

2-4-8-38

881911

STATE ETHICS COMMISSION

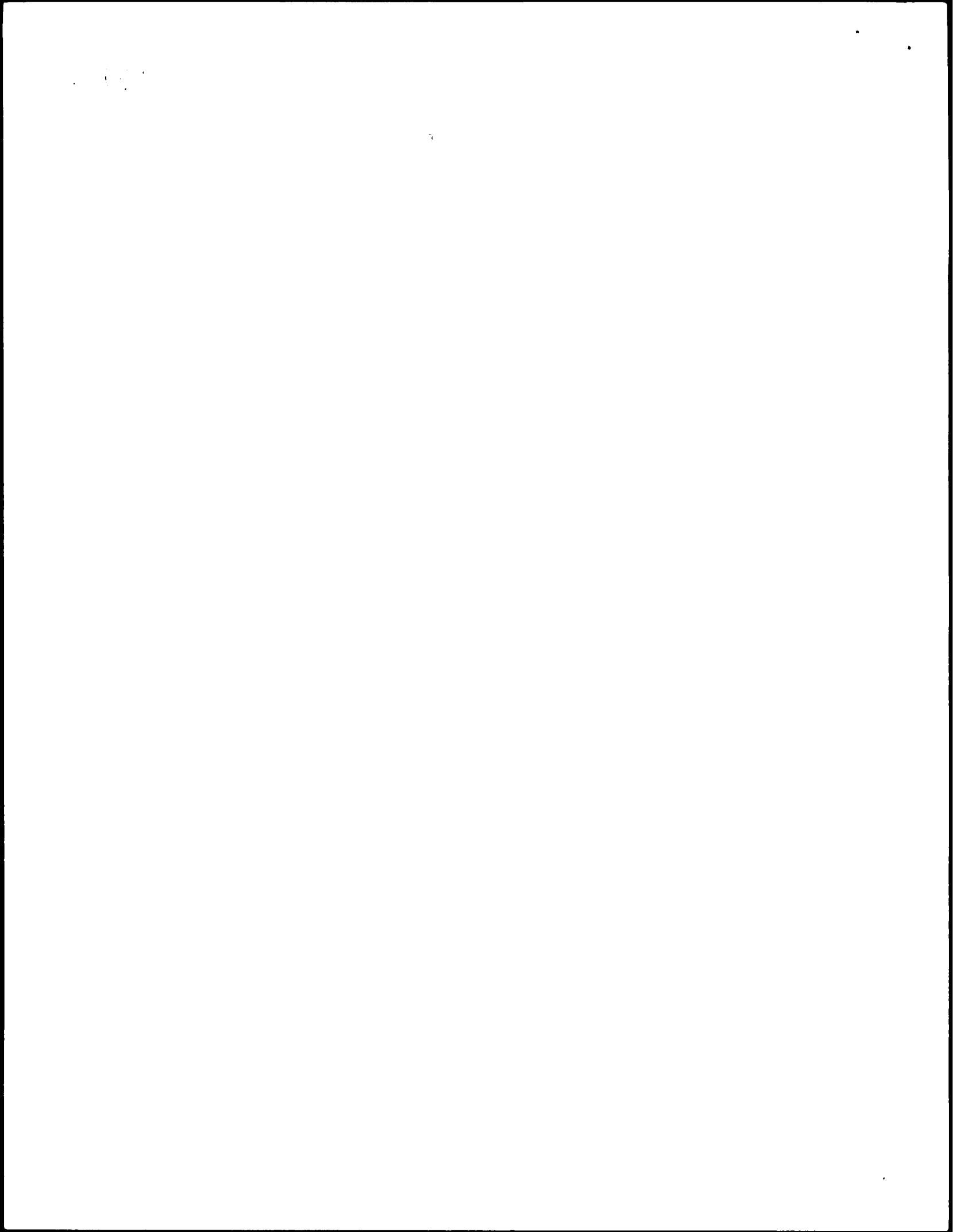
Seventh Annual Report

January 1, 1985 - December 31, 1985

RECEIVED

SEP 23 1986

HALL OF RECORDS



State Ethics Commission

Seventh Annual Report

January 1, 1985 - December 31, 1985

GENERAL STATUTORY IMPLEMENTATION

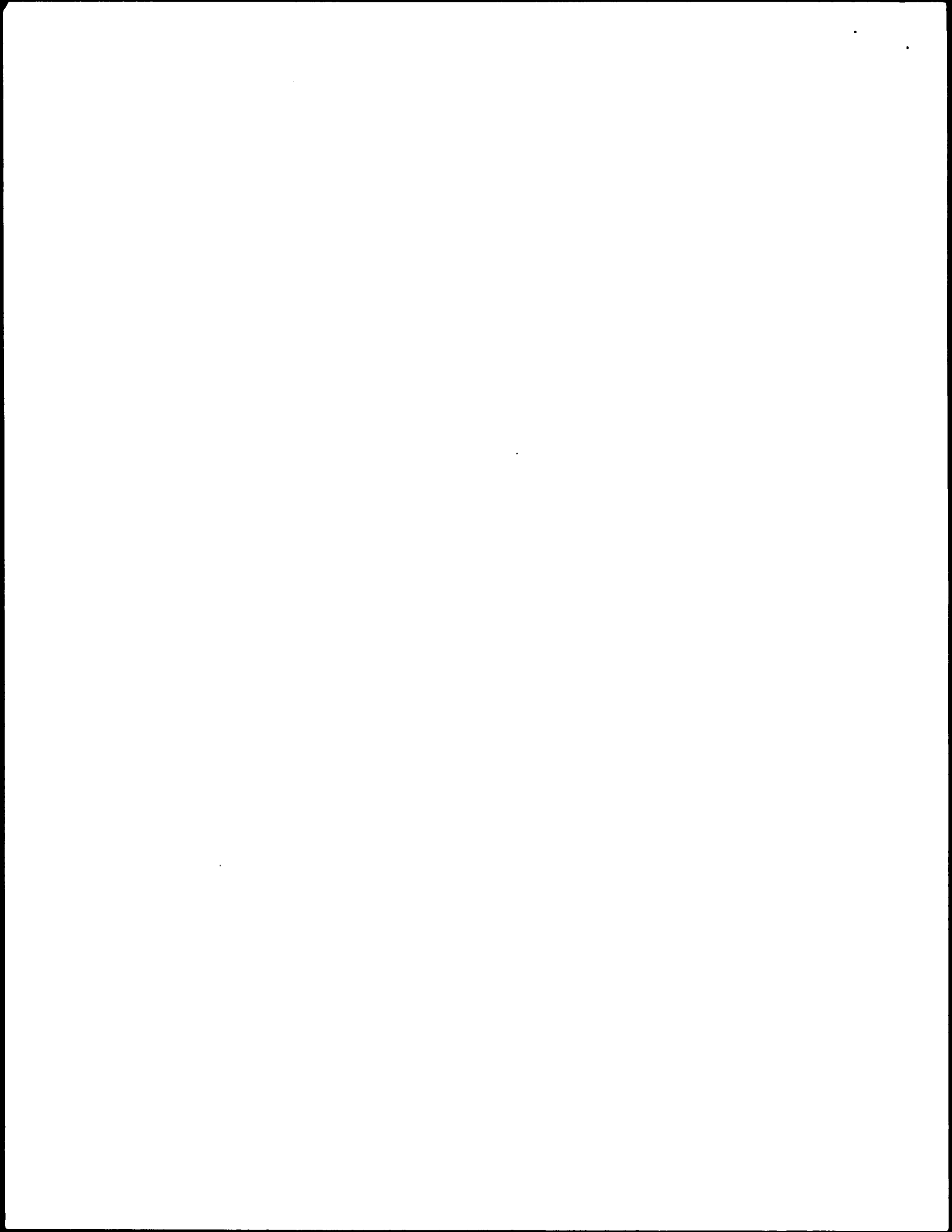
The State Ethics Commission met twelve times during Calendar Year 1985. During the year the Commission was involved in program activity relating to all areas of its statutory mandate. These include financial disclosure, conflict of interest, lobbyist disclosure, local government ethics laws, school board 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 1985 the Commission received 35 requests for advisory opinions and issued 28 opinions. There were five requests for advisory opinions pending at the end of the calendar year. (Two of the original requests were handled without formal advice.) All of the opinions issued in 1985 dealt primarily with the conflict of interest provisions of the Law. Most of these dealt with the employment or ownership interest prohibitions under section 3-103(a) of the Law. Other areas of the Law frequently cited in opinions include the non-participation requirements and the prohibition against using position for personal gain. One factor reducing the number of opinion requests and opinions issued is the large number of existing opinions that can now be used for informal guidance.

Financial Disclosure

The administration of the financial disclosure program continued to involve the identification of those required to file, providing technical assistance to filers and monitoring compliance with the Law. A comprehensive financial disclosure form review program 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 1985 General Assembly which requires candidates to file financial disclosure each year of their candidacy.

