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LEGISLATIVE ETHICS IN NEW JERSEY

*by Betty Wilson**

Introduction

Government's inability to meet society's needs, the misconduct of those vested with authority, and the failure of government to adjust and change with social conditions are fashionable topics of current public discussion. It has become axiomatic that all political pronouncements are rhetoric and that the Madison Avenue "packaged person" predominates in public life.

These charges, as well as others of their ilk, are expressed by constituencies across the land. What must concern today's legislators is that there is partial truth in the allegations. They are expressions of our constituents' fears of what they perceive as rampant unconscionable and unethical official activities.

Each new revelation of unethical behavior instills increased feelings of helplessness and hopelessness among members of the general public. Should the overwhelming public response be an escape into apathy, then our government will become an institution controlled by a few and cease to be a representative democracy.

Reaching a comprehensive solution to this problem as it relates to the New Jersey Legislature mandates an understanding of the historical and constitutional basis for ethics in America and requires an assessment of the effectiveness of present ethical controls on the legislature. With such information in hand, it will be possible to determine the means to expose, encourage and expand the good that exists.

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Historical and Political Considerations

The historical and political consideration of ethics precedes modern times in the philosophical thought of the Greeks. The idea, after all, that ordinary persons possess inherent value, as well as the innate ability to judge their surroundings, reflect on the times, and speculate on the interaction of all persons, began with Plato, Aristotle, Polybius and Thucidides.

It is this historical protection of the role of the citizen in government that has enabled us to demand and fulfill our expectations of ethical behavior on the part of our public officials. In a representative democracy, power is vested in the citizen who, through his involvement and access to information, can reasonably expect to control standards of ethical conduct of public officials.

Protection of freedoms inherent in the people as citizens in a democracy was a paramount concern of the Founding Fathers. The First Amendment to the United States Constitution guarantees the rights of free speech and of petition, which rights are ineffectual without knowledge of and involvement in government affairs. The citizen could not exercise either right effectively without access to information.

Additional reinforcement of citizen rights is provided in the Fifth and Fourteenth Amendments which recognize that the general populace could suffer from excessive government and undue special interests, and that the average citizen would always be in a relatively weaker position than those in power.

Without special consideration, the average citizen would be a person of fewer alternatives. However, the Fifth and Fourteenth Amendments assure equality of citizen power with governmental power.

For example, due process guarantees, while first used extensively to block public interest economic reforms in favor of corporate interests, led to the view expressed by U.S. Supreme Court Justice Hugo Black that "The due-process-of-law standard is one in accordance with the Bill of Rights."[1]

Acceptance of the view that the right to due process is inalienable and cannot be the subject of "invidious discrimination"[2] by the

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1 Adamson v. California, 332 U.S. 46, 82, 67 S.Ct. 1672, 91 L.Ed. 1903, (1947) (Black, J., dissenting).

2 *Discriminations Against the Poor and the Fourteenth Amendment*, 81 HARV. L. Rev. 435 (1967).

state has brought reform in criminal proceedings, legal aid, civil suits, public schools, repossession procedures, landlord and tenant laws, and public utility procedures, to name but a few. Due process has been increasingly invoked whenever individual liberty or property is threatened, particularly by government. A neutral official is often required to make final decisions, thereby eliminating arbitrary governmental authority. In fact, in New Jersey we have reversed the role of government from adversary to advocate with the establishment of the Department of Public Advocate,[3] whose responsibility it is to put the weight of government behind efforts to assure due process for certain classes of citizens.

Since it is unlikely that due process could be effective without proper information and neutrality, the right of due process is dependent upon assuring public access to information. If due process is truly "one in accordance with the Bill of Rights," then the citizen is entitled to have full knowledge of pertinent information to enable him to fulfill his pursuit of good government. The citizen is denied his full rights when he falls victim to a structure which is calculated to keep him ignorant of public affairs or which sanctions his ignorance through failure to provide means to inform. If a citizen is denied proper oversight of the public's business, and if he is kept uninformed as to his representatives' personal business activities, which conceivably regularly and directly affect proposed legislation, the citizen is, in effect, denied the right of due process.[4] The bereft citizen, denied complete information, can make no value judgment as to his own interests or property.

Moreover, mistrust and suspicions, engendered by the privacy of governmental operation, can produce no mutual bond of respect nor mutual power. Secrecy is, therefore, inconsistent with the stated purpose of government to govern. Open government is a fundamental right of the citizens and ought not to be granted in a grudging manner by governmental agents or agencies who lament over their own loss of prerogative.

Our New Jersey Constitution, adopted in 1947, reiterated the main tenets of the national document. The emphasis again was on justice, tranquility, protection and liberty. Article 1, Section 2, is particularly relevant in that it reiterates the inherent political

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3 N.J. STAT. ANN. 52:27E-1 *et seq.* (1974).

4 Various interpretations of the due process clause exist, one of which is: "A third theory has read the due process clause as a guarantee of those privileges 'implicit in the concept of ordered liberty,' and a prohibition of state actions which violate the canons of 'fundamental fairness.' Unlike equal protection analysis, this due process test does not dwell on comparisons among individuals but instead balances the importance of the right of the individual against relevant state interests." LAW AND POVERTY, (P. Dodyk ed. 1969) at 162.

power of the people: "Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." The right of access to information implied throughout the United States Constitution is herein repeated, for any attempt to alter or reform the government necessarily depends upon an ability to possess information.

The Legislature — The People's Branch

Therefore, it is well at this point to examine that branch of state government, the legislature, which is closest to the people, to ascertain the extent to which the constitutional protections of the citizens are being provided.

First, one should define the functions and responsibilities of state legislatures. Alexander Heard lists the following:

1. To set policy and supervise the administration conducted by local units of government;
2. To make decisions to collect resources for the common use through taxation measures;
3. To make decisions to allocate the government's resources;
4. To regulate the activities of the citizenry, i.e., to restrict, encourage, or protect citizens in the exercise of their civil liberties or economic activities including many professions, and to police their lives, guarding them from those who would exploit them if left to their own devices.[5]

It should be understood that equalizing benefits is perhaps one of the most important goals for the community of interests known as the state. One segment of the community should not suffer unduly at the mercies of another. Therefore, a legislator, in the role as representative of the constituency served, must necessarily investigate, discuss and weigh competitive factors in formulating decisions.

In addition, it is important and necessary to provide mechanisms whereby citizens can recognize pervasive influences which can be perpetuated through secrecy and which encourage or, at least, allow exploitation. Public awareness of the resulting perversion of the system was commented upon by Common Cause in September of 1974:

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[5] A. HEARD, STATE LEGISLATURES IN AMERICAN POLITICS (1966) at 9.

