ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

2044 SSA CONFIRMATION OF APPOINTMENTS - ETHICS

2044

Alaska State Legislature
Senate Committee on State Affairs
Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954
Official Business

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Sen. Vic Fischer Vic

DATE: March 18, 1982

RE: Confirmation of appointments

The Senate President has referred the Governor's appointees to the State Board of Registration for Architects, Engineers and Land Surveyors and to the New Capital Site Planning Commission to the State Affairs Committee for recommendation in accordance with AS 39.05.080.

If you would like any of these persons to appear before the committee prior to our making a recommendation, or if you have any questions, please contact my office prior to March 24. Appropriate resumes have been attached.

Thank you for your consideration.

Let's submit memo to Pres — rec. no objections registered

MEMORANDUM

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointments to the State Board of Registration for Architects, Engineers and Land Surveyors

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Pursuant to your instructions and in accordance with AS 39.05.080, the Senate State Affairs Committee has had under consideration the Governor's appointments to the State Board of Registration for Architects, Engineers and Land Surveyors and reports back with the following recommendations:

Gerald Myers, Fairbanks, term expiring 7/1/86
Odin Strandberg, Anchorage, term expiring 7/1/81

Member	Recommendation
Senator Fishher, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley	
Senator Eliason	
Senator Stimson	

MEMORANDUM

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointment to the Alaska Public Offices Commission

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Pursuant to your instructions the Senate State Affairs Committee has had under consideration the Governor's appointment to the Alaska Public Offices Commission and reports back with the following recommendation:

Mildred A. Opland, Anchorage, term expiring 2/1/86

Member	Recommendation
Senator Fischer, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley+	
Senator Eliason	
Senator Stimson	

M E M O R A N D U M

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointments to the Board of Electrical Examiners

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Pursuant to your instructions and in accordance with AS 39.05.080, the Senate State Affairs Committee has had under consideration the Governor's appointments to the Board of Electrical Examiners and reports back with the following recommendations:

MembeGeorge McCoy, Anchorage, term expiring 7/10/82
Terence Duszynski, Fairbanks, term expiring 7/10/83

Member	Recommendation
Senator Fischer, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley	
Senator Eliason	
Senator Stimson	

MEMORANDUM

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointments to the Alaska Pipeline Commission

---

Pursuant to your instructions and in accordance with AS 39.05.080, the Senate State Affairs Committee had had under consideration the Governor's appointments to the Alaska Pipeline Commission and reports back with the following recommendations:

Karen Cory, Anchorage, term expiring 4/4/86
Janis Williams, Juneau, term expiring 4/4/82

Member	Recommendation
Senator Fischer, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley	
Senator Eliason	
Senator Stimson	

MEMORANDUM

TO: Senator Jalmar Kerttula, President

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointments to the Athletic Commission

Pursuant to your instructions and in accordance with AS 39.05.080, the Senate State Affairs Committee had had under consideration the Governor's appointments to the Athletic Commission and reports back with the following recommendations:

Don Dennis, Fairbanks, term expiring 5/14/82
Reginald Joule, Kotzebue, term expiring 5/14/82

Member Recommendation

Senator Fischer, Chair ____________________

Senator Colletta, Vice-Chair ____________________

Senator Bradley ____________________

Senator Eliason ____________________

Senator Stimson ____________________

MEMORANDUM

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointment to the Personnel Board

Pursuant to your instructions and in accordance with AS/39.05.080, the Senate State Affairs Committee has had under consideration the Governor's appointment to the Personnel Board and reports back with the following recommendation

Morgan Reed, Skagway, term expiring 6/20/86

Member	Recommendation
Senator Fischer, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley	
Senator Eliason	
Senator Stimson	

MEMORANDUM

TO: Senator Jalmar Kerttula, President
Alaska State Senate

FROM: Senate State Affairs Committee

DATE: April 6, 1981

RE: Governor's appointment to the State Commission for Human Rights

---

Pursuant to your instructions and in accordance with AS 39.05.080, the Senate State Affairs Committee has had under consideration the Governor's appointment to the State Commission for Human Rights and reports back with the following recommendations;

James Chase, Anchorage, term expiring [illegible]/31/86

Member	Recommendation
Senator Fischer, Chair	
Senator Colletta, Vice-Chair	
Senator Bradley	
Senator Eliason	
Senator Stimson	

ETHICS

→ VF — LEG. REFORM

League of Women Voters of Alaska

May 4, 1981

On April 25, 1981, a workshop entitled, "Strengthening the Legislative Process was held in Juneau. The workshop was funded by the Legislative Council and conducted by the League of Women Voters of Alaska. Addressing the workshop participants were Jack Doyle, former executive director of the Legislative Affairs Agency in Alaska; Senator David Nething, North Dakota state legislature; Senator George Kinley, Iowa state legislature and chairman of the Legislative Management Committee of the National Conference of State Legislatures; Paul Mason, author of Mason's Manual of Legislative Procedure, and Senator Kay Poland, former member of the Alaska legislature. Participating in the workshop throughout the day were 25 Alaskan legislators, 14 legislative staff members, 3 lobbyists, 2 members of the Anchorage FREE committee, 1 member of Common Sense for Alaska, 4 members of the League of Women Voters of Juneau. In addition, there were 6 student assistants and 7 League of Women Voters of Alaska facilitators.

After using a process of group discussion and prioritizing, the following statements resulted. These are not to be confused with positions of the League of Women Voters of Alaska.

1. Combining the top recommendations for free conference committee changes, a new rule would include these items:
    * Conference committees must be appointed first. They may ask for specific powers from the presiding officer. If there is no agreement, then free conference powers could be granted to six new members.
    * 24 hours must elapse, with the new bill on members' desks accompanied by a summary of the changes, before a vote is taken.
    * Powers of free conference might be limited to certain stated subjects.

2. Many participants felt the existing rule allowing introduction of only committee bills after the 35th day of the second session is a satisfactory practice. Almost as many felt a majority vote of the committee should be required before a bill is introduced in its name.

3. Participants were nearly unanimous in agreeing that the "no recommendation" option should remain on committee report forms.

4. Participants felt comfortable with the existing system of allowing special committees to meet jointly.

5. An overwhelming majority believed adequate record-keeping requirements should exist.

6. Participants agreed unanimously that committee procedures should include the following:

- * Uniform logging and recording of arrival and departure of committee members.
- * Roll call of all motions.
- * All amendments recorded in the minutes.
- * Testimony summarized in the minutes, in addition to a taped record.
- * 5-day notice in advance of meetings. (This provision could be waived only by a majority vote of the committee.)

7. Pertaining to a committee's acting on all bills referred to it, a majority of participants felt there should be specific time restraints on the entire process of referring, acting and reporting on bills. A majority also thought that a committee's composition should reflect the majority/minority proportion in the respective houses. A significant number, however, felt that the situation which currently exists is not a problem.

8. A majority of participants thought the present rule requiring a committee to act and report on all bills referred to it "as soon as practicable" should be rewritten to reflect the current or preferred practice.

9. An overwhelming majority agreed a salary scale is needed for staff based on qualifications, experience and job description.

10. There was a strong consensus for giving each legislator a staff and an expense budget. In this staffing method, the legislator would make all decisions pertaining to staff, similar to the practice in the United States Congress.

11. Recommendations on interim committees included the following:
  - * A close relationship between standing committees and interim committees. At least a majority of the interim committee should be from the appropriate standing committee.
  - * Clear interim committee goals (planning, general education of members on the subject, drafting and introducing legislation).
  - * Utilization of standing committee staff on the related interim committee.
  - * Establishment of interim committees by concurrent resolution.

Sharon Richards
Project Coordinator
2306 Douglas Drive
Anchorage, Alaska 99503

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS BEEN FILMED.

Model State
Campaign Finance Law

National Municipal League
47 East 68th Street
New York, New York 10021

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

REPLY TO:

☑ 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3598
(907) 276-4176

☐ JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

October 27, 1981

The Honorable Vic Fischer
511 West 4th Avenue, Suite 5
Anchorage, Alaska 99501

Dear Senator Fischer:

Thank you for the interest you expressed in the annual meeting of the Council on Governmental Ethics Laws to be held December 7 - 9, 1981, in Charleston, South Carolina. I was unable to send you any of the enclosed information sooner because we received it ourselves only last week.

In light of your interest in ethics legislation, I also have enclosed a letter from the South Carolina State Ethics Commission which offers a comparative analysis of ethics laws. I ordered a copy for the APOC sometime ago, but since it has not arrived, I can't say whether it lives up to its promise as a reference document or not. As you know, at one time SB 175 attempted to incorporate portions of the Ethics Model from the National Municipal League, although my understanding is that some of the individuals who worked on the draft of 175 had questions about the League's model for which they didn't find satisfactory answers.

The fact that South Carolina has not ratified the ERA was discussed at last year's annual meeting when it came time to make a final site selection. Some members of the Council voiced the concern that you expressed but the majority felt that the ERA status of a site should not be given consideration in the decision of an organization whose members must be a-political in their day-to-day functioning.

After the first of the year, I will let you know about any reference materials which become available as a result of the Charleston meeting.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Theda S. Pittman

THEDA S. PITTMAN
Executive Director

TSP/mab

enclosures

CONFERENCE REGISTRATION FORM

THE PUBLIC OFFICIAL AND THE PUBLIC TRUST

December 7th thru 9th
Charleston, SC

NAME & TITLE: ______________________________

____

____

ORGANIZATION: ______________________________

ADDRESS: ______________________________

____

____

* * * * * * * * *

REGISTRATION FEE: (check one)

☐ Council Member: $30.00 per individual registrant

☐ Non-Member: $60.00 per individual registrant

- -

Complete the above portion and mail it together with your payment by November 30th to:

Dannie Trautwein, Treasurer
Council on Governmental Ethics Laws
P. O. Box 95086
Lincoln, NE 68509

If payment cannot be made by November 30th or if your agency has special billing procedures, please contact Dannie Trautwein, either at the above mailing address or by calling area code (402) 471-2524.

*Make checks payable to "Council on Governmental Ethics Laws." Receipts will be sent upon payment.

COUNCIL ON GOVERNMENTAL ETHICS LAWS

Steering Committee:

Melvin G. Cooper
Alabama Ethics
Commission

Jean-Marc Hamel
Chief Electoral
Officer of Canada

Shari Holmes
Alaska Public Offices
Commission

Betty J. Reynolds
Oregon Government
Ethics Commission

Robert W. Shellenberg
Florida Commission
on Ethics

Robert Stern (Chairperson)
California Fair Political
Practices Commission

Dannie Trautwein
Nebraska Accountability
and Disclosure Commission

J. Jackson Walter
U.S. Office of Government
Ethics

Please reply to:

OCT 20 1981 RECEIVED

OCT 26 1981

APOC-ANCH
PM HC.

Dear Council Member:

Mel Cooper from Alabama and Bob Schellenberg from Florida, who have arranged the program for the Charleston Conference of the Council on Governmental Ethics Laws, asked me to assist them in securing better attendance at our Conference. We have a program that should be of particular interest to members of your Commission and want to ask you to extend a special invitation to each of them to participate. In addition to that, you might want to give each of them a copy of the Conference information that you received from Bob Stern and to emphasize that other Commission members will be there and that there will be ample opportunity for discussing mutual problems and concerns.

I have enclosed a revised version of the Conference schedule; the one that Bob Stern sent you didn't do complete justice to the outstanding job done by Mel and Bob in arranging our Conference. Please note the additions to the list of speakers: Governor Richard Riley of South Carolina, Major Joseph Riley of Charleston, former Ambassador and Governor Reubin Askew of Florida, Commissioner Frank Reiche of the Federal Election Commission, and David Cohen, former President of Common Cause. This truly is an "all-star" line-up.

From here on, it is up to you. Mel and Bob have arranged a superb program but its real success will be only as good as the "selling job" you do to your Commission members. I personally believe it is important to the Council that this year's Conference be a great success, that our program will be first-rate, and that you and the members of your Commission will find your participation to be most worthwhile.

Sincerely,

Jack Walter

J. Jackson Walter
Director
Office of Government Ethics

Enclosure

Council on Governmental Ethics Laws
Preliminary Conference Program (10/20/81)

December 6-9, 1981
Mills House Hotel
Charleston, South Carolina

"IS POLITICAL REFORM DEAD?"

Sunday, December 6, 1981

6:00 - 7:00 p.m.	**Reception**

Monday, December 7, 1981

9:00 - 9:30 a.m.	**Opening Remarks and Greetings** Governor Richard W. Riley, South Carolina Mayor Joseph Riley, Charleston Robert Stern, Chairperson, Council on Governmental Ethics Laws
9:30 a.m. - 12 noon	"Political Reform Laws: Milestones or Millstones? A Debate" David Cohen, former President, Common Cause Frank Reiche, Member, Federal Election Commission - - - - - - - -
12:15 - 1:45 p.m.	**Luncheon** Honorable Howell Heflin, Vice Chairman, Select Committee on Ethics, U.S. Senate
2:00 - 3:00 p.m.	**Seminar Discussions** (discussion leaders to include Melvin G. Cooper, Alabama Ethics Commission; Robert W. Schellenberg, Florida Commission on Ethics; J. Jackson Walter, United States Office of Government Ethics)
3:15 - 4:15 p.m.	**Seminar Reports and General Discussion**

Tuesday, December 8, 1981

	Ethics, Conflict of Interests	Campaign Finance
9:00 - 10:15 a.m.	"CASE STUDIES IN ETHICS" Dr. John Dempsey College of Charleston	"UPDATE ON LITIGATION AND LEGISLATION" Tom Houston Jim Davis California FPPC
10:30 - 11:45 a.m.	"UPDATE ON LITIGATION AND LEGISLATION" Rosa Hamlett Assistant Attorney General Alabama	"CAMPAIGN FINANCE IN SELECTED COUNTRIES" Dr. K. Z. Palteil Carleton University, Ottawa

12:00 Noon - 1:30 p.m.	**Luncheon** Honorable Reubin O'D. Askew Former United States Trade Representative and Governor of Florida	
1:45 - 2:45 p.m.	"CODES OF ETHICS IN STATE GOVERNMENT" Dr. Stephen Hays University of South Carolina	"PUBLIC FINANCING IN SELECTED STATES" Ed Farrell, Counsel New Jersey Election Law Enforcement Commission
3:00 - 3:30 p.m.	**Question and Answer Session**	
3:30 - 4:30 p.m.	**Council Business Session**	

Wednesday, December 9, 1981

9:00 - 11:00 a.m.	"THE IMPACT OF POLITICAL ACTION COMMITTEES ON THE GOVERNMENTAL PROCESS" Howard Vaughn Vice President, Liberty National Life Insurance Company and PAC Secretary Edward Roeder Washington, journalist and author of PACS AMERICANA (S.C. Legislator)
11:00 - 12:00 Noon	**Question and Answer Session**

COMMISSIONERS
W. JACK GREER, 4TH DISTRICT
Chairman
JOHN M. TRASK, JR., 1ST DISTRICT
DR. LE COMAMS, 2ND DISTRICT
JACK GR

COMMISSIONERS
DR. D.H. DANIEL, 3RD DISTRICT
FRANCES M. DANIEL, 5TH DISTRICT
ALLEN RAY, 6TH DISTRICT

State of South Carolina
State Ethics Commission

GARY R. BAKER
EXECUTIVE DIRECTOR

(803) 758-7408
Rembert Dennis Bldg., Ste. 545
1000 Assembly Street
Columbia, S.C. 29201

September 1, 1981

SEP 3 1981

Ms. Shari Holmes
Alaska Public Offices Commission
610 C Street, Ste. 211
Anchorage, AK 99501

Dear Shari:

I have just received your latest newsletter. I was hoping to include another item in it but you were faster at publishing that I was in contacting you.