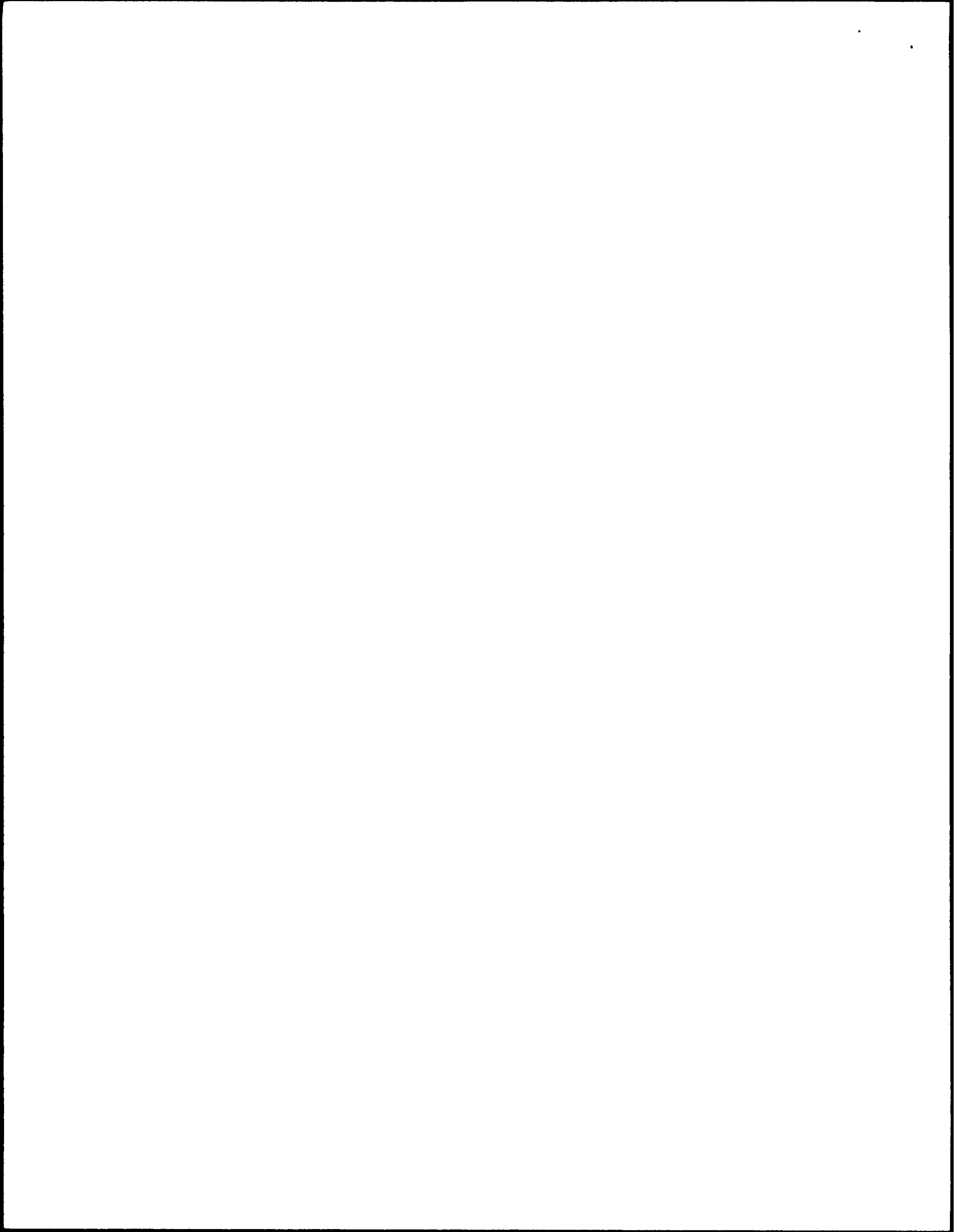


Lobbyist Disclosure and Regulation

During the lobbying year which ended on October 31, 1985, 665 registrations were filed with the Commission. This represents an increase from the 560 registrations 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. Most persons registered to lobby have only a single registration representing one employer. However, fifty-three lobbyists had two or more registrations during this time period. Twenty-six registrants had four or more employers. The \$6,948,681 in expenditures reported for the period of October 31, 1985 represents a 22% increase over the previous year. Lobbying expenditures have increased each year since the Commission reported \$2,864,454 of expenditures in the first year the Ethics Commission administered the filing program. An analysis of individual reports indicates that fifty-eight lobbyist employers reported having total lobbying expenditures of \$25,000 or more. Reports of individual lobbyists registered on behalf of one or more employers indicated that sixteen of these persons received \$50,000 or more in compensation for services. Six of these lobbyists reported compensation of \$100,000 or more. Topic areas involving large total employer expenditures during the 1985 reporting periods included banking, soap and detergent, coal transportation, health and utilities.

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

	10/31/83	10/31/84	10/31/85
1. Expenditures for meals and beverages for officials or employees or their immediate families.	\$ 152,988	\$ 209,656	\$ 234,615
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.)	\$ 109,855	\$ 120,598	\$ 129,536
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.	\$ 10,131	\$ 9,930	\$ 8,067