> The steady decline of confidence in government leaders stems largely from the public's perception that many politicians lack the kind of ethical integrity needed for dedicated public service. For example, a May, 1974 Harris Poll showed that 76% of those interviewed agreed that "too many government leaders are just out for their own personal and financial gain."[6]

Most legislators will agree, individually, that our form of government has the potential to meet its problems. They will agree that the people have the right to know about government and that theirs is a function in a "well-connected chain of responsibility"[7] which demands the sharing of knowledge relative to the business of government. The legislator will, thus, acknowledge that power does come from the people and that by seeking and accepting the power to act for the people, he has accepted obligations to make knowledge about government accessible and to accept controls on his behavior. However, translating individual willingness into legislative action for providing mechanisms of dispersal of information and for establishing controls over violators represents the crux of the problem.

Conflict of Interest

To discuss ethical considerations, including controls to assure ethical behavior, we must first consider the effect and therefore the definition of conflict of interest. The Minnesota Governor's Committee on Ethics in Government includes an apt definition:

> A conflict of interest . . . exists whenever a legislator or other public official has placed himself in a position where, for some advantage gained or to be gained for himself, he finds it difficult if not impossible to devote himself with complete energy, loyalty, and singleness of purpose to the general public interest. The advantage he seeks is something over and above the salary, the experience, the chance to serve the people, and the public esteem that he gains from public office.[8]

This statement clarifies the problem. First, it places responsibility with the legislator, who has, after all, implied a willingness to accept ethical controls by the act of seeking office. The legislators

[6] Open and Accountable Government—Report From Washington, Extra Edition, Common Cause, Sept., 1974 at 11.

[7] John C. Calhoun *as quoted* in HYNEMAN AND CAREY, A SECOND FEDERALIST: CONGRESS CREATES A GOVERNMENT (1967) at 150.

[8] Minnesota Governor's Committee on Ethics in Government, Report 17 (1959).

through self-scrutiny and legislative action can remedy the situation. Second, the statement also separates the natural and normal endowments of public service from others which might accrue through abuse. The latter category includes undue influence, industrial or professional contacts, and advantageous investment to further personal interests.

The effect of having a part time body of persons at the State level whose allegiances are necessarily divided between public duty and business or professional interests ought not be minimized. Opportunities for pressures by lobbyists, who know how to provide temptations and to whom they can be applied, are not difficult to imagine.

A note of caution, however, is in order. New Jersey legislators, as this author knows them, have entered government with a sincere desire to serve the people. Criticism, therefore, is reserved for a system rather than for any individual or particular group. Most legislators will agree that improvements to the present system are both desirable and needed, although all will not necessarily agree with given specific proposals.

Reasonable alternatives to the present system, which will inevitably benefit constituent and legislator alike, can be found. Edmund Burke said, "All that is necessary for evil to prevail, is for enough good men to do nothing." We have allowed the evils of potential for conflict to prevail long enough and it is now time to initiate change.

The People's Branch In New Jersey

While considering the possibility of mitigating the conflicts described above by relieving legislators of the necessity for engaging in a business or profession, we must also consider other measures which could improve legislative ethics. In order to evaluate such remedies, it is necessary to see where the New Jersey Legislature stands today—to review its composition, operations, and existing ethical controls.

The New Jersey Legislature is a bicameral body. Since the 1966 constitutional amendment took effect in 1968, there have been forty senators and eighty assemblypersons, who serve for four and two year terms respectively. Political and occupational composition varies. In 1975, twenty-nine of the senators are Democrats, as are sixty-four of the present seventy-eight assembly members. The traditional preponderance of lawyers has decreased somewhat in the present two-year session, with fourteen senators and nineteen

assemblypersons now listed as practicing attorneys, and one assemblyperson as a law student.[9] Fifteen legislators hold full-time jobs on other public payrolls, the majority either as school district or city employees.[10] Eleven list no other occupation than that of legislator.[11] Six are labor union employees.[12] Although the rest work in private business or industry, only ten are employed on a salary basis by impersonal managements.[13]

Although the New Jersey Legislature has been critized in the past for a paucity of session days, the 1974-75 *Book of the States* lists it as one of those which meet "virtually year round."[14] In 1974, the Assembly met in full session on forty-two days and the Senate on thirty-eight, with August being the only "vacation" month. Committees are scheduled to meet on session days, and occasionally at other times. Meetings of legislative commissions, committee and commission hearings, and special party and leadership conferences usually take place on non-session days.

There are eleven standing reference committees in the Senate, and thirteen in the Assembly, as well as administrative and joint committees. The elected chief officers of each house—the President of the Senate and the Speaker of the Assembly—appoint committee members and chairmen and, together with other members of the majority party leadership (majority and assistant majority leaders, majority whips, and, in the Assembly, associate majority leader and conference committee chairman), are responsible for enforcing the rules which each house adopts, for setting priorities, and for coordination with the other house and with the executive branch. The minority leadership also plays a part in these areas.

Bills are reviewed by the reference committees and, if released, automatically receive second reading and are posted for a vote at a future session. In the Senate, however, the president may refer a new bill to the Conference and Coordinating Committee for initial review. This Committee, as does the Assembly Conference Committee, also provides a mechanism whereby stalled bills may be released or whereby released bills may receive further consideration after the requisite signatures have been obtained. Committee meetings, as well as legislative sessions, are open to the public.

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9 N.J. LEGISLATIVE INDEX Vol. LXI No. 1, Vol. LXII No. 1, and Bergen Record (June 27, 1974).

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 COUNCIL ON STATE GOVERNMENTS, BOOK OF THE STATES, Vol. XX at 56 (1974-1975).

Some advance notice of proposed action is provided, and voting records are available.

Committees are staffed by the Legislative Services Agency, which also has a general research branch and a bill drafting branch. The Office of Fiscal Affairs, responsible to the legislature, provides fiscal information. Each house employs session-day and partisan staff. The state annually pays district office expenses for each legislator up to $5,000 and salaries for personal staff up to a total of $15,000, and issues a telephone credit card, a telegraph credit card, and 5,000 stamps. Legislators receive a $10,000 per year salary.

