

FINDINGS AND RECOMMENDATIONS OF THE
AD HOC COMMISSION ON LEGISLATIVE ETHICS
AND CAMPAIGN FINANCE

A REPORT TO THE PRESIDENT OF THE SENATE, THE
SPEAKER OF THE GENERAL ASSEMBLY AND
MEMBERS OF THE NEW JERSEY LEGISLATURE

COMMISSION MEMBERS:

Alan Rosenthal, Chairman
Albert Burstein
Michael R. Cole
Patricia Q. Sheehan
Thomas J. Stanton, Jr.

Senator Carmen A. Orechio
Senator Donald T. DiFrancesco
Assemblyman Thomas J. Deverin
Assemblyman Garabed "Chuck" Haytaian

October 22, 1990

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New Jersey State Legislature

AD HOC COMMISSION ON LEGISLATIVE ETHICS
AND CAMPAIGN FINANCE

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John A. Lynch
President of the Senate
Joseph V. Doria, Jr.
Speaker of the
General Assembly

October 22, 1990

John A. Lynch
President of the Senate

Joseph V. Doria, Jr.
Speaker of the General Assembly

Members of the New Jersey Legislature

Ladies and Gentlemen:

I am pleased to transmit with this letter the report of the findings and recommendations of the Ad Hoc Commission on Legislative Ethics and Campaign Finance.

The commission, which was established in March by order of the Senate President and General Assembly Speaker, met on thirteen occasions and heard testimony from 26 witnesses.

I would like to thank the individuals who appeared before the commission, sharing with us their observations and suggestions. The commission owes special gratitude to Frederick M. Herrmann, Executive Director of the New Jersey Election Law Enforcement Commission, who provided us with critical information and advice.

I take personal pride in the results of the commission's efforts. The four legislators and the four public members of the commission worked extremely well together, and practically all of the more than 25 votes on recommendations were unanimous or nearly so. Each of the members brought to the deliberations a wealth of experience with the Legislature, a deep concern for the legislative institution and process, dedication to the job at hand, and good judgment. It was a rare privilege for me to serve with these individuals.

President of the Senate
Speaker of the General Assembly
Members of the New Jersey Legislature
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The work of the commission could not have been done without the staff support provided by the Office of Legislative Services. Frank Parisi, Research Associate, and Marci L. Hochman, Assistant Legislative Counsel, performed superbly and contributed further to the excellent record of OLS in serving the Legislature. Special thanks must also be extended to David Inverso, Coordinator of the Hearing Reporter Unit, and his staff for their fine job of recording and providing transcripts of the commission meetings.

The recommendations in this report call for significant change. If adopted, they will have real impact on the political system in New Jersey. The recommendations are intended to achieve a number of purposes:

- To better record and regulate the sources and amounts of money contributed to election campaigns;
- To strengthen the reporting requirements for lobbyists and thus make more visible their activity with legislators; and
- To establish additional rules for the ethical conduct of legislators and reassure the public that their representatives are being held to high ethical standards.

The changes that the commission is recommending depend, of course, on the Legislature's approval and adoption. They depend even more on their implementation, monitoring, and enforcement, which are responsibilities of the Election Law Enforcement Commission and the Legislature's ethics committee. The commission's recommendations that the capacity of ELEC be increased and that public members be added to the ethics committee, we believe, will help make new campaign finance and legislative ethics requirements work and improve the political process in New Jersey.

Sincerely,

Alan Rosenthal
Chairman

AR/jas
Enclosure

MEMBERS OF THE AD HOC COMMISSION ON
LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

ALAN ROSENTHAL, Chairman, is Director of the Eagleton Institute of Politics and Professor of Political Science at Rutgers University. His major fields are state legislatures and state government and politics. He has directed organizational studies commissioned by legislatures in Arkansas, Connecticut, Florida, Maryland, Mississippi, Ohio, Texas and Wisconsin and has worked with the legislatures in 15 other states. Among his writings are Politics in New Jersey (1979), Legislative Life (1981), and Governors and Legislatures: Contending Powers (1990).

ALBERT BURSTEIN, Esq., is presently a senior partner in the law firm of Herten, Burstein, Sheridan and Cevasco in Hackensack. He was a member of the General Assembly between 1971 and 1981, where he served as Chairman of the Education Committee, a member of the Election Law Revision Commission, Assistant Majority Leader from 1976 to 1977 and Majority Leader from 1978 to 1979. He has also served in numerous non-legislative public positions, including a term as Chairman of the National Policy Committee of the Education Commission of the States and as Chairman of the New Jersey Special Education Study Commission.

MICHAEL R. COLE, Esq., is presently a partner in the law firm of Riker, Danzig, Scherer, Hyland and Perretti in Morristown. His most recent public position was Chief Counsel to Governor Thomas H. Kean, whom he served from January, 1986 through March, 1989. Prior to joining the Governor's staff, he served in several high-ranking positions with the Department of Law and Public Safety, beginning in April, 1978, as Assistant Attorney General in Charge of Litigation, in the Division of Law. In February, 1981, he became Director of the Division of Law and in October, 1983, he was named First Assistant Attorney General in charge of policy direction and day-to-day management for the department.

PATRICIA Q. SHEEHAN is the Manager of Corporate Relations in the Government Affairs Department of Johnson & Johnson. Before assuming that position she served, between 1978 and 1980, as the Executive Director of the Hackensack Meadowlands Development Commission. Her prior public positions include service as Commissioner of the New Jersey Department of Community Affairs, where she served from 1974 through 1978, and two terms as Mayor of New Brunswick, from 1967 through 1974.

THOMAS J. STANTON, JR. is the Chairman Emeritus of National Westminster Bank, NJ (formerly First Jersey Bank). He has been a banker since 1954 and has also been a member of many public and business leadership organizations. He has served as Chairman of the New Jersey State Commission on Budget Priorities, as a member of the Commission on the Future of Higher Education in New Jersey and as a member of the New Jersey Commission on Government Costs and Tax Policy.

SENATOR CARMEN A. ORECHIO, (District 30-D), is Chairman of the Joint Legislative Committee on Ethical Standards. He served as President of the Senate between 1982 and 1985 and occasionally as Acting Governor during that same period. He was first elected to the Senate in 1973 and served as Majority Leader in 1981. In addition to serving in the Legislature, he served as the Mayor of Nutley between 1972 and 1976 and again between 1980 and 1984.

SENATOR DONALD T. DIFRANCESCO, (District 22-R), was first elected to the Senate in November, 1979. Between 1982 and 1984, he served as Minority Leader. He also served in the General Assembly between 1976 and 1979. Before serving in the Legislature, he was assistant township attorney and municipal attorney for Scotch Plains between 1970 and 1974.

ASSEMBLYMAN THOMAS J. DEVERIN, (District 20-D), was first elected to the Assembly in 1969. He is presently Majority Leader Pro Tem. He held the position of Speaker Pro Tem from 1978 to 1981, and again between 1984 and 1985. He also held the position of Assembly Minority Leader between 1986 and 1988 and Acting Governor during 1979. Prior to entering the General Assembly, he was Mayor of Carteret from 1962 through 1969.

ASSEMBLYMAN GARABED "CHUCK" HAYTAIAN, (District 24-R), is presently the Minority Leader of the General Assembly. He was first elected to that House in 1981 and since then served as Assembly Majority Leader from 1986 through 1989 and Assistant Minority Leader in 1985. He also serves as a member of the Executive Committee of the Eastern Regional Conference of the Council of State Governments (CSG).

PERSONS AND ORGANIZATIONS SUBMITTING TESTIMONY
TO THE AD HOC COMMISSION ON
LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

LEGISLATORS:

HONORABLE LEANNA BROWN, Senator, District 26
HONORABLE ANTHONY J. "SKIP" CIMINO, Assemblyman, District 14
HONORABLE PAUL CONTILLO, Senator, District 38
HONORABLE JOSEPH V. DORIA, JR., Assemblyman, District 31
HONORABLE THOMAS P. FOY, Assemblyman, District 7
HONORABLE ROBERT J. MARTIN, Assemblyman, District 26
HONORABLE JAMES E. MCGREEVEY, Assemblyman, District 19
HONORABLE PATRICK J. ROMA, Assemblyman, District 38
HONORABLE DAVID C. RUSSO, Assemblyman, District 40
HONORABLE WILLIAM E. SCHLUTER, Assemblyman, District 23

LEGISLATIVE STAFF:

STEPHEN DEMICCO, Former Director of Research, Senate Democratic Staff
GREGG EDWARDS, Assistant Research Director, Assembly Republican Staff
MICHELLE SOBOLEWSKI, Director of Intergovernmental Relations,
Assembly Democratic Staff

STATE AGENCY OFFICIALS:

JEFFREY M. BRINDLE, Deputy Director
New Jersey Election Law Enforcement Commission
DR. FREDERICK M. HERRMANN, Executive Director
New Jersey Election Law Enforcement Commission

GREG NAGY, Esq., Legal Director
New Jersey Election Law Enforcement Commission

RITA L. STRMENSKY, Executive Director
Executive Commission on Ethical Standards

OTHER WITNESSES:

DR. HERBERT ALEXANDER

DR. RUTH S. JONES

EDWARD MCCOOL

DR. LARRY SABATO

DR. STEPHEN A. SALMORE

CHARLES E. STAPLETON

ROB STUART

JOHN TOROK

BARBARA TROUGHT

SUMMARY OF RECOMMENDATIONS BY THE
AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE

I. CAMPAIGN FINANCE

1. Limit to \$1,500 the amount that may be contributed per election to a candidate or to a candidate's campaign committee by an individual, corporation, union or other group (other than a political committee or a continuing political committee) and limit to \$5,000 the amount that may be contributed per election to a candidate or a candidate's campaign committee by a political committee or a continuing political committee, except as provided in recommendation 5.

2. Require that each candidate be limited to only one campaign committee or continuing political committee for the purpose of raising funds for and paying the expenses of the political activities of that candidate.

3. Limit to \$25,000 per year the amount that an individual, corporation, union, political committee or continuing political committee can contribute to the State committee of each political party or to each legislative leadership committee. (Only four such committees would be permitted: one for the majority leadership and one for the minority leadership in each House of the Legislature.)

4. Limit to \$10,000 per year the amount that an individual, corporation, union, political committee or continuing political committee can contribute to each county committee of each political party, and limit to \$5,000 per year the amount these groups can contribute to each municipal committee of each political party.

5. Place no limit on the amount of money that can be contributed to a candidate or a candidate's campaign committee by the State, county or municipal committee of a political party or a legislative leadership committee or a national party political committee.