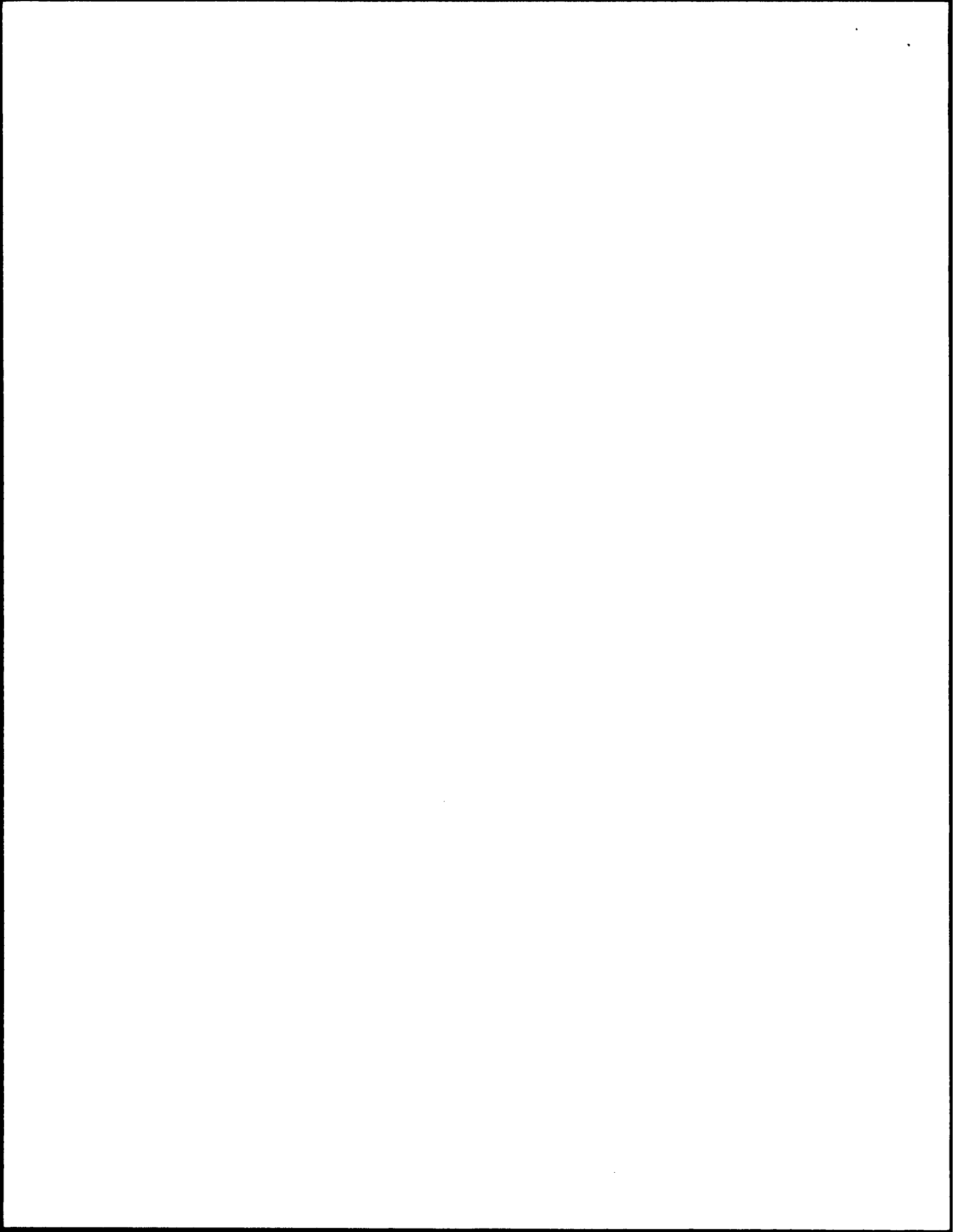


	10/31/83	10/31/84	10/31/85
*4. Expenditures for gifts to or for officials or employees or their immediate families (not including sums reported in 1, 2, and 3).	\$ 4,084	\$ 64,094	\$ 285,811
<u>Subtotal of items 1, 2, 3, & 4</u>	<u>\$ 277,068</u>	<u>\$ 404,278</u>	<u>\$ 658,030</u>
5. Total compensation paid to registrant (not including sums reported in any other section).	\$2,868,090	\$3,765,245	\$4,604,085
6. Salaries, compensation and reimbursed expenses for staff of the registrant.	\$ 283,327	\$ 289,963	\$ 422,827
7. Office expenses not reported in items 5 and 6.	\$ 254,125	\$ 372,935	\$ 380,676
8. Cost of professional and technical research and assistance not reported in items 5 and 6.	\$ 55,556	\$ 251,280	\$ 450,846
9. Cost of publications which expressly encourage persons to communicate with officials or employees.	\$ 153,167	\$ 155,155	\$ 136,280