The New Jersey Constitution, in addition to prescribing size, apportionment, and length-of-term requirements for the legislature, some minimum qualifications for legislators, and some requirements regarding the enactment of bills, also contains several provisions which have a direct bearing on legislative ethics. It provides that each house may discipline or expel members and that each house shall be the judge of the qualifications of its members. In addition, it prohibits legislators from accepting offices created or salary increases provided during a term of office in which such action was taken, and from holding any other state, or any federal, office "of profit."[15]

As far as specific laws dealing with ethical behavior are concerned, legislators are governed by the 1971 Conflict of Interest Law,[16] the Legislative Code of Ethics adopted pursuant to it, and, of course, by the criminal law provisions against bribery, extortion and fraud which apply to all public officials. Other relevant laws include the 1973 Campaign Disclosure Law,[17] the 1971 Lobbyists' Disclosure Law,[18] and the 1963 Right-to-Know Law.[19] New Jersey's current open meetings law[20] does not apply to the legislature.

The foregoing is a cursory description of the New Jersey Legislature, which may no longer deserve the rating of forty-second in accountability bestowed upon it in February, 1971, by the Citizens Conference on State Legislatures. However, an examination of further steps which should be taken to improve accountability and legislative ethics is in order.

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15 N.J. CONST. ART. IV & V (1947).

16 N.J. STAT. ANN. 52:13D-12 (Supp. 1974).

17 Campaign Contributions and Expenditures Reporting Act, N.J. REV. STAT. 19:44A-1 (Supp. 1975).

18 Legislative Activities Disclosure Act of 1971, N.J. STAT. ANN. 52:13C-19 *et seq.* (Supp. 1974).

19 Right to Know Act, N.J. STAT. ANN. 47:1A-1 (1963).

20 Open Meeting Law, N.J. REV. STAT. 10:4-1 *et seq.* (Supp. 1974).

Full-time Legislature

As mentioned earlier, given the opportunities for conflict of interest inherent in our present legislative structure, many groups and individuals have advocated changes which would make the legislature a full-time body. The President's Committee of the New Jersey Bar Association has recommended that the present legislature be replaced by a unicameral body "of perhaps twenty to forty members," full-time in nature, with "adequate individual staffing, salaries and office space," and that "outside employment and similar conflicts of interest" should be prohibited.[21] This smaller legislature would make higher salaries and better staffing possible, according to the committee, which has called for a constitutional convention to consider legislative restructuring.[22] Franklin Gregory, commenting on this proposal in his "About the State" column, strongly suggests that legislators not serve as delegates to such a convention, as their doing so would constitute a clear conflict of interest.[23] A 1971 report of the Committee for a Responsive Legislature also favored restructuring. Over the years, a number of legislators and other public figures have advocated similar reforms.

Although advocates of increased compensation for legislators do not always call for a smaller legislature and restrictions on outside employment, it is difficult to imagine that the public would accept the need for substantially higher salaries without insisting upon full-time service and restricting outside employment. The top salary which has been suggested in bill form is $30,000. Annual salaries in such states as California, Illinois, and New York are closer to $20,000, although allowances for such expenses as lodging, food and transportation effectively increase the base amount.[24]

Viewing the three changes together, then (and omitting the unicameral idea), it is in order to summarize the arguments for the smaller, well-paid, full-time legislature. Under such conditions legislators would be better informed because they would have more time to become so and because they would remain longer in the legislature.[25] The resulting intellectual independence would lessen

21 N.J. Bar Assoc., President's Committee Rep. (March, 1974).

22 *Id.*

23 Franklin Gregory, *A Constitution and Those Who Would Write It,* Newark Star-Ledger, Nov. 5, 1974 at 13.

24 *Supra* note 14, at 59, 70-73.

25 Statistical analyses of turnovers in fifty Senates and forty-nine Houses show that levels of compensation and rates of turnover are positively related. Alan Rosenthal, *And So They Leave—Legislative Turnover in the States,* STATE GOVERNMENT (Summer, 1974) at 151.

reliance upon and reduce the likelihood of being influenced by lobbyists and special interests. Legislators would be able to devote more attention to assuring that the public is well informed. Also, voters would be better able to follow the activities of the individual members of a smaller legislature. Thus, the public would be in a better position to recognize conflicts of interest and to demand higher standards—to hold their legislators more accountable.

Freeing legislators from the demands of outside employment would in itself greatly reduce possibilities for conflicts of interest.[26] Further, legislators could be expected to be more willing to disclose information about their private involvements, as there would be less information to disclose.

A restructured legislature offering higher compensation, greater job satisfaction, and equality with the executive branch would attract more of the able and self-confident "lawmakers" described by Barber in his book on legislators.[27] The self-image of legislators, as well as their position in the public mind, would be enhanced, and high standards would thus be maintained. For, as R. Allan Hickman says, "Politicians are pretty much like the rest of us, they incline to become the kind of people they are expected to be."[28] The circle of "low salaries and poor facilities, causing low standards and poor performance, causing public disgust . . ."[29] would be broken.

The merits of these arguments ought to be acknowledged in considering the desirability of a restructured legislature. However, it is also true that many ethical goals can be accomplished without such restructuring, and that restructuring will not solve all of the problems of ethics, particularly in the areas of disclosure and conflicts of interest. We cannot ignore the fact that legislators come to their duties with pasts which include personal and financial interests, and that they constantly face the possibility of futures in which the legislature has no part.

Closely related to the idea of a full-time legislature, and achieving many of the same goals without involving such sweeping change, is a well staffed legislature. In describing staffing reforms in the California Legislature, J. N. Miller states: "The result is that

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26 C.B. Howe, *The Professional Legislator,* STATE GOVERNMENT (Summer, 1974) at 132.

27 J.D. BARBER, LAWMAKERS: RECRUITMENT AND ADAPTATION TO LEGISLATIVE LIFE (1965).

28 Citizens Conference on State Legislatures (1974), Legislative Openness: A Special Report on Press and Public Access to Information and Activities of State Legislatures at 5.

29 James N. Miller, *Hamstrung Legislatures,* p. 11, NATIONAL CIVIC REV. (April, 1965) at 11.

rarest and most essential of legislative qualities—intellectual independence."[30] New Jersey is moving in this direction.

The effect of recent additions to the Legislative Services staff in both the Division of Bill Drafting and the Division of Information and Research have not yet been fully felt, but cannot be other than salutary. Both houses have moved to increase the effectiveness of partisan and personal staff. In New Jersey and elsewhere, efforts are being made toward greater utilization of the services of experts in specialized fields.[31] Among sources available to New Jersey legislators are the Seton Hall Law School Legislative Bureau, specialists from Rutgers, the Council of State Governments, the Citizens Conference on State Legislatures, and the National Legislative Conference, which "has increasingly begun to act as a broker between legislatures and the scientific and technical community in fulfilling legislators' requests for information."[32]

For the first time, starting July, 1974, the State is providing for district office space and furnishings for members of the legislature. Recent increases in personal staff allowances also enable legislators to serve their constituents and the public as a whole more effectively. It is reasonable to assume that the last-named changes, in particular, may influence the composition of the legislative body. Statistics suggest that people who already had offices and personal staff as part of their businesses have found it easier to serve in the legislature in the past. Improvements in all areas of staffing, in addition to providing the opportunity for more initiative and thought in the drafting of legislation, will make the legislator more independent of lobbyists, of political party ties, and of the executive branch, and will enhance the prestige of legislative service.