6. Limit to \$5,000 per election the amount that one candidate or candidate's campaign committee can contribute to another candidate or candidate's campaign committee.

7. Limit to \$1,500 per year the amount that an individual may contribute to a continuing political committee (other than a legislative leadership committee, or the State, county or municipal committees of a political party).

8. Limit to \$1,500 per year the amount that an individual may contribute to a political committee and limit to \$5,000 per year the amount that a political committee or a continuing political committee may contribute to another political committee.

9. Restrict the use of political contributions to only the following uses: 1) the payment of all campaign-related expenses; 2) contributions to charities; 3) the payment of overhead and administrative expenses related to the operation of the candidate's campaign committee or continuing political committee; 4) contributions to other candidates or to political committees or continuing political committees; 5) pro rata refunds to contributors.

10. Require that any funds remaining in the campaign committee or continuing political committee of a candidate at the time of his death shall be used in one or more of the acceptable ways provided by recommendation 9 by the committee's treasurer or whoever has control of the campaign committee's funds after the death of the candidate.

11. Require individual contributors to a candidate or a committee (including candidates' campaign committees, political committees and continuing political committees) to disclose to that candidate or committee their occupation and employer, so that this information and all other information already required by law is provided to the Election Law Enforcement Commission (ELEC).

12. Require each type of committee to provide to ELEC a brief statement of purpose, as well as the names, home addresses, occupations and employers of the officers of the committee, and require each candidate's campaign committee to disclose the name of the candidate or candidates for which it is raising funds and paying campaign expenses.

13. Raise the current threshold amount which triggers the disclosure of contributions made to a candidate or a candidate's campaign committee from \$100 to \$200 and raise the threshold amount triggering the 48-hour notice requirement for contributions from over \$250 to over \$500.

14. Prohibit candidates and elected officials from raising funds in their own name for charitable or any other non-campaign purposes via checks made out in their own name, except through their campaign committees.

15. Require that all dollar amounts provided for in the Reporting Act, including all new limits and thresholds recommended in this report, shall be adjusted quadrennially.

II. LOBBYING

16. Eliminate the provision in current lobbying law which does not require the disclosure of expenditures undertaken for the purpose of communicating with the Governor, his staff and with members of the Legislature unless the communications are "expressly" connected to a particular piece of legislation.

17. Require lobbyists and legislative agents to file with ELEC quarterly reports of all lobbying activity. The threshold amounts for reporting expenditures would be \$25 a day or \$100 per person per quarter.

18. Require that all laws pertaining to the disclosure of expenditures by lobbyists on legislators be extended to cover all legislative staff.

19. Clarify the terminology in current law with regard to lobbyist and legislative agents, using instead the terms "employee lobbyist," "contract lobbyist" and "lobbyist organization."

20. Consolidate the monitoring of all lobbying activity in ELEC, instead of maintaining the present system whereby administration is bifurcated between ELEC and the Attorney General.

21. Require that all dollar amounts provided for in the Lobbying Act, including all new thresholds recommended in this report, shall be adjusted quadrennially.

III. CONFLICTS OF INTEREST

22. Add four public members to the Joint Legislative Committee on Ethical Standards (for a total of 12 members) with the presiding officer and minority leader of each House having the authority to appoint one member, with both legislators and public members serving for a two-year term concurrent with the legislative session.

23. Expand the financial disclosure requirements to include the listing of: assets; liabilities; forgiven debts; all sources of income including directorships or fiduciary positions for which compensation has been claimed; and offices, trusteeships, directorships or other positions held by the member with any entity that either does business with or is licensed, regulated or inspected by a State agency other than charitable entities. Include specific dollar amounts of income on a member's financial disclosure statement.

24. Require that the Legislature (State) authorize and pay the expenses (travel and subsistence) for all trips taken by members related to their official duties with any private reimbursement going directly to the Legislature instead of an individual member.

25. Prohibit legislators from accepting any honoraria in conjunction with speeches or appearances related to their official legislative duties.

26. Require the Legislature to provide on a biennial basis an educational program on legislative ethics for its members and staff.

IV. ELECTION LAW ENFORCEMENT COMMISSION

27. Increase existing civil fines and penalties that may be imposed by ELEC on violators of the Reporting Act and the Lobbying Act in order to promote compliance with disclosure.

28. Prohibit any person from making loans to any other person for the purpose of inducing that person to make a campaign contribution.

29. Strengthen by increased appropriations the administrative capacity of ELEC so that it can make available, in a timely and appropriate manner, the campaign finance and lobbying information it receives.

INTRODUCTION

The Ad Hoc Commission on Legislative Ethics and Campaign Finance was established on March 27, 1990 by order of Senate President John A. Lynch and General Assembly Speaker Joseph V. Doria, Jr. Pursuant to this order, the commission was made up of nine members: five public members, including the chairman, and four members of the Legislature, specifically one member of the majority party and one member of the minority party of each House. Each of the legislative members also sits on the Joint Legislative Committee on Ethical Standards.

On April 23, 1990, at the organizational meeting of the commission, Speaker Doria instructed it to examine all areas of legislative ethics and campaign finance, including lobbying, to determine what changes in current law should be made to restore the public's confidence in the integrity of the Legislature. The Speaker noted that a recent poll showed public confidence in the Legislature to be at its lowest point in 10 years and that many people believed that they lack any voice in State government. Assemblyman Doria stated that this belief was fed by the cynicism of the media and the escalating cost of campaigning for public office, which led the public to believe that only people with personal fortunes or with influential contacts could raise the large amount of money necessary to run for the Legislature. The Speaker urged the commission to dispel such rumors and innuendo and prove to the general public that the Legislature is the tool of the people and not of the special interests.

In keeping with the Speaker's belief that the Legislature is part of an open democratic system with free access to all citizens, the commission decided that each meeting would be open to the public, and recorded and transcribed by the Hearing Reporter Unit of the Office of Legislative Services. It also decided on a schedule of approximately two meetings per month for the succeeding five months, to which would be invited legislators, lobbyists, representatives of pertinent State agencies and public interest groups, academic experts and the general public.

After the organizational meeting, the commission subsequently held meetings on May 2nd, May 15th, June 6th, June 20th, July 11th, July 25th, August 8th, August 24th, September 5th, September 12th, September 26th and October 3rd. Over the course of those meetings, the commission received the testimony of more than twenty-five witnesses. The meetings were divided between the issues of legislative ethics, campaign finance and lobbying. Witnesses, however, were invited to speak on all issues to avoid burdening them with multiple appearances before the commission.

The establishment of the Ad Hoc Commission on Legislative Ethics and Campaign Finance was based on the belief that a partnership of private individuals familiar with the functioning of State government and experienced elected officials could examine the current system of legislative ethics and campaign finance and suggest changes in current law and regulation where necessary to restore the public's faith in its political system. When it began work, the commission believed that its mission was to consider only the state of current legislative conflicts of interest law, legislative campaign finance law

and legislative lobbying law. After receiving testimony on and recommendations regarding changes in many different areas of current law, the commission concluded that some of its recommendations must exceed the boundaries of this mandate to be practical and effective. Accordingly, the recommendations for changes in current campaign finance law should be applied to candidates for any public office of the State or any political subdivision thereof and not only to candidates for the Legislature, and the recommendations for changes in the lobbying law should include the Governor and his staff and not only members of the Legislature. After carefully considering the testimony of many witnesses and engaging in lengthy public discussions, the commission believes that it has thoroughly examined the issues before it and has developed reasonable and practical recommendations for changes in the areas of campaign finance, lobbying and conflicts of interest. In this spirit, the commission presents this report for consideration by the President of the Senate, the Speaker of the General Assembly, other members of the Legislature, the relevant agencies of State government and the general public.

PROBLEMS

The commission recognizes that there are certain problems and public concerns which have arisen from the current systems of campaign finance, lobbying and legislative ethics. These were identified at length by the legislators, members of the public, State agency officials and others who offered testimony to the commission. The commission finds that these problems and concerns have their roots in the deficiencies and inadequacies of current law which have become more obvious and burdensome with time. The fact that certain deficiencies and inadequacies have been allowed to continue has led to a slow, yet insidious erosion of public confidence in the system which is harmful not only to the reputation of the Legislature, but also to the democratic tradition in this State.

The problems and concerns which have been identified by witnesses testifying before the commission and by the commission in its deliberations are:

- 1) A public perception that public officials and candidates for public office are influenced in their actions and opinions, perhaps inordinately, by the persons, companies or organizations who make large or numerous contributions of money to their election or reelection campaigns;
- 2) A public perception that excessive fund raising for election or reelection distracts elected officials from governing and gives the impression that the official's vote is for sale to the contributors making the largest donations;
- 3) A public perception that the cost of running for elected office is too expensive and that the escalation of this cost has led to an 'arms race' mentality among candidates, which further feeds the increasing cost of campaigning;
- 4) A public perception that the power of special interest groups, lobbyists and PACs (political action committees) has increased so significantly in recent years that their contributions to a candidate can make the difference between whether that candidate is defeated or elected;
- 5) Not enough is known about the contributors who donate money or other things of value to candidates running for election or reelection to State office;
- 6) The allowable uses of political contributions are unclear and potentially open to abuse;
- 7) The current laws governing the disclosure by lobbyists of the amount of money they spend passing benefits to and lobbying the Governor, members of the Legislature and their respective staffs are inadequate, confusing and do not produce enough information of value to the public;
- 8) Currently there are insufficient resources for the enforcement of existing campaign finance laws, especially those administered by the Election Law Enforcement Commission (ELEC), and of any future laws enacted by the Legislature;

9) A public perception that pure self-policing is not the most effective method of ethical regulation;

10) A public perception that legislators use their official positions to further their personal interests;

11) A public perception that the current financial disclosure statements filed by legislators do not provide the public with an adequate picture of the legislators' financial and other interests which may impact upon their official actions; and

12) A public perception that legislators are being compromised with trips, gifts and honoraria from special interest groups.

ASSUMPTIONS

In framing the recommendations which appear subsequently in this report, the commission was guided by several assumptions relative to campaign finance, lobbying and conflicts of interest. These assumptions respond to the problems in each of those areas, as identified in the previous section of this report, and also offer a partial explanation of the reason for the existence of those problems.

1) The existing political system and the current system of campaign finance, lobbying and conflicts of interest laws are basically sound.

Despite its outward appearance to some observers and some members of the public, the political system in New Jersey does, in the opinion of the commission, function reasonably well. It represents and responds to the needs of the citizens of the State and it provides basic services. There will always be problems of one kind or another in State government. It is not a perfect system and never will be, but through reform some of the problems and inadequacies can be addressed.