We have recently completed publications of State of South Carolina State Ethics Act: A Comparative Analysis. The publication was put together by the staff of the South Carolina Ethics Commission as a research aid for the staff and commission. This publication compares other states' statutes with each section of the South Carolina Ethics Act. Each code section of the South Carolina Act is listed separately, followed by similar or same code sections from other states. In addition, the Model State Statutes of the National Municipal League are also included. Copies can be made available to other agencies at cost, plus postage, approximately $10.00.

Sincerely,

Gary

Gary R. Baker
Executive Director

GRB:lhl

26 October 1981

TO: SENATOR FISCHER
FROM: GINGER BAIM
RE: SOME CONSIDERATIONS FOR ETHICS TELECONFERENCE

ETHIC - 1. the discipline dealing with what is good and bad and with moral duty and obligation 2. a set of moral principles or values, a theory or system of moral values, the principles of conduct governing an individual or group.

ETHICAL - 1. of or relating to ethics 2. conforming to accepted professional standards of conduct

ETHICS - (Roget's Thesaurus) The Science of Morals

MORAL - 1. (a) of or relating to principles of right and wrong in behavior: ETHICAL (judgement) (b) expressing or teaching a conception of right behavior (c) conforming to a standard of right behavior (d) sactioned by or operative on one's conscience or ethical judgment (e) capable of right and wrong action 2. probable though not proved 3. of, relating to or acting on the mind, character, or will.
SYN - MORAL, ETHICAL VIRTUOUS, RIGHTEOUS, NOBLE shared meaning element: conforming to a standard of what is right and good

MORAL PHILOSOPHY n: ETHICS; also: the study of human conduct and values.

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1) What is the dividing line between "ethical" considerations and personal moral values?

2) What public employees, departments and agencies fall under Ethics Legislation? Which ones don't and why?

3) Can we set ethical standards (read moral values) from a secular base?

4) What are the penalties for ethical violations and why can't they be administered through the law in the manner that criminal violations having ethical overtones are currently channeled? (I.E. illegal kickbacks and/or campaign contributions, bribes, and contracting violations that result in actual embezzlement)

5) What is the publics perception of ethics and ethical behavior?

6) What is "right" behavior, who determines it and who enforces it?

7) Can there be one set of ethics or moral values for an individual and another set for groups? (If not why is it "ethical" for society to kill as in administering the death sentance and not "ethical" for and individual to kill)?

8) With ethics and ethical considerations be extended to persons in the scientific and medical professions and what protection can the state offer to individual and groups expressing their ethical beliefs? (over)

FINANCIAL DISCLOSURE

CONFLICT OF INTEREST

A MODEL STATE LAW

National Municipal League

CONTENTS

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by Sowers Printing Company

FOREWORD

That "public office is a public trust" has always been a basic principle underlying the National Municipal League's programs to make state and local government more responsive and responsible, efficient and effective. Its special interest in ethics was initiated by William W. Scranton in 1970 while he was League president. In its preliminary stages ethics was considered as an adjunct to the Election Systems Project (1971-1973) because financial disclosure requirements for candidates and regulations governing campaign finance are integral parts of comprehensive election legislation.

The public disillusionment with government generally caused by a number of scandals involving officials at all levels of government prompted the enactment in the early 1970s of an unprecedented number of new statutes, broadly described as ethics legislation. The administration of these statutes was uncharted territory to a substantial extent. Since 1976, the League has been able through its Ethics Project not only to assist in an exchange of information among those with official responsibilities in this field but also to serve as a forum for the evaluation of existing statutes, the case law developed as the statutes have been adjudicated, and proposals for further legislation. In a very real sense the League has been the instrumentality for "reforming reform," and thus guiding an effort to make refinements to assure that today's reform will not be tomorrow's problem, as is sometimes the case when measures are not reappraised after they are in operation. The *Model State Conflict of Interest and Financial Disclosure Law* is presented to provide such guidance.

The League is indebted to The George Gund Foundation of Cleveland for a series of grants which provided the basic financial support for the project, which included preparation of this model statute.

The League is also indebted to Mark S. Matthews of Greenwich, Connecticut, a former member of the Council, for financing the preliminary stages of the project which led to the publication of the *Preliminary Bibliography on Conflict of Interest and Personal Ethics in Government* and *Ethics in Government: Selected Statutes and Reports.*

Barbara Rawson, who chaired the League's Ethics Project Committee, provided constant assistance to the project staff. She brought to the undertaking not only a longtime concern that state and local government be worthy of citizen trust because of its competence and integrity, but also the special experience gained as an early chairman of the Ohio Ethics Commission as that body launched a statewide program to administer newly enacted legislation.

The members of the League committee made invaluable contributions to the development of the model. The committee deliberations held in connection with the annual National Conference on Government, as well as comments received from members, shaped the basic policy thrust of the *Model.* Although some members expressed reservations with regard to detail, the committee as a whole gave approval.

Members of the special Advisory Committee composed of persons with official responsibilities for the administration of conflict of interest, financial disclosure and campaign finance laws gave the model the benefit of their experience in dealing with the delicate issues involved in enforcing rules and regulations designed to maintain high ethical standards. (The rosters of the committees appear at the end of this volume.)

Frank P. Grad, professor of law and director of the Legislative Drafting Research Fund, Columbia University, not only prepared the draft of the *Model* but also was of enormous assistance in the deliberations of the League committee and in the preparation of the commentary which accompanies the legal text.

In addition to her participation as a member of the Advisory Committee, Barbara Snethen, former executive director of the Iowa Campaign Finance Disclosure Commission, provided special assistance in analyzing financial disclosure requirements.

Page Elizabeth Bigelow, League staff associate, directed the research effort for the project, prepared the detailed specifications for the model for review by the committee, and revised them for the guidance of the draftsman. She also prepared the analytical commentary.

Acknowledgement is also made of the assistance provided by League staff members: William J. D. Boyd, former assistant director, Debra J. Collins,

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ssistance provided by League staff
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research librarian, and Thomas J. Drury and Shelley M. Greenwald, legal research assistants.

As the *Model* was in preparation, many inquiries were received from citizens and officials concerned with conflict of interest issues. Their questions were important to the model-building process and helped to focus staff research. It is hoped that those using the *Model* will address inquiries to the League and thus help enhance its capability for making further refinements in the law governing ethical standards in government.

WILLIAM N. CASSELLA, JR.
Executive Director

INTRODUCTION

In December 1974, the executive directors of several newly established ethics and campaign finance commissions formed an ad hoc group which sponsored a conference in Washington, D.C., primarily for representatives of commissions and agencies involved in the administration of state legislation on conflicts of interest, financial disclosure, campaign finance, elections and lobbying. A major purpose of the meeting was to facilitate the exchange of information among governmental bodies charged with responsibility in these evolving areas. A number of participants urged the National Municipal League to expand its limited program in this field into a national center with a clearinghouse capability to serve public officials and citizens.

In October 1975, The George Gund Foundation of Cleveland, which had provided financial support for the 1974 conference, made a grant to the National Municipal League for the operation of a service center to assist states and major local governments as they administer and refine newly established programs for enforcing ethical practices in government. The service center project has operated an information clearinghouse, sponsored annual conferences on "The Public Official and The Public Trust," published periodic newsletters, indexes and directories, and prepared the *Model State Conflict of Interest and Financial Disclosure Law* and the *Model State Campaign Finance Law*.

An Advisory Committee of executive directors and commissioners from various states has assisted the League in planning program objectives and the annual conferences. This committee also was extremely helpful in commenting on technical aspects of the model laws, particularly those with administrative implications. The participation of the committee was advisory only, and does not imply endorsement of the contents by the committee members or their respective commissions.

The League's Ethics Project Committee was responsible for basic policy decisions with respect to the model laws which were subsequently approved by the League's Executive Committee.

Early in the process of designing the *Model State Conflict of Interest and Financial Disclosure Law* it was decided to incorporate the strictest provisions that the League committee found acceptable which would also be constitutionally permissible in most states. Recognizing that the strictest provisions would not be necessary everywhere, and that their use might be counterproductive where they were stronger than needed, it was decided that the commentary would provide guidance for varying them in such a way as to maintain basic effectiveness. Most of these variations are in the financial disclosure provisions (Section 9) and the definition of "State Official" (Section 3(g)).

The committee began its work with one basic premise, which was that the only conflicts of interest which could be regulated under this law were those which concerned finances. Having a conflict of interest is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic, cultural, emotional, nostalgic, regional, financial or philosophical. Conflict of interest laws are concerned with financial conflicts which set apart an individual officeholder from most of the general public. For example, being a taxpayer and a legislator voting on new taxes is not a conflict one worries about; while being a contractor/legislator voting on a bill specifying one's own company as the contractor is a matter of concern.

Conflict of interest provisions are designed to prevent public officials and employees from gaining financial profit from their official actions (other than government salaries), or from helping family or friends to profit unfairly because of inside information or preferential treatment. At the same time, the provisions can take some outside pressure off by making certain practices illegal instead of merely unethical. This is particularly true when the provisions are combined with those for financial disclosure and when the existence of conflicts or potential conflicts becomes a matter of public record.

Financial disclosure provisions are an essential part of the enforcement capability of the conflict of interest provisions. There would be no point to financial disclosure laws if there were no conflict of interest provisions. The purpose of financial disclosure laws is to make available sufficient relevant information to allow citizens to judge whether officials are acting in the public interest or tending too much to favor personal interests. Another role of financial disclosure statements is to remind public officials to examine their actions in light of their holdings and to be aware of possible conflicts of interests or the appearance of conflicts of interests. It is not the purpose of financial disclosure laws to give the public a chance to pry into every private detail of an official's life, right down to valuations on jewelry, silver, antiques and art.

Local officials are not included in this law. There are statutes which include

odel State Conflict of Interest and
incorporate the strictest provisions
ble which would also be constitu-
nizing that the strictest provisions
l that their use might be counter-
n needed, it was decided that the
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be aware of possible conflicts of
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luations on jewelry, silver, antiques

w. There are statutes which include

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local officials in the conflict of interest and financial disclosure provisions; some have operated fairly smoothly while others have encountered resistance. There is no reason why any local government could not adapt this model for its needs. The needs of local government may be very different depending on the population and budget, whether or not any of its officials are paid, and if so, how much. There is a big difference between what may be needed in Loving County, Texas (population 164), and what is appropriate for Cook County, Illinois (population 5,492,369). It appears wiser to adapt the model provisions for local use than to try to make provisions appropriate for such disparate situations.

The *Model State Conflict of Interest and Financial Disclosure Law* is designed to allow sufficient flexibility for adaptation to particular conditions and political traditions. The commentaries on the sections dealing with commission structure and financial disclosure explain what kind of variations could be made and still fulfill the stated purposes of the law. There should be no mistake, however, about the standards of conduct expected from public officials; there is virtually no provision in the commentary for changes in the conflict of interest and penalty provisions. The use of public position for private financial benefit or gain is clearly and unequivocally unacceptable, and no variations in the structure of the enforcemnt body or the financial disclosure requirements change that standard.

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Model Conflict of Interest and Financial Disclosure Law

An Act to prohibit conflicts of interest among State officials and employees, creating a State Ethics Commission and prescribing its powers and duties, establishing a state code of ethics and procedures for its enforcement, and penalties for its breach.

Section 1. Short Title.

This Act shall be known and may be cited as Conflict of Interest and Financial Disclosure Act.

Section 2. Legislative Findings and Statement of Policy.

The legislature finds that public confidence in the impartiality and independence of state officials and employees is essential for the sound functioning of a democratic government. To maintain such confidence, the business and offices of the state must be conducted in a manner free from improper influence, and particularly from influences arising, or which may arise, from opportunities for personal gain or from divided loyalties resulting from involvement in business ventures that may benefit from particular government decisions or courses of action.

The purpose of the Conflict of Interest and Financial Disclosure Act, therefore, is to establish ethical standards for state officials and employees for the avoidance of such conflicts of interest as the use of offices or employment for private gain, the granting and exchange of favored treatment to persons, businesses or organizations, and the conduct of activities by such officials and employees that may engender opportunities for personal gain or advantage to influence government decisions. It is the purpose of the code of ethics to delineate clearly the ethical standards for state officials and employees in order to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety even when no actual impropriety has occurred. It is the intention of the legislature that the Act be liberally construed so as to accomplish its purposes of protecting the public against government decisions that result or are affected by undue influences or conflicts of interest.

Commentary

Section 2. The *Model State Conflict of Interest and Financial Disclosure Law* emphasizes the avoidance of conflicts between the private financial interests of public officials and employees and their responsibilities to the public and to the government that employs them. The Act is intended to curb such conflicts, and to protect the public's right to honest government and to government decisions unaffected by competing private interests of officials. When the private interest of officials and employees conflicts with the interests and rights of the public, such private interests must yield.

Implicit in this statement is the intent to use such constitutionally permissible and effective methods for the enforcement of the conflict of interest provisions as have been provided for. For this reason, the financial disclosure provisions as set forth in Sections 9 and 10 are essential for the enforcement of the law.

Section 3. Definitions. As used in the Act.

(a) "Business" means any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or a service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as nonprofit organizations.

Commentary

Section 3(a) The definition of *business* is intentionally broad in order to include as many forms of economic activity as possible. Many economic involvements which may appear to be slight or of little consequence may nevertheless have sufficient economic importance to affect an official or employee's judgment in situations that may give rise to conflicts with official decisions.

(b) "Business with which a person is associated" means any business in which the person is a director, officer, owner, member, partner, employee, or is a holder of securities which have a fair market value of $5,000 or more or whose market value is one-fifth of his net worth, regardless of its value. It does not include any insurance companies which have issued the person a policy of insurance if that is his sole association with such companies.

Commentary

Section 3(b). The definition of *business with which a person is associated* is intended to delineate business relationships that involve some measurable element of close and continuing association and economic interest which might lead to a conflict of interest. The definition seeks to exclude relationships of a mere formal nature as

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between insurance companies and their insureds, and relationships where the interest is of such a minor nature that it is unlikely to have any impact on the decisions of the business or on the decisions of government that may affect such business, as in the case of a government official who owns a few shares of the stock of a large, publicly held corporation.

(c) "Commission" means the State Ethics Commission.

(d) "Interest in Real Property" includes any leasehold, beneficial interest, ownership interest or an option to acquire any such interest in real property.

Commentary

Section 3(d). *Real property* is defined in a broad manner to include a broad spectrum of property interests not limited to ownership of legal title. The definition recognizes that other interests may lead to conflicts of interest to the same degree as outright ownership. For further discussion of conflicts of interest involving real property, see commentary on Section 10 (d), which requires that such interests in real property be listed in financial disclosure statements.

(e) "Member of Household" means

(i) a person who is another person's spouse, child, ward, parent or other relative, or the child, ward, parent or other relative of such person's spouse, and who shares such other person's legal residence; or

(ii) a person who is another person's spouse, child, ward, parent or other relative of such person's spouse, and over whose financial affairs and holdings such other person has legal or actual control, whether or not they share a legal residence.

Commentary

Section 3 (e) *Member of Household* is defined to include those family members or wards sharing the same legal residence with another person and those family members or wards over whose financial affairs such person has legal or actual control. The defined term is used in provisions relating to public officials' financial disclosure statements and potential conflicts of interest. Members of household, as defined, are individuals whose financial affairs are likely to be best known to the official and who, because of ties of blood or affection the official is most likely to want to benefit financially. In some cases, there may be a more direct self interest, *i.e.*, where the public official is a possible beneficiary of the estate of a member of the household. The inclusion of members of household in financial disclosure requirements will allow not only the public but also the public official to become aware of potential conflicts, apparent or real, before they occur so that such conflict of interest may be avoided.