10. Fees and expenses paid to witnesses.	\$ 5,942	\$ 11,824	\$ 28,237
11. Other expenses.	\$ 127,514	\$ 164,812	\$ 267,697
<u>Total of items 1 through 11</u>	<u>\$4,024,789</u>	<u>\$5,425,492</u>	<u>\$6,948,681</u>

* This category includes the value of race track passes distributed by racing industry lobbyists to State officials. This activity began to be reflected in the annual report figures in 1984. \$268,375.00 of the \$285,811.00 reported for gifts in the period ending 10/31/85 reflects value of these passes.

Enforcement Activities

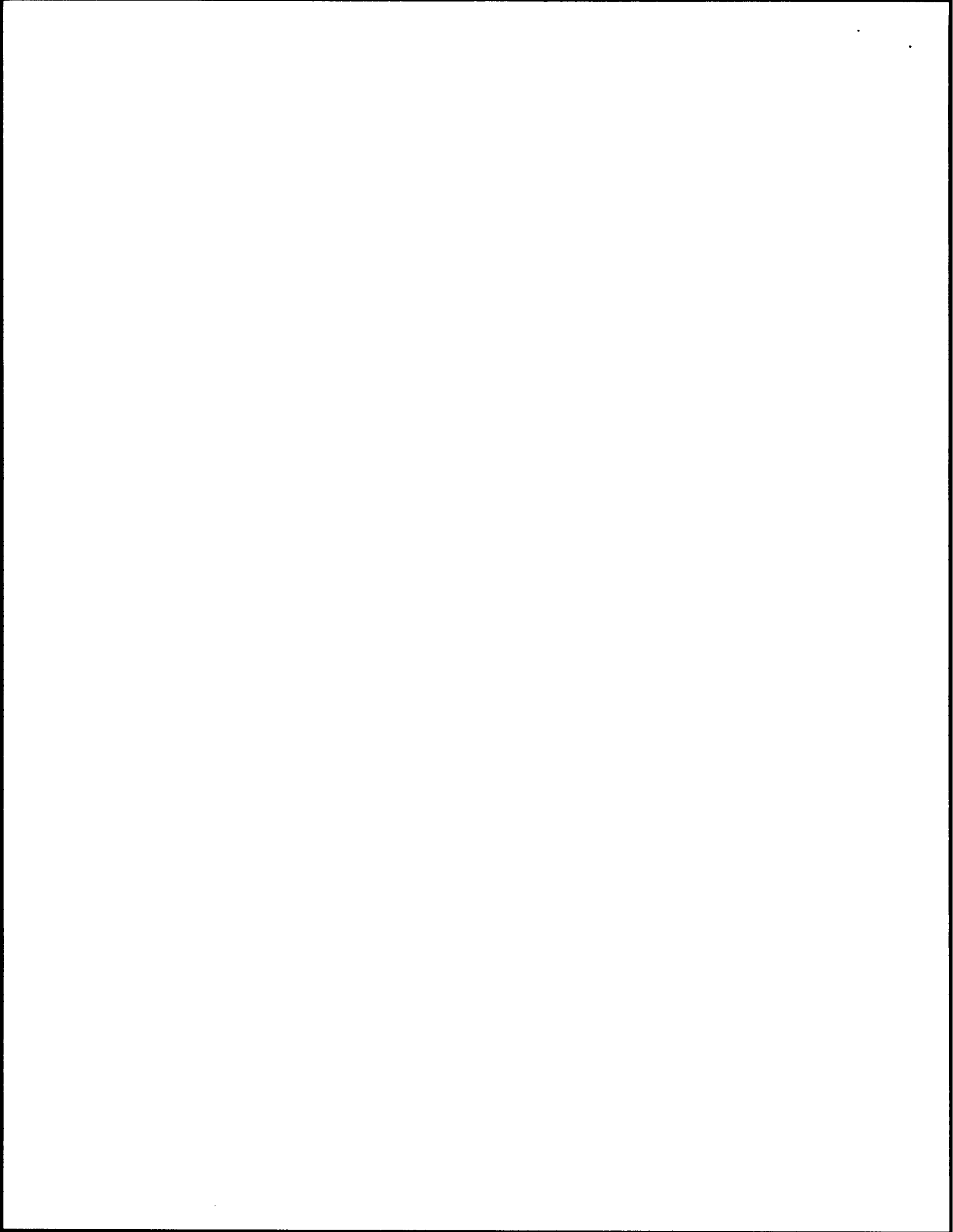
The Ethics Law and implementing rules of the Commission provide that any person may file a complaint with the Commission. Complaints must be signed under oath, and allege a violation of the Law by a person subject to the Law. Additionally, the Commission may file a complaint on its own initiative, and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