Strengthening the Laws

While providing conditions which will make legislative service more prestigious and legislators more independent can indeed influence legislative ethics, more direct measures can and should be taken to achieve a higher ethical level. Through appropriate laws and rules, the very passage of which will increase public esteem,

[30] *Id.* at 10.

[31] Pennsylvania State University, in cooperation with the National Legislative Conference, now the National Conference of State Legislatures, is conducting a study of the ways in which legislatures get and use scientific and technical information. New Jersey is one of the states included in the study.

[32] Irwin Feller, *Providing a University-based Science and Technology Input to State Legislatures,* STATE GOVERNMENT (Summer, 1974) at 142.

the public can be assisted in knowing what to demand of its officials, and the officials can be assisted in knowing what is "right"—so easy to recognize in simple situations, so difficult in complex ones. To quote Paul Douglas, "not knowing clearly what is expected of them in concrete situations, they allow themselves to be led into compromising acts which gradually wash away a large part of their original idealism."[33] Meaningful enforcement of such measures can produce a deterrent effect because of the fear of public censure and of actual punishment.

On June 5, 1974, the National Governors' Conference unanimously adopted a statement which begins: "In 1974, the first obligation of every elected official in this nation is to lead the fight to restore citizen confidence in government." The conference members went on to call for "stringent ethical codes for government officials, which clearly define conflicts of interest, assure appropriate and timely disclosure of personal finances by public officials and candidates, and set up an independent enforcement procedure."

Financial Disclosure Legislation

"Citizens can't hold their public officials accountable if they don't know what's going on."[34] Here, in a few words, is a major argument for open government, and in particular for disclosure laws. While New Jersey law regulates campaign finance disclosure[35] and lobbying disclosure,[36] it has virtually no provisions for public disclosure of financial interests of public officials. Without such disclosure by legislators, it is almost impossible for the people to know who really makes their laws.

Legitimate unanswered questions persist and arouse public suspicion. The public should know: From what sources do legislators and dependent members of their households receive appreciable non-legislative income? What other professional and business ties do they have? Do they owe considerable sums of money, and if so to whom? What real property do they own? Do they have business dealings with the State? These are the major questions to which the public should have answers in order to be more fully informed about the operations of government and about possible influences on those who represent and seek to represent them.

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33 P. DOUGLAS, ETHICS IN GOVERNMENT (1952) at 101.

34 John Gardner, *Integrity in Politics*, Common Cause Report from Washington Extra Edition, Vol. 4 No. 2 (Dec., 1973-Jan., 1974) at 17.

35 *Supra* note 17.

36 *Supra* note 18.

Besides informing the public and other legislators about such possible influences, disclosure laws encourage legislators to assess their own motivations and "to consider in advance the full implication of potential unethical action."[37] Recognizing all these factors is perhaps what led sixty-one candidates, now members of the New Jersey Legislature, to respond in the affirmative when asked by Common Cause if they would support financial disclosure legislation.[38]

Judging from reactions to past proposals, legislators who do not favor financial disclosure are chiefly motivated by the belief that it constitutes an invasion of privacy, that people have no right to know about these matters. However, a partial surrender of privacy is one of the obligations which public officials assume when they accept a delegation of power from the people. A model disclosure law will not require the listing of amounts of income, but only the sources of income in excess of stated figures.[39]

Thirty-one states require some form of financial disclosure by public officials.[40] Noteworthy decisions upholding disclosure laws have been rendered by State Supreme Courts in Illinois, California, and Washington.[41] The Illinois and Washington cases were appealed to and dismissed by the United States Supreme Court,[42] which has recently declined to review an Illinois executive order calling for disclosure.[43] An important consideration is that disclosure requirements should be rationally related to the asserted government interest.[44] Alabama's 1973 financial disclosure law[45] has been found unconstitutional in part,[46] the affected section being one which calls for disclosure of financial interests by members of the press.

Although newspaper reports indicate that numerous officials have called other sections of this law unreasonable and have resigned as a result,[47] information from the Alabama Ethics Com-

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37 Robert M. Rhodes, *Enforcement of Legislative Ethics: Conflict Within the Conflict of Interest Laws*, 10 HARV. J. LEGIS. 373, 388 (1973).

38 *Supra* note 34.

39 Assembly Bill 2282, 1974 Session N.J. Legislature.

40 Common Cause, Conflict of Interest Legislation in the States. January 10, 1975, at 6.

41 Stein v. Howlett, 52 Ill. 2d 570, 289 N.E.2d 409 (1972); County of Nevada v. MacMillen, 114 Cal. Rptr. 345, 522 P.2d 1345 (1945); Fritz v. Gorton, 83 Wash.2d 275, 517 P.2d 911 (1974).

42 Stein v. Howlett, cert. denied 412 U.S. 925, 93 S.Ct. 2750, 37 L.Ed.2d 152 (1973).

43 Exec. Order No. 4, 1973; Trooper Lodge No. 41 v. Walker, 57 Ill.2d 512, 315 N.E.2d 9 cert. denied—U.S.—, 95 S.Ct. 642, 42 L. Ed. 2d 656 43 (1974).

44 REV. CODE OF WASH. ANN. 42.17.240 (1973).

45 Substitute Senate Bill 1, 1973 Session Alabama Legislature.

46 Lewis v. Baxley, 368 F. Supp. 768 (N.D. Ala. 1973).

47 B. Drummond Ayres, Jr., New York Times, July 22, 1974 at 10.

mission does not support these charges. Executive Director Melvin C. Cooper has said that although a few officials and employees have resigned since September, 1973, none has specifically stated to the Commission that his resignation was due to disclosure requirements.[48] The 1972 Washington Law, despite many threats before its passage, had led, by February, 1974, to only one state level resignation.[49]

In addition to providing for rational exclusions, financial disclosure laws should include effective means for enforcement. An independent board, composed of a majority of members of the public who hold no other public and no party office, should be created to administer them. Meaningful penalties, including forfeiture of office, should be provided for violations. Citizens should have the right to examine disclosure records and to initiate complaints regarding violations.