Similarly, the current campaign finance system is not perfect and never will be, but it performs the functions for which it was created. The main campaign finance law, known formally as "The New Jersey Campaign Contributions and Expenditures Reporting Act," (N.J.S.A. 19:44A-1 et seq.) (cited hereafter as the Reporting Act), provides basic information on the financial activities of persons running for elected office and it prohibits some of the activities which in the past had led to corruption or abuse. With few exceptions, this and other campaign finance laws are being complied with.

The commission believes, however, that certain adjustments in these laws are now necessary. The Reporting Act, with the exception of those sections covering gubernatorial campaigns, has not been amended significantly since 1983. Since then certain changes have occurred in the practice of campaigning for public office which have revealed clearly the inadequacies of current law.

The passage of time has also revealed the inadequacies of the current lobbying law. That law, known formally as the "Legislative Activities Disclosure Act of 1971," (N.J.S.A. 52:13C-19 et seq.) (cited hereafter as the Lobbying Act) identifies the persons involved in the important job of lobbying. The law also requires lobbyists to account for all money spent attempting to influence individual legislators regarding the destiny of a particular piece of legislation. Yet the commission finds that the most important information--how much money a lobbyist spends passing a benefit to a legislator or engaging in "goodwill" lobbying--is not required to be made available to the public, but should be.

The commission believes that adjustments in current law are also necessary to relieve public concerns and to change public perceptions regarding those laws. The commission agrees with Speaker Doria's observation that some media reports regarding the activities of the Legislature have increased public

cynicism towards the institution. Several witnesses testifying before the commission noted that special or public interest groups regularly use the media to make accusations, often based on erroneous information or inaccurate assumptions, regarding the actions of the Legislature or individual legislators. The commission finds that too often media reports about a supposed conflict of interest assume that there is a direct connection between money given and votes cast in the Legislature. The truth is always more complicated. Legislators vote the way they do for many reasons that have nothing to do with a campaign contribution. Studies of the voting behavior of legislators have demonstrated that party affiliation, constituent interests and personal beliefs are the principal determinants of how a legislator votes. Other studies have shown that a legislator usually receives a campaign contribution from a particular interest group because he supports that group's position, not because that group expects to change that legislator's vote in favor of its position.

It is important to note that the need to reexamine and revise existing campaign finance, lobbying and conflicts of interest laws is not unique to New Jersey. The passage of referenda in California which tighten up conflicts of interest laws and recent proposals made in Congress for strengthening current federal campaign finance laws show that ethical problems and public suspicions arise wherever politics and money mix.

2) The cost of running for public office is high and is escalating, yet such costs are understandable.

Statistical evidence shows clearly that the cost of running for public office in New Jersey has increased significantly over the past several years. For example, according to figures compiled by ELEC, the total receipts reported by Assembly candidates for the 1989 general election amounted to \$9,787,549 and expenditures to \$7,653,744. These figures represent a 49 percent increase in receipts by candidates and a 42 percent increase in spending since 1985. Between 1987 and 1989 alone, Assembly fund raising increased by 27 percent and expenditures by 38 percent.

The commission believes that the most important reason for this increase is the steadily rising cost of campaigning. Every year it becomes more expensive for a candidate to communicate his or her message so that the voting public has some sense of what the major issues are and who the candidates are in a particular election. The high cost of television advertising in the New York and Philadelphia markets (the first and fourth most expensive in the country), the cost of radio air time, the cost of printing political pamphlets and placing advertisements in local newspapers, and increasingly, the cost of direct mailings to potential supporters, sophisticated polling surveys and professional campaign advisers have each contributed to increasing the overall cost of elections. Individual candidates have little control over most of these costs. If they choose to pass up one campaign device or another they run the risk of abandoning a means of communicating with the public which their opponents may exploit successfully enough to gain office.

The commission notes that the increasing competitiveness of campaigns in New Jersey has also helped fuel the cost of campaigning. Such costs are especially high in those legislative districts which are considered "swing"

districts and therefore are particularly competitive. For example, in the highly competitive 10th legislative district, a total of \$605,321 was spent by candidates in the 1989 general election for members of the General Assembly, while in the relatively non-competitive 8th legislative district, a total of \$150,128 was spent by Assembly candidates that same year.

3) There is a need to establish, as much as possible, a "level playing field" between candidates.

Although the commission recognizes that complete equality is at best an elusive if not impossible goal, it believes that any group of recommendations for reform of the current campaign finance laws must strive to create an environment in which opposing candidates can compete on the same level. The voter recognition which an incumbent engenders and the access to the public's eye and ear that a large campaign account can purchase are two advantages in any campaign which can rarely be surmounted. The commission believes these advantages should not be accented by any change in the current law, but rather that all new changes should work to neutralize the advantage of incumbency, affect both the incumbent and the challenger equally or, at best, tilt the playing field to the advantage of the challenger so that equality between the candidates can be approached.

4) Full disclosure of relevant financial information is essential.

It is a basic right of the citizens in a democracy to have available information about who their candidates are, where they stand on current issues and the sources of the contributions they receive. To the extent that this information does not exist, the public is ill-informed or not informed, and therefore unable to vote intelligently or have full confidence in the integrity of their representatives.

The commission believes that all financial information relative to the public life of a candidate for office must continue to be readily available for inspection by the media, other candidates and the public. The importance of disclosure was established in New Jersey with the enactment of the Lobbying Act in 1971 and the Reporting Act in 1973. The commission believes that any future changes in these laws must be made with an eye toward extending the scope of information required by disclosure and strengthening compliance to those requirements.

5) The Legislature is essentially an ethical body of dedicated public servants committed to serving the best interests of the residents of this State.

The commission finds that much of the public cynicism directed towards the Legislature is fueled by the complexity of the legislative process and by an incomplete understanding of the current ethics provisions.

While the commission finds that the basic framework of ethical regulations contained in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.) and the Legislative Code of Ethics is sound, certain changes are warranted

to restore public confidence in the integrity of the Legislature and insure that members themselves are knowledgeable about existing regulations and capable of applying those regulations to day-to-day situations.

The commission endeavors with its recommendations to reassure the public that the Legislature is committed to insuring the ethical conduct of its members and staff while maximizing each representative's participation in the legislative process.

RECOMMENDATIONS

I. CAMPAIGN FINANCE

A. CONTRIBUTION LIMITS

Existing provisions:

Current law contains no provisions which limit the amount of a contribution that a candidate for public office, other than Governor, may receive from an individual, a corporation, union, group, political committee or a continuing political committee. N.J.S.A. 19:44A-11 prohibits all anonymous contributions and provides that no currency contributions in excess of \$100 may be used or expended by a candidate. Current law is also silent as to the source of contributions, except that N.J.S.A. 19:34-32 bans insurance corporations or associations from making either direct or indirect contributions for any political purpose. N.J.S.A. 19:34-45 bans banks, utility companies and certain other regulated corporations from making campaign contributions. Section 138 of the "Casino Control Act" (N.J.S.A. 5:12-1 et seq.) prohibits any applicant for or holder of a casino license or any of the principal officers of a company holding a casino license from making campaign contributions to a candidate for any public office in the State or to any committee of a political party in the State or to any group, committee or association organized in support of any candidate or political party.

The Reporting Act recognizes and provides a comprehensive set of disclosure requirements for three types of committees which are involved in political activity: candidate committees, political committees (PC) and continuing political committees (CPC). A candidate committee is an entity formed by an individual candidate for the purpose of raising money on behalf of and paying the bills of that candidate. Although this type of committee is not defined specifically in current law, N.J.S.A. 19:44A-16 requires that a candidate who expends, expects to expend or has expended more than \$2,000 on behalf of his candidacy must file reports with ELEC 29 and 11 days before the election and 20 days after the election which list all contributions in excess of \$100, in the aggregate. The candidate must continue to file reports every 60 days thereafter until all campaign debts and surplus funds have been dissolved. He or she must also notify ELEC within 48 hours of the receipt of a contribution of more than \$250 received within the 13 day period before the election.

N.J.S.A. 19:44A-3(i) defines a political committee as any group of two or more persons acting jointly to aid or promote the nomination, election or defeat of any candidate for public office in any election which raises or expends \$1,000 or more to aid or promote the nomination, election or defeat of any candidate in any election or the passage or defeat of a public question. This type of committee is established to receive contributions for and pay the expenses associated with only one election. A political committee must file with ELEC

on the 29th day before the election, on the 11th day before the election, on the 20th day after the election and if not disbanded immediately following an election, at 60-day intervals thereafter. A political committee also must notify ELEC within 48 hours of the receipt of a contribution of more than \$250 received within the 13 day period before the election.

N.J.S.A. 19:44A-3(n) defines a continuing political committee as (1) "the State committee, or any county or municipal committee of a political party"; or (2) any group of two or more persons acting jointly to aid or promote the nomination, election or defeat of any candidate for public office in any election which in any calendar year contributes or expects to contribute at least \$2,500 to the aid or promotion of the nomination, election or defeat of any candidate in any election and which may be expected to make contributions toward such aid or promotion during a subsequent election. This latter committee is the entity usually associated with the term "political action committee" or PAC. However, the term "political action committee" or PAC is not used in current State law. Continuing political committees must file on a quarterly basis, with reports due on April 15, July 15, October 15 and January 15. Contributions in excess of \$250 received before the election and after the final day of a quarterly reporting period must be reported to ELEC within 48 hours of their receipt. ELEC regulations permit a CPC to file a cumulative report on the 11th day prior to the election of all contributions in excess of \$250 received after the final day of a quarterly reporting period and up to that 11th day. Any contribution in excess of \$250 subsequent to the 11th day or not included in that cumulative report is subject to the 48-hour notice requirement.

Recommendation 1:

Limit to \$1,500 the amount that may be contributed per election to a candidate or to a candidate's campaign committee by an individual, corporation, union or other group (other than a political committee or a continuing political committee) and limit to \$5,000 the amount that may be contributed per election to a candidate or a candidate's campaign committee by a political committee or a continuing political committee except as provided in recommendation 5.

Explanation:

Although the commission recognizes the merits of the argument made by several witnesses that contribution limits will not stop the flow of money into political campaigns, the commission believes that such limits are essential and that they serve two purposes: 1) to limit the amount of money, and therefore, the potential influence, that any single, large contributor or group of contributors may have over a particular candidate; and 2) to help alleviate public fears that large amounts of money are contributed by one person or group to the campaigns of public officials in order to influence their actions. The commission notes that the Council on Government Ethics Law Blue Book, 1988-1989, identifies 28 states which currently have some type of restriction or limit on contributions to candidates, perhaps showing that such restrictions have proven useful in limiting the influence of money on politics and in calming public concerns about that influence.

