on behalf of one or more clients indicated that ten of these persons received \$50,000 or more in compensation for services. Six of these lobbyists reported compensation of \$100,000 or more.

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

<u>Type of Expense</u>	<u>Lobbying Year</u>		
	11/1/81 to 10/31/82	11/1/82 to 10/31/83	11/1/83 to 10/31/84
1. Expenditures for meals and beverages for officials or employees or their immediate families.	\$ 120,044	\$ 152,998	\$ 209,656
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 also reported.)	\$ 115,289	\$ 109,855	\$ 120,598
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.	\$ 8,404	\$ 10,131	\$ 9,930
4. Expenditures for gifts to or for officials or employees or their immediate families (not including sums reported in 1, 2, and 3).	\$ 841	\$ 4,084	\$ 64,094
<u>Subtotal of items 1, 2, 3, & 4</u>	<u>\$ 244,578</u>	<u>\$ 277,068</u>	<u>\$ 404,278</u>

5. Total compensation paid to registrant (not including sums reported in any other section).	\$2,627,181	\$2,868,090	\$3,765,245
6. Salaries, compensation and reimbursed expenses for staff of the registrant.	\$ 249,098	\$ 283,327	\$ 289,963
7. Office expenses not reported in items 5 and 6.	\$ 251,140	\$ 254,125	\$ 372,935
8. Cost of professional and technical research and assistance not reported in items 5 and 6.	\$ 63,253	\$ 55,556	\$ 251,280
9. Cost of publications which expressly encourage persons to communicate with officials or employees.	\$ 106,340	\$ 153,167	\$ 155,155
10. Fees and expenses paid to witnesses.	\$ 27,712	\$ 5,942	\$ 11,824
11. Other expenses.	\$ 107,846	\$ 127,514	\$ 164,812
<u>Total of items 1 through 11</u>	<u>\$3,677,148</u>	<u>\$4,024,789</u>	<u>\$5,425,492</u>

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 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 1984 the Commission issued eighty-eight complaints. Eighty-one complaints involved financial disclosure matters, four complaints related to conflict of interest issues, and three complaints involved the lobbying law. Also, during this year action was completed on fifty-seven complaints. All of these complaint cases were completed by accepting cure or settlement agreements. Forty-one complaints were still active at the end of the Calendar Year. The Commission initiated twelve preliminary inquiries during 1984 in order to evaluate whether a complaint should be filed. Six preliminary inquiries were still in process at the end of the year. The eighty-one financial disclosure complaints were the result of a continuing compliance review program originally instituted in 1983 to ensure that covered individuals comply with the filing requirement. The processing of financial disclosure complaints has become an expensive and time consuming process. Although the number of people failing to file after two notices represents only slightly over 1% of those required to file, the Commission believes that in lieu of resorting to court ordered fines, some financial charge to those who continue to ignore the filing requirements even after a hearing

notice has been issued is necessary to insure timely availability of forms. Therefore, the Commission has announced a general policy of requiring some financial settlement of complaint cases where the form filed at any time after a hearing notice is sent to the non-filer. This notice generally occurs about 75 days after the report is due and follows two other notices and a complaint document. Although there are only a few lobbyists that are significantly late in registration and activity reporting, there have been some instances where the same registrant has been late on more than one occasion. The Commission is considering recommending legislation which would provide for a late filing in both the financial disclosure and lobbying program.

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. 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 was involved during all of 1984 in 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 of December 31, 1984 thirty-two municipalities had laws which had not been approved as meeting Commission requirements. It is likely that a significant number of these towns will be fully or partially exempted from the law based on size and related considerations. Fifty municipal laws had been approved by the Commission.

By the end of 1983 the Commission had reviewed all county laws to determine if they met State standards. In 1984 the Commission continued to work with counties whose laws did not meet Commission standards. Twenty counties have enacted approved laws. It is anticipated that the remaining three counties and Baltimore City, which are not now in compliance, will enact amendments in conformity with Commission regulations in the first half of 1985.

In addition to the requirement that counties and cities enact ethics laws, the 1983 Session of the General Assembly amended the Law to require local school boards either to promulgate ethics regulations similar to the State Law or be covered by county ethics laws. The Commission issued regulations covering this requirement in 1983. At the end of 1984 twenty-two county Boards of Education and Baltimore City had issued regulations which had been approved by the Commission. One School Board is in the process of issuing regulations; the remaining board has decided to be covered by the county law.

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 substantial daily 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 government 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 1984 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 has been made available to management level employees in all State agencies. A new pamphlet covering ethics requirements for part-time members of State boards and commissions was developed during 1984 and will be distributed on a comprehensive basis during 1985.

LEGISLATIVE RECOMMENDATIONS AND ISSUES

The Commission continues to review the adequacy of the Public Ethics Law as required by the statute. An area currently being considered by the Commission for recommended legislation is a fee for late lobbying and financial disclosure forms. Another idea under consideration is the possibility of requiring a special lobbying report during the General Assembly session for lobbyists having significant expenditures during that part of the reporting period.

The recommendations listed below were made in previous Commission annual reports and the Commission continues to believe these 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 in place. There is a weakness not addressed in the 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 strengthened. The Commission recommends that the General Assembly pass legislation to assure adequate sanctions for violations of school board ethics regulations by board members, candidates for board membership, and lobbyists.

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 preceding calendar year. The Commission has received comments from new officials that disclosure of activity for the preceding 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 preceding Calendar Year) cover their holdings at the time of being required to file and not the preceding 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 dis-

closure 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 large 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 the current disclosure requirements as to small shares of large testamentary trusts.

Other Legislative Recommendations

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 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.