

1988 ANNUAL REPORT

The N.J. Election Law Enforcement Commission



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THE COMMISSION



Stanley G. Bedford, Chairman

Stanley G. Bedford is serving his first term. Appointed to the Commission as Chairman in 1987, he is a former judge of the Essex County District Court (1971-1972), the Essex County Court (1972-1976), and the State Superior Court (1976-1986).

A member of the New Jersey Bar since 1949, he is a member of the Essex County Bar Association and the New Jersey State Bar Association. As a resident of Nutley, Chairman Bedford also served as Acting Surrogate in Essex County from August 1986 to January 1987 and as Deputy Surrogate from January 1987 to June 1987.

Married to the former Ruth Grey for 31 years, Chairman Bedford graduated from Columbia University with a B.A. in 1941 and a J.D. in 1948.

A member of Phi Delta Phi and a Harlan Fiske Stone Scholar while at Columbia University, he serves as Chairman of the Alpha Chi Rho Educational Foundation.

Owen V. McNany, III, Vice Chairman

Owen V. McNany, III, is serving his second term on the Commission. Appointed Vice Chairman in 1987, his civic involvement also includes serving as a trustee and Vice President of the Hospital Center at Orange and as State Director of the Institute of Financial Education of the U.S. League of Savings Associations.

In addition to his community service work, Vice Chairman McNany is President and Director of Yorkwood Savings and Loan Association and President and Director of the Crestwood Service Corporation.

Married to the former Patricia Beury, Vice Chairman McNany, the father of four children resides in Maplewood.

Andrew C. Axtell, Commissioner

Andrew C. Axtell is serving an unprecedented fourth term as Commissioner.

A businessman who serves on the Board of Directors of the Afro-American Purchasing Commission (New York, N.Y.), he is a former Chairman of the Election Law Enforcement Commission.

Commissioner Axtell is President and a partner of the Parkhurst Realty Company of Newark and a member of the Board of Directors of the Dreyfus Consumer Bank of East Orange.

A former Commissioner on the Port Authority of New York and New Jersey from 1970-1976, Commissioner Axtell's civic involvement extends to the East Orange General Hospital, where he is a trustee.

As a former Councilman and Mayor of Livingston, Commissioner Axtell is a former Chairman of the Essex County Republican Committee, and a former member of the State Republican delegations to the National Conventions of 1960, 1964, and 1976.

Married to the former Ruth Cunningham, Commissioner Axtell and his wife have two children.

David Linett, Commissioner

David Linett is serving his first term on the Commission. Now a principal in the Bridgewater law firm of Gindin and Linett, he is a former Somerset County Prosecutor.

A member of the New Jersey and District of Columbia Bars, Commissioner Linett is a member of the American, New Jersey, and Somerset County Bar Associations. Chairman of the State Bar Association's Election Law Committee from 1985-1987, he is currently serving as Vice Chairman of the Court's District XIII Ethics Committee.

A graduate of Yale University, where he received his B.A., and Harvard University Law School, where he received his J.D., Commissioner Linett has also served as a member of the New Jersey Supreme Court Committees on County District Courts and Speedy Trial.

A participant in the 1988 Conference on Governmental Ethics Laws (COGEL) as a panelist, Commissioner Linett's civic activities include

THE COMMISSION continued

service as Chairman of the Board of Trustees of the Association for the Advancement of the Mentally Handicapped (AAMH), and as a trustee of the Proprietary House Association. As a past President of the Somerville Rotary Club and member of the Board of Directors of the Greater Somerset County Chamber of Commerce, he was twice elected to the Democratic State Committee from Somerset County.

The father of three children, Commissioner Linett is a resident of Somerset County.

**Frederick M. Herrmann, Ph.D.,
Executive Director**

Frederick M. Herrmann is in his fifth year as Executive Director. Previously, he worked for the New Jersey Legislature in the area of election law for eight years before coming to the Commission in 1984.

Executive Director Herrmann holds a doctorate in American political history; has taught at Rutgers University and Kean College; and is the author and co-author of numerous books, articles, and reviews in New Jersey history and government.

A former Chairperson of the Council on Governmental Ethics Laws (COGEL), he is a member of the COGEL Steering Committee and is also the Chairperson of the Northeastern Regional Conference on Lobbying (NORCOL).

Edward J. Farrell, Counsel

Edward J. Farrell has been Counsel to the Commission since its inception in 1973. He is a partner in the Morristown law firm of Schenck, Price, Smith and King.

CHAIRMAN'S MESSAGE



Celebrating its 15th anniversary in 1988, the New Jersey Election Law Enforcement Commission (ELEC) continued to build upon its outstanding record as one of the best analytical and enforcement ethics agencies in the country.

John D. Feerick, Chairman of the New York State Commission on Government Integrity and Dean of the Fordham University School of Law, pointedly referred to the Commission in *Governing* as a "dynamic, independent enforcement board."

This praise was certainly borne out through the achievements of the Commission over the past year.

In 1988, not only did ELEC complete analyses of 1987 lobbyist and PAC financial activity, but it also published its highly acclaimed *Gubernatorial Cost Analysis Report*.

Too, it began its new White Paper series, the first study of which dealt with contribution limits and prohibited contributors.

More than just providing interesting information to the public, this analytical activity, combined with the Commission's legislative activity, truly had an impact upon the processes of debate and governance in New Jersey.

For instance, the Executive Director, during numerous appearances before legislative committees, made effective use of the *Gubernatorial Cost Analysis Report* by citing the campaign inflation index contained in it as a measure by which the Public Financing program's thresholds and limits could be adjusted every four years.

This effort, together with the Commission's timely use of a resolution asking the Governor to grant an emergency regulation delaying the date of the first Public Financing submission, not only contributed to reform of the law but also helped to have the cost index language included in it.