The commission believes that the \$1,500 figure is reasonable and within the range of contributions made currently, according to the most recent statistics compiled by ELEC. In its White Paper Number One: Contribution Limits and Prohibited Contributions and White Paper Number Two: Trends in Legislative Campaign Financing, 1977-1987, ELEC notes that in the general election of 1987 the average contribution to legislative candidates was \$936 and the median contribution \$250. The largest portion of contributions to these candidates fell between \$101 and \$2,000. Although the same contributor information for local candidates is not readily available, ELEC believes that the average and median contributions to local candidates are probably lower than to legislative candidates. Thus, a \$1,500 contribution limit to these local candidates appears reasonable.

Moreover, the commission recommends the \$1,500 limit because it is the same as the limit on individual contributions to gubernatorial candidates. Having the two limits the same would help to eliminate any confusion about the amount of the limit by a potential donor to a candidate for any public office. At the same time, having contribution limits which were not the same for all elected officials would be exceedingly difficult for ELEC to administer and enforce.

The commission recommends the \$5,000 limit on contributions by political committees and continuing political committees because it recognizes that contributions from these entities often represent an accumulation of smaller contributions from a large group of people. The commission also believes that a contribution of \$5,000 is a relatively large amount of money from any source and one which is usually rare for most legislative candidates. The commission notes that this limit would apply only to political committees which are organized to promote or defeat a candidate for public office. The United States Supreme Court in Citizens Against Rent Control v. The City of Berkeley, 454 U.S. 290 (1981), held that contribution limits imposed on political committees formed to promote the passage or defeat of a public question were an unconstitutional infringement of the First Amendment right of freedom of political expression.

Ultimately, the commission accepts the argument made by Dr. Herbert Alexander of the Citizens Research Foundation and other witnesses that contribution limits must be high enough to allow a candidate to raise the money necessary to run an effective campaign, but not so high as to encourage only large contributions from special interests. At the same time, the limits should not be so low that the candidate must spend most of his or her time fund raising.

Recommendation 2:

Require that each candidate be limited to only one campaign committee or continuing political committee for the purpose of raising funds for and paying the expenses of the political activities of that candidate.

Explanation:

This recommendation would mean that each candidate for public office would be limited to only one campaign committee or one political committee for the purpose of raising funds and paying the expenses associated with campaigning for and holding public office. Under present practice, many candidates have one or more "friends of" continuing political committees for receiving political contributions and paying political expenses during non-election years and one campaign committee for paying the expenses associated with running for office during election years. The funds which are first collected via a "friends of" committee often form the basis of the campaign committee, and after an election, these funds are then returned to the "friends of" committee and the campaign committee is dissolved until the next election year.

If recommendation 2 is adopted by the Legislature, this practice would be prohibited. Instead, candidates would be permitted to establish only one committee which would function as a "friends of" committee in non-election years and as a campaign committee in election years. Because the reporting requirements for candidates and continuing political committees are different under the Reporting Act, this single committee would need its own reporting schedule. One scheme could be to require that the committee file quarterly reports in non-election years and in election years, file on the current schedule of 29 and 11 days before the election and 20 days after the election, with filing returning to a quarterly basis until the next election year or the account is closed.

The commission makes this recommendation because it believes that the financing of campaigns should be clarified and simplified, and that the reporting of a candidate's financial activities and the disclosure of those activities to the public should be facilitated. The recommendation should also stop the proliferation of committees used by a candidate in an election and deter candidates from trying to evade the contribution limits recommended in this report.

This recommendation would enable candidates in a district to form either their own separate campaign committees or a joint campaign committee with one or more other candidates in the district. If two or three candidates in a district form a joint committee, that committee would be able to receive contributions that could exceed the limit for an individual candidate but would be within the combined limits of contributions for two or three candidates. Thus, a joint committee of three candidates could receive up to \$4,500 per election from an individual or up to \$15,000 per election from a political committee or a continuing political committee and remain within the recommended limits.

At the same time, a candidate who establishes a joint campaign committee would be permitted to transfer funds to it from an existing political committee or continuing political committee.

The commission notes that a campaign committee, whether the committee of a single candidate or three candidates, should be considered the same as a continuing political committee and be subject to the same limits. Candidate committees should follow the registration and disclosure requirements that

apply to other continuing political committees (see recommendations 11 and 12 below) and should be limited to \$25,000 per year in contributions to the State committee of each political party, \$10,000 per year in contributions to the county committees of each political party and \$5,000 per year in contributions to the municipal committees of each political party. Hence, being a candidate with a campaign committee should confer no immunity from the limits on campaign contributions recommended in this report.

Recommendation 3:

Limit to \$25,000 per year the amount that an individual, corporation, union, political committee or continuing political committee can contribute to the State committee of each political party or to each legislative leadership committee. (Only four such committees would be permitted: one for the majority leadership and one for the minority leadership in each House of the Legislature.)

Explanation:

In selecting the \$25,000 limit, the commission seeks to strike a balance between strengthening a political party's ability to support its candidates, especially challengers, and its goal of limiting the influence over the party of any one donor or group of donors. The commission believes that the role of the party in legislative elections should be strengthened and that increased party unity and centralization is desirable. The \$25,000 limit, together with the recommendation not to limit the amount of money that can be given to a candidate by the State, county or municipal committee of a political party or a legislative leadership committee (see recommendation 5 below), would allow parties to collect significant amounts of money for use in party-building activities and to help elect or reelect party candidates to the Legislature. At the same time, the \$25,000 limit will restrict the potential influence over the party of any one contributor or group of contributors.

By making this recommendation the commission recognizes and sanctions the existence of the so-called legislative leadership committees. These are basically continuing political committees controlled by the legislative leadership and caucus of each party in each House which raise money during election and non-election years to allow party leaders in each House to help elect or reelect party candidates to the Legislature. The commission believes that there should be only four such committees: one for the majority party and one for the minority party in each House. The commission makes this recommendation with the hope of ending the proliferation of this type of committee while at the same time strengthening the ability of party leaders in the Legislature to help elect or reelect party candidates.

Recommendation 4:

Limit to \$10,000 per year the amount that an individual, corporation, union, political committee or continuing political committee can contribute to each county committee of each political party, and limit to \$5,000 per year the amount these groups can contribute to each municipal committee of each political party.

Explanation:

In recommending these limits, the commission seeks to maintain a balance between helping the party grow stronger and limiting the potential influence of a single or a small group of contributors. The commission believes that campaigning for county or municipal office is probably less expensive on the whole than campaigning for legislative office. Although there are counties which are larger than a single legislative district, there are also legislative districts which encompass more than one county or parts of more than one county (e.g., the 23rd district includes parts of Hunterdon, Mercer, Morris, Sussex and Warren counties). The commission recognizes that there is wide disparity across the State in the cost of running for county office and municipal office and that the recommended limits may not be adequate to cover all races. Yet the commission also believes that it is necessary to recommend these limits now and to adjust them at a later date if experience demonstrates that an adjustment is necessary.

Recommendation 5:

Place no limit on the amount of money that can be contributed to a candidate or a candidate's campaign committee by the State, county or municipal committee of a political party or a legislative leadership committee or a national party political committee.

Explanation:

The commission believes that there should be no limits on how the party leadership decides to allocate money to a candidate in an election. By making this recommendation, the commission is suggesting that campaign funds be concentrated in the hands of the political leadership committees (i.e., the legislative leadership committees and the State, county and municipal committees of a political party), thus giving these committees an important role in the election or reelection of party candidates. These committees would, of course, be subject to disclosure regarding the source of their funds and would be affected by the contribution limits recommended by this report for individuals, corporations, unions, political committees and continuing political committees. Yet the effect of this recommendation would be to allow the committees to concentrate their financial resources in ways they deemed best, be it by providing funds to challengers or by shoring-up the reelection bid of an incumbent facing a tough race.

Recommendations 6, 7 and 8:

Limit to \$5,000 per election the amount that one candidate or candidate's campaign committee can contribute to another candidate or candidate's campaign committee.

Limit to \$1,500 per year the amount that an individual may contribute to a continuing political committee (other than a legislative leadership committee, or the State, county or municipal committees of a political party).

Limit to \$1,500 per year the amount that an individual may contribute to a political committee and limit to \$5,000 per year the amount that a political committee or a continuing political committee may contribute to another political committee.

Explanation:

By making these recommendations, the commission seeks to limit the potential influence of individual donors, be they candidates who contribute directly to other candidates or be they private citizens who contribute large amounts to political committees or continuing political committees. One goal of the commission is to strengthen the ability of the political leadership committees to assist candidates. To do so, clear limits must be placed on the amount of money that one candidate can give to another candidate and that individuals can give to political committees and continuing political committees.

Recommendation 6 would inhibit one candidate's ability to influence decisively the campaign of another candidate, thereby preserving the political leadership committees' role in assisting candidates. Recommendation 7 is aimed at limiting the potential influence that an individual would seek to establish over a candidate by making a large donation to that candidate through a continuing political committee. Recommendation 8 limits the potential influence that an individual may seek to establish over a first-time candidate who has a political committee but not a campaign committee or a continuing political committee and it limits the potential influence that a non-party political committee or continuing political committee may seek to establish over such a candidate. For the First Amendment-related reasons noted above (see p. 11), recommendation 8 would not apply to limits on contributions to political committees formed to promote the passage or defeat of a public question.

Still, all of these limits together may, in time, lead to a reduction in the amount of money that non-party political committees and continuing political committees have at their disposal to contribute to candidates, thereby possibly lessening the total amount of money involved in the election process.

B. POLITICAL CONTRIBUTIONS

Existing provisions:

Although there are no provisions in the Reporting Act which govern the use of political contributions (i.e., campaign contributions and surplus campaign funds), ELEC has promulgated regulations (N.J.A.C. 19:25-1.7, 7.2) that regulate the allowable use of such moneys. These include: 1) the payment of outstanding campaign expenses; 2) transmittal to another candidate, political committee or continuing political committee; 3) the pro rata repayment of contributors; 4) the repayment of loans made by a candidate to his campaign; 5) donation to a charitable organization; and 6) retention by the candidate for a future campaign. N.J.A.C. 19:25-7.4 specifically directs that such funds shall not be "converted to any personal use by the candidate or any other person." The administrative code states that ELEC has no jurisdiction over the question of whether surplus campaign funds may be used for the operation and staffing of legislative district offices. However, the Joint Legislative Committee on Ethical Standards has determined that the use of political contributions, including surplus campaign funds, for that purpose could constitute a technical violation of the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-24) and section 2:10 of the Legislative Code of Ethics which prohibit a legislator from receiving something of value from a source other than the State for matters related to that legislator's official duties.