In Calendar Year 1985 the Commission issued forty-five complaints. Thirty-nine complaints involved financial disclosure matters, two complaints related to conflict of interest issues, and four complaints involved the lobbying law. Also, during this year action was completed on eighty-nine complaints. Seventy-six of these completed complaint cases were financial disclosure matters, seven were conflict of interest matters, and six were lobbying matters. Nineteen complaints were still active at the end of the Calendar Year. Sixty-three failure to file financial disclosure complaints were terminated by accepting late filing as a cure. Eleven late filing cases were completed by an admission of violation, waiver of confidentiality, acceptance of a reprimand, and the payment of \$100 to the State in lieu of a potential fine. One complaint was settled by admission of violation and one complaint concluded with a finding of violation of the Law after a hearing.

Seven conflict of interest complaints were completed in 1985. Two complaints were completed by a finding of violations based on hearings. Part of the decisions in these two cases resulted in \$2,567 being paid to the State by respondents. One complaint was completed based on a public admission of violation and a reprimand. Cure, which included a \$500 payment to the State, was accepted in one case. Three conflict of interest complaints were dismissed after investigation and evaluation by the Commission. Action was completed on six late filing of lobbying activity report complaints. Five of these complaints were completed by accepting late activity reports as a cure. One complaint was forwarded to a law enforcement agency for its review. The Commission also initiated thirteen preliminary inquiries regarding either conflict of interest or lobbying matters during 1985 in order to evaluate whether a complaint should be filed. Seven preliminary inquiries were still in process at the end of the year.

The substantial numbers of financial disclosure complaints were the result of a continuing compliance review program to ensure that individuals comply with the filing requirement on a timely basis. 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 about 2% 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 settlement policy of requiring an admission of violation, a reprimand, and a \$100 payment in lieu of a fine in complaint cases where there is a second complaint or where the form is filed at any time after a hearing notice is sent to the non-filer. This hearing notice generally occurs about 120 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. As to either financial disclosure or lobbyist matters, in cases where a case completion consistent with the settlement criteria cannot be accomplished, a formal hearing is held by the Commission, with the final decisions and actions based on the record as proved at that proceeding.



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 primarily involved during 1985 in reviewing amendments to enacted laws. At the end of 1985 twelve municipalities and one county had laws which did not fully meet Commission requirements. It is likely that a significant number of these municipalities will be fully or partially exempted from the law based on size and related considerations.