In the area of enforcement, the record is similarly impressive. Last year, the Legal Section initiated 603 complaints and the Review and Investigation Section closed 97 investigations. Moreover, the Legal Section was quite busy in drafting advisory opinions and regulatory changes adopted by the Commission in 1988. And, as exemplified by the section on legislation in this report, the Commission has been quite active in promoting reform of campaign finance, personal financial disclosure, and lobbyist disclosure laws.

Certainly, vigorous efforts taken by the Commission in these vital areas have paid off, not only in terms of prosecuting violations of campaign disclosure laws, but also in maintaining its high compliance rate among filers.

In 1988, candidates complied at a rate of over 90 percent. In addition to strong enforcement efforts, this achievement is also attributable to the Commission's campaign to inform candidates, treasurers, and other filing entities of their obligations under the law.

The Commission held ten candidate information sessions throughout the State and responded to 8,082 requests for public assistance. As part of this effort to educate candidates and committees on the requirements of the disclosure law, the Compliance and Information Section handled an increasing number of requests for information and continued to publish the agency's biannual newsletter, the *ELEC Report*.

Apart from these highly visible achievements, other less obvious accomplishments also contributed to the reputation of the Commission as one of the model agencies in the nation.

In 1988, for instance, the Office of Legislative Services audit team presented its findings vis-a-vis the Commission's fiscal management, grading it "above satisfactory" and citing the agency as one of the best in the Department of Law and Public Safety.

Moreover, the Commission made continued progress in the area of computerization, upgrading its computer system, completing the word-processing training of its secretaries, and completing a comprehensive legislative data computer project.

Finally, ELEC Commissioners and staff participated in numerous extracurricular activities that brought distinction to the Commission and added to its national and even international reputation.

Executive Director Frederick M. Herrmann distinguished the Commission and himself with his outstanding service as Chairperson of the Council on Governmental Ethics Laws (COGEL) and Chairperson of the Northeastern Regional Conference on Lobbying (NORCOL).

And with the participation of the Commissioners and staff, ELEC hosted the fourth biennial NORCOL Lobbying Conference, entitled "Lobbying in the 90's."

Lastly, several articles in the field of campaign

CHAIRMAN'S MESSAGE continued

finance and lobbying disclosure were written by staff members last year. These included: "Campaign Spending: What Kind of Reform?" by Executive Director Herrmann in *State Government News* and "Public Financing," by Deputy Director Jeffrey M. Brindle and "A Modest (Lobbying) Proposal," by Legal Director Gregory E. Nagy in the *COGEL Guardian*.

Naturally, I am very proud of the record of accomplishment of the Commission in 1988. Its achievements equal, and in many ways, surpass that of any previous year in its 15-year history. Yet this pride does not prevent me from expressing a word of caution about the future and that word is this: ELEC's outstanding record will be endangered if its funding levels are not increased to keep pace with the tremendous growth in campaign spending, a problem that looms larger every year and is shared with sister agencies throughout the nation.

On that cautionary note then, and on behalf of the members of the New Jersey Election Law Enforcement Commission, it is with pride that I present this report and remarkable record of achievement to the Legislature.

COMMISSION STAFF AND TABLE OF ORGANIZATION

Executive

Frederick M. Herrmann, Ph.D., *Executive Director*
 Jeffrey M. Brindle, *Deputy Director*
 Gregory E. Nagy, Esq., *Legal Director*
 Carol A. Killings, *Executive Secretary*
 Josephine A. Hall, *Executive Secretary*

Administration

Richard J. Magee, *Director*
 Donna D. Margetts, *Assistant Director for Personnel Administration*
 Elaine A. Salit, *Fiscal Assistant*
 Kimberly A. Aamodt, *Administrative Assistant*
 Debra A. Kostival, *Senior Receptionist*
 Irene Comiso, *Assistant Receptionist*
 Jose J. Zayas, *Messenger*

Compliance & Information

Evelyn Ford, Esq., *Director*
 Rachel T. Herman, *Assistant Director of Compliance & Information*
 Virginia Wilkes, *Assistant Compliance Officer*
 Barbara Counts, *Secretarial Assistant*
 Kimberly A. Key, *Senior Clerk*
 Evelyn M. Robeson, *Senior Clerk*
 Ivestia Williams, *Senior Clerk*
 Vera C. Mumford, *Messenger*

Computer

Warren L. Heins, *Systems Analyst*
 Shirley R. Thorpe, *Associate Systems Administrator*
 Brenda A. Brickhouse, *Associate Data Entry Operator*
 Nelly R. Rosario, *Assistant Data Entry Operator*

Legal

Judith Shaw Chamberlain, Esq., *Assistant Legal Director*
 Carolyn Neiman, *Senior Legal Secretary*

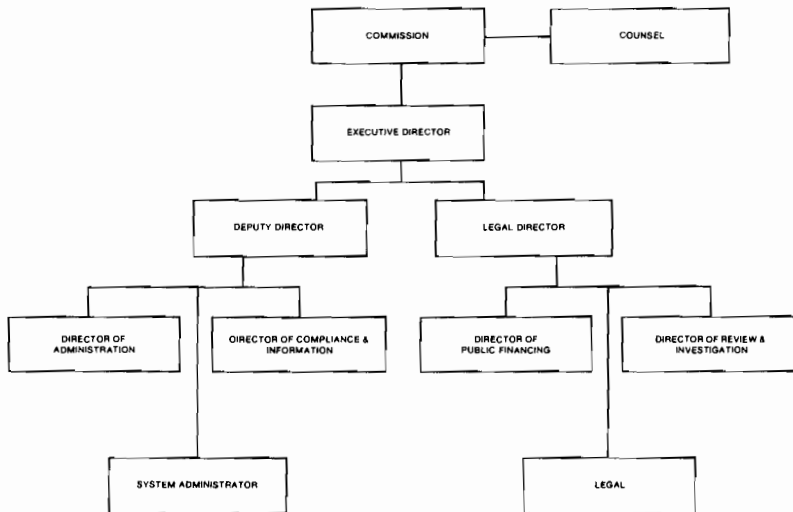
Review and Investigation

Elizabeth A. Ryan, Esq., *Director*
 Linda D. Owens, *Assistant Director of Review and Investigation*
 Barbra A. Fasanella, *Assistant Examiner*
 Shreve E. Marshall, Jr., *Assistant Examiner*
 M. Susan Carr, *Assistant Examiner*
 Beverly A. Dixon, *Secretarial Assistant*