Citizen groups, including the League of Women Voters and Common Cause, and many legislators themselves have called for the passage of a strong disclosure law. At the beginning of his term, Governor Brendan T. Byrne established procedures for financial disclosure by his cabinet appointees. On January 7, 1975, he signed an executive order requiring financial disclosure statements from all department and division heads and assistant heads in the executive branch of state government.[50] It is to be hoped that the present legislature will also take action on this issue.

Disclosure of financial interests is a necessary condition to the most effective operation of conflict of interest laws prohibiting or restricting officials' participation in situations where their personal interests may interfere with the public interest. If the public is not aware of, and officials themselves have not reviewed private financial interests, the officials may find it easy to forget about such laws, or to interpret them in the most favorable light.

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48 Conversation between Deputy Attorney General Mark I. Siman and Mr. Melvin Cooper, January 31, 1975.

49 Testimony delivered to Alaskan legislators Feb. 18, 1974, by Sam S. Reed, Assistant Secretary of State for the State of Washington.

50 Exec. Order No. 15, Jan. 7, 1975. On March 12, 1975, Superior Court Judge Samuel Lenox, Jr. signed a Temporary Restraining Order prohibiting public disclosure of statements filed pursuant to the Executive Order. On April 14, 1975 Judge Lenox ruled that the Governor had the power to require the filing of financial disclosure statements which would be available to the public, however the Judge continued the Restraining Order for 30 days to allow affected officials to seek judicial or administrative exceptions to public access to financial disclosure statements for cause.

New Jersey's Conflicts of Interest Law

New Jersey has a conflicts of interest law[51] which generally prohibits officials and employees in both the legislative and executive branches of state government from taking private actions which could conflict with their public roles. The law is amplified by the adoption of codes of ethics, and, as far as the legislature is concerned, is enforced by the Joint Legislative Committee on Ethical Standards, made up solely of legislators.[52]

Under the law, legislators may not themselves or through any partnership, firm or corporation in which they have an interest,[53] participate in purchases, sales, contracts, or agreements of the value of $25 or more made or awarded by any State agency,[54] or represent any person or party other than the State in connection with acquisition or sale by the State of real or personal property,[55] or in proceedings or applications before State agencies.[56] They may not act as agents for the State in dealings with themselves or with business organizations in whose profits they have an interest.[57] Legislators are also prohibited from accepting anything of value which they know or have reason to believe is offered with intent to influence them in the performance of their official duties,[58] or which is offered by any source other than the State for matters related to those duties.[59] Legislators are further prohibited from participating in legislation when, by such participation, they have reason to believe they will derive a direct monetary gain or suffer a direct monetary loss.[60]

All of these prohibitions are mitigated by exceptions, three of which involve a type of disclosure. Legislators may participate in legislation as described above after filing a statement for the public record with the Clerk of the Assembly or the Secretary of the Senate noting their "personal interest", but declaring that they can still be fair and objective.[61] Legislators may also bid on and

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51 N.J. STAT. ANN. 52:13D-12 *et seq.* (Supp. 1974).

52 The Executive Commission on Ethical Standards, made up solely of members of the Executive Branch, enforces the conflicts law as it deals with officers and employees in that branch of state government.

53 "'Interest' in a corporation means ownership or control of more than 10 percent of the stock of the corporation." N.J. STAT. ANN. 52:13D-13 (g) (Supp. 1974).

54 N.J. STAT. ANN. 52:13D-19 (Supp. 1974).

55 N.J. STAT. ANN. 52:13D-15 (Supp. 1974).

56 N.J. STAT. ANN. 52:13D-16 (Supp. 1974).

57 N.J. STAT. ANN. 52:13D-20 (Supp. 1974).

58 N.J. STAT. ANN. 52:13D-14 (Supp. 1974).

59 N.J. STAT. ANN. 52:13D-24 (Supp. 1974).

60 N.J. STAT. ANN. 52:13D-18 (Supp. 1974).

61 *Id.*

accept contracts made after public notice and bidding, and may negotiate and accept certain contracts where public bidding is not required, if they first receive approval from the Joint Legislative Committee on Ethical Standards.[62] If successful, they must file with the Committee the name of the State agency and the dollar amount of the contract and any amendments or change orders to such a contract.[63] The Legislative Code of Ethics clearly specifies another situation in which legislators must file with the Committee—that is, if they are engaged in a business or profession subject to licensing or regulation by the State.[64]

A review of the files of the Committee and of the Senate Journal and Assembly Minutes indicates the extent of compliance elicited by these limited disclosure requirements. Exact determinations cannot be made, partly because Committee records on approximately seventeen cases remain confidential under the provisions of Section 2:12[65] of the Legislative Code of Ethics. The right to keep Committee advisory opinions confidential was upheld by a September, 1973, Superior Court decision,[66] and by a February 20, 1975, Appellate Division decision.[67] The New Jersey Bar Association, in requesting permission to intervene in the case, stated that "[p]ublic opinions by the Joint Committee on Ethical Standards without mentioning names would be in the public interest."[68] However, the Appellate Division held that it lacked authority to mandate such a procedure in view of the Legislature's adoption of the Ethics Code,[69] including the confidentiality provision.

The Committee's files do show, however, that some twenty-three of the present legislators have reported their involvement in business activities licensed or regulated by the State. Although it is difficult, without a comprehensive disclosure law, to be aware of exactly who should file, it is believed that most affected legislators

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62 *Supra* note 53; N.J. LEGISLATIVE CODE OF ETHICS, 2.5.

63 *Id.*

64 N.J. STAT. ANN. 52:13D-23 (e), (2) (Supp. 1974); N.J. LEGISLATIVE CODE OF ETHICS, 2.7.

65 This provision states that "Advisory opinions of the Joint Committee shall not be made public except upon the direction of a majority of all the members of the Joint Committee or upon the request of the member seeking the advisory opinion."

66 Gewertz v. Joint Legislative Committee on Ethical Standards and William M. Lanning, No. A-541-73 (N.J. Super. Ct., App. Div., filed Sept., 1973).

67 Gewertz v. The Joint Legislative Committee on Ethical Standards and William M. Lanning, No. A-541-73 (Super.Ct., App. Div., Feb. 20, 1975).

68 John O. Davies, *Secrecy Lid Gets Lift*, Courier-News (Plainfield, N.J., Nov. 29, 1974) at C-4. When the case was heard in Superior Court, the argument was made that legislators would be easily identifiable, even if their names were withheld.