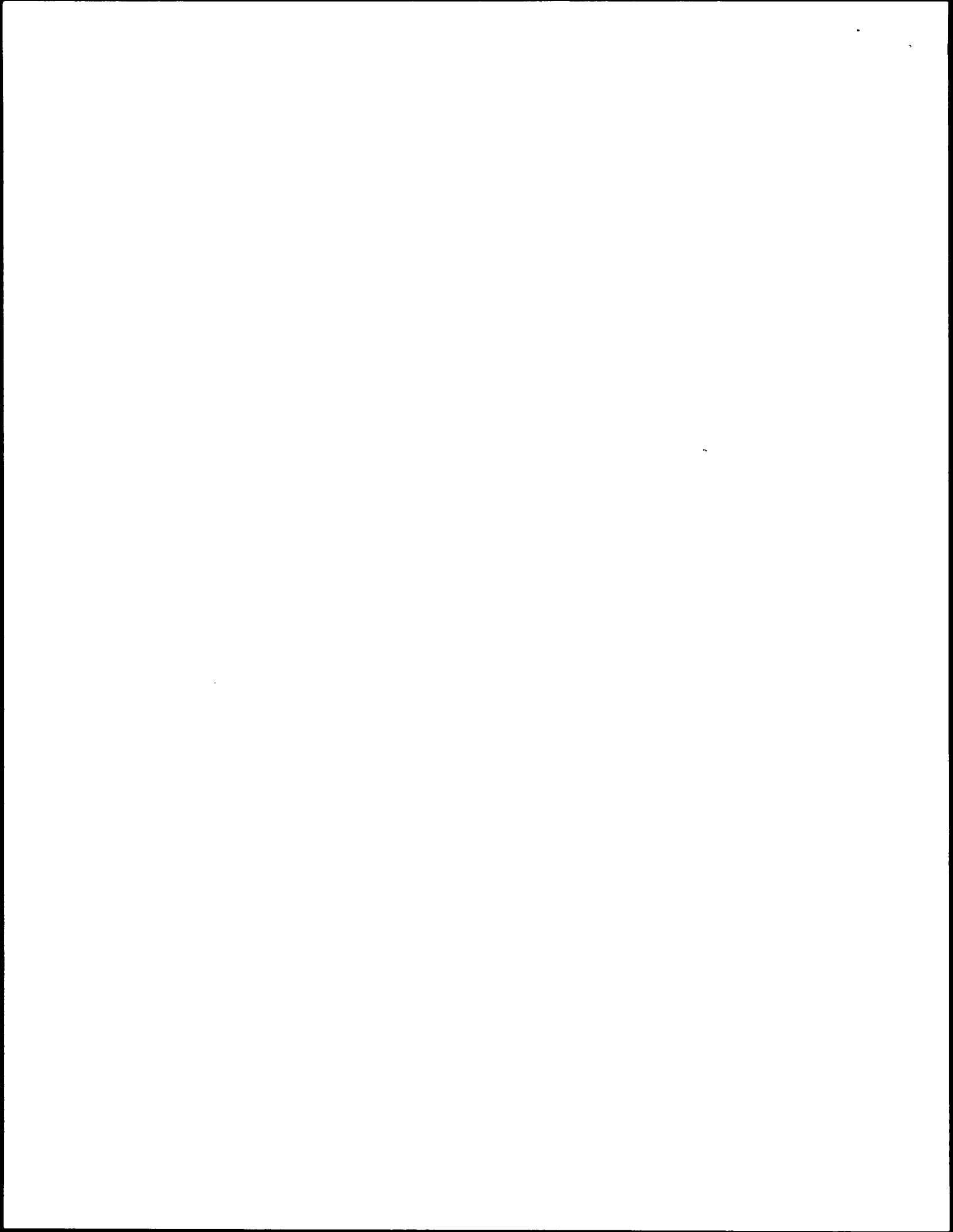
In addition to the requirement that counties and cities enact ethics laws, the 1983 Session of the General Assembly amended the Law to require local school boards either to promulgate ethics regulations similar to the State Law or be covered by county ethics laws. The Commission issued regulations covering this requirement in 1983. At the end of 1985, twenty-two county Boards of Education including 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. Most of the staff activity relating to local ethics programs during 1985 involved providing technical assistance to ongoing administration of local government ethics programs.

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.

In the Fall of 1985 the Commission provided a one day training program to local government and school board ethics panels and their staff. A briefing for lobbyists and those interested in the operation of the lobbying law was held in Annapolis during the 1985 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. Planning also began in 1985 for offering one day ethics seminars at agency sites where these are requested.

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. Another pamphlet covering ethics requirements for part-time members of State boards and commissions was distributed for the first time during 1985. A



new pamphlet covering public access to Commission records and decision information was developed during 1985 for distribution during early 1986. The Commission also initiated a new ethics bulletin. This quarterly publication, which covers prohibitions, rules, procedures and Commission decisions, is being provided to key agency managers and personnel officers.