Recommendation 9:

Restrict the use of political contributions to only the following uses: 1) the payment of all campaign-related expenses; 2) contributions to charities; 3) the payment of overhead and administrative expenses related to the operation of the candidate's campaign committee or continuing political committee; 4) contributions to other candidates or to political committees or continuing political committees; 5) pro rata refunds to contributors.

Explanation:

The commission believes it necessary to regulate more effectively the use of campaign contributions and surplus campaign funds. Such regulation must be buttressed by the authority of statutory law and must be specific as to the allowable uses of such moneys.

Since these would be the only acceptable uses for such funds, this recommendation contains an implicit prohibition on the conversion of such funds for the personal use of the candidate and the use of such funds for the operation of district offices. The commission believes that political contributions were donated to a candidate or officeholder for one purpose only: to get that person elected or reelected. Hence, any other use of this money must be carefully controlled. Permitting funds to be converted for personal use poses clear ethical and legal difficulties. Permitting funds to be used to improve constituent services or pay for more elaborate district office facilities may have some merit. But the effect would be to assist the incumbent who saved money from a previous campaign for use to fund his district office and may also increase his solicitation of political contributions.

The commission notes that although the list of acceptable uses for political contributions does not specify that such funds may be "rolled over" for use in a subsequent election, that use is clearly implied and therefore, is acceptable. Political contributions would be placed into a campaign committee account or in a continuing political committee account, which would serve as an ongoing depository into which money is periodically deposited and withdrawn during both election and non-election years. The political contributions would thus "roll over" automatically. The funds continue to be available until the candidate decides to disband the committee, at which time the funds would be used in one of the other acceptable ways.

Recommendation 10:

Require that any funds remaining in the campaign committee or continuing political committee of a candidate at the time of his death shall be used in one or more of the acceptable ways provided by recommendation 9 by the committee's treasurer or whoever has control of the campaign committee's funds after the death of the candidate.

Explanation:

The commission recognizes that current law is silent as to the acceptable uses of funds remaining in the campaign committee or continuing political committee of a candidate after the death of that candidate. Under current law, there is nothing to prevent the family or staff of a deceased candidate from using the funds for any purpose whatsoever. The commission finds unacceptable such unlimited use of moneys donated originally for the purpose of electing or reelecting a candidate. It believes that the use of these funds should be carefully regulated. Thus the commission recommends that the campaign committee's treasurer or whoever has control of the committee's account after the death of the candidate should be responsible for the final disposal of the funds only in the ways provided for recommendation 9. The commission assumes that the treasurer or the person in control of the campaign committee or political committee would know the source of the contributions in the account and, possibly, would know how the candidate would want the funds distributed if he was still alive.

C. DISCLOSURE

Existing provisions:

Section 16 of the Reporting Act (N.J.S.A. 19:44A-16) currently provides that contributions to a candidate in excess of \$100 in the aggregate (including both monetary and in-kind) must be disclosed to ELEC in preelection and post-election reports including the name and address of the contributor, the date of receipt and the amount of the contribution. For contributions received after the completion of the 11-day preelection report through the day of the election and exceeding \$250, the contributor's name and address, the date of receipt and the amount of each contribution must be reported to ELEC within 48 hours of the receipt of the contribution.

Section 8 of the Reporting Act (N.J.S.A. 19:44A-8) provides that all contributions from one source to a political committee or continuing political committee in excess of \$100 in the aggregate (including both monetary and in-kind) must be disclosed to ELEC on the quarterly reporting dates and include the same basic identification information. In addition, the same information must be provided to ELEC within 48 hours of the receipt of the contribution when disclosing contributions in excess of \$250 received from any one source between the closing date of the last quarterly report and the day of the election.

The Reporting Act is silent as to the disclosure of the occupation or employer of a contributor to a candidate or a political committee or continuing political committee. It requires that such committees be formally registered with ELEC. The law requires that candidates and political committees and continuing political committees appoint a treasurer and that a depository for the committee be established no later than the date on which the first contribution is received or expenditure is made.

Recommendation 11:

Require individual contributors to a candidate or a committee (including candidates' campaign committees, political committees and continuing political committees) to disclose to that candidate or committee their occupation and employer, so that this information and all other information already required by law is provided to the Election Law Enforcement Commission (ELEC).

Explanation:

Despite the commission's certainty that these disclosure laws have worked as originally intended, the commission believes that more information must be required from individuals and organizations which make campaign contributions and that that information must be readily available to the public. The commission believes that the disclosure of this information is essential if the public is to have full knowledge about the source of campaign contributions. Existing disclosure laws do not always adequately identify the ultimate sources of these contributions. The public does not now know whether a person contributes to a candidate because he simply agrees with that candidate's stand on certain issues or because he is seeking to promote a particular issue favored by the members of his occupation or his employer. The commission believes that such identification is essential so that there can be no question as to whether a particular candidate may be susceptible to the potential influence of a single contributor or group of contributors.

The commission suggests that to facilitate contributor identification and to make public disclosure easier, any new forms that are produced by ELEC as a result of this or any other recommendation should be easy to complete and clearly legible to both the person filling out the form and to any person wishing to extract information from it afterward.

Recommendation 12:

Require each type of committee to provide to ELEC a brief statement of purpose, as well as the names, home addresses, occupations and employers of the officers of the committee, and require each candidate's campaign committee to disclose the name of the candidate or candidates for which it is raising funds and paying campaign expenses.

Explanation:

The goal of this recommendation is to increase disclosure, and specifically, to get more information about the purpose and leadership of the political committees and continuing political committees who make contributions to candidates. Under current law, very little is known about some of these committees other than how much money or what things of value they have contributed to a candidate during a particular time period. This recommendation, if implemented, would allow the public to know what the committee stands for and who its leaders are. It would then be up to the people to make their own interpretations and decide whether to support candidates who receive contributions from such organizations.

This recommendation would also force a candidate's campaign committee to reveal the name of the person or persons for whom it is raising funds and paying campaign expenses. Hence, the public would be notified if such a committee carried the name of one candidate but was actually raising money and paying the campaign expenses of an other candidate (which is permissible under current law).

Recommendation 13:

Raise the current threshold amount which triggers the disclosure of contributions made to a candidate or a candidate's campaign committee from \$100 to \$200 and raise the threshold amount triggering the 48-hour notice requirement for contributions from over \$250 to over \$500.

Explanation:

The commission believes that leaving the contribution disclosure threshold at \$100 or lowering it may produce too much disclosure and will ultimately bury ELEC under a mountain of relatively insignificant information. The commission notes that the \$100 threshold has not been altered since the Reporting Act was enacted in 1973. Since then, the effects of inflation have reduced the value of that \$100 by approximately two-thirds. Thus, doubling the threshold to \$200 would mean that ELEC would receive pertinent information on larger contributions--specifically those that have the potential for being the most influential.

Concurrently, the commission believes that the 48-hour reporting threshold for contributions in excess of \$250 should be raised to contributions in excess of \$500. This threshold was established to require the near-immediate disclosure

of any sizable contribution made to a political committee or a continuing political committee between the closing date of the last quarterly report and the day of the election--presumably the critical period when a large contribution to a candidate with a political committee or a continuing political committee would have the greatest effect on a tight race. Raising the threshold would help to relieve inflationary pressures which have been eroding the impact of the \$250 figure since it was first established. Raising the threshold would also help to insure that disclosure stays focused on an important reporting period.

Recommendation 14:

Prohibit candidates and elected officials from raising funds in their own name for charitable or any other non-campaign purposes via checks made out in their own name, except through their campaign committees.

Explanation:

The commission recognizes that it is common for elected officials to raise money for purposes other than campaigning. For example, testimonial dinners are held regularly around the state to honor elected officials and the proceeds are donated to charity. Under current law, money thus collected is usually not disclosed, even if it is given directly to the candidate or elected official or in his name, because it is not donated for campaign-related purposes. The commission believes that a candidate or elected official who raises money for reasons other than to finance a campaign is successful due to his status as a candidate or elected official. Since some individuals or groups participate in such a fund-raising activity to get access to the elected official, public disclosure of the contributions of those individuals or groups is essential and may be accomplished by requiring those contributions which are made in his name to go through his campaign committee.

The commission notes that not all funds raised by a candidate or an elected official would be required to be filtered through his campaign committee before being remitted to the charity or other entity for which it was raised. Nothing in this recommendation would prevent a candidate or an elected official from serving in a ceremonial or leadership capacity for a charity and from receiving contributions for that charity. The contributions thus received would not go through his campaign committee--provided that the contributions were clearly designated for or in the form of checks made out to that charity and not designated for or in the form of checks made out to or given in the name of the candidate or elected official.

D. QUADRENNIAL ADJUSTMENT

Existing provisions:

The Reporting Act contains no provisions for adjusting the dollar amounts which trigger disclosure. Indeed, the dollar amounts contained in the statute have not changed since it was enacted in 1973. The dollar amounts in the

gubernatorial public financing program (N.J.S.A. 19:44A-27 et seq.) have been changed periodically. The most recent adjustment was made in 1989 when the maximum amount of a contribution to a gubernatorial candidate, the amount a candidate must raise to qualify for public financing, the maximum amount that a candidate could spend and the maximum amount that a candidate could receive in public funds were linked to quadrennial changes in an index which reflects changes in the general level of the cost of campaigning for Governor (N.J.S.A. 19:44A-7.1).

Recommendation 15:

Require that all dollar amounts provided for in the Reporting Act, including all new limits and thresholds recommended in this report, shall be adjusted quadrennially.

Explanation:

The commission believes that the quadrennial adjustment of the dollar amounts provided for in current campaign finance law is essential to keep pace with economic fluctuations and to keep public attention focused on the most significant contributions. Without question, the importance of the dollar amounts contained in the Reporting Act has eroded significantly. The commission believes that to keep that statute meaningful, dollar amounts must be adjusted periodically and relatively easily. Making adjustments by amending current law is often difficult and ultimately unsuited to responding to the sensitive economic fluctuations which affect costs and prices.

Therefore, the commission believes it practical to link the dollar amounts contained in the Reporting Act, and in any recommendations pertinent thereto adopted by the Legislature, to the quadrennial changes in the campaign cost index established for the gubernatorial public financing program. By doing so, contributors to gubernatorial candidates and candidates for other offices would be subject to the same limits and thresholds and a confusing two-tiered system of limits and thresholds could be avoided. Such a linkage would make giving and monitoring campaign contributions easier for both contributors and candidates, and easier for ELEC.