Gubernatorial Public Financing

Nedda Gold Massar, Esq., *Director*
 Donna S. Saczynski, *Assistant Director of Public Financing*
 Sandra L. Magee, *Public Financing Secretary*
 Brett A. Mead, *Public Financing Analyst*
 Gail D. Schneier, *Public Financing Analyst*
 Kap Chul Sin, *Public Financing Analyst*
 Pamela R. Powell, *Public Financing Data Entry Operator*
 Chrystal A. Crowell, *Public Financing Data Entry Operator*
 Sheri L. Anderson, *Public Financing Data Entry Operator*

New Jersey Election Law Enforcement Commission
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EXECUTIVE DIRECTOR'S REMARKS

During its fifteenth anniversary year, the Commission proved again that it is on the move.

With the publication of the *Gubernatorial Cost Analysis Report* in June, ELEC once again confirmed the widely held view expressed so succinctly recently by Professor A. T. Barbrook of the University of Kent at Canterbury, England, who wrote, "ELEC is certainly a model in the United States for its production of campaign finance literature."



The Commission is proud of this well-deserved reputation in publications as well as its strong enforcement record, which was maintained with equal diligence during 1988. Yet, as Chairman Bedford suggested in his annual message, this fine record of accomplishment may be endangered in the future if repeated requests for additional staffing go unheeded.

As a small agency which is regulating a growth industry, ELEC will increasingly face the problem of maintaining control over a burgeoning campaign finance system.

Moreover, it must do so while meeting the responsibilities wrought by changes to its law during the early 1980's—changes implemented with no accompanying funding. These changes include: the enactment of the 1981 Lobbying law, the enactment of the 1981 Personal Financial Disclosure Act, and the 1984 amendment creating a separate reporting system for PAC's and political parties.

The Commission monitors the campaign financial activity of: candidates for local, county and statewide office; lobbyists; political action committees (PACs); various political committees; and political party organizations.

As repeatedly reported to the public by ELEC analyses, the financial activity of these entities is increasing at unprecedented and even startling rates. For instance, between 1977 and 1987, campaign spending on legislative races realized a tremendous increase. Further, since only 1985, PACs have increased their contributions to candidates by 98 percent. Finally, in only one year, between 1986 and 1987, lobbyists increased their expenditures by 33 percent.

The ramifications of this ever-increasing financial activity by these reporting entities are enormous. For it is this financial activity, the increasing number of contributor transactions, not just the increase in entities filing reports, that is the basis of the Commission's workload.

Specifically, continued growth in the number and financial activity of candidates, PACs, and lobbyists will have a severe impact on informational, prosecutorial, and analytical activities. There will be a need for more document review, investigations, prosecutions, telephone assistance, computer data entry, and xeroxing.

In enforcement, the volume of review, investigative, and prosecutorial activity will continue to increase as financial activity increases. One Field Investigator for the entire state and one Assistant Counsel for prosecutions will not possibly be able to keep up with the growing workload.

Also, the increasing number of requests for information (over 8,000 in 1988) together with the growing financial activity of reporting entities (over 15,000 reports in 1988) has already strained the compliance resources of the Commission and will do so in more devastating fashion if current trends continue.

Finally, in the area of research and analysis, the Commission, absent any research staff, will be hard-pressed to continue to provide the same quality of analysis if the growth and sophistication of campaign finance activity continues unabated.

During this past year, ELEC developed a five-year plan setting forth its long-term budgetary needs. The implementation of this plan, which

EXECUTIVE DIRECTOR'S REMARKS continued

adds 14 new positions and includes administrative support costs, is essential if ELEC is to maintain its current high level of services and handle New Jersey's explosively growing "campaign finance industry."

In conclusion, ELEC believes that it is extremely important for the integrity of the electoral process that its highly regarded reputation for quality publications, as well as its stature as a model of excellence in the field of governmental ethics enforcement, be maintained.

As the Commission enters its next fifteen years of service to the citizens of New Jersey, it will strive to build upon one of the finest records of accomplishment in the nation for an ethics agency safeguarding open and honest government.

However, as ELEC moves forward it will do so with the fervent desire that it receive critically needed additional funding to keep pace with an ever increasing workload brought about by an explosive campaign finance industry that shows no sign of diminishing.

LEGISLATIVE REVIEW

The past year proved to be one of the busiest in the history of the Commission in terms of legislative activity. A total of 38 bills was introduced on the following topics: campaign reporting (16), gubernatorial public financing (14), legislative public financing (4), lobbying, (3) and personal financial disclosure by candidates (1).

Gubernatorial Public Financing

The most pressing legislative priority in 1988 was the comprehensive revision of the Gubernatorial Public Financing Program, which had not been amended since 1980, and therefore contained various thresholds and limits which needed to be adjusted for inflation. The Commission played a vital role in the passage and enactment of a public financing compromise. It issued a report highlighting its program recommendations in September, 1986, and issued a Gubernatorial Cost Analysis Report in June, 1988. The Executive Director testified before both the Senate and Assembly State Government Committees on several occasions as various amendments were debated. The legal staff worked closely with the Office of Legislative Services as several bills were proposed and revised. Finally, at the behest of the Commission, the Governor signed an emergency regulation at the end of December, 1988 delaying the start of the 1989 program. The emergency delay provided additional time for the Legislature to pass the compromise bill in early January, 1989. The new law includes, at ELEC's recommendation, provisions allowing the thresholds and limits on dollar amounts to be adjusted for inflation before each gubernatorial election cycle so that the program remains viable as the level of inflation changes.