It should be noted that in cases where such financial disclosure involving members of household would prove difficult or cause serious family problems, the Commission is empowered to modify or waive the financial disclosure requirement to the extent necessary to relieve such hardship. Such waiver authorization does not extend to references to member of household in conflict of interest provisions relating to such matters as government contracts, as for instance in Section 13, which are designed to prevent the abuse of official position.

(f) "State Employee" means a person who obtains or is entitled to compensation for any services to any department or agency of state government other than a state official. The term includes full-time and part-time service and service on a long-term or short-term basis, whether or not included in civil service or a merit system, whether undertaken pursuant to a written agreement or otherwise, and whether the relationship is considered an employment relationship or an independent contractor relationship for any purposes other than this Act, unless the Commission exempts such independent contractor relationship by regulation.

Commentary

Section 3 (f). State employee is defined to include all persons who, by reason of their work for the government, gain contacts and inside knowledge which, because of their position, may be abused or used in a manner to benefit themselves or others. The definition includes not only persons who stand in a formal employment relationship, but also persons who may be regarded as independent contractors. For instance, a lawyer, accountant or consultant should not be able to do work for the state, whether as an employee or an independent contractor, and then represent or assist private clients against the state in the same, or in a related matter. In instances where there is no risk of an abuse of the independent contractor relationship, as in independent contractual relationships with plumbers, electricians, and other such service- and repair-related matters, the Commission may by regulation exempt such contractors, unless there is good reason that they continue to be covered by this definition.

(g) "State Official" means an elected office holder in the legislative and executive branches of state government, or a member of any state board, commission, agency, bureau, department or any other part of state government who is appointed by any elected state official or by the legislature, except a member of the judiciary. The term includes a member of a commission, except that a member of any commission which is solely advisory in nature and which has no authority to make binding decisions, to enter into contracts or to make expenditures other than expenditures necessarily incurred for research in connection with its advisory functions shall not be required to meet the requirements of financial disclosure of Sections 9 and 10.

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Commentary

Section 3(g). The definition of State Official includes all elective office holders in the legislative and executive branches and all appointed office holders who owe their appointment to an elected official. Thus, it includes all officials who are charged with authority to make choices and decisions, and whose conflicts of interest and official corruption are likely to be most injurious to public confidence in government. The betrayal of the public trust by such an official, whether appointed or elected, who is expected to serve the public interest and who, generally, has taken an oath pledging to do so, undermines the public confidence in the official's agency and in the government as a whole, unless it is dealt with promptly and effectively. The definition thus covers officials whose fidelity is essential to well-ordered government.

There are some states which include the judiciary in conflict of interest and financial disclosure provisions. In many others this would pose substantial constitutional problems. It is for this reason that judicial offices are not included in this Model. The Model thus recognizes that the laws relating to ethical standards for judicial offices may need to be varied by each state. To include the judiciary within this law one need merely delete "except a member of the judiciary" from the first sentence of the definition.

Members of commissions which are purely advisory in nature and have no authority to make binding decisions, to enter into contracts or to make expenditures other than those necessarily incurred for research in connection with its advisory function are covered by the conflict of interest provisions of the law, but they are exempted from financial disclosure requirements. Members of such commissions are usually not compensated and frequently are very difficult to recruit. Their exemption from the financial disclosure requirements is intended to avoid further discouragement from such service. Moreover, because of the limitations regarding spending and decision-making authority, the opportunities to use these positions for personal financial gain or benefit are greatly diminished.

Section 4. State Ethics Commission; Establishment, Membership, Executive Director; Offices.

(a) There is hereby established the State Ethics Commission to administer and implement this Act. The Commission shall consist of seven members appointed by the governor with the concurrence of the Senate. Not more than four members shall be identified with the same political party. No member shall hold any elected or appointed office under the government of the United States, the state or any of its political subdivisions or be a candidate for any such office. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in any political campaign or in a campaign relating to a referendum or other ballot issue, and no member shall be a lobbyist or an employee of the state or any of its political subdivisions. Members of the Commission may be removed by the governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this law, after written notice and opportunity for reply.

Commentary

Section 4 (a). The provision establishing the Ethics Commission requires appointment by the Governor with concurrence by the Senate, which parallels the federal constitutional requirement as laid down in *Buckley* v. *Valeo*, 424 U.S. 1, 46 L.Ed. 2d 659, 96 S. Ct. 612 (1976) which sets the *federal* separation of powers standard for commission appointments where the commission has regulatory and enforcement powers. The federal requirement is that all such appointments be made by the chief executive rather than by other executive or legislative officers. In most states, by express constitutional requirement or by judicial interpretation under the doctrine of separation of powers, the result reached in *Buckley* v. *Valeo* would be followed. In some states it is permissible, however, to have various executive and legislative officers appoint members of regulatory commissions. If this is done, it is advisable not to authorize the attorney general to appoint members as he may do in some states, because there might be a conflict in his official obligations due to his role in Commission litigation.

The Commission is designed to be bipartisan. Because of its sensitive position, its members must avoid even the appearance of a conflict of interest, and they are barred from participation in political campaigns, running for or holding any federal, state or local office or employment, or engaging in lobbying. They may, however, contribute to a political campaign.

While many states do not have any provisions for the removal of members of ethics commissions, it is advisable to allow removal for cause. The Model follows this course, but requires the concurrence of the Senate in order to prevent abuse of this power by the Governor. The Model thus seeks to balance Commission independence against prevention of abuse. This Commission ought to be as independent as possible so long as its members perform their duties faithfully and in compliance with the law.

It has been suggested that there ought to be two separate state ethics commissions—one for the executive branch and one for the legislature- administering the same law. Several states, among them Nevada, Ohio and South Carolina, have this arrangement because of constitutional separation of power provisions which do not allow legislators to be overseen or regulated by a gubernatorially appointed body; they can only be governed by their own members. States that encounter this problem may have to adapt the Model to meet their special constitutional requirements. For other states a single commission is considered preferable.

(b) A member of the Commission shall be appointed for a term of office of seven years and until his successor has been appointed and has qualified, except that the members first appointed shall be appointed for terms of office of one, two, three, four, five, six and seven years, respectively, and until their successors have been appointed and have qualified. No member shall serve for more than one full seven-year term. When a vacancy occurs in the

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Commentary

Section 4 (b). The provision for limited and rotating terms is intended to achieve continuity on the Commission while avoiding long-term domination of the Commission and its decisions by any single member.

(c) The Commission shall elect a chairman from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. A majority of the total membership shall be necessary to act at all times.

Commentary

Section 4 (c). A majority of the total membership of the Commission is necessary for Commission action. This discourages the practice of leaving one or more vacancies in order to gain more favorable decisions from a "rump" commission. The requirement for an absolute majority for binding action—rather than merely a majority of a quorum—is not unusual. An absolute majority is necessary for many government actions including, in most states, those of state legislatures.

(d) Each member of the Commission shall be compensated at the rate of $________ for each day devoted to the performance of his official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

Commentary

Section 4 (d). The level of per diem compensation ought to be high enough so as not to discourage professionals and others of high standing in the community from service, where such service would otherwise constitute an undue economic sacrifice. On the other hand, the rate of compensation should not be so high as to make service on the commission a plum to be sought for its economic benefits.

(e) The Commission shall appoint and set the compensation of an executive director to assist the Commission in carrying out its functions, in accordance with Commission policies and regulations and with applicable law. The executive director shall appoint and discharge counsel and employees, consistent with applicable civil service laws, and shall fix the compensation of employees and prescribe their duties. The counsel to the Commission shall advise the Commission on all legal matters and on the instructions of the Commission may commence civil or criminal actions as may be appropriate.

Commentary

Section 4 (e). The executive director is directly responsible to the Commission which does the hiring and sets the salary. In turn, counsel and employees are responsible to the executive director, who is responsible to the Commission for their work. However, the counsel is directly responsible to the Commission in the sense that he or she may commence legal proceedings only on its instruction. In all other matters counsel is responsible to the executive director, thus avoiding the problem of competition for staff leadership position and power.

(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission, except that the Commission shall not delegate the power to hold hearings and determine violations.

Commentary

Section 4 (f). It is a common pattern that Commission staff may be delegated to act for the Commission on routine matters between commission meetings. Some states also allow commission staff or others to act as hearing officers and present their findings to the Commission for its decision. Such a delegation may be necessary when the Commission would otherwise be overburdened by the size of its docket. States wishing to adopt such a system should change the section to read:

> "(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission. The Commission may delegate the power to hold hearings but not to determine violations."

The delegation of the power to hold hearings to hearing officers generally meets the requirements of due process if the Commission itself makes the appropriate determination or decision on the basis of a fully adequate record so that it may review the hearing officers' recommendations.

(g) The principal office of the Commission shall be in ______________ but it may establish offices, meet, and exercise its power at any other place in the state. Meetings of the Commission other than hearings shall be public or private as provided for in Section 6(b), except that the Commission may exclude the public from attendance at discussions of Commission personnel, planned or ongoing litigation and planned or ongoing investigations.

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Commentary

Section 4 (g). The subsection provides for accessible commission offices and for open meetings, making exception in certain limited situations. As provided for in Section 6 (b), hearings may be open or private, depending on the wishes of the person charged (see commentary, subsection 6(b)). Meetings may also be closed when the Commission discusses its own personnel, and certain litigation and investigations. The provision is intended to balance the need for the protection of confidential discussions to enable the Commission to perform its functions effectively against the public's right to open movement.

Section 5. State Ethics Commission; Powers and Duties.

(a) The Commission may adopt, amend and rescind rules and regulations to carry out the provisions of this Act, and to govern the procedures of the Commission, in accordance with the administrative procedure act of the state. Such rules and regulations shall be consistent with this law and other applicable law.

(b) The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its duties and powers of investigation.

(c) The Commission shall, in addition to its other duties:
  (i) Prescribe forms for reports, statements, notices, and other documents required by law;
  (ii) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this law; and
  (iii) Provide assistance to agencies, officials and employees in administering the provisions of this law.

(d) The Commission may:
  (i) Prepare reports and studies to advance the purposes of the law;
  (ii) Contract for any services which cannot satisfactorily be performed by its employees;
  (iii) Request the Attorney General to provide legal advice and representation without charge to the Commission, and the Attorney General shall comply with the request. The Commission may also employ additional legal counsel; and

(iv) Request appropriate agencies of state government to provide such professional assistance as it may require in the discharge of its duties.

Commentary

Section 5. This section authorizes the Commission to carry out its routine housekeeping functions. It also grants the Commission full authority to make rules consistent with the law, and it provides the Commission with the necessary powers to carry on investigations and to hold hearings and determine cases. The intent is to give the commission sufficient authority to run effective, efficient and timely investigations with the full cooperation of other state agencies, and to carry out its other enforcement responsibilities. It may use its powers of subpoena both for investigational purposes and in mind of the production of evidence at hearings. It may undertake studies and enter into contracts. In addition, the Commission also has the duty to provide assistance and information to persons and agencies covered by the law, and it may also prepare instructional and other public information materials it may deem advisable to advance compliance with the law.

Section 6. State Ethics Commission; Complaints; Hearings; Dispositions; Judicial Review.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate alleged violations of this law.

Not later than fifteen days after the Commission receives a sworn complaint, or after it decides to investigate on its own initiative, it shall acknowledge the receipt of the complaint to the complainant, where appropriate, and it shall give notice of the investigation to the person complained against. Not later than thirty days after receipt of a complaint under this section, or after the Commission decides to act on its own initiative, the Commission shall notify in writing the person who made the complaint and the person complained against of what action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Commission does not decide within thirty days of receipt of the complaint what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.

Commentary

Section 6 (a). Section 6 requires the Commission to investigate on the *sworn* complaint of any individual and sets up procedures under which the Commission is required to keep the complainant and the person complained against apprised of Commission actions and decisions with regard to the complaint until such time as final decisions are made. This provision is designed not only to ensure prompt action by the

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Commission, but also to make sure that the cases will not be buried or delayed for political reasons, or in order to avoid hard political choices. The time limits and procedures are particularly important in light of the three-year statute of limitations on criminal prosecutions (Section 21(c)) and civil actions (Section 24 (b)), and in light of provisions which allow for citizen action to sue for relief should the Commission fail to take action. The section also allows the Commission to initiate complaints on its own.

(b) When the Commission concludes that there is probable cause for believing that the law has been violated, it may hold a hearing to determine if such violation has occurred. The person complained against may choose whether the hearing shall be open or closed. At the hearing, the person complained against shall have all of the protections of due process consistent with the state administrative procedure act, including but not limited to the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. When the Commission determines that the preponderance of the evidence shows a violation has occurred, it shall issue an order to the violator to comply with any one or more of the following requirements:

(i) To cease and desist violation of this law;
(ii) To file any reports or other documents or information required by this law; or
(iii) To pay a penalty not to exceed $100 a day until the proper financial disclosure statements are filed.

Commentary

Section 6 (b). The Commission may not proceed to the hearing stage unless it concludes that there is "probable cause for believing that the law has been violated." Thus, it may not proceed on mere suspicion. Once it has found such probable cause it may hold a hearing to determine whether such a violation has indeed occurred.

The provisions for hearings allow the person complained against to choose whether the hearing shall be open to the public or not. Many states require that such hearings be open while others require that they be closed. The decision to allow a choice reflects a desire to keep a balance between the rights of persons who are drawn into situations without wrongdoing—such as individuals who may not be directly involved in the situation in question—and the rights of the public. Since the final determination made by the Commission will be a matter of public record, the public's right to know will ultimately be served in every case.

There are good and valid reasons why a person might choose to have a hearing closed to the public. There are cases in which the inquiry might involve delicate or confidential information about government plans, whose disclosure might be detrimental to the best interests of the government. Other such cases might involve disclosure of the assets of a minor or disclosure of a serious mental or physical illness of someone other than the involved official and which might interfere with that person's right to lead as normal a life as possible. If a determination is made to go to court, such information would become public, but in many situations cases will not progress that far and could be handled without damage to privacy or the public right to know by allowing the option of closed hearings.

For others, an open hearing may offer prompt public vindication and may be the more desirable alternative. While in some situations the protection of privacy is a desirable goal, it seems equally important to guarantee the personal right of an individual to a public hearing, particularly in situations in which a great deal of public speculation and inneundo already exists, when only full and prompt disclosure of facts may lead to public vindication.

This section also provides for the usual guarantees of due process at hearings, including the right to counsel, to call and examine witnesses, to subpoena evidence, and the right of cross-examination.

The Commission has the authority to impose a number of sanctions and restrictions administratively, without going to court, if it finds by a preponderance of the evidence that violation has occurred. It may issue cease and desist orders against a further violation of law, and it may order the violator to file reports or other documents as required by law. It may also order the violator to pay a penalty of not more than $100 a day until proper financial disclosure statements are filed. The issuance of any administrative order does not, however, preclude the Commission from referring a case to the Attorney General for criminal prosecution (cf. Section 6(c)), or from suing for injunctive relief or for civil penalties (cf. Section 22 (a)).

(c) The Commission shall refer to the Attorney General violations of the law which in its opinion merit prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the Commission all evidence collected in its investigation.

Commentary

Section 6 (c). Where the Commission finds by a preponderance of the evidence that a violation has occurred which, in its opinion, merits prosecution, the Commission may refer the case to the Attorney General for criminal prosecution. Under section 21 it must be shown for conviction that the violation was knowing or willful. Thus, the Commission is likely to find that a case merits prosecution when there is evidence of knowing or willful violation. Referral for prosecution does not preclude the Commission from issuing the order authorized in Section 6 (b) or from filing a civil suit pursuant to Section 22 (a).