LEGISLATIVE RECOMMENDATIONS AND ISSUES

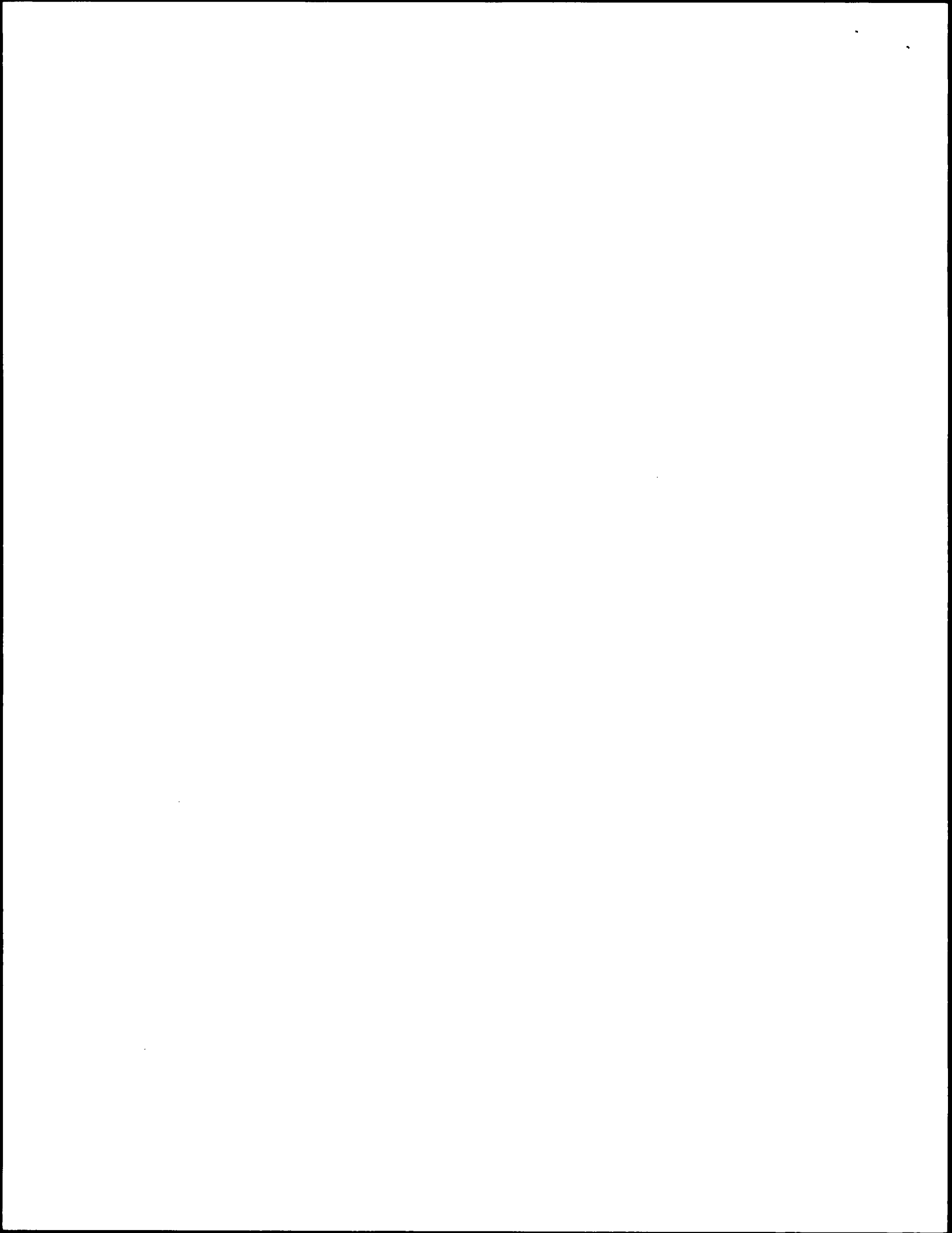
The Commission continues to review the adequacy of the Public Ethics Law as required by the statute. The following five proposals are new legislative recommendations developed in 1985.

1. Changing the reference in the financial disclosure section to Grade 16

In 1985 the Secretary of Personnel renumbered the State pay grades, making what was previously a Grade 18 a Grade 16. The Attorney General has ruled that the Ethics Commission can consider the new Grade 16 to be a Grade 18 for the purposes of the financial disclosure provisions in the Ethics Law since the Grade 18 language was aimed at requiring certain positions at that level to disclose and the numbering change was only in administrative nomenclature. The Ethics Commission agrees with the Opinion of the Attorney General but believes that changing the grade number in the statute will provide better notice and avoid potential litigation.

2. Providing for Commission fining power and clarifying appeals

The Commission believes there are significant problems regarding statutory penalties and procedures based on its experience in 1985 enforcement cases. Under the current law, the Commission has limited sanctioning powers. It can reprimand, recommend personnel action by the appointing authority, and go to court to ask for fines. The current law is clear (under the APA) as to the Respondent's appeal route regarding Commission decisions, but is unclear as to the timing and the evidence to be considered by the Court (possibly a different court) in levying fines or otherwise taking action in response to Commission initiative. It has occurred to the Commission that it could be ruled that the court's action on the fines would be a trial de novo even though, basically, the Commission's court action would be for review and enforcement on the record. The existing law already creates a long and expensive process. Generally, in conflict of interest cases there are Law violations with some financial benefit to the employee. Often the possibility exists for an admission of violation by the Respondent in which an agreement is made to pay the gain received to the State. However, when this or other settlement does not occur, the Commission believes it is left with the prospect of further protracted, expensive litigation over even a small fine where a violation is found. In order to remedy this situation, the Commission recommends that it be given limited fining authority leaving the possibility for Commission-initiated court action to impose larger fines when necessary based on the record of the Commission proceeding. The Commission believes that the law should be amended to make it clear that any court action on requested fines or enforcement of a Commission determination would be on the record and not de novo. The



Commission also recommends that the basic penalties under the Ethics Law be increased from up to \$1,000 to a maximum of \$5,000 because the current maximum fine for a single non-continuing violation is not sufficient to credibly respond to substantial wrongdoing.

3. Late Filing Fees

The Commission has a significant workload caused by persons filing late financial disclosure statements, with additional work caused by persons filing late lobbying activity reports and registration forms. Generally, as to financial disclosure forms and lobbying activity reports, the Commission sends two late notices and then files a complaint. This may be followed by a hearing notice as well as other correspondence and staff communication. Usually eventually these people do file, sometimes the day of the hearing. In order to have a fine apply, the Commission must find a violation (failure to timely file) at a hearing and then go to Court for the fine. Even without going to court, this is an expensive and very time consuming process. In order to reduce this problem, the Commission has developed settlement criteria for second complaints and for persons who do not file until a hearing notice is issued requiring various admissions, as well as a payment in lieu of fines. This has worked but somewhat unevenly. The Commission believes the fairest and most effective way to get the disclosure information to the public in the timely manner envisioned by the Law is a late filing fee provision that could apply in late filing situations when more substantial enforcement action is not warranted.