Other Legislative Activity

The Commission also took an active role in urging the adoption of contribution limits and in urging flat prohibitions against contributions from corporations or labor unions, except through political action committees (PACs). These recommendations were circulated to the Legislature and the public in a report entitled "ELEC White Paper: Contribution Limits and Prohibited Contributions," Number 1, October 1988. During 1989, the Commission anticipates producing two more White Papers; one dealing with the 1987 legislative general election and the other with legislative public financing.

The Commission was also active in seeking the enactment of legislative objectives identified in prior Annual Reports. In particular, press releases advocating consideration of legislation to require better identification of persons or entities controlling PACs and better regulation of unspent or surplus campaign funds were circulated. A similar press release was distributed concerning the problems with inadequate lobbying disclosure. These press releases received considerable support from newspapers and other media throughout the State. Several of the bills introduced during 1988 addressed these vital subjects, and a few of them introduced virtually all of the Commission's past legislative recommendations.

Summary and Suggested Legislation

The Commission recommends the following legislative objectives for 1989:

1. Establishment of filing fees for campaign reports based on the amount of reported contributions. Over the last several years, campaign financing activity has increased dramatically. In only four years, for example, the amount of contributions to legislative candidates jumped from \$8.3 million to \$14.8 million. During that time, however, no increases in funding for functions such as information assistance, report review, data compilation, investigations, or prosecutions occurred, and indications are that future appropriations will decrease. During this period of budget constraints, the most viable means of supporting meaningful campaign disclosure would appear to be requiring filing entities to pay a fee based on their reported contributions. Such a revenue source would insure funding for campaign disclosure during times of budgetary shortfalls, and would link the revenue of the Commission to the actual activity that generates its mission.
2. Enhancement of commissioner compensation, and lengthening of commission terms. Commission members are currently compensated at \$250 per meeting, plus expenses. The ever-increasing complexity of campaign finance requires a significant time commitment from the Commissioners. Commission membership should always be open to persons without regard to personal wealth. Therefore, Commissioners should

- be compensated on a salaried basis, with State benefits, as are members of the State Commission of Investigation (SCI). Also, the existing three-year term of commissioners should be expanded to five years. The complexity of regulation in campaign finance demands an expertise that is not quickly acquired. Further, under the existing three-year term structure, the entire membership of the commission could be without any personal experience in administering a publicly financed gubernatorial election, which occurs every four years. Finally, lengthened terms will add an additional measure of autonomy to the Commission's structure.
3. Adoption of legislative recommendations made in the Presentment of the State Grand Jury concerning the Reporting Act, dated October 6, 1988. These recommendations are:
 - a) amend *N.J.S.A.* 19:44A-20 to prohibit any person from making loans to any other person for the purpose of inducing that person to make campaign contributions;
 - b) limit loans (except through a licensed lending institution) to a gubernatorial candidate;
 - c) regulate solicitation of contributions from employees and union members;
 - d) establish as a crime of the third degree coercion of political contributions;
 - e) require registration of political action committees (PACs) and political committees under a name that reflects political interests or objectives, a previously proposed ELEC initiative;
 - f) amend *N.J.S.A.* 19:44A-21 to provide for grading of criminal offenses so that more severe penalties can be imposed.
 4. Doubling of the check-off on State income tax returns for gubernatorial public financing from one dollar to two dollars; see *N.J.S.A.* 54A:9-27. These funds are dedicated exclusively to the public financing program, and are required to fund the increases approved by the Governor and the Legislature in newly enacted amendments.
 5. Establishment of contribution limits for all elected offices that are high enough to permit candidates to raise enough money to run effective campaigns but yet are low enough to provide sufficient safeguards against undue influence by any single contributor.
 6. Prohibition of campaign contributions from corporations and labor unions, except through their voluntary political action committees (PACs).
 7. Comprehensive amendments to "The Legislative Activities Disclosure Act" that would require lobbyists to disclose expenditures for "goodwill" lobbying activity. Under current law, lobbyists and their agents are required to disclose expenditures for food, entertainment, and similar items only if specific communication concerning legislation occurs. The Commission also recommends streamlining and simplifying lobbying reporting. It also recommends that responsibility for monitoring lobbyists be placed solely with the Commission, and not be shared with the Attorney General.
 8. Comprehensive amendments to "The Campaign Contributions and Expenditures Reporting Act" that would:
 - a) regulate the use of surplus campaign funds, providing specific direction as to whether such surplus funds may be used for supporting legislative district offices or other ordinary and necessary expenses of holding public office;
 - b) establish civil jurisdiction in the Commission to enforce the law concerning prohibited contributions by regulated corporations;
 - c) establish civil jurisdiction in the Commission to enforce requirements that political advertising identify the person or entity that paid for it;
 - d) require reporting by an individual contributor of his or her occupation and the name and mailing address of his or her employer;
 - e) change the threshold requiring identification of contributors in excess of \$100 to in excess of \$200 and change the threshold from \$250 to \$500 for requiring 48-hour identification of contributors immediately before an election;
 - f) raise the threshold for requiring reporting by persons making independent expenditures from \$100 to \$1,000 and raise

from \$1,000 to \$2,000 the level at which ELEC can administratively terminate postelection reporting requirements of candidates and committees;