In states where the Attorney General is not the chief prosecutor for the state, this provision should be adapted to mandate referral to the appropriate prosecutorial authority.

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(d) Any person directly involved or affected by a final action of the Commission within the meaning of the state administrative procedure act may seek judicial review of the action of the Commission other than of a determination to refer a violation to the Attorney General for prosecution.

Commentary

Section 6 (d). Subsection (d) gives any person "directly involved or affected by a final action of the Commission" the right to seek judicial relief of a final action of the Commission other than the determination to refer a violation to the Attorney General.

Thus, a right to seek judicial review is available only to final actions of the Commission, carrying out the usual requirement of administrative law that there must be an exhaustion of administrative remedies before a judicial review may be had.

It should be noted, too, that not only the person charged with a violation may seek judicial review, but other persons involved or affected by such final action may ask for review, too. For instance, if a person is ordered to file certain information and the filing of such information would have adverse consequences to a third person, such person adversely affected would also have a right to judicial review. This may become a matter of some significance in light of the broad financial disclosures required under the law.

(e) If judicial review is sought of any action of the Commission relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

Commentary

Section 6 (e) Subsection (e) provides for docket preferences, and allows the court to speed the resolution of matters relating to a pending election. A prompt resolution of such matters is desirable so that the matter will not unfairly become an election issue or otherwise taint the election.

Section 7. State Ethics Commission; Advisory Opinions.

The Commission may on its own motion issue opinions and interpretations of the law. Any person may request the Commission to issue an opinion with respect to his duties under this law in a given factual situation. The Commission shall, within thirty days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith relying on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, if the statement of facts and other data submitted as part of his request for an opinion and on which the opinion is based are complete and true. The Commission's opinions with such limited modifications as may be necessary to protect the privacy of individuals, other than public officials or candidates for public office, shall be public records and shall from time to time be published.

Commentary

Section 7. The power of the Commission to issue advisory opinions is intended to provide protection to persons who seek advance determination as to whether particular activities will violate the law. If such a person submits a true and complete statement of facts to the Commission, and if the person follows the Commission's opinion in good faith, then such a person will be protected against civil and criminal penalties which would arise from a different resolution of the issues.

By giving opinions on certain issues prospectively, the Commission may also ease its caseload and the number of cases which must go through time-consuming hearings. With this power the Commission can, with authority, clarify the application of the law in a variety of circumstances. The certainty of the application of the law is also sought to be advanced by the requirement that advisory opinions be published from time to time. When made public or published, names of individuals other than public officials and candidates for public office may be deleted or withheld to protect the privacy of persons who are not involved as officials or candidates.

In *Stein* v. *Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409, *app. dismissed* 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973), a provision of the Illinois Ethics Act was held unconstitutional because it authorized the Secretary of State to hire legal counsel and to render advisory legal opionions interpreting a legislative enactment, because that function properly belonged to the attorney general, the chief law officer of the state. Thus, states which follow the Illinois approach should delegate the advisory opinion function under this section to the attorney general. In *Dunphy* v. *Sheehan*, 549 P.2d 332 (Nev. 1976) the invalidation of the financial disclosure provision of the Nevada Ethics in Government Law was based in part on the ground that advisory opinions from the State Ethics Commission provided no insulation from criminal prosecution.

Section 8. State Ethics Commission; Modification of Reporting Requirements.

Upon application made in the form prescribed by the Commission, it may suspend or modify any of the requirements of Sections 9 and 10 of this law in a particular case, if it finds (a) that strict application of this Act works a manifestly unreasonable hardship, and (b) that such suspension or modification will not frustrate the purposes of the law. Any such suspension or modification shall limit the application of a requirement only to the extent necessary to relieve the hardship.

Commentary

Section 8. This provision gives the Commission flexible powers to suspend or modify financial disclosure requirements where warranted. This may obviate the

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criticism that financial disclosure requirements will discourage substantial and dedicated people from seeking public office or employment when required disclosures produce manifest hardship. Under the provision, it would be possible for the Commission to tailor difficult financial disclosure provisions to the particular requirements of the position held or sought, while providing sufficient information so as not to frustrate the purposes of the law relating to public disclosure.

Section 9. Financial Disclosure; Filing Requirements.

(a) On or before January 31 of each calendar year, each state official shall file with the Commission a financial disclosure statement. The statement shall cover the previous calendar year. The state official shall file the statement at the office of the Commission, or shall mail it by certified mail to the Commission prior to the time specified.

Commentary

Section 9 (a). Section 9 requires that all "state officials" as defined in Section 3 (g) file by January 31 of each year a financial disclosure statement covering the previous calendar year. It is the responsibility of each official to make sure that the Commission has received the statement by January 31 or that it has been mailed by certified mail by January 31. Certified mail is required to ensure timely mailing and to prevent violation of the time limit by using a back-dated postal meter. It is necessary that all state officials file financial disclosure forms because only in this manner can the legislative purposes of the law be carried out (see Section 2).

While the financial disclosure provisions as stated are limited to "state officials" and do not include "state emloyees," this does not indicate any disapproval of such inclusion. Financial disclosure provisions might well include employees in policy-making positions, particularly those who can authorize and make expenditures. Differences between states' employment provisions make it inadvisable to write state employees into a model provision. States are urged to consider including some state employees in disclosure requirements. It is advisable, however, to limit inclusion to employees who are actually in a position to benefit their own interests. Over-inclusiveness may become burdensome to the Commission in that the mass of filing may obscure violations rather than reveal them.

(b) A person who becomes a state official less than ten days before the filing date or who becomes a state official after the filing date shall file a financial disclosure statement for the previous twelve months no later than ten days after the date on which he assumes the duties of his office unless he has filed a financial disclosure statement with the Commission during the preceding twelve months.

Commentary

Section 9 (b). Since many appointments do not take effect until after the appointing authority takes office, or until another official's term of office is completed in mid-year, this section provides for a filing procedure for them. It also provides that officials who have filed during the previous 12 months need not file again, so as to avoid the burden of over-repetitive filings. It should be noted that this provides for filing the financial disclosure statement after taking office. This would not, however, prevent a confirming authority (usually the Senate) from requiring earlier filing as part of the confirmation proceedings and perhaps even as a pre-condition for confirmation consideration. The fact that many state-appointed offices may not require confirmation militates against the practicality of a general requirement of pre-appointment filing.

(c) [illegible] candidate for state office shall file a financial disclosure statement with the Commission for the previous twelve months no later than ten days after he becomes a candidate, unless he has filed a financial disclosure statement with the Commission during the previous twelve months. A candidate shall continue to file annual financial disclosure statements with the Commission until he ceases to be a candidate by reason of election, withdrawal or defeat. As used in this section, a candidate is a person who officially files as a candidate for office, or who publicly announces that he is running for office, or who authorizes the collection or disbursement of money for the promotion of his candidacy or election. The State Election Commission [or Secretary of State] shall promptly inform the State Ethics Commission when a person files as a candidate for office.

Commentary

Section 9 (c). This section requires candidates to file if they have not already done so in a given year and to continue filing so long as they are candidates. This section is intended to address the problem of public knowledge of the reportable finances and actual and potential conflicts of interest of the incumbent state official, and the lack of comparable knowledge of the reportable finances and potential conflicts of other candidates. The public has a right to know as much about the candidates as it knows about incumbents in order to make an informed choice.

The definition of *candidate* in this section is designed to correlate this section with Section 3 (c) of the *Model State Campaign Finance Law* (National Municipal League, 1979). The definition of the term "candidate" in both laws is similar but not identical. A person must have taken some positive action to become a candidate in order to be required to file financial disclosure statements. For purposes of the Campaign Finance Law, the fact that money is being collected with or without his permission or authorization for the promotion of his nomination or candidacy suffices to make him a candidate, though the positive assertion of his candidacy will also reach that result.

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(d) The Commission shall retain financial disclosure statements in its files for not less than ten years from the date of filing.

Commentary

Section 9 (d). This subsection puts a limit on the required retention of records, while providing that they be kept for ten years—long enough to facilitate efficient investigation should that be necessary.

Section 10. Financial Disclosure Statement; Contents.

The financial disclosure statement shall disclose the economic interest of the state official or candidate, and of all members of his household. The value of interests shall be indicated by category only. The categories are Category I, less than $5,000; Category II, $5,000-$24,999; Category III, $25,000-$99,999; and Category IV, $100,000 or more.

Commentary

Section 10. A key provision of the law is the requirement that public officials and candidates regularly disclose their holdings and earnings. The Model provides for disclosure by officials or candidates by categories rather than by actual specific amounts. Disclosure by categories represents an acceptable compromise between specific disclosure by amount and disclosure by source or type of property only. Disclosure by categories as in the Model produces significantly more information by which the public may judge the behavior of its public officials, as well as information for the Commission should investigation be called for. Among other things, it reflects any significant augmentation of reportable holdings and income. The lesser alternative is to list by sources and nature of holdings. This model would work without categorization by amount, but not as effectively.

However, if reporting by source is relied on, once a source reaches a reportable level, the income can become much greater or the value of a holding can be augmented substantially without triggering public or Commission awareness, except in the case of the acquisition of a controlling interest in a business, in which case its real estate holdings would have to be disclosed under Section 10 (d). Disclosure by categories, as in the Model, will facilitate the use of the information to call attention to major or potential conflicts of interest, or to indicate possible use of confidential information or use of public position for private financial gain, thus aiding the preventive purpose of the Act.

States which do not seek financial disclosure by category may use the Model without such categories by eliminating all references to them in Section 10, Section 10 (d), Section 10 (e), Section 10 (f), Section 10 (g) and Section 10 (h).

In addition, broader or narrower ranges may be used. The Model may be adapted to such changes so long as the threshold amounts referred to in the body of the law are keyed to the arrangement of the categories. The amounts shown in the Model were designed to be far enough apart to prevent accurate pinpointing of net worth of officials and candidates, but to provide an opportunity for the observation of substantial changes in holdings which may give rise to inquiry.

The statement shall include:

(a) The name, address, and public position held or sought by the state official or candidate, the names of all members of his household, and all names under which any of them do business.

Commentary

Section 10 (a). There is a substantial issue as to whether financial disclosure requirements should be limited to public officials, or whether members of the official's household should also be included. The Model resolves this issue in favor of the broader disclosure requirement, in view of the ease of concealment of questionable income or holdings by such methods as giving it or having it paid to the spouse, particularly in community property states, putting it in a revocable trust, or using some other device through which actual control is retained.

This provision covers only persons included in the definition of "member of household" (Section 3(e)). Thus, persons who share the official's legal residence, or relatives over whose financial affairs the public official has legal or actual control whether or not they share the same legal residence are included. In most cases, adult children or wards will probably not fall within the requirement. In cases where such disclosure would cause unusual problems, the Commission can make necessary modifications in the disclosure requirements under Section 8 without allowing circumvention of the disclosure law. For example, in a situation in which a member of the official's household is one of several beneficiaries of a trust where the official has neither control nor even knowledge of its holdings, and in which disclosure would necessarily make known the holdings of persons not covered by the act, the Commission could waive disclosure.

For discussion of the implications of the "member of household" definition, see Commentary on Section 3 (e).

Financial disclosure provisions have been upheld against a variety of constitutional challenges, including the alleged invalid delegation of legislative power; vagueness and overbreadth, thus violative of due process; denial of the equal protection of the law; unconstitutional conditions on right to public employment, invasion of privacy; invasion of employees' right to freedom of association and other first amendment rights; infringement of employees' rights to petition government for redress of grievances; e.g., *Alabama State Employees' Assoc. v. Dr. Wright, et. al.*, Circuit Court of Montgomery Co. (Ala.), Civil Action No. 39026, 1974; *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345 (1974); *Baty v. Bales*, Marin County Superior Court, No. 83978 (July 15, 1977); *Metropolitan Water District of Southern California v. FPPC*, 73 Cal. App. 3d 650 (1977); *Goldtrap v. Askew*, 334 So.2 20 (Fla. 1976); *Plante v. Gonzalez, Thomas v. Gonzalez*, 575 Fed. 2d 1119 (5th Ct. 1978), *cert. den.* — U.S. — 1979; *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409, *app. dismissed*, 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973); *Illinois State Employees' Association (I.S.E.A.) v. Walker*, 57 Ill. 2d 512, 315 N.W. 2d 9, *cert. denied* (with memorandum, Douglas, J.) sub. nom. *Troopers Lodge No. 41 v. Walker*,

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419 U.S. 1058, 95 S. Ct. 642, 42 L.Ed. 2d 656 (1974); *Klaus* v. *Minnesota State Ethics Commission*, 309 Minn. 430, 244 N.W.2d 672 (1976); *Kenny* v. *Byrne*, 144 N.J. Super. 243, 365 A.2d 211 (App. Div. 1976); *Evans* v. *Carey*, 53 A.D. 2d 109, 385 N.Y.S.2d 965 (1976), *aff'd*, 40 N.Y.2d 393, 359 N.E. 2d 983 (1976); *Fritz* v. *Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), *app. dismissed* 417 U.S. 902, 94 S. Ct. 2596, 41 L.Ed. 2d 208 (1974); *In Re Kading*, Wis. 2d 508, 235 N.W. 2d 409 (1975) (disclosure requirements under Judicial Code of Ethics). Decisions apparently to the contrary involved special and non-recurring situations, e.g., *Comer* v. *City of Mobile*, 337 So. 2d 742 (Ala. 1976) (law amending earlier state ethics legislation invalidated in part on such grounds as violation of prohibition of a special legislation in its effect on certain local governments; major provisions on disclosure upheld); *Alabama League of Municipalities* v. *Dr. Wright* (unconstitutional delegation of legislation in that state ethics commission was granted overly broad, and not legislatively defined, role asking power on ethical conduct and financial disclosure; also, violation of subject/title rule); *Dunphy* v. *Sheehan*, 549 P.2d 332 (Nev. 1976) (required disclosures limited to economic interests that would "materially affect" the official in the performance of his duties; held unconstitutionally vague, in that they failed to inform officials as to what conduct was proscribed); *Rapp* v. *Carey*, 44 N.Y. 2d 157 (1978) (Governor's executive order for financial disclosure inconsistent with earlier state law).

The inclusion of the economic interest of the spouse, children or other dependents was challenged and upheld in a number of cases, e.g., *County of Nevada* v. *MacMillen, supra; Baty* v. *Bales, supra; Illinois State Employees' Association* (I.S.E.A.) v. *Walker, supra, Havrilsky* v. *Byrne*, N.J. (1978); *In Re Kading, supra;*

(b) The occupations and principal places of business of the state official or candidate, and of all members of his household, indicating in each instance which person is associated with any particular business.

(c) The name of each business with which the state official or candidate or any member of his household was associated at any time during the filing year, indicating to which person it applies, and a brief description of the business or activity of each business entity, and the nature of the association of the state official or candidate or member of his household with each such business.

Commentary

Section 10 (b) and (c). These requirements primarily serve the purpose of identification, helping to connect individuals covered by the financial statement and their business interests.

(d) A listing of all interests of the state official or candidate and of all members of his household, in real property, excluding his principal residence, held by him at any time during the previous year and which had a fair market value exceeding $5,000. If he acquired or divested any such interest during the year, he shall disclose the transaction and the date it occurred. This listing shall include the street address or legal description of the property, and its value by category. An interest in real property for purposes of this section shall include property owned by any business in which the official or any member of his household owns a controlling interest.