E. ADDITIONAL COMMENTS

During its discussion of contribution limits, the commission considered at length, but ultimately voted against, recommending the adoption of public financing for legislative elections and the imposition of aggregate limits on campaign contributions.

After considering the testimony offered to the commission on public financing, the conclusion of a majority of the members was that this alternative to the current system of campaign finance would not curb the costs of elections,

limit the potential influence of large donors or level the playing field among candidates. The commission found that a program of public financing would probably be expensive--between \$5 million and \$10 million by some estimates, depending on the amount of public funds provided and on whether the Senate and the General Assembly were both up for election--at a time when the State was facing a serious budget crisis, a shortfall in revenues and little support for increased taxes. The commission also found that in states which already have public financing, such as Minnesota and Wisconsin, it was not working entirely as intended. In these states, candidates in "safe" districts and not involved in competitive races usually opted for public financing to pay for their campaigns because the expenditure limits were high enough and the money the program provided was sufficient to pay for such races. Yet in races in competitive districts or in which a strong challenger sought to unseat an incumbent, the candidates did not accept public financing and consequently were not bound by an expenditure limit and thus could spend as much money as they deemed necessary.

Although the commission voted not to recommend the adoption of public financing at this time, a minority of members believes that such a program has merit and therefore should be studied for possible adoption in the future.

On the question of imposing aggregate limits on campaign contributions, several members believe that such limits are essential to stem the potential influence of wealthy contributors who would seek to give the largest allowable donation to a significant number of individual candidates. These members note that an aggregate limit of \$25,000 is currently in effect for contributions by individuals to all candidates for election as members of Congress (11 CFR 110.5).

The majority of members, however, believes that aggregate limits are impractical and ineffective. These members note that such limits would be extremely difficult for ELEC to enforce, while per-election limits would be much easier to monitor and administer. Any person found to be in violation of the limit would have to be detected, prosecuted and fined well after the election or defeat of the person that the contribution was intended to assist. The members also believe that such limits have been ineffective on the federal level and may be subject to change pursuant to legislation now before Congress. Thus, in their view, it makes little sense to impose them now on candidates in New Jersey.

II. LOBBYING

A. DISCLOSURE

Existing provisions:

The Lobbying Act (known formally as the "New Jersey Legislative Activities Disclosure Act of 1971") establishes a bifurcated disclosure system for legislative agents. A legislative agent must register with the Attorney General and provide his name, the name of the entity employing him and the name of the entity in whose interest he is working. A legislative agent must also disclose the type of legislation which he will be seeking to advance or defeat. Once registered, the legislative agent must file quarterly reports with the Attorney General listing the particular items of legislation he lobbied in favor of or against and describe his activity during the three-month period in connection with any type or general category of legislation.

In addition to these reports, legislative agents and lobbyists must file annual financial reports with ELEC if they exceed a \$2,500 threshold amount for receipts received or expenditures made "for the purpose of direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of affecting legislation during the previous year." (N.J.S.A. 52:13C-22.1) Included in those reported expenditures are certain costs, including media, entertainment, food and beverage, and travel, which "expressly relate to direct, express and intentional communication" with legislators or the Governor or his staff for the purpose of influencing the content or course of legislation. Expenditures for each category are required to be reported in the aggregate, unless the expenditure exceeds more than \$25 per day or \$200 per person per calendar year. In such instances, the expenditure, together with the name of the public official on whose behalf the expenditure was made, must be reported in detail.

Recommendation 16:

Eliminate the provision in current lobbying law which does not require the disclosure of expenditures undertaken for the purpose of communicating with the Governor, his staff and with members of the Legislature unless the communications are "expressly" connected to a particular piece of legislation.

Explanation:

The commission acknowledges that the right of any individual or group in a democracy to lobby lawmakers in connection with legislation is a constitutionally protected form of free speech. An important part of the job of every lobbyist is to bring valuable information to key policy and decision makers in the governmental process. Yet the commission believes that the

public has a right to know the extent of special interest lobbying, the amount of money being spent by these lobbyists in pursuit of their policy goals, and the names of the public officials receiving benefits from lobbyists.

The commission recognizes that the practice of lobbying has grown significantly in New Jersey during the past several years and that the role of lobbyists has expanded at a rate commensurate with that growth. According to ELEC's White Paper Number Five: Lobbying Reform, 622 persons registered as lobbyists with the Attorney General in 1988. This figure represents a 45 percent increase over 1985, when 430 persons were registered. As part of this growth, large sums of money are being expended by lobbyists to influence the content and destiny of legislation. According to ELEC, lobbyist spending increased from \$5.8 million to \$10.5 million between 1986 and 1988, for a total increase of 81 percent. ELEC notes that lobbyists have become more successful because they understand the legislative process. They have sought and achieved greater access to legislators and to the Governor and his staff than have other members of the public. The result is that lobbyists, as a group, are especially skilled at influencing the governmental process in a way that is favorable to the particular interests that they represent.

The commission believes that because of the inadequacies of current lobbying law, the public does not have enough information about the individuals and groups seeking to exercise influence over the Governor and the Legislature. The commission finds that the Lobbying Act does not give an adequate or even accurate picture of the amounts of money being expended by lobbyists, nor does it provide sufficiently for the identification of the public persons being lobbied. As a result, meaningful disclosure of lobbying activity under current law has not yet been achieved.

The commission believes that the "expressly" exception in current lobbying law is a loophole which must be eliminated. It permits a significant amount of money to be spent on the "goodwill" lobbying of the Governor and his staff and members of the Legislature and legislative staff with no disclosure or accounting to the public. Current law permits a legislative agent to spend any amount of money on the Governor or a legislator or on legislative staff without requiring that legislative agent to disclose the amount spent so long as no specific piece of legislation is discussed. Such "goodwill" lobbying is common and, in the commission's view, effective in strengthening a legislative agent's ability to influence the political process.

Moreover, the commission finds that the lack of such disclosure has contributed to eroding public confidence in the honesty of the legislative process. It agrees with a joint report on the Lobbying Act issued by ELEC and the Attorney General in 1982, which is harshly critical of the "expressly" exception. The report notes that "meaningful disclosure of financial activity by lobbyists and legislative agents can never be realized unless all significant expenditures, including those which inure to the benefit of the Governor, or a legislator, or members of their staffs, are subject to disclosure requirements. Public confidence in the integrity of the legislative process and disclosure program is necessarily compromised if the regulatory system permits a lobbyist to make personal benefit expenditures without disclosure." (pp. 27-28)

Recommendation 17:

Require lobbyists and legislative agents to file with ELEC quarterly reports of all lobbying activity. The threshold amounts for reporting expenditures would be \$25 a day or \$100 per person per quarter.

Explanation:

The purpose of this recommendation is to increase disclosure. Instead of providing information to the public which may be as much as 12 months old, lobbyists and legislative agents would be required to disclose their financial activity once every three months, thereby providing the public and the Legislature with information which is reasonably current. Increasing the number of reporting periods per year from one to four may increase the paperwork required from reporting entities, but it will also better enable the Legislature and public to know what organizations and persons are lobbying in favor of or against a particular piece of legislation before action is taken on that legislation.

The commission recommends maintaining the \$25 per day per individual reporting threshold for disclosure which is in current law, but lowering the quarterly threshold to \$100 per person per quarter. The commission believes that such amounts are necessary in order to establish a reasonable minimum threshold which would not be so low as to require the disclosure of minor expenditures and generate relatively unimportant reports, yet would be high enough to identify any significant expenditure or pattern of expenditures which may reveal attempts by a legislative agent to gain undue access to a legislator or influence the content or course of legislation.

Recommendation 18:

Require that all laws pertaining to the disclosure of expenditures by lobbyists on legislators be extended to cover all legislative staff.

Explanation:

The commission finds that while current law requires the reporting of expenditures made on behalf of the Governor and his staff and members of the Legislature to influence the content or destiny of legislation, it is silent as to similar expenditures made on behalf of legislative staff. The commission believes that if the Governor's staff is covered by current law and would be covered by the changes in lobbying law recommended by the commission, it is logical and fair that legislative staff be covered as well. An extension of coverage will identify more fully the public persons on whose behalf lobbyists make expenditures and will make clear that legislative staff is open to the same public scrutiny as other key personnel in State government.

B. REORGANIZATION

Existing provisions:

N.J.S.A. 52:13C-20 defines a "lobbyist" as a person or an organization who employs a person to influence the Governor, his staff or members of the Legislature regarding legislation, and a "legislative agent" as the person who is employed by the lobbyist for the purpose of influencing the Governor, his staff or member of the Legislature regarding legislation.

As noted above, the Lobbying Act also provides for the bifurcation of jurisdiction for monitoring lobbying activity between ELEC and the Attorney General, with all annual reports of financial activity filed with ELEC and all quarterly reports of legislative activity filed with the Attorney General.

Recommendation 19:

Clarify the terminology in current law with regard to lobbyist and legislative agents, using instead the terms "employee lobbyist," "contract lobbyist" and "lobbyist organization."

Explanation:

The commission believes that confusion among lobbyists, legislators and members of the public can be lessened and greater disclosure can be achieved if there is a redrafting of certain definitions used in current lobbying law and a reorganization of the way in which lobbying activity is monitored. The commission notes that the difference between how the term "lobbyist" is used in current law and how it is generally understood has created confusion not only among members of the public but also among those persons and organizations that are required to file expenditure reports with ELEC.

Since one of the primary goals of this commission is to increase and facilitate disclosure, it supports suggestions made by ELEC to clarify and update the terminology used in current law to define and describe more precisely the individuals and groups who engage in lobbying activity. In its White Paper Number 5: Lobbying Reform, ELEC suggests that the term "lobbyist" should be changed to "lobbyist organization" to make clear that this entity is not an individual or firm but rather the sponsor corporation, business partnership, labor union association or other organization retaining the services of such an individual or firm. The term "legislative agent" should be eliminated and in its place, the term "contract lobbyist" should be used to denote a professional lobbyist who is in the business of lobbying and the term "employee lobbyist" should be used to denote a salaried employee of a company whose job includes lobbying for the parent company.

Recommendation 20:

Consolidate the monitoring of all lobbying activity in ELEC, instead of maintaining the present system whereby administration is bifurcated between ELEC and the Attorney General.

Explanation:

The commission believes that consolidating the monitoring of all lobbying activity into one State agency instead of two is of critical importance to achieving meaningful reform of the current lobbying law and increasing and facilitating disclosure. The commission believes that ELEC should be that one agency because it is the State government agency best suited for that task. Its experience and success in administering the Reporting Act, the Gubernatorial Public Financing Program and the annual financial disclosure requirements of the Lobbying Act make it a logical choice to oversee current and future laws which mandate increased disclosure by lobbyists.