- g) permit candidates and committees required to file 60-day postelection campaign reports to file quarterly post-election campaign reports instead;
 - h) lengthen the time for the Commission to respond to a request for an advisory opinion from 10 to 35 days;
 - i) require that all bank accounts controlled by a candidate for election purposes must be included in one campaign report filed by a candidate and, in the absence of contribution limits (see Recommendation 5), that transfers of campaign funds between candidates be restricted;
 - j) increase the fines the Commission may impose for violations of the Act, which fines have not been changed since enactment in 1973, and provide that when the identity of contributors is not disclosed, the fine can be three times the amount of the contributions; and
 - k) exempt candidates for municipal charter study change commission or for special taxing districts from the reporting requirements.
- 9. Amendments to the personal financial disclosure law requiring disclosure by gubernatorial and legislative candidates of not only the sources of gifts, honoraria and reimbursements, but also the amount of funds given or paid, and lowering the reporting threshold of gifts from more than \$250 per year to more than \$100 per year, which is the same threshold that currently exists for honoraria and reimbursements.
 - 10. Amendments to the statute governing the content of nominating petitions (i.e., *N.J.S.A. 18A:14-10*) of school board candidates requiring that such petitions give notice of filing requirements with ELEC.
 - 11. Repeal of superfluous reporting obligations for some municipal candidates which obligations predate the establishment of the Reporting Act requirements; see *N.J.S.A. 40:73-1*.

LEGAL SECTION

The past year proved to be a very productive one for the Legal Section, which is responsible for reviewing proposed legislation, prosecuting complaints, collecting fines, preparing advisory opinions and promulgating regulations.

Complaints and Fines

On numerous occasions, the Commission has been cited nationally for its historically strong enforcement record. Candidates, treasurers, political committees and other entities that file late, incomplete, or inaccurate campaign financial disclosure reports are subject to civil penalties if they are found to be in violation of the Reporting Act. Intentional and willful violations may be referred to the Attorney General for criminal prosecution. The following table shows the substantial number of complaint proceedings undertaken by the Legal Section and the amount of fines collected over each of the past five years:

TABLE

Year	Complaints	Fines Collected
1988	603	\$29,027
1987	518	26,848
1986	628	23,865
1985	396	21,130
1984	364	22,581

In each of the 603 cases filed in 1988, the respondent was entitled to a hearing before the Commission, or before an Administrative Law Judge. However, the great majority of candidates did not contest complaints that were brought against them, and voluntarily waived formal hearing proceedings. In 1988, 17 cases were transferred to the Office of Administrative Law in the Department of State for "contested case" hearings. A total of 12 were settled with the assistance of an Administrative Law Judge, three were abandoned by the respondents, one was suspended because of the absence of the respondent from the State, and one went to a full hearing. In the 16 matters that resulted in decisions, those decisions upheld penalties requested by the Commission.

Advisory Opinions

Any person or filing entity with reporting obligations may submit a request for an advisory opinion. The legal section in conjunction with the Counsel prepares a draft response which is

reviewed at a public meeting of the Commission and ultimately voted on by the Commissioners. During 1988, the Commission issued 22 advisory opinions as follows:

- eight requests concerned permissible uses of a candidate's or continuing political committee's surplus or unspent funds;
- five requests concerned the upcoming 1989 gubernatorial public financing program;
- four requests concerned reporting by a corporate or other business entity that limits political activity to the making of campaign contributions;
- four requests concerned the applicability of criminal statutes outside the Commission's jurisdiction which prohibit certain corporations such as public utilities from making campaign contributions and were referred to the Attorney General for consideration; and,
- one request concerned reporting obligations of a fundraising entity created by two different continuing political committees.

There was considerable interest in the issue of what a candidate, political committee, or continuing political committee can do with funds that are not spent for strictly campaign purposes. The issue is arising more frequently as more candidates are retaining greater sums in their campaign accounts in anticipation of future campaigns. The Commission has asked the Legislature to consider adopting amendments to the Reporting Act to clarify permissible uses of campaign funds.

As might be expected, several inquiries concerned the upcoming 1989 gubernatorial primary election. Of particular interest was the question of when does an individual become a candidate for purposes of reporting, and what requirements exist for those individuals who are conducting "testing the waters" activity but have not yet reached candidate status.

The advisory opinion procedure is a useful means of providing guidance to candidates and the public alike, and the Commission relies heavily on its past advisory opinions when it considers adopting regulations.

Rulemaking Activity

The major regulatory undertaking in 1988 was the amendment of the gubernatorial public financing regulations for both the primary and general elections. Extensive amendments and new requirements were proposed, submitted to public hearing and ultimately adopted. In addition, the Commission authorized, and the Governor approved an emergency regulation that delayed for three weeks the beginning of the 1989 gubernatorial public financing program. As a result of this action, the Legislature in early January, 1989 was afforded additional time and ultimately did pass comprehensive amendments to the public financing statutes.

The Commission also proposed extensive changes to its reporting and record keeping regulations. Some of the major changes were as follows:

- the elimination of campaign reporting by businesses or other entities which limit their activities to the making of campaign contributions;
- clarification that the date to be reported on a contribution is the date of its receipt by the campaign, not the date that a check is written;
- an increase in the threshold under which a continuing political committee may file a short form report (Form A-3) from \$1,000 to \$2,500 in a 12-month period, and a change of the filing procedures to a single filing on September 15th;
- relaxation of the reporting requirements for "write-in" candidates;
- establishment of an affidavit procedure for a campaign treasurer who asserts that campaign records are missing; and
- establishment of new rules concerning campaign purchases by credit card.

Other Activity

Periodically the Legal Section is called upon to determine which documents constitute public records, and under which circumstances they must be disclosed and at which time they must be made available for public inspection. In an effort to codify legal requirements and Commission policies, final decisions and miscellaneous correspondence were prepared and approved by the Commission.