4. Disclosure by Judicial Candidates

The financial disclosure law was revised in 1985 to require annual filing by executive and legislative candidates who file in years prior to election. It recommended that the same provisions be included in the sections of the law covering candidates for judicial office.

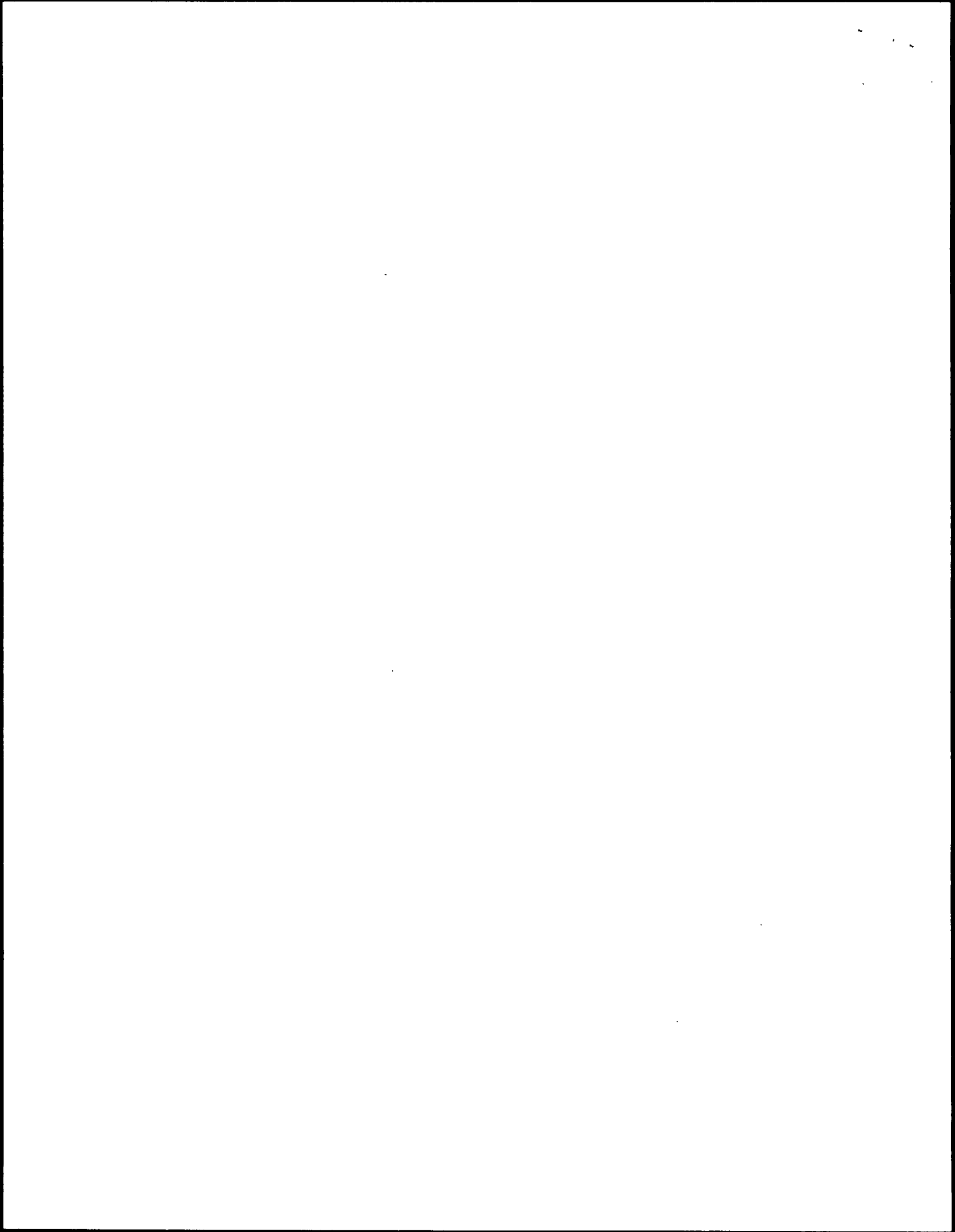
5. Disclosure of Partnership Held Real Property

The Law should be amended to make sure that individuals holding any significant share in a partnership which has title to real property are required to disclose this property on their annual financial disclosure form. Generally, as the Law is now written, unless the deed is in the individual names of the partners or unless the partner has a 30% interest in the partnership, the real property can be kept from public disclosure.

Other Legislative Recommendations

The recommendations listed below were made in previous annual reports. The Commission continues to believe that these recommendations are appropriate, based on its experience in administering the ethics program:

- 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 instead of the State 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.

- The provisions for confidentiality in the Ethics Law should be reviewed to determine if they adequately protect privacy without denying needed information to operational agencies or the public.

- Consideration should be given to having new officials file a financial disclosure statement covering their holdings as of the time when they come into their position rather than for the previous calendar year.

- The Ethics Law prohibits certain types of representation before State agencies. However, except for legislative disclosure under section 3-102 of the Ethics Law, there is no required disclosure of representation before State agencies. It is recommended 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.

- The need for disclosure of interests in mutual funds should be reviewed to determine if this information is fully necessary to accomplish the purposes of the Law.

- The provisions of section 4-104(c) regarding attributable interests should be modified to reduce the burden caused by the disclosure requirements when a person has a small share in a large diverse testamentary trust.

- The provisions covering school board ethics regulations need to be strengthened to assure that there are adequate sanctions for violations by board members, candidates for board membership and lobbyists.