Commentary

Section 10 (d). Inclusion in financial disclosure statement of direct and indirect interests in real property is particularly important because such interests provide many opportunities for conflict of interest violations. For instance, an official can use confidential information to buy real estate while the price is low, expecting its value to rise sharply when public announcement of state building plans is made. This has given rise to problems in areas surrounding highway development, specifically in the acquisition of land at premium prices for planned entrance and exit ramps. Another example involves the participation in decisions on the location of government buildings or other projects on or adjacent to land owned by the decision maker. A further example is the corrupt development of design specifications for a project to fit *only* the real estate the official owns, such as in the development of water resources and other similar uses for undeveloped land.

(e) A listing of all securities the state official or candidate or members of his household held at any time during the previous year and which at any time during the year had a fair market value of $5,000 or more, and their value by category for each such security. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (e). Persons required to file financial disclosure statements must list all securities having a fair market value of $5,000 or more which they or members of their household held at any time during the previous calendar year. In addition, acquisitions and divestments of such securities must also be shown, together with an indication of when they were acquired or disposed of. The $5,000 value of securities was chosen as a threshold because it would be considered by most a fairly substantial holding and because, particularly in closely held corporations, a person holding a $5,000 security interest may well be in the position to affect company decisions. Holdings of a lesser value than $5,000 are not considered to give their owner an interest which is likely to affect the business decisions. It is difficult to determine a value which is likely to give the owner of shares a sufficient interest to affect business decisions in all situations. Clearly, in a major, publicly held company a $5,000 share interest is not likely to be of

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The requirement that dates of acquisition and dates of divestiture be indicated serves the additional purpose of flagging what may be significant transactions having conflict of interest implications. The acquisition of shares in a company at a time when the official has regulatory responsibilities relating to the field of operations of the particular business would of course be a matter which would give rise to inquiry. An additional purpose of the requirements of detail in furnishing information relating to security holdings is a preventive one, in that a public official who knows that his acquisition and divestiture of securities is subject to scrutiny is less likely to acquire shares and other securities in companies and at times when these may point to conflict of interest situations.

(f) A listing of all bonds issued by the state or by any municipality, county or other political subdivision of the state regardless of value, held by the state official or candidate, or any member of his household at any time during the filing year, and their value by category. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (f) The section requires that all persons who must file financial disclosure statements must list holdings of all bonds issued by any state or local government regardless of value. As in the case of other securities, their value, time of acquisition and time of divestiture must also be shown. The requirement that state and municipal bonds be listed regardless of the value of the holding indicates the importance of the concern for potential conflicts of interest which officials may encounter who have an interest in state and municipal bonds. The value of state and municipal bonds is peculiarly affected by decisions made on the state level. This is the case especially in the instance of revenue bonds issued to support particular capital projects of the state or municipality.

(g) The name and address of each creditor to whom the state official or candidate or a member of his household owed a debt in excess of $1,000 at any time during the filing year, other than for a credit card or retail installment contract, and the rate of interest, listing each obligation to each creditor and the amount of each debt by category. If he or any member of his household incurred or discharged any such debt during such year, the transaction and date shall be shown.

Commentary

Section 10 (g). Persons required to file financial disclosure statements must list any debt in excess of $1,000 owed at any time during the filing year. This does not include credit card or retail installments which may be regarded as faily routine. Other debts. rate of interest and listing of each obligation to individual creditors and the amount of the debt must be listed, and the incurring or discharge of the debt during the year and the date of such transaction must also be shown. Note that all personal debts of the person who files, and of his household, must be included if they exceed the $1,000 threshold. The purpose of the provision is to forestall or at the very least to raise questions regarding debts which have been granted on a preferential basis, or where the interest rate shows that the borrower has been given an unusual preference or advantage, or that he has been given unusually favorable terms in situations which may well raise questions of conflicts of interest. The nature of the obligation may also provide useful information. In political life it is not at all unusual to make gifts by way of extending credit in instances where there is no intention that the loan be repaid, even though it will ostensibly have all of the characteristics and all of the formalities and legal instruments that normally show that a loan rather than gift was intended.

The $1,000 threshold is intended to cover loans of some significance. The figure may need adjustment from time to time to insure that the requirement includes only significant obligations.

(h) The name and address of any person or business that made payments or provided gross income exceeding $1,000, other than income received from securities reported in subsection 10(e), including the amount by category, to the state official or candidate or any member of his household, indicating the nature of the business or services for which such payment or income was received. A report shall be made under this subsection when the payment is to a business which pays, or which is under an obligation to pay, a prorated share to the state official or candidate exceeding $1,000. If such payments or income are for the rendition of medical or mental health services, the income shall be listed but the identity of individual patients need not be disclosed.

Commentary

Section 10 (h). The provision requires persons who file financial disclosure statements to include information on all payments made exceeding $1,000 during the reporting year to the person filing or to any member of his household, indicating the nature of the business or services for which the payment was made. The section expressly excludes payments of dividends earned on securities which are already covered in another provision. The disclosure requirement is of all payments regardless of whether these payments were made by an individual or by a business or corporate entity. The source of the payment must be disclosed unless such payment is for medical or mental health services. Included in the report are to be payments to a business which in turn is under an obligation to pay the state official a prorated share exceeding $1,000. The purpose of the provision is the disclosure of sources of income to the state official or candidate other than the public sources which pay his compensation as a state official. The requirement that the nature of the business or

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services for which payment was made must be disclosed is intended to prevent the gratuitous and potentially corrupt payment of moneys under the guise of payment for goods or services rendered. Under the provisions government officials who are involved in law practice for instance would have to indicate payments received from particular clients, but they would not have to disclose the exact nature of services rendered. It has been held that it is not a violation of the code of professional ethics to reveal the name of clients so long as the exact nature of the professional services is not disclosed. Legal requirements of a similar nature in other laws have not had any untoward effects on the practice of the professions and have not caused lawyers with outside interests to leave public employment.

A requirement that attorneys disclose the names of clients who paid a fee of $1,000 or more in the report year was upheld in *Hays v. Wood*, 79 Cal. App. 3d 354, modified 79 Cal. App. 3d 447, with the court indicating that the requirement of disclosing the client's name did not invade any recognized rights of privacy or legally recognized privilege. The California Political Reform Act of 1974 required attorneys and others, such as brokers, to disclose the names of clients who had paid $1,000 or more during the year. This the court found discriminatory, and held that lawyers and brokers would be bound only by the $10,000 disclosure rule applicable to other professionals under the law.

(i) The name and address of business or governmental clients or customers of any business in which the state official or candidate or a member of his household is an officer, director or partner or has an ownership interest of more than ________ percent, if the client or customer has paid an aggregate of $25,000 or more to the business during the filing year, but the full amounts of such fees need not be disclosed.

Commentary

Section 10 (i). The section covers the rather unusual situation of a state official, candidate or member of his household who is an officer or has a major ownership interest in a business to which a customer or client has paid an aggregate of $25,000 or more during the filing year. The disclosure required by this section affects only state officials with major business interests in situations where a major client or customer may affect the overall financial condition of the firm. The underlying assumption is that where a government official also has a major interest in a business he is likely to value important customers and clients, and that this may in turn influence his judgment in carrying out his official duties. There is a particular risk of this in instances where a number of important clients or customers may have similar interests in certain government decisions. So, for instance, a law firm which represents a number of banks or insurance companies or which represents a number of mining operations may well have a particular point of view with respect to the law which applies to these regulated interests. The disclosure of the relationship of the public official to certain regulated industries puts the matter on the public record and may thus be useful in preventing undue influence.

An effort has been made to make this provision no more burdensome than necessary. The only disclosure that is required is the name of the client or customer who has paid an aggregate of $25,000 or more during the filing year. The exact amount paid need not be disclosed, and there is no requirement that the amount paid be disclosed by category. It should be noted that professional or trade directories frequently list the important clients of law firms or the most important trade connections of the firm. Except in the case of very large firms or businesses, it is unlikely that an officer, director, partner, or part owner will be unaware of the existence of such important clients or customers. It may well be that the $25,000 threshold is too low to be of significance in the case of large companies. In that event, this may be an appropriate situation for a petition to the Commission for a modification of the requirement under Section 8 of the law.

(i) A list of all gifts received which exceed ________ dollars in value from persons other than relatives or a person to whom the state official or candidate is engaged or intends to marry. As used in this section, the term "gifts" does not include campaign contributions, but shall have the same meaning as in Section 18.

Commentary

Section 10 (i). The section requires financial disclosure of valuable gifts, exempting only defined categories of gifts among family members or among persons who expect to marry. The section makes the assumption that large gifts received by a public official or candidate from persons other than family members may at least be subject to some explanation. The section expressly exempts campaign contributions which have been properly defined in Section 3(e) of the *Model State Campaign Finance Law*. The matter of the acceptance of gifts by state officials or state employees is dealt with in considerable detail in Section 18 of this law. Thus, the present section may be viewed as a regulatory mechanism to see that Section 18 is properly complied with.

Section 11. Conflicts of Interest; Prohibitions.

(a) No state official or state employee shall use his public office for private advancement or gain.

Commentary

Section 11 (a). Section 11 contains a number of specific prohibitions that deal with recurring problems involving conflicts of interest. Section 11 (a) is a general prohibition on the use of public office for private advancement or gain. The subsection is intentionally broad because it is intended to cover the variety of situations which may not be expressly covered by more specific prohibitions. One such example of the use of public office for private gain is the situation of a state official who uses his official position to place state funds in a bank in order to obtain favorable action from the bank on a personal loan application.

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(b) A state official or state employee shall not represent or otherwise assist any person or business before any state agency or before any agency of any political subdivision of the state for contingent compensation in any transaction involving the state or any political subdivision.

Commentary

Section 11 (b). The section prohibits state officials or employees from representing or assisting any person or business before any agency of the state or any of its political subdivisions for a contingent compensation. The agreement to pay compensation contingent on the success of the assistance of representation adds a special inducement to the use of undue influence to get a desired result. Note that this section does not address the question of state officials or employees who represent others before agencies for compensation other than contingent compensation, such as on a regular fee basis. Such representation is permitted except as restricted by other provisions of this Act, and especially subsections (c), (d) and (e) of this section.

(c) A state official or state employee shall not represent or otherwise assist any person or business for a fee or other compensation to secure passage of a bill or to obtain a contract, or payment of a claim, or in any other transaction or proposal if he has participated, will participate, or is likely to participate as an official or employee in the disposition of the matter.

(d) A state official or state employee shall not represent or otherwise assist any person or business before a state agency on any bill, contract, claim or other transaction or proposal involving official action by the agency if he has official authority over that state agency or is an official or employee of that agency.

(e) This section shall not apply to elected members of the state legislature who shall be governed by Section 12 of this Act.

Commentary

Section 11 (c) and (d). These subsections prohibit state officials or employees from representing others for a fee or other consideration in matters in which they have been involved in their work for the state. Subsection (c) deals with the situation of a state official or state employee who represents another in a situation where such official or state employee participates in or is likely to participate in the disposition of the matter. Such matters as passage of a bill, obtaining a contract, or the payment of a claim are covered transactions. Subsection (d) deals more generally with a state official or state employee who represents or assists another before a state agency on any bill, contract, claim or other transaction if such state official or employee has official authority over that state agency or is an official or employee of that agency. The situations covered involve some classic and recurring conflict of interest problems, and are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise of benefit. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

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(c) Any violation of this Act by a member of the state legislature shall be subject to the sanctions of this Act to the fullest extent possible under the provisions of the state constitution. Any violation not subject to the sanctions of this Act by reason of the state constitution shall be subject to such sanctions as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act by members of the state legislature are to be subject to the sanctions of the Act insofar as such sanctions may be applied consistent with the provisions of the state constitution. In a number of states the constitutional protection granted legislators for actions on the floor of the respective houses of the legislature extends beyond matters of voting and free speech and may be inconsistent with the enforcement of certain conflict of interest provisions under this law. To the extent that some of the conflict of interest provisions under this law may not be applicable to state legislators under the constitution, the Act relegates those violations to sanctions imposed by the legislature itself. Thus, for example, if the Commission may not penalize a legislator for failing to disclose a conflict of interest prior to voting as required by Section 17, the legislature is obligated to proceed against its members when the commission cannot by reason of constitutional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shall not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

(i) The contract is let by competitive bidding or involves not more than $150 (One Hundred and Fifty Dollars);

(ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.

(b) In the absence of bribery or a purpose to defraud, a state official or state employee, or a member of his household, shall not be considered as having an interest in a public contract or the investment of public funds when such a person has a limited interest as a shareholder or creditor of the business which is the contractor on the public contract involved or which is the issuer of the security in which public funds are invested. A limited interest for purposes of this section is an interest not exceeding 5 percent of the outstanding shares of a corporation or an interest as a creditor not exceeding 5 percent of the total indebtedness of a corporation or other organization, unless it is a corporation whose shares are traded on a public exchange, in which case the Commission may set lower limits. A person claiming such a limited interest shall file with the State Ethics Commission and the governmental agency an affidavit describing his status in and connection with the corporation or other business, before such public contract is entered into.

Commentary

Section 13. Section 13 places management restrictions on business dealings between state officials or employees and the state. It prohibits outright self-dealing but it relieves the state of the burden of limiting its business transactions to companies in which no state official or employee has even a minute or indirect interest. In instances where a state official or employee has such a minor interest in a business that deals with the state the section provides that the state official or employee may take no part in the deliberations and decisions relating to such dealings, and that the persons and businesses involved in such situations be aware of the relationship and take appropriate steps to disclose the same to the commission. The purpose of the section is not only to prohibit outright self-dealing but also to prevent even the appearance of conflict to the fullest extent possible.

The purpose of preventing self-dealing might best be served by an outright and complete ban, but such a ban is not likely to serve the public interest because it is unfeasible and unmanageable.

The prohibition against self-dealing allows for certain exceptions. The exception in subsection (a) is for contracts let by competitive bidding, or where the amount involved is $150 or less where the contract is let for necessary materials at the best available price, as part of a continuing course of dealing established prior to the time the state official or employee became associated with a governmental agency. Further conditions require the arrangement to be at arm's length and that the state official or employee disclose his interest to the agency. Both the small amount involved and the conditions imposed assure that no significant instances of self-dealing will be permitted under this subsection.

Subsection (b) allows public contract or the investment of public funds with businesses in which a state official or state employee has a demonstrably limited interest. Such a limited interest may be a shareholder's interest or a creditor's interest where the shareholder's interest does not exceed 5 percent of the outstanding shares of the business and where the interest of the creditor does not exceed 5 percent of the total indebtedness of the business. In the instance of publicly held companies whose shares are traded on a public exchange, a 5 percent share interest or a 5 percent

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Section 14. Conflicts of Interest; Employment.

(a) No state official and no state employee shall seek employment with, or allow himself to be employed by, any business which is or may be regulated by a department or agency which he serves. The term employment within the meaning of this section includes professional services and other services rendered by the state official or state employee whether rendered as an employee or as an independent contractor.

(b) No business shall employ a state official or state employee if the employment violates subsection (a) of this section.

Commentary

Section 14. This section prohibits a state official or employee from seeking or accepting employment from a business regulated by his agency. For purposes of this prohibition the term employment is broadly defined to include professional services and other services that may be rendered either as an employee or as an independent contractor. Subsection (b) poses a correlative prohibition on businesses. They are prohibited from employing state officials or state employees if such state officials or employees are prohibited from accepting such employment under this section, thus the business and the employee would become equally guilty of violating the law.

Section 15. Conflicts of Interest; Avoidance.

No state official or state employee shall acquire any financial interest, including, but not limited to, interest in a business, real property, or in a contractual relationship, when he believes or has reason to believe that it will be directly and immediately affected by his official action or the action of the government department or agency which he serves.