The Commission also adopted amendments to its Code of Ethics which were ultimately approved by the Executive Commission on Ethical Standards. These amendments clarify that spouses of Commissioners and staff may make political contributions, and also permit Commissioners to make contributions to federal candidates or national political party committees.

COMPLIANCE AND INFORMATION SECTION

During the past year, the Compliance and Information Section improved its efficiency in providing information to candidates and treasurers. Not surprisingly, the resulting compliance with the State's disclosure laws in the general election was over 90 percent.

Compliance

The Compliance and Information Section had a busy year in 1988. Despite the fact that there were no legislative races, approximately 15,000 disclosure reports were processed by the Section. Moreover, the trend of local candidates filing lengthier and more detailed reports continued unabated.

To assist the county and municipal candidates and treasurers to comply with State law, the Compliance and Information Section again went to 10 different locations throughout the State and conducted informational seminars. During the Primary election cycle, Commission staff went to: Cranford, Toms River, Hackensack, Vineland, and Somerville. During the General election cycle, the staff visited Morristown, Woodbury, Mt. Holly, Freehold, and again went to Hackensack. These seminars were not only attended by candidates and their treasurers, but also numerous staff members from the county and municipal clerks' offices attended.

This high compliance rate was also fostered by the frequent correspondence with candidates. Prior to the filing dates, candidates received two separate instructional packages to assist them with filing. Within 48 hours of each filing date, candidates who failed to file were sent a warning letter aimed at promoting quick, corrective action to avoid penalties. These steps undoubtedly impacted favorably upon the higher compliance rate.

The rate of compliance by continuing political committees is also improving. In addition, the number of continuing political committees is steadily increasing in number each year. In 1988, an average of 12 committees per month sought certification to become a continuing political committee. This trend has been on the rise and is predicted to continue.

Information

Although there were no Gubernatorial or Legislative races in 1988, the press and the public maintained an active interest in reviewing local campaign and committee reports. To accommodate this interest, the Compliance and Information Section published numerous press advisories informing the press and public of upcoming filing dates.

Moreover, analytical summaries in the form of press releases were published on several topics. In April of 1988, an analysis of spending by PACs was released. In July, ELEC took a look at spending by lobbyists and legislative agents which filed with the Commission in 1988. And, during October and November, ELEC gave an accounting of the spending by a group in support of the educational bond issue. These analyses spurred the interest of numerous journalists and academics and resulted in many newspaper reports.

The ELEC newsletter, "THE ELEC REPORT" became more comprehensive in 1988, containing more substantive articles. The readership of the *REPORT* grew steadily, with the out-of-State audience widening significantly.

The staff of the Compliance and Information Section had a very busy year in 1988. Requests to receive photocopied information not only remained high but continued to increase. Telephone assistance to candidates, treasurers, the press and public was ever-increasing, with 1988 averaging 400 telephone calls per month. The months prior to the primary and general elections (May and October), were by far, the busiest months. For example, during the month of October there were only 20 business days. The four Compliance Clerks handled 167 requests for information during that time period. The same four clerks coded, processed, and filed over 3,000 reports during those 20 days. These figures are staggering considering that a request for information may involve literally hundreds of photocopies.

Data Processing

ELEC's data operations saw dramatic changes during 1988. The programming adjustments to the computer which began in 1987 continued in 1988. As a result, the detailed and summary information from the 1987 Senate and General Assembly races were entered into the computer's data base during the past year. In an amazingly short period of time, the data for both the primary and general elections became available to the press and public. On display in its public room, ELEC has massive computer printouts of alphabetical listings of contributors, as well as summary printouts of candidate expenditures. Upon request, the data operation section can generate the data in various formats for research or other purposes.

The latter half of 1988 was spent on "gearing up" for the upcoming Gubernatorial and General Assembly races of 1989. To assure that the increasing number of inquiries and users can be accommodated in 1989, the need for a computer upgrade became apparent. So, during the final months of 1988, the data operation section shut down in order to install the upgraded system. The temporary delay of services was well worth the benefit which the entire agency, as well as the public, will receive in 1989 and thereafter as data is more quickly entered and retrieved by staff.

REVIEW AND INVESTIGATION SECTION

The Review and Investigation Section reviews campaign reports in order to uncover potential violations of the Campaign Act. In 1988, the Review and Investigation Section fulfilled this responsibility in a note-worthy fashion despite operating without a field investigator for a three-month period. By increasing the number of reports reviewed, the Section was able to double the number of investigations opened from the previous year.

Increase in Investigations Opened

The following table provides a comparison of cases opened and investigated since 1983:

	OPENED	COMPLETED
1988	106	97
1987	44	103
1986	95	128
1985	127	95
1984	129	66
1983	128	102

These statistics demonstrate the success of the Section's heightened report-review efforts. There was a 141 percent increase in opened investigations over 1987 and an 11.6 percent increase over 1986. The statistics also show that the Section was able to complete 97 investigations in 1988. This figure compares very favorably with the previous years figure when the fact that the Section operated without a full-time investigator for a three-month period is considered.

Organization of Staff

In 1985 the Review and Investigation Section was established as the result of an agency-wide reorganization. The Section is divided into two units: desk auditors (report review staff) and a field auditor (investigative staff). The report review staff reviews a large number of reports each year. When a potential violation of the Campaign Act is discovered, or a member of the public makes a specific complaint in writing, the investigative staff conducts a detailed investigation. If necessary, the investigative staff conducts field investigations and reviews the financial records of the reporting entity to ensure that accurate financial disclosure has been made. The Section reports its findings directly to the Commission.