The commission notes that the Attorney General has recently stated, through an aide, that he supports and advocates all of the recommendations contained in the 1982 report on lobbying issued jointly with ELEC, including the recommendation that the monitoring of all lobbying activity be consolidated in ELEC.

C. QUADRENNIAL ADJUSTMENT

Existing provisions:

Current law contains no provisions for adjusting the dollar amounts which trigger disclosure in the Lobbying Act. In fact, the dollar amounts contained in the Lobbying Act have not changed since it was enacted in 1971.

Recommendation 21:

Require that all dollar amounts provided for in the Lobbying Act, including all new thresholds recommended in this report, shall be adjusted quadrennially.

Explanation:

The commission believes that the quadrennial adjustment of the dollar amounts contained in current lobbying law is essential to keep pace with economic fluctuations and to keep public attention focused on the most significant expenditures by lobbyists. Without question, the importance of the dollar amounts in this law has eroded significantly. The commission believes that to keep that law meaningful, those amounts must be adjusted periodically and relatively easily. Making adjustments by amending current law is often difficult and ultimately unsuited to responding to the sensitive economic fluctuations which affect costs and prices. Therefore, the commission believes it desirable and practical to link the dollar amounts in the Lobbying Act, and in any recommendations to that law adopted by the Legislature, to changes in a pertinent and sensitive economic barometer such as the Consumer Price Index (CPI). Doing so may prove the best way to make these dollar amounts reflective of wider economic changes and still be meaningful.

III. CONFLICTS OF INTEREST

A. COMPOSITION OF ETHICS BODY

Existing provisions:

N.J.S.A. 52:13D-22 creates the current Joint Legislative Committee on Ethical Standards to govern and guide the ethical behavior of officers and employees in the Legislative Branch of government. The Joint Committee is comprised of eight members of the Legislature equally divided between the Houses and parties. The Joint Committee is required to organize annually.

Recommendation 22:

Add four public members to the Joint Legislative Committee on Ethical Standards (for a total of 12 members) with the presiding officer and minority leader of each House having the authority to appoint one member, with both legislators and public members serving for a two-year term concurrent with the legislative session.

Explanation:

The commission believes the addition of public members will bring an outside perspective to the decisions of the Joint Committee and eliminate a common criticism that pure self-policing is not the most effective method of regulation. The addition of four public members, one appointed by the presiding officer and minority leader of each House, will preserve the bipartisan composition of the Joint Committee. Providing for two-year terms for all members concurrent with the legislative session will eliminate the necessity of having to appoint new members in the second year of each two-year session. In the past, delays in second year appointments have at times resulted in the absence of a Joint Committee in the beginning of the second year of a biennial session. A two-year term will also provide continuity and allow the members time to become familiar with the multitude of issues facing the Joint Committee.

B. FINANCIAL DISCLOSURE

Existing provisions:

Section 2:14 of the Code of Ethics requires the following sources of income (not amounts) to be disclosed:

Earned income totalling more than \$1,000 received from salaries, bonuses, royalties, fees, commissions and profit sharing;

Unearned income totalling more than \$1,000 received from rents, dividends and other income from named investments, trusts and estates;

Fees and honorariums totalling more than \$100;

Reimbursements totalling more than \$100 for travel, subsistence or facilities provided in kind; and

Gifts totalling more than \$250.

Recommendation 23:

Expand the financial disclosure requirements to include the listing of: assets; liabilities; forgiven debts; all sources of income including directorships or fiduciary positions for which compensation has been claimed; and offices, trusteeships, directorships or other positions held by the member with any entity that either does business with or is licensed, regulated or inspected by a State agency other than charitable entities. Include specific dollar amounts of income on a member's financial disclosure statement.

Explanation:

The commission recognizes that when an individual assumes public office it is appropriate for that official to disclose certain private interests which impact upon or could be perceived as impacting upon his official determinations. The commission also recognizes, however, that public officers have a right to personal privacy and the public's need for disclosure must be balanced against unwarranted invasions of privacy so as not to deter qualified people from entering public life.

The commission believes its recommendation for greater disclosure in certain areas will alleviate some perceptions on the part of the public that the current financial disclosure statements filed by legislators do not present an adequate financial picture. The commission feels that threshold amounts for reporting, specific exceptions to reporting and other details should be decided by the legislators themselves to insure that the personal privacy of legislators is not needlessly jeopardized. Legislators should endeavor to provide the public with a profile of their financial and other interests which may have a bearing upon their official actions; however, legislators should not be required to disclose private details relating to their personal and financial interests which have little or no nexus to their official responsibilities and would merely serve to satisfy idle curiosity. While Executive Order No. 1 of 1990 may be looked to as a guide for expanded disclosure, the commission recognizes that appropriate disclosure requirements for legislators may not be identical to those requirements appropriate for Executive Branch officials.

A minority of the members of the commission noted that disclosure of specific amounts of income may be too invasive and that it would be sufficient to disclose categories of amounts.

C. TRAVEL, SUBSISTENCE AND HONORARIA

Existing provisions:

N.J.S.A. 52:13D-14, N.J.S.A. 52:13D-24, and sections 2:1b. and 2:10 of the Code of Ethics prohibit legislators from accepting gifts, employment or any thing of value to influence them in the performance of their official duties or for matters related to their official duties. An exception is made for fees for speeches or published works or the reimbursement of travel and subsistence expenses for which no payment is made by the State. Other gifts and honoraria are not proscribed, but would have to be disclosed on the member's annual financial disclosure statement if the threshold amount (gifts/\$250 and honoraria/\$100) was reached.

Recommendation 24 (travel and subsistence):

Require that the Legislature (State) authorize and pay the expenses (travel and subsistence) for all trips taken by members related to their official duties with any private reimbursement going directly to the Legislature instead of an individual member.

Explanation:

The commission believes that legislative participation in various conferences concerning issues which may come before the Legislature serves a valuable educational purpose and provides an exchange of knowledge and perspectives essential to the legislative process. The commission believes its recommendation will allow for continued legislative participation in various conferences, while dispelling a public perception that legislators are being compromised with trips from special interest groups.

The recommendation adopted by the commission provides a mechanism which facilitates reimbursement by private entities for legislative travel and eliminates another public expense, while maintaining legislative integrity by distancing individual legislators from direct benefits from special interest groups. Leadership and committee chairpersons would select which members could attend the various conferences.

Recommendation 25 (honoraria):

Prohibit legislators from accepting any honoraria in conjunction with speeches or appearances related to their official legislative duties.

Explanation:

The commission believes that speeches and appearances by a legislator regarding legislative matters are part of the member's official responsibilities and do not require separate honoraria. While commission members acknowledge

that in some ways a legislator takes away from his personal time to deliver a speech or participate in a discussion and some compensation could arguably be warranted, overall the commission believes that public perception is better served by banning honoraria.

D. TRAINING

Existing provisions:

Currently there is no formalized training program for legislators and legislative staff in the area of legislative ethics and conflicts of interest. At the beginning of every two-year session, members and staff are provided with copies of the New Jersey Conflicts of Interest Law and the Legislative Code of Ethics as well as documentation advising them of those reports which are required to be filed with the Joint Legislative Committee on Ethical Standards.

Recommendation 26:

Require the Legislature to provide on a biennial basis an educational program on legislative ethics for its members and staff.

Explanation:

The commission recognizes that sound ethical practices begin with knowledge of the existing regulations by legislators and staff and an understanding of how those regulations impact upon day-to-day situations. Ethics seminars would sensitize the Legislative Branch of government to potential conflicts of interest and educate members and staff as to the appropriate way to resolve potential conflicts. The commission anticipates that such a seminar would not be offered as merely a small segment of an overall orientation program, but rather as an independent program where ethical issues could be examined in depth. The commission believes the precise content of such seminars and whether they would be mandatory or discretionary should be determined by the members themselves.

E. OTHER CONFLICTS OF INTEREST DETERMINATIONS

The commission notes that it considered modifying several other existing conflicts of interest provisions. After extensive discussion, a majority of the commission members believes that the revisions suggested for various provisions would not be effective and that the existing provisions in the following areas should be retained:

Personal Interest

Existing provisions:

N.J.S.A. 52:13D-18 and section 2:9 of the Code prohibit a member from participating in legislation in which he has a personal interest until he files a statement with the Joint Committee and his House stating that notwithstanding such an interest he can cast a fair and impartial vote. The Code further states that "[t]he Joint Legislative Committee on Ethical Standards is authorized to investigate the circumstances giving rise to the filing of a statement of personal interest and upon a finding, after a hearing thereon, that the member's participation with respect to the enactment or defeat of the legislation would constitute a violation of the public trust or create an impression among the public of a violation of the public trust, the joint committee shall direct the member to withdraw his sponsorship of, or participation in, the enactment or defeat of the legislation." "Personal interest" means that the legislator believes he will derive a direct monetary gain or loss from the enactment or defeat of the legislation. A member does not have a personal interest in legislation if the benefit or detriment which accrues to him as a member of a business, occupation or group is no greater than that which accrues to any other member of such a business, occupation or group.

Commission determination:

A majority of the members of the commission believes the existing provisions concerning personal interest are satisfactory, noting that the changes suggested by the minority would greatly inhibit full participation by members in the legislative process. Currently, a legislator does not necessarily have a personal interest in legislation which affects in a direct monetary way his profession, occupation or business, provided other members of that profession, occupation or business are financially affected by the legislation in substantially the same way as the legislator. The majority of the commission members rejects a minority position that this existing standard should be modified so that a member would have a personal interest in legislation which financially affects his profession, occupation or business. This change would require a legislator to file a personal interest statement before he could participate in any legislation in which he had a direct financial interest, regardless of whether that interest was shared equally by all members of the legislator's profession, occupation or business. Only where legislation financially affects all residents of the State or all members of the Legislature generally, such as a bill which raises taxes or increases legislative salaries, would a personal interest statement not be required. A minority of the commission members believes such a change in the existing provisions is needed to restore public confidence in the legislative process, and eliminate the perception that legislators are "feathering their own nests."

The majority of the members believes legislators might feel uneasy participating in legislation in which they were defined as having a personal interest, even where they honestly believe they could cast a fair and objective vote. The more likely scenario would be that members would simply abstain from participating in any legislation in which they might be perceived as having

a personal interest. The majority of the members of the commission feels such inhibited participation would disserve both the legislators and their constituents. A part-time Legislature brings together representatives from all walks of life with diverse interests and occupations. To prevent those legislators who have the most knowledge about a particular piece of legislation - because it affects their business, occupation or profession - from participating in its defeat or passage is perceived by a majority of the members of the commission as counter-productive. The commission views increased financial disclosure as a better way of notifying the public of the personal interests a legislator has which might affect his or her vote. The commission perceives the election process as the ultimate evaluation of a legislator's voting record. The majority of the members of the commission finds that the belief that legislators are participating in legislation to further their personal business interests is more a public misperception than an actual problem.