Commentary

Section 15. The section prohibits the acquisition by any state official or employee of any financial interest which he believes or has reason to believe will put him in a conflict of interest situation. It is clearly contemplated by the section that any employee who finds that he has acquired such a financial interest divest himself of the same as promptly as possible.

Section 16. Conflicts of Interest; Reporting.

(a) A state official or state employee, other than a legislator, who is required to take any action or make any decision in the discharge of his official duties that may cause financial benefit or detriment to him, to a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the Commission and to his immediate superior, if any, who shall assign the matter to another, or, if he has no immediate superior, he shall take such steps as the Commission shall prescribe or advise to remove himself from influence over actions and decisions on the matter. This restriction shall not prevent such person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made, but in such event the person shall report the occurrence to the Commission.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the state official or state employee is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 16. When a state official or employee finds himself faced by a conflict of interest as defined in the section he must prepare a written statement describing the situation and he must deliver a copy of the statement to the State Ethics Commission and to his immediate superior in the agency. The state official or employee must then also disengage himself from participation in the matter so far as legally permissible. His superior is under an obligation to assign the matter to another person for determination or decision, and if the official or employee has no direct superior, he must follow the advice of the Ethics Commission in removing himself from a decision-making role. In some instances the law may require that certain decisions be made by designated officials. In such an event, where the determination cannot be delegated to another, the needs of government shall be met in that the particular official or employee shall make the legally required decision, but he must report the matter to the ethics commission. The section provides that a state official or employee cannot close his eyes to the existence of a conflict of interest situation. The obligation to report and to disqualify himself arises as soon as he is aware of the conflict, or as soon as he should reasonably be aware of such conflict.

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reports the matter to the State Ethics Commission as required by law and who thereafter follows the direction of the Commission would be protected from any subsequently asserted liability.

Section 17. Conflicts of Interest; Member of State Legislature; Reporting.

(a) A member of the Legislature who is required to take an action in the discharge of his official duties that may cause financial benefit or detriment to him, a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public shall:

(i) Prepare a written statement describing the matter requiring action and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the clerk of the house of the legislature for inclusion in the official legislative record and to the Speaker of the House or [Assembly] or the President Pro Tempore of the Senate as appropriate [and to the Commission.]. He may request permission to abstain from voting on the issue and such legislative officers may grant the request. Nothing in this section shall be construed to prohibit any legislator from voting on any matter that comes before his house of the legislature.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the member of the legislature is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 17. Section 17 imposes disclosure requirements on legislators who find themselves in a situation of conflict of interest. Section 16, which deals with conflicts of interest of state officials and state employees other than legislators, requires them to disqualify themselves from official action in conflict situations, except insofar as they may be required to act by reason of the legal responsibilities of their position. Unlike other state officials, legislators are not required to disqualify themselves, but they are required under section 17 to disclose their conflict and to put it on the legislative record. Disqualification of state legislators is not required because to require them to disqualify themselves would deprive their constituents of representation. To require legislator to disqualify himself, and in effect to prohibit him from voting when he find himself in a conflict of interest, or to penalize him for voting in such a situation, would probably be an unconstitutional interference with the legislative process. The right of the legislature to be the sole judge of the conduct of its members on the floor is virtually absolute. However, a legislator who finds himself in a conflict of interest is encouraged to request permission to abstain from voting on the particular issue and the presiding officer of the particular house may grant the request. It is clear that the effectiveness of Section 17 in dealing with legislative conflicts of interest will depend largely on the seriousness of the legislature in its enforcement. In this area it is likely that efforts by the State Ethics Commission to seek enforcement of the law will meet with constitutional objections based on the principle of the separation of powers.

Section 18. State Officials or Employees; Making and Acceptance of Gifts.

(a) No state official or state employee shall solicit, accept or agree to accept any gift, including economic opportunity, loan (other than from a regular lending institution on terms generally available for such loans), gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from any person, except from members of his family or from a person whom he plans to marry. This section shall not, however, operate to prevent the acceptance by a state official or state employee of reimbursement for expenses which are expressly provided for or permitted by law.

(b) No person or business shall offer or make any gift which a state official or employee is prohibited from accepting pursuant to subsection (a) of this section.

Commentary

Section 18. Section 18 prohibits any state official or employee from accepting any gift in excess of $100 from persons other than his family or a person whom such official or employee plans to marry. Earlier formulation of state ethics laws prohibited officials from accepting gifts from persons one might "reasonably" expect to have an interest in some matter over which such official's agency had authority. In this earlier formulation there was the recurring risk that the law would be declared unconstitutional, as void for vagueness. The firm dollar limit eliminates the problem of what is a reasonable gift, and it also eliminates the problem of determining when a gift is made because it is reasonably expected to have some impact on the official's actions. The section assumes that gifts other than from relatives or future spouses in excess of the limit are questionable in purpose and resolves the issue by prohibiting such gifts altogether. The dollar limit on gift giving may have to be adjusted from time to time to reflect inflationary changes. Subsection (b) of Section 18 makes the giver or offerer of an illegal gift equally liable with the official who accepts it.

Section 19. State Officials or Employees; Disclosure of Information.

No state official or state employee shall disclose or use confidential information or information not available to members of the general public for

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his personal gain or benefit or for the personal gain or benefit of any other person or business if he has obtained such information through his official position. The restriction on the use of information shall continue for two years after he ends his term of office or leaves government service or employment, and shall supersede any other less restrictive requirements of confidentiality that may be applicable.

Commentary

Section 19. Section 19 prohibits the use of confidential information for financial gain. The use of confidential information has long been a common and serious abuse of public trust and one which, because of its nature, was particularly difficult to prove. Financial disclosure requirements make certain gross abuses easier to trace. However, when confidential information is not used by the official himself but is given to friends or business associates, tracing it may still be difficult. The abuse of confidential information gained through official position both during and after public service has been the frequent subject of public investigations, particularly as "government in the sunshine" laws diminish the amount of truly confidential information and makes it easier to trace its leakage. Note that Section 19 restricts the use of information gained in consequence of official position for two years after the term of office is concluded or government service or employment is ended. This two-year limitation supersedes other less restrictive requirements which are commonly scattered throughout the law with a variety of requirements applicable to different agencies.

Section 20. State Officials or Employees: Limitation on Representation.

(a) No former state official or former state employee shall for a period of two years following the end of his term of office or the termination of his state service or employment assist another person or business whether or not for compensation, in any transaction, or in any appearance in connection with any transaction involving the state or any of its agencies or subdivisions in which such former state official or former state employee participated during his term of office or employment.

(b) No business in which a former state official or former state employee is a partner or member, or, in the case of a professional corporation, a shareholder, and no employee of such business, shall, for a period of two years following the termination of his term of office or employment, assist another person in any appearance or transaction involving the state or any of its agencies or subdivisions in which the former state official or former state employee participated during his term of office or state employment. For purposes of this section, the termination of employment of the former state official or former state employee with the agency which he served when he so participated shall be deemed to be the termination of his state employment.

(c) Nothing contained in this Act shall prohibit a former state official or former state employee from being retained or employed by the department or state public agency which he served.

Commentary

Section 20. Section 20 deals with the recurring problem of state officials and employees who leave public employment to work in the private sector, who are then able to use confidential information and the previous close contacts gained in public employment for the advantage of their private employer's customers or clients. The problem of the "revolving door" in public service is a recurring and serious one. While abuses in the use of special contacts and special information gained during public employment must be curbed, it is constitutionally unacceptable to place undue job restrictions on public officials and public employees after they leave public service. Moreover, it would be a disservice to the public interest to limit employment opportunities of former government officials and employees unduly because it would discourage highly qualified and expert persons from entering government service for fear of unduly limiting their future employment opportunities.

Section 20 seeks to resolve these competing considerations by drawing a balance which results in reasonable limits. Under subsection (a) a former state official or employee is barred for a period of two years following the end of his official service from assisting or appearing on behalf of any other person or business in connection with any transaction in which such official participated during his term of office or employment. Subsection (b) applies a similar limitation to any business or person associated with such business in which such a former state official or state employee is a partner or member, or in a professional corporation, a shareholder. It should be noted that only those matters with which the former state official or employee had any direct connection are out of bounds. It may be of particular significance to law firms and similar professional undertakings that all appearances, including those before the agency of the former official or employee, on matters that were not his responsibility are permitted. The narrow range of prohibitions is intended to limit the adverse impact which such limitations would have on highly qualified professionals who might otherwise avoid entering government service. At the same time the section also protects businesses from a form of undue pressure or blackmail by state officials or employees who may condition favorable government action on advantageous private job offers.

Section 21. Criminal Prosecution; Penalties.

(a) A person who knowingly or willfully violates any provision of this Act other than a requirement of financial disclosure pursuant to Sections 9 and 10 of this Act is guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine not to exceed $10,000.

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Penalties.

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Commentary

Section 21(a). Section 21 separately provides for convictions which involve violation of the conflict of interest provision of the law and violation of the financial disclosure requirements. Knowing and willful violation of the conflict of interest provisions is a misdemeanor and the penalty is a fine of not more than $10,000, imprisonment for not more than one year, or both. Many jurisdictions treat the violation of conflict of interest provisions as a felony. However, it has been a common experience that white collar crimes, which generally do not involve any violence or threat of violence, are treated lightly by juries and that juries are less likely to convict when the violation is treated as felony subject to many years of imprisonment. Thus, designating knowing and willful violation as misdemeanors is more likely to result in convictions. It should be noted, moreover, that in many instances it is likely that more than one offense of conflict of interest will be charged. Thus, in egregious cases, consecutive one-year terms for different counts or violations are not unlikely.

(b) A person who knowingly or willfully violates any financial disclosure requirements of Section 9 or 10 of this Act is guilty of a misdemeanor, punishable by a fine of not more than $10,000 or three times the amount or value of the interest or interests the person failed to report, whichever is greater.

Commentary

Section 21(b). The violation of financial disclosure requirements under the law is treated as a misdemeanor. Unlike violations of conflict of interest provisions this misdemeanor is not punishable by a jail term but only by a fine. In effect, the violation of a financial disclosure requirement is regarded as a primarily economic offense; consequently, the penalty provided is primarily economic in nature. For the conviction of failure to make required financial disclosures the penalty is three times the amount or value of items not reported. Thus, when there has been a gross failure to meet financial disclosure requirements, penalties may be greatly in excess of $10,000.

(c) The Attorney General shall commence prosecution for violation of this Act no later than three years after the date of violation.

Commentary

Section 21(c). A three-year statute of limitations for violations of the *Model State Conflict of Interest and Financial Disclosure Law* is intended to provide sufficient time for the discovery and careful investigation and case preparation of violations which in many instances may involve complex financial dealings. While some states allow for longer statutes of limitations in laws of this nature, the three-year statute of limitations is intended to require diligent prosecution efforts when violations have been discovered. A three-year statute of limitations is also subject to less abuse for political purposes and for purposes of influencing the outcome of elections.

(d) A person convicted of a misdemeanor under this Act shall not be a candidate for any elective office or be eligible for any appointive office or act as a paid lobbyist for a period of four years following the date of the conviction, unless the court at the time of sentencing reduces the period or determines that this provision shall not be applicable. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Act.

Commentary

Section 21 (d). As an additional sanction, Subsection (d) provides that a convicted official or employee may not become a candidate for public office, or become eligible for appointive office, or be a paid lobbyist for four years unless the court relieves him from the effects of this provision at the time of sentencing. Removal from office as a sanction for conviction of violation of law is a justifiable penalty, and it is recommended that Section 21 (d) also provide for removal from office in states where such a provision is constitutionally permissible. It is not constitutionally permissible in all states for all public officials, because the constitution may limit removal from office to certain offenses or may require certain constitutionally prescribed procedures.

Section 22. Civil Action; Injunctive Relief; Civil Penalties.

(a) The Commission may sue in the ______ Court for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, and for the collection of civil penalties.

Commentary

Section 22. Section 22 authorizes the Commission to bring civil actions for two purposes. First, to secure injunctions against violation of the Act, or to compel compliance with its provisions and, second, to sue for the collection of civil penalties under the Act.

The injunctive process is a useful and necessary procedure to deal with situations that involve conflicts of interest before they have done irreversible damage. Such damage may involve not only public confidence in government but also the expenditure of substantial public funds in reliance on administrative decisions or other government action based on a process that was tainted by the private interest of the decision maker. The injunctive process has the advantage of a prospective, preventive procedure that can deal with imminent risks in a timely fashion, unlike criminal prosecution for violation of the Act which generally deals with violation after the harm is done, and which takes a lengthy course of preparation, and evidence to convict beyond a reasonable doubt. The effectiveness of the injunctive procedure is enhanced by the availability of the power of the court to hold the violator in contempt if he fails to obey the court's injunctive order. Such contempt powers are exercised by the court subject to the applicable provisions of state law.

It is likely that the power to enjoin violations of the law will usually be exercised after

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Relief; Civil Penalties.

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the violator has failed to obey the State Ethics Commission's own administrative order to cease his violation.

The Commission's right to sue for civil penalties is discussed in connection with Subsection 22 (d).

(b) Upon a preliminary showing in an action brought by the Commission that a violation of the law has occurred that involves a conflict of interest or a disqualification for official action, the court may restrain the execution of any official action in relation to which such violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that in the absence of such conflict of interest the official action might not have been taken or approved, the court may set the official action aside as void. The term official action as used in this subsection includes, but is not limited to, executive and administrative action, such as orders, permits, resolutions and contracts, but does not include the enactment of state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury to members of the public who rely on the official action in good faith.

Commentary

Section 22 (b). In addition to the power of the State Ethics Commission to seek an injunction against a violation of the ethics law under Subsection 22(a), this subsection allows the court, in an injunctive proceeding brought by the Commission, to restrain the official action alleged to be tainted. The Commission may obtain a temporary restraining order against such government action after a preliminary showing that a violation of the law has occurred. Such a preliminary restraining order will hold all further government action in relation to which the violation has occurred until the issue of the existence of the alleged violation has been determined. When it is determined that there has been a violation, the court may void the tainted government decision or action. The court, however, is not required to grant such temporary or permanent relief, but must give due weight to the detrimental effect such an order may have on members of the public who rely on the official action, in good faith. A number of instances of such good faith reliance may be suggested—such as employees whose jobs may be lost when their company's contract is voided, or the residents of a particular area who may lose the benefit of some public works project, be it a housing project, a public transportation project, or a flood control project, as a result of the voidance of the particular government action.

(c) Any person who violates any of the reporting requirements of this Act is liable to the state for a civil penalty in an amount not exceeding the value of the interest not properly reported.

Commentary

Section 22(c). This subsection allows a civil action for the collection of a civil penalty for the violation of the reporting requirements of the Act, in an amount not exceeding the value of the interest not properly reported in the financial disclosure statement. Note that this civil penalty is limited to violations of reporting requirements, and that, unlike the criminal fine for the same violation, the penalty may be collected regardless of whether the violation was knowing and willful. The civil penalty, as in other civil suits, may be imposed on the basis of the fair preponderance of the evidence of violation. For additional discussion of the imposition of civil penalties see Commentary in Section 24.

(d) Any state official or state employee who realizes an economic benefit as a result of violation of the conflict of interest provisions of Sections 11 to 20, is liable to the state for a civil penalty in an amount not exceeding three times the amount or value of the benefit.