69 Senate Concurrent Resolution 28 (1972) was the Ethics Code at the time the case was brought. The present Ethics Code, Senate Concurrent Resolution 98 (1974), is substantially the same in the relevant sections.

have done so.[70] Compliance by legislators with approval and filing requirements regarding contracts with the State is subject to check, since, according to William M. Lanning, secretary and counsel to the Committee, State agencies are alerted to ask for appropriate approvals, and any contracts awarded are public record. Lanning notes that Committee permission to bid on or negotiate such contracts is generally automatic.

The requirement to file a statement prior to participation in legislation had, by the middle of 1974, led to only five filings in two and one-half years.[71] As of February 24, 1975, the Clerk of the Assembly had received three additional statements; the Secretary of the Senate, none.[72] During this time, legislators with business involvements in a variety of fields have, according to news sources,[73] participated in legislation dealing with these fields. The Committee's public records indicate that during this time only about a dozen legislators have taken advantage of the provision which allows the seeking of advisory opinions on this subject.[74] Apparently others have determined for themselves, as the law[75] gives them the opportunity to do, that no benefit or detriment could be expected to accrue to them which would be greater than the benefit or detriment to any other member of their occupational group.

A major reason that New Jersey's conflicts law has not operated with maximum effectiveness is that it does not make sufficient provision for public knowledge (except in the limited ways described earlier) or for public participation. In effect, it leaves almost all determinations to the discretion of legislators themselves, either individually, or through the joint committee. In addition to issuing advisory opinions and receiving the required filings listed above, this body has the power to initiate, receive, hear and review complaints regarding violations, to fine legislators found guilty of such violations and to recommend further action to the appropriate

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70 Randy Young, *Whom Do New Jersey Legislators Really Represent?* Newark Star-Ledger (May 19, 1974) at 19.

71 Newark Star-Ledger (June 9, 1974) at § 3, p. 2.

72 As reported by John Miller, Clerk of the Assembly and Robert Gladden, Secretary of the Senate, Feb. 24, 1975.

73 Courier News (Plainfield, N.J., Jan. 31, 1973) at A-11; *Special Report*, Newark Star-Ledger (May 19, 1974) at 1; Newark Star-Ledger (May 27, 1974) at 1; Courier News (Plainfield, N.J., June 14, 1974) at editorial page.

74 The majority of advisory opinions in the public files deal with lawyer's questions as to whether or not they may take cases under the terms of N.J. STAT. ANN. 52:13D-19 (Supp. 1974). (Sections 2:2, 2:3 and 2:4 of the LEGISLATIVE CODE OF ETHICS).

75 N.J. STAT. ANN. 52:13D-18 (Supp. 1974).

house.[76] Under the present law, it is not to be expected that many complaints would be initiated.

The public generally has little information about either a legislator's private interests or the complete effects of specific pieces of legislation.[77] Although the joint committee has somewhat more information and is diligent in responding to requests for advisory opinions, it is subject to limitation by lack of comprehensive data and by built-in pressures against investigating fellow legislators—members of the "club" described later in this paper.[78]

Responsibility under our present system, then, comes back primarily to the individual legislators themselves, as to some extent, it always must. However, it should be recognized that objectivity is hard to achieve and that all legislators will find themselves in situations where being guided by a specific law rather than having to rest solely on individual interpretation would enhance their credibility. Furthermore, yielding of some self-determination is another obligation which accompanies power. Therefore, the legislator must share responsibility for ethical control with the public.

Control By Independent Board

As noted earlier, a financial disclosure law is one means to achieve some sharing of responsibility. However, it is also important to substitute for the joint legislative committee an independent board of ethics. To be most effective, the same board should handle both financial disclosure and conflicts of interest, and should have jurisdiction over both the legislative and executive branches of state government. Should a state law governing local government conflicts of interest be enacted, the board's responsibilities should be broadened to include local government as well. As mentioned earlier, such a board should include a majority of respected members of the public who hold no other office. It should have the necessary staff to pursue obvious and suspected conflicts of interest, and its reports should be public records.

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76 N.J. STAT. ANN. 52:13D-22 (Supp. 1974).

77 Public Committee files show that five complaints have been initiated by members of the public since the Conflict of Interest Law (N.J. STAT. ANN. 52:13D-12 *et seq.* (Supp. 1974)) took effect on January 12, 1972.

78 According to R. GETZ, in CONGRESSIONAL ETHICS (1966), between 1900 and 1966 only five members of Congress were formally censured by their houses. This action was stimulated by disloyalty and discourtesy to the House and its members, rather than by unethical or illegal conduct.

Many voices have called for an end to in-house policing such as is presently exercised by the New Jersey Legislature. The failure of self-policing because of the reluctance of legislators to judge their colleagues is the subject of a well documented law journal article aptly entitled "Enforcement of Legislative Ethics: The Conflict within the Conflict of Interest Laws."[79] Chief Justice Richard Hughes, when Governor of New Jersey, included a slightly different emphasis in his 1966 veto message of Senate Bill No. 40. He wrote:

> In particular, I cannot agree that members of the legislature generally should be shouldered with the distasteful responsibility of passing upon charges against their colleagues. . . . It would be unwise to vest in the legislature the responsibility for enforcement of its code of conduct for another reason. For good cause or not, public attention to the subject of conflicts of interest has long been focused primarily upon the activities of the legislature. In order to assure the confidence of our citizens in their government, it is imperative that no suspicion concerning the *bona fides* of the legislature be given a basis for existence. In a society which derives its order from the consent of the governed, men in public office not only should do justice, but also should satisfy the public that justice has in fact been done.

The New Jersey League of Women Voters has advocated a board with at least some public members, and Bernard Kuttner, Chairman of the New Jersey Bar Association's Conflicts of Interest Committee, has voiced his organization's support for an independent ethics committee. Legislators themselves favor the idea, according to the Common Cause 1973 survey. Sixty-eight of those subsequently elected answered that they would support legislation establishing an independent ethics commission.[80]

The idea of independent ethics commissions is not an untested concept. Louisiana has provided for an independent board since 1965.[81] Hawaii's independent commission was established in 1968.[82] Kansas recently replaced its independent advisory ethics committee[83] with a more powerful commission.[84] In fact, as of January 1975, a total of sixteen states had established boards with

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[79] *Supra* note 37.

[80] *Supra* note 34.

[81] LA. REV. STAT. ANN. 42:1144 (A) (1965).

[82] HAWAII REV. STAT. 84–21 (1968).

[83] Senate Bill 689 (1974), KAN. STAT. ANN. 75–4303 (a) (Supp. 1971) L. 1970, ch. 366, § 3.