Several members of the commission also maintain that restricting the ability of legislators to participate freely in the legislative process may raise serious constitutional questions.

Gifts

Existing provisions:

N.J.S.A. 52:13D-14, N.J.S.A. 52:13D-24, and sections 2:1b. and 2:10 of the Code of Ethics prohibit legislators from accepting gifts, employment or any thing of value to influence them in the performance of their official duties or for matters related to their official duties. Other gifts are not proscribed, but the source of the gift has to be disclosed on the member's annual financial disclosure statement if the threshold amount of \$250 is reached. Meals, tickets to various events and drinks are considered gifts by the Joint Committee.

Commission determination:

A majority of the members of the commission believes that an absolute prohibition on all gifts over \$25.00 from lobbyists and legislative agents to members of the Legislature is unnecessary in light of the other recommendations made by the commission. The commission maintains that its recommendations to: (1) close the "expressly" loophole in the existing lobbying law and require lobbyists and legislative agents to report all expenditures undertaken to communicate with legislators and legislative staff; and (2) have all legislative travel paid for by the State with private reimbursement going directly to the State, obviate the need for additional restrictions on gifts which may be given to legislators to engender goodwill. Furthermore, all gifts intended to influence legislators in the performance of their official duties or for matters related to their official duties are already prohibited.

The majority of the commission members believes there is nothing inherently inappropriate about a legislator having a meal paid for by a lobbyist or attending a reception sponsored by a lobby group. Any legislator who feels

uncomfortable accepting such gifts may, of course, refuse to allow a meal to be purchased or refuse to attend a reception. To have a legislator make a speech at a function and then prohibit the member from sitting down to dinner with the guests (once he ascertains that the value of the meal exceeds a \$25.00 threshold) is perceived by the majority of the commission members as overly restrictive.

A strong minority of the members of the commission, however, views such a prohibition on gifts as necessary to restore public confidence in the Legislature. A minority of the members maintains that social relationships are forged by this type of goodwill lobbying and such relationships foster the public perception that legislators are being compromised by special interests.

State Contracts

Existing provisions:

N.J.S.A. 52:13D-19 prohibits legislators and full-time employees (and firms in which they have an interest greater than 1%) from contracting with the State for anything in excess of \$25.00 unless the contract is: (1) publicly bid; (2) purchased without public advertising pursuant to N.J.S.A. 52:34-10; or (3) for certain types of insurance. Note: N.J.S.A. 52:34-10 provides that purchases may be made without public advertising under the following circumstances: the purchase is from a governmental entity; the public exigency requires immediate delivery; only one source of supply is available; more favorable terms can be obtained from a primary source of supply; the purchase is seasonal wearing apparel; or the purchase is for commodities traded on a national commodity exchange and price fluctuations require immediate action. All contracts between the State and legislators or legislative employees require the prior approval of the Joint Committee. The Code of Ethics also requires that all change orders affecting the dollar amount be reported to the Joint Committee.

Commission determination:

A majority of the members of the commission feels that the current law adequately regulates the circumstances under which legislators, legislative employees and their companies may do business with the State. The majority believes that an absolute bar on all contracting with the State would eliminate a potential class of people from seeking public office, making the Legislature less representative. The majority further believes that the current approval process prevents any undue influence by legislators or legislative employees in the contracting process.

A minority of the commission believes all legislators, legislative employees and their companies should be prohibited from contracting with the State under all circumstances. Concern was expressed that even where contracts are publicly bid, change orders of substantial magnitude occur administratively and could provide an area for potential undue influence.

Post-employment Restrictions

Existing provisions:

N.J.S.A. 52:13D-17.2c. prohibits legislators, full-time professional employees of the Legislature, members of their immediate families and companies with which they are associated from holding an interest in, holding employment with, or representing, appearing for or negotiating on behalf of a casino licensee or applicant for a period of two years after leaving public service. The two-year representational restriction also extends to holding or intermediary companies of casino licensees or applicants in connection with any phase of casino development, permitting, licensure or other matter related to casino activity.

N.J.S.A. 52:13D-17 prohibits a legislative employee or officer (other than a legislator) from representing or providing services or confidential information to parties other than the State in connection with any matter in which the employee or officer made any investigation, rendered any ruling, gave any opinion or was otherwise substantially and directly involved during the course of his public employment. This is a perpetual restriction.

Commission determination:

The commission believes that the current post-employment restrictions are adequate. The commission recognizes that absolute post-employment restrictions, unrelated to the actual responsibilities of a legislator or legislative employee, may substantially impair the ability of a former legislator or legislative employee to continue practicing his profession or engage in pursuits in which he has some expertise without necessarily serving the public interest. The commission suggests that the Legislature reexamine the existing casino related post-employment restrictions to determine whether the public interest is served by their continued application at this time.

F. ADDITIONAL COMMENTS

The issue of dual office holding was discussed by the commission. While some members believe that the simultaneous holding of local and legislative offices may involve inherent conflicts of interest, the majority of the members does not see this as an actual problem since, at least with regard to elective offices, the electorate ultimately determines whether an individual can fulfill the responsibilities of two public offices. There is a general consensus among the majority of commission members that the issue of dual office holding is really a question of overall public policy and not within the jurisdiction of the commission to determine, since it does not involve strictly legislative ethics, campaign finance or lobbying.

IV. ELECTION LAW ENFORCEMENT COMMISSION

A. ENFORCEMENT

Existing provisions:

ELEC's enforcement authority under the Reporting Act provides that anyone who willfully or knowingly files false information or refuses to file a report as provided by the act is guilty of a misdemeanor (crime of the fourth degree) (N.J.S.A. 19:44A-21). The Reporting Act also imposes a fine (\$1,000 maximum fine for the first offense and a \$2,000 maximum fine for the second and each subsequent offense) on any person who fails or neglects to carry out the provisions of the act. Violators of the statutes concerning prohibited contributions by insurance corporations, banks and certain regulated industries are guilty of a misdemeanor (crime of the fourth degree); however, ELEC does not have jurisdiction over the enforcement of these statutes.

The Lobbying Act provides that ELEC has the authority to bring complaint proceedings against any violators of the act and may cause hearings to be held by the office of Administrative Law with regard to such a violation (N.J.S.A. 52:13C-22.2). Any person found guilty of a violation is liable for a civil penalty of up to \$1,000. The Lobbying Act also authorizes the Attorney General to investigate and bring civil proceedings against any person found to be in violation of the Act and to enjoin such a person from engaging in all lobbying activity (N.J.S.A. 52:13C-23, 32).

Recommendation 27:

Increase existing civil fines and penalties that may be imposed by ELEC on violators of the Reporting Act and the Lobbying Act in order to promote compliance with disclosure.

Explanation:

The commission believes that ELEC must be given increased enforcement authority and be permitted to impose higher fines and penalties in order to promote compliance with existing and future campaign finance and lobbying laws. The commission notes that the fines and penalties established in the Reporting Act have not been revised since the law was enacted in 1973, while those in the Lobbying Act date back to 1971. Although a maximum fine of \$2,000 or \$1,000 was significant nearly 20 years ago, inflation has left those fines with only about one-third of their original impact. Given the amount of money contributed to campaigns and the desire of some candidates to win election at any cost, the commission acknowledges that there are candidates and reporting entities who are willing to risk a \$1,000 or \$2,000 fine in order to evade existing law. Although the commission does not believe it appropriate to recommend to the Legislature a specific amount of increase, the commission believes that greater disclosure and continuing compliance with existing and future campaign finance and lobbying laws will be greatly assisted by revising and expanding the existing fines and penalties that ELEC may impose.

Recommendation 28:

Prohibit any person from making loans to any other person for the purpose of inducing that person to make a campaign contribution.

Explanation:

This recommendation was first made in the Presentment of the State Grand Jury, dated October 8, 1988, concerning the Reporting Act and has been suggested subsequently by ELEC in its annual report. The commission supports this recommendation in the belief that the prohibition would serve as a strong deterrent to anyone seeking to coerce another person into making campaign contributions that would not have been made otherwise. The commission recognizes that if the contribution limits suggested by this report become law, this prohibition could thwart any person seeking to evade those contribution limits by making a contribution to a candidate through another person.

B. ADMINISTRATION

Existing provisions:

Pursuant to the Reporting Act, ELEC monitors the campaign financing of all elections held in the State. Whether the election is for membership on a school board or for Governor, all candidates and organizations participating in those elections are required to file contributions and expenditures reports with ELEC. It, in turn, is required "to furnish timely and adequate information [relative to contributions and expenditures], in appropriate printed summaries and in such other form as it may see fit, to every candidate or prospective candidate for public office who becomes or is likely to become subject to the provisions of this act. . . . [ELEC] shall also make available copies of such printed summaries to any other person requesting the same" (N.J.S.A. 19:44A-6). The Lobbying Act empowers ELEC to monitor the financial disclosure of all legislative agents and lobbyists who exceed an expenditure threshold of \$2,500 made for the purpose of direct and express communication with legislators or the Governor regarding legislation during the previous year. There is, however, no provision in either the Reporting Act or the Lobbying Act to provide for the continuous funding of ELEC to administer, monitor or enforce these disclosure mandates.

Recommendation 29:

Strengthen by increased appropriations the administrative capacity of ELEC so that it can make available, in a timely and appropriate manner, the campaign finance and lobbying information it receives.

Explanation:

The commission believes strongly that full disclosure can be achieved successfully only by strengthening significantly the financial resources and authority of ELEC. It believes that ELEC must have the money, personnel and independence it needs to monitor compliance with and ensure the enforcement of the Reporting Act and the Lobbying Act. The existing laws and any new laws adopted by the Legislature based on the recommendations of this commission must be administered competently and fully if they are to have the effect sought by this commission. The goals of increased public confidence in the integrity of the political system and greater disclosure will not be achieved unless sufficient financial resources are committed regularly by the Legislature to make those goals reality. Indeed, few of the recommendations contained in this report with regard to campaign finance or lobbying can become fully operational unless the Legislature commits itself to providing ELEC with the funds necessary to make those recommendations fully operational. Although the commission does not believe it appropriate to suggest to the Legislature how a stable source of funding for ELEC may be achieved, the commission notes that simply enacting new campaign finance or lobbying laws will prove meaningless unless the agency charged with administering and enforcing those laws is given the means to do so.