Investigative Manual

In addition to the excellent improvement in the number of investigations opened, the Review and Investigation Section drafted an Investigative Manual. The manual will be utilized to train new staff in investigative techniques. It is also utilized as a daily reference guide by existing staff. Finally, the manual will be shared with out-of-state sister agencies. The Commission believes that the manual will contribute greatly to staff's ability to meet the demands of future investigations in a highly professional manner.

Public Assistance

The Review and Investigation Section also provides public assistance to candidates, political committees, PACs and lobbyists with technical questions concerning the requirements of the Campaign Act. In 1988, the Section provided technical assistance to 3,112 reporting entities. Technical assistance is usually provided over the telephone to those with questions regarding the specific filing requirements of the Act.

Administrative Hearing Preparation

Both the report review staff and the investigative staff provide assistance to the Legal Section in order to prepare for administrative hearings. For each case in which a reporting entity requests a hearing, staff prepares a chronology of events detailing ELEC's internal procedures and the summarizing of the reports filed by the entity. Both the investigative staff and the report review staff serve as witnesses for administrative hearings.

The Review and Investigation Section functions to review reports and investigate possible violations of the Campaign Act. The Section is essential to the enforcement efforts of the Commission. In 1988, the Section achieved new levels of success. In the years ahead, the section plans to continue its excellent record.

PUBLIC FINANCING SECTION

As one of the Commission's most visible activities, New Jersey's Gubernatorial Public Financing Program continues to be a model for the nation. Throughout 1988, staff monitored numerous bills aimed at modifying the Public Financing Program. Moreover, its vigorous efforts in behalf of reforming this program, capped by its timely adoption of a resolution asking the Governor to grant an emergency change of its regulations to delay the date of the first submission date, contributed greatly to the process of reform. As the result of its activity, combined with the very responsible approach taken by the Governor and Legislature, a compromise was enacted in early 1989, maintaining the program's place as an important part of the gubernatorial process. As such, it will continue its tradition of allowing persons of limited financial means to seek election as New Jersey's Governor, at the same time permitting these candidates to conduct their campaigns free from undue influence.

Legislative Revision of the Program

The legislation signed on January 21, 1989 by Governor Thomas H. Kean significantly revised the Public Financing Program in a manner which keeps its thresholds and limits at pace with inflation.

Major changes included:

- Raising the public financing qualification threshold to require that \$150,000 of contributions have been received and expended.
- Tying qualification for public financing to participation in debates.
- Raising the contribution limit to \$1,500.
- Raising the primary election expenditure limit to \$2.2 million and the general election expenditure limit to \$5 million.
- Raising the primary election public fund cap to \$1.35 million and the general election public fund cap to \$3.3 million.
- Raising the gubernatorial inaugural contribution limit to \$500.
- Requiring public fund submissions to contain at least \$12,500 of contributions eligible for match.
- Permitting the Commission to adjust thresholds and limits in gubernatorial elections after 1989 on the basis of a campaign cost index designed by the Commission.

Thus, the continued adequacy of the thresholds and limits which form the basis of the Public Financing Program may now be adjusted by the Commission starting with the 1993 gubernatorial election in response to economic factors and insulated from the political process. Obviously, a major and positive change in the law, it was the result of a Commission initiative first proposed in its 1986 report on the 1985 gubernatorial elections and further elaborated upon in its highly-touted *Gubernatorial Cost Analysis Report* issued last year.

Planning and Staffing

To guide its preparations for the 1989 program, early in 1988 regular staff created a detailed public financing calendar which projected all tasks related to public financing through September of 1990. Projected budget needs, public fund submission dates, public financing staff hiring targets, Office of Administrative Law filing deadlines, as well as day-to-day operational functions and statutory and regulatory requirements were included. This calendar has proved to be an invaluable guide for managing the variety of tasks necessary for implementation of the 1989 program.

As a result of efforts by the Executive Director and the Administration Section during 1987, Office of Management and Budget (OMB) approval was secured for creation of a permanent public financing staff. Therefore, during 1988, the Commission began its preparation for the 1989 Gubernatorial Public Financing Program with the knowledge that the positions of Director and Secretary of Public Financing would become a permanent part of the Commission's operating budget in Fiscal Year 1990. This addition of a permanent public financing staff will insure program continuity and permit tasks, reports, and analyses of the 1989 Public Financing Program to be completed after the election by staff directly involved in the day-to-day operation of the program. Staffing was begun with the hiring of the Public Financing Director and Secretary during August of 1988. An Assistant Director, Public Financing Analysts, and Data Entry Operators were hired gradually between October and December and trained in review and data entry functions.

The Commission's computer upgrade, installed in 1988, enhanced the capacity and capability of the public financing staff to process

public fund submissions and to provide contributor information to the public. Testing of all computer operations related to public financing was a continuous process during the fall.

With hiring, staff training, form revision and all preparation progressing on target, the public financing staff held two information sessions during December for the staffs of prospective gubernatorial candidates. The sessions were well-attended and well-received.

Regulations Reviewed and Amended

Based upon its past experience in operating the Public Financing Program, the Commission proposed amendments to the regulations governing the gubernatorial primary and general elections. Public hearings were held on July 19, August 11, and November 15, 1988 as part of the adoption process. Testimony heard at the hearing and comments received were considered by the Commission. Among the new regulations adopted are two new reporting obligations. Individuals and committees conducting financial activity associated with "testing the waters" for a possible gubernatorial candidacy are now required to file a report notifying the Commission of the bank account established for testing purposes. Candidates must also report all expenditures of public funds to the Commission prior to the beginning of their campaign cycle reporting obligations. An amendment to the regulations has now clarified that the entire purchase price of a ticket to a fundraising entertainment event is considered a contribution and is eligible for match. Still other regulations and amendments were adopted to provide guidance for campaigns involved in the public financing process.