Commentary

Section 22 (d). This subsection allows a civil action for the collection of a penalty for the violation of the conflict of interest provisions of Sections 11 to 20 in an amount not exceeding three times the amount of the benefit derived from the violation (such as the use of official information for private benefit, or the benefit from government contracts improperly obtained). The provision does not require proof beyond a reasonable doubt or proof of knowing and willful violation. The section treats the violation as a civil, economic or administrative offense, for which an economic penalty is imposed that stands in direct relationship to the economic benefit gained from the violation.

(e) If two or more persons are responsible for any violation, each of them is liable to the state for the full amount of the civil penalty, and a separate civil penalty for the full amount may be imposed on, and collected from, each of them individually.

Commentary

Section 22 (e). This subsection provides for separate civil causes of action against each person civilly liable under the provision of the Act. Civil penalties, therefore, are not to be divided among the persons responsible in cases where more than one person bears responsibility, but each person is liable independently for the full amount of the penalty.

Section 23. Citizen Action.

Any resident of the state may file a written request with the Commission ry

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that the Commission commence action for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, or for the collection of civil penalties. The request shall state the grounds for belief that a cause of action exists. The Commission shall respond no later than forty days after the receipt of the request, indicating whether it intends to file a civil action. If the response is affirmative, and suit is commenced within fifty days thereafter, no other action may be brought unless the action brought by the Commission is dismissed without prejudice as provided for in subsection 24 (c). If the Commission fails to reply or to take any action, the resident may proceed with the action in the same manner and to the same extent as is provided for civil actions by the Commission pursuant to Section 22 of this Act.

Commentary

Section 23. This section follows the trend, which began in the sixties, to give standing to private citizens to engage in litigation to vindicate the public interest. In areas of the law where there is a great concern that powerful groups within and outside the government may prevent others from carrying out the law to the fullest, private citizens may bring lawsuits not to protect narrow personal interests but rather broad public ones. Citizens acting in this manner have sometimes been referred to as "private attorneys general," and the public interest litigation they have engaged in in such areas as civil rights, consumer protection, environmental protection, has added greatly to compliance with the law.

As in other areas of citizen action, the purpose is not to oust the government from jurisdiction, but rather to encourage government assumption of its duties. Moreover, it should be noted that citizen action is limited to civil action and plays no direct part in criminal prosecution. Great care is taken in Section 23 to assume that citizen action will not interfere with, but will rather enhance public enforcement activities. Thus, citizen action can only be brought if the Ethics Commission has failed to respond to a request to take action, or having responded to the request, has failed to proceed promptly. Once the Commission has begun its own civil suit, no citizen action may be brought, unless the Commission's action is dismissed without prejudice. The kind of action the citizen may bring is like the Commission's authorized actions—either for injunctive or for civil penalties. The purpose of the section is to give private citizens the opportunity of closely reviewing government action or inaction, without objectionable interference in the government's primary sphere. In the case of this model state ethics law, it is expected that in most instances the law would work to stimulate the Commission to take enforcement steps on its own.

Section 24. Civil Action; Generally.

(a) In any civil action brought under Section 22 or 23 of this Act:

(i) The court may award court costs and reasonable attorney's fees to the prevailing party;

(ii) The court in determining the amount of civil liability under subsections (c) and (d) of Section 22 may take into account the seriousness of the violation and the degree of culpability of the defendant;

(iii) The court, on motion of any party, may require the defendant or a private plaintiff at any stage of the proceedings to post a bond in a reasonable amount sufficient to assure payment of costs and attorney's fees.

(b) No action shall be filed under Sections 22 and 23 more than three years after the occurrence of the violation complained of.

Commentary

Section 24(a) and (b). The provisions of this section are applicable to all civil actions brought under this law, whether by the Commission under Section 22, or as a citizen action under Section 23 In all such civil actions, the court may award court costs and attorneys fees to the winning party, and it may also require the posting of bond by defendants and by citizen plaintiff, to secure the payment of costs and attorneys fees. This is a device to discourage frivolous lawsuits. In addition, the section sets forth the considerations the court may take into account in setting the amount of the civil penalty.

A three-year statute of limitations on civil actions, which parallels the statute for criminal prosecution is Section 21(c), is provided for.

(c) The court may dismiss an action under Section 22 or 23 without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the Commission or any other plaintiff who intends to bring an action based on the same violation.

Commentary

Section 24(c) The subsection authorizes the court to dismiss a civil action, whether brought by the Commission or by a private citizen, for failure to proceed diligently and in good faith. The subsection meets several needs. It prevents an action from being dragged out unnecessarily. Such protracted delay, which reflects a failure to pursue the matter diligently, gives evidence of lack of good faith. Delays in litigation have the result of damaging the defendant's reputation, and, where a particular business contract or activity has been suspended, it may damage other, tangible, interests as well. Delay intended to defeat the full pursuit of the matter may be dealt with by dismissing the action "without prejudice," which has the result of allowing some other party—most probably a private citizen plaintiff—to start a new lawsuit and carry the matter to a completion, so long as the three-year statute of limitations has not run out at the time the new action is commenced.

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(d) Any civil penalties imposed under Section 22 or 23 shall be paid into the general fund of the state.

Commentary

Section 24 (d). Civil penalties, whether collected in a civil action brought by the Commission or by a private citizen, must be paid into the general fund of the state. This also demonstrates the public interest nature of citizen actions, because the plaintiff does not derive any personal benefit from the successful outcome of the suit.

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(e) The commencement or conclusion of a criminal prosecution for violations shall not bar a civil action under Section 22 or 23, nor shall a civil action be a bar to criminal prosecution for violation of this Act.

Commentary

Section 24 (e). The subsection expressly provides that civil and criminal proceedings and sanctions are not mutually exclusive. The purpose of a criminal prosecution is to prove a criminal violation beyond a reasonable doubt, and to impose a criminal penalty that will, because of its punitive nature, exert a deterrent effect. The civil sanction is based on a civil proceeding that does not impose the stigma of criminality on the violator. A civil violation may, therefore, be proved by a fair preponderance of the evidence. While the civil sanction may be economically onerous, it is nonetheless not intended to be punitive, but rather compensatory and restitutional in scope, in that it is designed to have the violator pay back to the public the economic cost of his violation. In view of the different modes of proof, the different procedural requirements and the different measures for, and purposes of, the sanctions imposed, the two procedures may stand separately, and no question of double jeopardy arises. The existence of two possible procedures to deal with violation allows the Commission a wide range of choices of civil and criminal sanctions, depending on the nature of the violation and the nature of the available evidence. The constitutionality of civil and criminal sanctions for violation growing out of the same set of circumstances has been upheld by the U.S. Supreme Court.

The distinction between criminal prosecution and civil penalty action was drawn authoritatively in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 2d 644 (1963). The distinction has been applied in numerous cases where both criminal and civil sanctions were available, e.g., *United States v. Ashland Oil & Transp. Co.*, 364 F.Supp. 349 (W.D. Ky. 1973); *United States v. General Motors Corp.*, 403 F.Supp. 1151 (D.Conn. 1975).

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Section 25. Violations; Employment Discipline.

Any state employee who violates a provision of the law is subject to discipline, including dismissal, by his agency, consistent with any applicable civil service or other personnel laws, regulations and procedures.

Commentary

Section 25. This section adds another sanction to the array that may be imposed for violation of the law. A violation of this Act is clearly a breach of employment discipline in the case of state employees and may be treated accordingly.

Section 26. Severability.

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Effective Date.

This law shall become effective on ________.

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*Resigned on leaving the commission

Alaska State Legislature
Senate

JUNEAU, ALASKA

M E M O R A N D U M

Date: 1/24/81

To: Senate President Jalmar Kerttula

From: Senator Vic Fischer

Re: Ethics, etc. legislation

I am currently having a bill drafted on ethics, conflict of interest, financial disclosure, etc., applicable to state officials and employees. I'm also interested in issues of campaign financing.

I will greatly appreciate your referring bills dealing with these topics to the State Affairs Committee.

Thanks.

Vic

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December 8, 1980

Mr. Vic Fischer
211 East Seventh Avenue No. 204
Anchorage, Alaska 99501

Dear Vic:

I was particularly disappointed that you couldn't get to New York, but distressed about your accident. John Bebout filled me in. Campaigning is dangerous business.

We are quite pleased with our two "ethics" models. Both are enclosed. If you have any questions on either "conflict of interests" or "campaign finance" contact Page Bigelow of our staff.

Legislating "clean" elections is something else. We wouldn't attempt a model because we aren't sure that anything can be done about this that will pass muster constitutionally. The clipping from the NY TIMES and attached materials tell the story.

We enjoyed having Guy Van Doren with us here in NYC and also at the Conference. We want to be helpful in every possible way. Incidentally, please send me a copy of your report on the Hawaii Convention. It sounds like it should be pubslihed is NCR. We will keep in touch.

AND NOW. CONGRATULATIONS TO YOU AND YOUR DISTRICT!! Best wishes!!

Sincerely yours,

Bill

William N. Cassella, Jr.
Executive Director

WNC/gm
Enclosures

Carl H. Pforzheimer Building, 47 East 68th Street, New York, N. Y. 10021
Telephone: (212) 535-5700

Vic Fischer
State Senate
221 East Seventh Avenue No. 204/Anchorage, Alaska 99501/(907) 276-0621

November 16, 1980 CASSELLA

Dear Bill ---

I trust this finds you semi-recuperated after your convention. I'll be interested how conference responded to goals and programs...

And that I hope to find out soon. I will be in New York late Tuesday, Nov. 25. Probably in the city on Wed, 25th. Back to New York early Wed. Dec 3. Leaving for Anchorage afternoon of Mon, 8th; a couple of days in Boston during this Dec. 3-8 period.

? May I stay in NML hostelry Dec 3 to 8 ? No need to write, I'-ll call you on 26th.

Aside from everything else, I do want to spend a bit of time with you and others on "business" matters. I have won election to state senate, and now that the albatross is around my neck, I'm going to make the beast fly somewhere...

(interruption --- dinner with John Bebout and Vic Jones; last night spent with John and Tom Stewart!!!!)

Anyway --- had a real tough campaign, a lot of malicious, gutter tactics used against me. Want to introduce some good and responsible legislation for clean election and campaigns, as well as ethical conduct and conflict-of-interest laws. Obviously, NML. Plus lots of other topics.

I will call you once in New York to see what would be convenient for you.

Til then, very best

November 29, 1980 BILL CASSELLA

Dear Bill ---

This is a sad letter -- for I've had to cancel my trip east for medical reasons. Had injured my leg five weeks ago, and doctor said it's not healing well enough for me to expose it to a busy travel schedule.

Lots of regrets, including opportunity to spend some time with you and others at NML. But I still need your help.

Even though it's early, we've already organized the state senate for the next sessions. One of my assighments is chairman of state affairs committee. Among many other functions, that covers responsibility for elections and the like, including state personnel, overall state government, etc, etc.

I am, as I mentioned in my previous note, very interested in enacting some good legislation on ethical conduct and conflict of interest covering legislative and other state employees, as well as possibly applying same rules to local governments and school districts. In addition, would like to see some machinery established to promote more ethical or "clean" elections, especially after being exposed to the most viciously lying campaign ever seen in Alaska -- without any recourse to any machinery that could adjudge veracity of charges being indiscriminately thrown around. (I've decided that this course would be more constructive than pursuing a tough libel case.)

Anyway -- I'd appreciate anything you could send me on these topics, especially model legislation and information on what other states have done.

If you have anything recent and useful on legislative reform, apportionment, or anything else I should know as an active legislator -- do let me know please.

Thanks for any help you can give me. I do regret that I have to send you this written request, rather than delivering it in person...

I do hope you were able to get Atwood back on an active track. If enthused, he can do much good.

Since I don't expect any trips east til next fall, it will be a while before I do get to see. But til then, all my very best regards,

Vic

LEGISLATIVE STUDY COMMITTEE REPORT

PART 1

SPONSORED BY GFWC ANCHORAGE WOMAN'S CLUB FREE COMMITTEE

INTRODUCTION

While monitoring the activities of the Alaska State Legislature, it became apparent to the members of the Anchorage FREE Committee that legislative rules (or lack of) and procedures could be used to circumvent the wishes of the majority.

In an effort to educate ourselves as well as the citizens of Alaska, FREE formed a Legislative Study Committee in September of 1980. The purpose of the committee was to try to discover how policies and procedures of our state legislature might be modified or changed in order to make the legislative process run smoother, allow for additional public input, and make it less vulnerable to abuse.

We have interviewed or received written comments and suggestions from 24 legislators involving 100 hours of discussion. We have talked to former legislators and many other knowledgeable people. We have also studied and analyzed the rules of other states. We have come up with the following recommendations: If you concur with our findings please send a hand written note to your legislators at Pouch V, Juneau, Alaska 99811. This is the only way that we will get these rules implemented.

SUMMARY OF RECOMMENDATIONS

1. Two consecutive conference committees should be appointed, deliberate in good faith, and be unable to reach a compromise before granting powers of free conference to a third committee.

2. A simple "bill content" rule is needed to define "germane" and prevent bill "piggybacking" from occuring. The rule should read: "No bill shall be passed by either house containing more than one subject, which should be clearly expressed in the title."

3. The public should be informed of the standing committee meetings and their agendas at least five days prior to the meeting.

4. The House and Senate Finance Committees should meet jointly for the purpose of holding public hearings or considering any proposed or pending legislation.

5. Precise procedures for standing committees are vital. Fiscal impact statements and legislative intent should be included with all bills. The committee report should include one of three recommendations from each member. - "Do pass", "do pass as amended", or "do not pass".

6. No interim committees should be provided except those authorized by the state constitution, or either or both houses jointly may by resolution or statute, provide for the appointment of interim committees.

7. The legislative session should be limited to 120 days. Any extension beyond that time should require a 2/3 vote of both houses and include a "limited call" provision. The extension should be for a specific number of days.

8. There should be a limitation on the number of consecutive terms for legislators. Our recommenation: Two 4-year terms for Senators, and four 2-year terms for representatives. Possible to alternate houses every 8 yrs.

9. A Code of Ethics should be added to the Uniform Rules. A disciplinary mechanism should be established to deal with alleged violations.

10. A simple precise procedure is needed in awarding legislative professional service contracts.

If you have any questions concerning these recommendations, or if you wish to know the names of your legislators, please call Jan Bomhoff, 243-1099, or Jan Faiks, 344-0454.

Please help us. Your opinion really does count. - Thank you.

97 [illegible]
Financial disclosure

NANCY 276-4176
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Ethics

Executive Recruiters
For Alaska's Future.

TOLL Associates, Inc.

Suite 603
NBA Building
301 W. Northern Lights Blvd.
Anchorage, Alaska 99503

(907) 276-6901

March 16, 1981

Vic Fisher
Pouch V
State Capitol
Juneau, AK 99811

Dear Vic:

There were two very impressive ladies who presented the enclosed material to our Rotary club. They seem to have a handle on the ways to reform legislative procedures.

I would consider it a sign of good faith toward Alaska's progress if you could seriously consider giving them your wholehearted support to pass the more critical changes they endorse.

Sincerely,

Dick

Richard Decker, PhD
Management

RD:ta
Encl: legislative report

Broadcast commission will debate future of director

By PETE SPIVEY
Daily News reporter

Two members of the Alaska Public Broadcasting Commission want the 9-person board to meet in secret session next week for a frank discussion of the commission's future and possibly that of its executive director, Michael Porcaro.

Commissioner Elaine Mitchell of Juneau has asked for the closed talks — a legal "executive session" under state law — to be placed on the agenda of the board's regular public meeting Friday. Mitchell's request is supported by a second member of the commission, Cathy Ulmer.

In the secret session, Mitchell plans to criticize Porcaro for the commission's deficiencies in budgeting and planning, and for moonlighting on his $58.656-a-year public job by making radio and television advertisements for private businesses and politicians, sources told The Daily News Friday.