[84] Senate Bill 689 (1974), House substitute for Senate Bill 656; Senate Bill 1020 (Mar. 22, 1974).

complete or partial public membership to enforce conflicts and disclosure laws.[85]

A board of ethics' tasks would be simplified, and the public would be better satisfied "that justice has in fact been done" if New Jersey's conflicts of interest law were further amended to provide that no more than half the membership of legislative committees should be composed of members of the businesses or professions over which the committee has jurisdiction, and that no such member should serve as chairperson. Although it may be said to be practical, for example, that bankers serve on the Banking Committee, and educators on the Education Committee, it is in the public interest to require relatively mixed committees, where expertise can be balanced by lack of bias.

Those legislators who have a financial or "personal," interest, even if the interest is no greater than that of other members of the same class, in the passage of legislation should not participate in the enactment of such legislation.[86] If they are uncertain as to the permissibility of participation, they should be entitled to request a ruling from an independent board. Recognition of the problems involved in such a requirement should result in solutions which set time limits for board action, and possibly where abstentions were indicated, which reduce the number of votes needed for a bill to pass, so that abstentions would not count, as they do now, simply as "no" votes. Moreover, legislators should be limited not only on the grounds of direct financial interest, but also on the basis of interests arising from family or business relationships which may unduly influence them in carrying out their public duties.

Other government officials should be similarly restricted.[87] Members of the legislature are certainly no more likely to engage in unethical conduct than are public officials in other branches and at other levels of government. We have only to read the newspapers to be aware of that. Public awareness of such actions makes it even more important that good people in all areas of government

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[85] *Supra* note 40 at 8.

[86] It is noteworthy that a rule requiring U.S. Senators to abstain on bills when their private interests were concerned was laid down by Thomas Jefferson as Senate presiding officer in 1801. The rule was relaxed to include the class concept in 1874 by James G. Blaine. Ten years later, Blaine was exposed as a bribe taker in connection with procuring land grants for railroads. F. LUNDBERG, THE RICH AND THE SUPER-RICH (1968) at 569.

[87] Examples of laws which prohibit some officials from having certain interests and taking certain actions are: N.J. STAT. ANN. 2A:135-7, 8, 9 (Supp. 1974); N.J. STAT. 18A:6-8 (1947); N.J. STAT. 18A:12-2 (1960); N.J. REV. STAT. 40:55-1.4 (1937); N.J. REV. STAT. 40:66A-5 (1948); N.J. REV. STAT. 40:69A-163, 164, 166 (1950); N.J. REV. STAT. 40:73-2, 3, 4 (1937); N.J. REV. STAT. 40:83-2, 3, 4, 5 (1937).

be willing to show that they have nothing to fear from disclosure and conflicts of interest laws.

Campaign Finance Disclosure

New Jersey has already gone forward in the area of disclosure through passage of the Campaign Expenditures Reporting Act,[88] which became law in April, 1973. This and similar laws in at least three dozen states and at the federal level allow the public to know the sources and uses of campaign contributions made to help elect and perhaps to influence their representatives.[89] "Money and secrecy are the key to the whole question of citizen access and official accountability"[90] says John Gardner. New Jersey's law requires full reporting of all contributions and expenditures, except that names of those who did not contribute more than $100 may be excluded. It also limits the amount which may be spent per candidate to "fifty cents for each voter who voted in the last preceding general election in a presidential year in the district in which the public office is sought."[91] The law creates an independent Election Law Enforcement Commission with the power to fine violators as much as $2,000 and to seek criminal penalties. According to David Norcross, the Commission's Executive Director, compliance has generally been good, with lateness or misunderstanding being the most frequent reasons for filing failures. Active follow-up by the commission in the form of reprimands, hearings and fines has been a major factor in improving compliance. Four fines and forty-seven reprimands resulted from the failure of legislative candidates to file required forms by the three reporting dates for the 1973 general election. All of the 276 candidates have now filed. Initial figures for 1974, when there were no legislative races, showed 38 percent non-compliance. This figure was reduced to less than nine percent within ten days, and as of December 10, 1974 to 2.5 percent.[92]

Although people in politics across the country have complained that new campaign disclosure laws are strengthening incumbents,[93] evidence from the 1973 New Jersey legislative races does not support this contention. The 56 freshmen out of 120 members of the legislature are testimony to the fact that newcomers were not discouraged from seeking office nor were they denied victory.

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88 N.J. REV. STAT. 19:44A-1 *et seq.* (Supp. 1975).
89 W. Greider, *Campaign Cash Shrivels,* Newark Star-Ledger (Oct. 10, 1974) at 23.
90 L. GILSON, MONEY AND SECRECY (1972) at xi.
91 N.J. REV. STAT. 19:44A-1 *et seq.* (Supp. 1975).
92 Letter from David F. Norcross, Dec. 10, 1974.
93 *Supra* note 89.

Moreover, the argument that campaign disclosure would place incumbents in a relatively more advantageous fund raising position was not borne out.[94] Election Law Enforcement Commission figures show little expenditure difference between incumbents and challengers.[95]

However, a recent New Jersey Common Cause report indicates that incumbents were the chief beneficiaries of contributions from special interests, particularly lobbyists.[96] This study shows that incumbent legislators received ten times as much in campaign funds from lobbyists as did challengers. Prohibitions placed on such contributions, together with partial public funding of legislative campaigns, would reduce special interest influence, and increase public participation and awareness.[97] It is interesting to note that public financing is not a new concept. Theodore Roosevelt recommended it in his 1907 State of the Union message, and in 1936 a special U.S. Senate committee called for total public funding.[98] In addition to public financing, other needed reforms would limit individual contributions, would place strict limitations on cash contributions, and would bar violators from seeking office for a specified time.

Controls on Lobbying

A provision of the campaign disclosure law requires political information groups and lobbyists to report contributions and expenditures for political activity, and for influencing legislation. However, lawsuits challenging this provision have led to an injunction against its operation.[99] Thus, at present, New Jersey controls over lobbying are limited to those contained in the Legislative Activities Disclosure Act of 1971.[100] This law requires lobbyists to wear identifying badges, and to register with the Attorney General, listing their employers and the types of legislation in which they are interested and describing arrangements by which their compensation may depend on the success of their

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94 *Id.*

95 1974 N.J. ELECTION LAW ENFORCEMENT COMMISSION, Annual Report at 4.

96 N.J. COMMON CAUSE, *Campaign Monitoring Report for the 1973 Legislative Elections* (Jan., 1975).

97 Recently enacted law provides for public funding for gubernatorial general election campaigns, and pending legislation would extend such provisions to the primaries.

98 *Supra* note 34.