Advisory Opinions

In its responses to a series of advisory opinion requests received during 1988, the Commission outlined the reporting obligations of individuals and committees engaged in "testing the waters" activity (Advisory Opinions 7-1988, 10-1988, and 12-1988). The Commission reemphasized that, should an individual become a gubernatorial candidate, all prior testing activity conducted by the individual or by a committee on his or her behalf becomes subject to the candidate's reporting obligations. The advisory opinion mechanism was therefore actively employed to clarify requirements of the Public Financing Program.

Staff approaches the 1989 gubernatorial election anticipating the challenge of molding recent legislative changes into the already successful Public Financing Program. It is confident that detailed preparations begun during 1988 will enable the Commission to respond to the public's desire for information about gubernatorial campaigns and to serve the candidates' needs.

ADMINISTRATION SECTION

During 1988, the Administration Section continued to meet the ever increasing fiscal and personnel demands of the Commission in a professionally efficient manner. An essential part of the Commission, Administration provides all management services for the agency. ELEC is "in but not of" the Department of Law and Public Safety. The department has no administrative responsibility over the Commission.

Managing The Budget

Looking forward to FY 1990, the Commission anticipates an appropriation of \$1,486,000 to support regular Commission operations and the administration of the Public Financing Program. Two of the temporary Public Financing positions from FY 1989 will be converted to permanent status in FY 1990. These are the director and secretary who will provide for continuity of the program by handling legal matters and audit programs.

The Public Financing Program is targeted for an appropriation of \$3,000,000 to support 1989 general election candidates. However, recent changes in the law will require additional funds to be made available. These funds will come as a loan from the State's General Fund.

Absorbing Budget Cuts

The operating appropriation of \$1,486,000 has been reduced from a request of \$1,707,000 originally approved by Office of Management and Budget. The Commission will absorb this cut of \$221,000 by not filling vacated positions in accordance with the Governor's hiring freeze and by appropriate reductions in some functions caused by the current funding level. There is no question but that this budgetary reduction will place enormous pressure on an already thin staff as it copes with a campaign finance industry that is growing in an explosive manner, adding greatly to the Commission's workload.

In view of this ever growing workload, the Commission's first budget request included six new positions to provide adequate staff to meet increasing demands. None of these positions were included in the final requested and recommended appropriations. Over the next five years, the Commission has projected that it will need fourteen additional positions including the six requested in FY 1990 to maintain services at their current high standard.

Computer Upgrade

In late summer, the Commission determined that its existing computer capacity would be inadequate to efficiently handle existing functions plus the new word processing system and the Gubernatorial Public Financing Program simultaneously. The Administration Section worked very closely with the Commission's System Administrator and the Office of Telecommunications and Information Systems in the Department of Treasury to determine the specifications of a proposed upgrade to the system. Massive effort was dedicated to the procurement process to ensure that the new system could be delivered and installed before Public Financing came on line in early January 1989. The system was delivered within two weeks of the target date and was ready to accommodate Public Financing on schedule.

During this same period, the Administrative Section finalized the implementation of its state of the art word processing system. Five terminals are now fully operational and all ELEC secretaries have been trained on this system.

Expanding Office Space

The commencement of the Public Financing Program in FY 1989 created other challenges for the Administrative Unit. Additional space, supplies, equipment, and personnel were needed to insure that the program would be operational on the targeted date. The need for additional space resulted in Administration's vacating its area on the twelfth floor and moving to quarters on the fifth floor of the National State Bank Building.

ADMINISTRATION SECTION continued

This move permitted the Public Financing staff to locate their operations near the agency's computer resources and necessary records. When the Director of the Public Financing Program was selected, she worked closely with Administration in securing both the personnel and equipment (including the applicable computer capacity and programs) needed to run this important and highly visible program.

High Marks for Operational Performance

The results of an audit, conducted by the Office of the State Auditor in 1988, found ELEC's fiscal and personnel records in excellent condition and complimented the agency for its efficient and effective operational performance.

There is no doubt that the Administration Section, with its responsibility for purchase and contract negotiation, for fiscal and personnel management, for future staffing, and for the efficient functioning of the Commission's day-to-day operations, is a vital part of the Election Law Enforcement Commission. As it has done during its three years in existence, the Administration Section will strive to improve efficiency in management and day-to-day operations in the coming year.

1988 AND 1989 BUDGET OVERVIEW AND 1988 EVALUATION DATA

In FY 1989, the Commission received some increases over FY 1988 in its non-salary operating accounts to cover inflation. In addition, two lump sum appropriations were received for the Public Financing Program: \$8,000,000 for the funding of gubernatorial candidate campaigns in the primary election, and \$362,000 for the administration of the program. In FY 1990, however, the Commission will have to absorb cuts amounting to \$221,000 in its original budget target.



Comparison of Fiscal Years 1988 and 1989 Appropriations

	<u>FY 1988</u> <u>Appropriation</u>	<u>FY 1989</u> <u>Appropriation</u>
Personnel	\$ 779,000	\$ 851,000
Printing & Supplies	40,000	42,000
Travel	7,000	8,000
Telephone	16,000	17,000
Postage	18,000	19,000
Data Processing	89,000	93,000
Professional Services	38,000	40,000
Other Services	19,000	20,000
OTIS	11,000	12,000
Maintenance/Equipment	1,000	1,000
Central Motor Pool	4,000	4,000
Furniture/Equipment	15,000	15,000
Commissioner Per Diem	30,000	30,000
Public Financing Administration	<u>0</u>	<u>362,000</u>
Total Operational	\$1,067,000	\$1,514,000
Gubernatorial Public Financing	\$ 0	\$8,000,000

1988 Evaluation Data

Disclosure Reports (Total)	15,165
Campaign & Quarterly	14,718
Lobbyist	447
Personal Finance	0
Advisory Opinions	21
Investigations	97
Complaints	603
Public Assistance Requests	8,082
Fine Collection	\$29,027