Mitchell, who refused to discuss her plans with a reporter, also may offer a resolution that would demand Porcaro's resignation, if approved by the board, the sources said.

"I have requested an executive session. That's all I can tell you," Mitchell said.

Porcaro was the subject of a controversy of sorts last month when the Alaska Public Radio Network — a charge of the broadcasting commission — reported his proposal to use a state satellite hookup for a commercial broadcast of the Sugar Ray Leonard-Roberto Duran championship boxing match.

Although the fight eventually was beamed over a commercial transponder, the network did a second news report — disputed by Porcaro and commission chairman Stowell Johnstone — in which it claimed Porcaro was ordered to explain to the commission his role in the effort to secure the public satellite for a private cable television company.

The satellite incident is expected to be a minor part of the complaints about Porcaro.

But there apparently will be much more talk about his commercial moonlighting and discussion of what several persons in the broadcasting system say is a consistent failure by Porcaro to do any planning or to fight for funding critical to the operation of public broadcasting.

Porcaro, who's held the director's job since June 1976, says the criticism is groundless. He said he's done much more than his job requires and says he would be surprised if any commission member makes an effort to fire him.

"I've done one hell of a good job. As far as I'm concerned, the people have gotten their money's worth out of public broadcasting since I got here," Porcaro said.

Porcaro said he believes he's drawn the ire of some commission members and some managers of public radio and television stations because he's convenient to blame, as executive director. He also says most of that criticism may really be aimed at his personality, which he likens to that of baseball's superhustler, Pete Rose.

"Anytime you're in a position that's visible like this one and you're the kind of person I am — a doer; someone who doesn't let the grass grow under his feet — you're bound to be criticized by others," Porcaro said.

Others in the system don't write off the criticism so quickly, however.

Elmo Sackett, general manager of KAKM Channel 7 public television, said his station lost a $280,000 budget request to Gov. Jay Hammond's veto last year because neither Porcaro nor anyone else on the commission relayed the importance of the request to Hammond.

"We needed that money for equipment that would enable us to do live-remote broadcasts, but Michael just sent the request to Juneau and no one did any follow-up on it, which you have to do in the budget process," Sackett said. "We have the request in again this year and if nobody's going to push it, we'll track the thing ourselves."

Porcaro, however, says that cut and others the system suffered were expected from the start. And he says while no public broadcasting facility gets all the funding its managers want, he follows their budget requests for the commission as best he can.

"I keep up with it by phone and by correspondence and when I'm called to Juneau for a hearing, I go," he said. "Unlike some people, I don't believe you have to be prowling the halls of the capitol all the time during the legislative session."

Others in the system are concerned that his commercial work on the side could present the appearance of a conflict of interest.

Porcaro does commercials for a variety of businesses, has done political advertising and he is paid by The Daily News for a weekly column on the origin of popular products and their brand names.

Bill Brooks, manager of public radio station KSKA, says he is one who told Porcaro it wasn't a good idea to do political advertisements for defeated state Sen. Bill Sumner, R-Anchorage.

"I told him I wasn't sure he was serving the public by doing those ads, because what if Vic Fischer (who defeated Sumner) wanted to hold a grudge when our budget came up later? I'm not saying Fischer would, but some politicians might," Brooks said. "It's not something I'd fire the guy for, but I sure would ask him to think about it first."

Porcaro says he has thought about it.

"If I thought I shouldn't be doing it, I wouldn't be doing it," he said. "There was nothing wrong with it, because I was just hired for a job. I would have done the same for Fischer if he wanted to pay the price."

Porcaro says criticism of his other commercial work is "ludicrous" and "crazy." He does commercials "for pocket money," he says, and does it only as a voice or a face — never as the director of the state's public broadcasting system.

"As raw talent, I am no more involved with the creation of ads than is an artist's pencil — I'm a pencil; a paintbrush. The producer just uses me to create something," he said. "Because it's my voice doing it, that doesn't mean it's me doing it."

Porcaro ordered to explain fight promotions

Times 12-5-80

Associated Press

The executive director of the Alaska Public Broadcasting Commission has been ordered to explain his involvement in a paid promotional campaign for Visions Ltd. the same week he recommended the cable company be allowed to use the state satellite to air a championship boxing match.

Stowell Johnstone, chairman of the commission, said Thursday he has instructed Michael Porcaro to make a full report Dec. 19 on his role in the promoting and televising of the Sugar Ray Leonard-Roberto Duran title fight last month.

A story on Porcaro's activites was carried on Thursday's news report by the Alaska Public Radio Network, one of the broadcast outlets funded by the commission.

The commission operates the state satellite project and funds 13 public radio stations and three television stations with an annual budget of $4 million in state money.

Porcaro, under contract to an Anchorage advertising firm, put together a series of radio spots promoting the bout. The ads included interviews with fight promoter Don King, heavyweight boxing champion Larry Holmes and Visions president Bob Uchitel.

According to Jack Lloyd of the advertising firm of Murray, Bradley & Rockey, the spots were produced as part of "an ongoing relationship" between his firm and Alaska Broadcast Services, a company in which Porcaro is a partner.

Lloyd said Porcaro's company will be paid between $150 and $200 for the series of ads which were distributed to radio stations in Anchorage, Bethel and Southeast Alaska.

Citing the small amount of money involved, Porcaro, Lloyd and Uchitel denied that Porcaro's work for the advertising firm constituted a conflict of interest.

"What was my gain?" Porcaro asked when questioned about the advertising venture. "For there to be a conflict of interest there has to be some big gain."

Johnstone said he did not know about the radio spots when he approved Visions' use of the state satellite system to telecast the fight.

"I was told this was a clean operation," Johnstone said. "I was assured that no one would object to it."

Plans to use the state satellite to funnel the Leonard-Duran fight to pay-TV customers were scrapped the day of the bout, following questio[illegible] several state officials and at lea[illegible] legislator about the proprie[illegible] idea.

Lt. [illegible] Terry Miller said the proposal "obviously raised some pretty serious policy issues."

Porcaro and Uchitel denied the complaints played any part in their decision to switch the event to a commercially leased transponder. Porcaro insists the change was made because an Alascom transponder — previously booked — became available at the last minute.

"It's nobody's business what I do in my private affairs," Porcaro said, adding that what he does after 4:30 p.m. each day is a private matter.

"The state doesn't own me," he said.

Lloyd said Porcaro's company provides a radio actuality service for Murray, Bradley & Rockey. He said Alaska Broadcast Services was not hired because of Porcaro's position with public broadcasting.

Lloyd also said Porcaro does not exercise any executive judgment on the accounts he handles. In producing the fight promotion, Porcaro was "simply doing a mechanical job,"

As he has in the past, Uchitel criticized media coverage of the controversy. He said it is an example of the media creating the news instead of reporting it. He said Porcaro should be complimented for pulling off a "mechanical miracle."

This is not the first time that Porcaro's private business activities have been questioned. His work [illegible] political ads for Democratic U.S. Sen Mike Gravel, state Sen. Bill Sumner, R-Anchorage, and commercials for the Alaska Bank of the North also have been criticized.

Those ads were done by Audio Enterprises, another firm of which he is part-owner. Porcaro refused to discuss the company.

Porcaro acknowledged that North Slope Borough officials had raised conflict-of-interest questions last month in connection with a controversy over the airing of a documentary on the dangers of Arctic oil exploration.

Public television station KAKM in Anchorage pulled the documentary the day before it was to run, claiming it was unbalanced. One of Porcaro's partners in Alaska Broadcast Services is Pete Carran, a reporter-producer for KAKM. Through Alaska Broadcast Services, Carran has done promotional work for Atlantic Richfield Co., one of the major oil producers on Alaska's North Slope.

Carran dismissed the objections and said he played no part in the station's decision to pull the film, which eventually ran followed a night later with a film approved by the oil industry.

Bill Dubay of the borough's Anchorage office called the activities of Carran and Alaska Broadcast Services a "questionable mixture of public and private interest."

Bob Clark, director of communications for Gov. Jay Hammond, said he was unaware of the outside business interests of Carran and Porcaro and declined to comment on the matter.

According to Clark, there is no legal definition in Alaska law of conflict of interest. "It comes down to one individual's interpretation of what his moral limits are," he said.

Porcaro downplays fight flap

by Steve Hansen 12-7-80
Times Writer

Alaska Public Broadcasting Commission director Mike Porcaro says the report he will give the commission's directors on his involvement in plans to use the state satellite to broadcast a boxing match is "a matter of routine."

It was reported Friday that he was ordered to give a special report on the incident after conflict of interest allegations surfaced.

Porcaro said his position as executive director warrants regular reports to the nine-person board to keep it informed of the agency's actions.

Reports from Juneau said Porcaro, a one-fourth owner of an Anchorage advertising firm, had been involved in producing radio spots promoting the Roberto Duran-Sugar Ray Leonard fight at the same time the commission was making decisions to allow Visions Ltd. to use the state satellite to broadcast the fight statewide.

Porcaro said allegations that this was a conflict of interest were "nonsense."

He said his agency — Alaska Broadcast Services — had a contract with the advertising firm Murray Bradley and Rockey to produce radio spots whenever its services are requested. Porcaro said Visions had a contract with Murray Bradley and Rockey to promote the fight telecast. He added that Murray Bradley and Rockey — not Visions — had called Alaska Broadcast Services to produce the radio spots.

"We are a client of Murray Bradley and Rockey. Visions retained (the services) of Murray Bradley and Rockey, not me. They (the advertising agency) tell us exactly what to do and we do it. We get paid by them."

"If I were to say to Visions, 'we'll give you the satellite but I want you to give my company a lot of money,' 'that's a conflict of interest," he said.

Porcaro said Murray Bradley and Rockey had not yet been billed for the Visions radio spots. But he estimated the bill would probably be from $150 to $200. The fee is then to be divided among the company's four owners.

Porcaro has been the executive director of the commission since June 1976.

"The idea that there's any monetary gain is ridiculous," he said. "Basically what I'm saying is 'where is the conflict of interest? What advantage am I getting?' "

Porcaro repeated that he did not make the decision for Visions to use the state satellite. Board chairman Stowell Johnstone made the decision. And when a private transponder became available, Porcaro added, it was he who made the decision for Visions to use the private transponder instead of the state satellite. '

"Stowell and I have talked about this and he's treating the matter quite routinely," Porcaro said. "He says he doesn't see any conflict of interest.'

Johnstone is in Portland, Ore., and was unavailable for comment.

"It's being absolutely overblown," Porcaro said of news reports. "I think empty barrels make a lot of noise. Does it merit all of this attention ... do people really care?"

Visions officials Bob Uchitel and Bob Gould agreed with Porcaro.

"In my opinion this whole brouhaha ... is kind of unfortunate," said Gould, a co-owner of Visions. "It's kind of surprising to me that it's considered newsworthy."

Uchitel, also a co-owner of the cable television firm, said he had wanted to broadcast the fight to the entire state for free. But because of a lack of equipment, some Bush areas were excluded from seeing the fight.

Uchitel said persons who accused Porcaro of unethical conduct were "creating a controversy out of a positive achievement."

"It just makes me mad to realize people who try to do things for people" end up getting criticized, Uchitel said. "The citizens haven't gotten mad. There hasn't been a complaint from anybody except a few . . . that call themselves leaders."

Uchitel said he wondered why no one complained of the first Duran-Leonard fight in June, which was telecast from the state satellite in the same fashion the recent fight was originally proposed to be telecast.

"If they stop Porcaro and people like him, I'll tell you who'll get hurt — it'll be the taxpayers," Uchitel said. "We did something in Alaska that no other state had. It's so dumb. We need more tryers and less critics."

But Gene Deck of the Robert Wold Co., a communications firm, said George Shaginaw, the director of marketing and planning for Alascom, told Porcaro and officials from Visions that a private transponder was available five days before the fight Nov. 25.

"The decision could have been made the night of the 20th if they wanted to," Deck said.

Robert Wold Co. was contracted by Vision to provide engineering service for the fight.

Porcaro, Uchitel and Gould said Deck was mistaken.

"Deck is telling you something that isn't true," Uchitel said. "Deck in my opinion should keep his mouth shut because he didn't do very good work. We basically didn't use them but we still had to pay them."

In a letter to a state communications official, Shaginaw said everyone attending the meeting where broadcast details were arranged "agreed that the only way we could be sure Alaska fight coverage would be provided was by using the state" satellite.

MIKE PORCARO
Where's the conflict?

Porcaro fends off criticism of boxing match broadcast

by Steve Hansen 11-27-80
Times Writer

An angry Mike Porcaro Wednesday defended the Alaska Public Broadcasting Commission's effort to aid the broadcast of Tuesday's championship fight between Roberto Dura [illegible]ugar Ray Leonard.

Po[illegible] executive director of the commission, then turned the tables and leveled a barrage of criticism at a state communications official who publicly criticized the commission's efforts. Porcaro said the official didn't know what he was talking about.

"What we did in my opinion was right and proper and I'd do it again," Porcaro said. "I take offense to the posture of the governor's office and the manner that they took it."

Porcaro was responding to statements by Larry Chaplin, a communications aide for Gov. Jay Hammond, and a handful of other public officials who criticized the commission for tentatively allowing Visions Ltd. the use of the state-leased satellite to broadcast the fight. They questioned the propriety of allowing the satellite to be used for commercial purposes.

But the state satellite was not used. A transponder normally used by NBC-TV was substituted at the last minute to broadcast the fight live from New Orleans. Porcaro said the decision to change was made after he was informed that another one was available.

Chaplin, however, said other transponders were available to Visions prior to the change Tuesday. Porcaro said Chaplin is wrong.

"I'm outraged at those statements," Porcaro fumed. "They're totally uncalled for. The situation changed every day because we had a whole different set of circumstances each day. And he's (Chaplin) sitting there in Juneau making statements about something he knows nothing about and things he shouldn't be commenting about anyway.

"Up until Tuesday morning there was no other way to bring the fight up. What he's says simply is not true."

Porcaro said he had no qualms about being criticized by state officials. But he wants to hear the criticism personally rather than first read it in the newspapers.

Porcaro said he originally was told by Alascom officials Tom Jensen and George Shaginaw that the only way Visions could telecast the fight in Alaska was by using the state satellite.

"The credibility they have on this is a lot more than that guy in Juneau has," Porcaro said.

Visions co-owner Bob Uchitel said his firm would have reimbursed the state by purchasing an equal amount of satellite time later. Anchorage Visions subscribers watched the fight for free, as did residents in Kotzebue, Kodiak and a few other rural villages. Persons in Juneau and Fairbanks, however, were charged admission fees up to $50.

"I was told the only way to get the fight to the state was on the state transponder," Porcaro said. "I said 'fine, let's do it.' "

"Can you imagine this fight being seen in Argentina, Japan . . . and not being seen in Alaska," he later added. "I'm confident we did the right thing. Our only sin is that we're trying to serve. I'd rather serve and be critized than sit back and take the safe, bureaucratic (way out)."

Porcaro said using the state satellite would have cost the state about $3,000.

"What's curious to me is how on the one hand we can be criticized for being unethical . . . and they're sending a state official to New Zealand to study farms," he said.

Porcaro was referring to W.I. "Bob" Palmer's 3½ week state-paid trip to Australia and New Zealand to study agriculatural projects. Palmer is the Special Project Coordinator for Hammond. State officials say they don't know the details of Palmer's trip. The trip is costing the state $2,412 for airfare and an undetermined amount of expense money and per diem pay.

"It just shows you he who lives in glass houses shouldn't throw rocks," Porcaro said.

He added later that his comments were directed at the governor's office, not at Palmer "in any way, shape or form."