99 The law has been attacked in Federal Court by the American Civil Liberties Union and in the N.J. Superior Court by the Chamber of Commerce and sixteen business and labor groups; the latter action has resulted in the injunction. *Supra* note 95 at 10.

100 N.J. STAT. ANN. 52:13C–19 (1971).

efforts. They must also make quarterly reports listing legislation on which they have been active, and updating their registration information. All of these records are open to the public, although records of legislative agents' financial transactions, which they themselves are required to preserve for at least three years, are not. Lack of compliance with the provisions of the law, or the knowing issuance of false information, constitutes a misdemeanor.

Although New Jersey's "lobby law" has been rated as adequate by Lawrence Gilson in *Money and Secrecy*,[101] it would be more effective in letting the public know the extent of lobbyists' influence on legislators as well as in eliminating any improper influence if it required itemized public disclosure, by both lobbyists and their employers, of income and expenditures.[102] The role of the lobbyist can be both honorable and constructive; however, both the public and the legislature must be well informed for this to hold true.[103]

Twelve states, according to Common Cause, have enacted new lobbying disclosure laws during a recent eighteen month period.[104] Among the strictest provisions are those included in the California Political Reform Act of 1974,[105] which prohibits lobbyists from making political contributions and from spending more than $10 per month on any official, as well as requiring registration and monthly expenditure reports. Enforcement is in the hands of California's new independent commission.

Open Meetings

Public confidence in the ethics of the legislature could also be increased by a revision of the 1963 Open Meetings Law. Former Attorney General George F. Kugler stated the arguments for the effect of open meetings on ethics in his final report:

> It is easy for government personnel to unwittingly develop proprietary instincts and begin feeling that government is their domain. . . . This . . . becomes dangerous in a contemporary society where public relations devices and mass media are available to government to be utilized by it in convincing the public of the propriety of its actions. Without a right in the public to view the govern-

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101 *Supra* note 90 at 209.

102 *Supra* note 34. The Common Cause survey shows that seventy-five legislators would favor such a change.

103 *Supra* note 29 at 8.

104 *Open and Accountable Government—Report From Washington, Extra Edition,* COMMON CAUSE, Vol. 4, No. 9 (Sept., 1974) at 10.

105 CAL. STAT. ANN. 9:1–1 (Supp. 1974).

> ment decision-making process, these devices could readily be used to misinform the public. . . . Probably the most compelling reason for opening up the decision-making process to the view of the public is that secrecy both shrouds corruption and engenders public distrust in government and in its officials.[106]

New Jersey's Open Meetings Law,[107] unlike laws in at least twenty-two other states, does not cover the legislature.[108] The law does not allow for public attendance at executive sessions, and permits votes to be taken in secret under a number of circumstances. Gilson calls it "virtually meaningless."[109] The much more comprehensive open meetings bill[110] now before the legislature, although it has seventy-three sponsors, was not released from Assembly committee until October 29, 1974, almost ten months after its introduction. In fairness it should be noted that the strongest objections to the bill have come from municipal bodies, while the legislature has acted through rules to make its own processes more open.

Legislative sessions have traditionally been open to the public. In 1974-75, for the first time, members of the public may attend meetings of all standing reference committees, including conference committees, as long as there is space in the committee room.[111] A committee may meet in executive session, but no votes may be taken in secret.[112] New Assembly rules require full public discussion of all bills and resolutions in the reference committees, which have a deciding voice in determining which legislation will be acted on by the entire body.[113] Rules of both houses are silent regarding public attendance at meetings of joint and administrative committees, including the important rules committees.

Legislative meetings which have been completely closed to the public are those of the Assembly Party Conference and Senate Caucus.[114] In the party conferences an explanation of a bill may be presented by the sponsor, questions can be answered, and general

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106 N.J. Atty. Gen., New Jersey's Right To Know: A Report On Open Government (Submitted Jan., 1974) at 173.

107 N.J. REV. STAT. 10:4-1 (1960).

108 *Supra* note 34, at 69.

109 *Supra* note 90, at 22.

110 Assembly Bill 1030, 1974 N.J. Legislature.

111 N.J. SENATE RULE 155; N.J. ASSEMBLY RULE 10:10. *See also* note 28 *supra* at 81.

112 N.J. SENATE RULE 155; N.J. ASSEMBLY RULE 10:10.

113 N.J. ASSEMBLY RULE 10:10.

114 The Senate has recently allowed limited press representation at its caucus. After a brief trial, however, the Legislative Correspondents Club voted to discontinue the arrangement on the grounds that the caucus should be open to all.

support for a controversial bill may be assessed. Based upon what is learned there, the sponsor may request the Speaker to postpone consideration of a bill, or he may consider amendments.[115] When party conference meetings are used to consider legislation in this way, it seems reasonable that they should be open.

The Executive Secretary of the National Conference of State Legislative Leaders says:

> When party caucuses deal with partisan, political strategy, they should be closed. They should not deal with strictly legislative procedures which in any way directly affect bill making, but if they do, they should be open to the press and the public.[116]

An intermediate measure could be a requirement that party conference votes be recorded and made available to the public. Such a requirement could possibly be included in the proposed revision of New Jersey's Right-to-Know-Law[117] or could be made by rule. Party caucuses *are* open in eight states (Florida, Tennessee, Georgia, Colorado, North Dakota, Vermont, Maine and Virginia),[118] which thus have given priority to the people's right to know how government is handling their business.

The experience of open committees has shown us that the public does not descend on these meetings in disruptive droves—physical limitations of the committee rooms and, to a greater extent, personal limitations on the public's time prevent this. Lobbyists, including public interest lobbyists, do attend. Members of the press attend as well and they are able to report committee activities, including presentations by lobbyists, to the public from first hand knowledge. Representatives of public interest groups are able to report through their publications. Both types of information sources are thus able to add valuable background data and insight to their coverage of general sessions. Moreover, to quote a Pennsylvania legislator, "This added press coverage can be a great help to the image of the legislature."[119] The same kinds of effects could result from opening up party conferences.

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115 This is Assembly procedure; Senate caucus procedures are slightly different.

116 Charles Davis as quoted in CITIZENS CONFERENCE ON STATE LEGISLATURES (1974), Legislative Openness: A Special Report on Press and Public Access To Information and Activities of State Legislatures at 102.

117 N.J. STAT. ANN. 47:1A-1 (1963).

118 *Supra* note 28, at 70, 97-99.

119 R. Butera, *Open Committees in Pennsylvania: Lessons for the Leadership*, STATE GOVERNMENT (Summer, 1974) at 163.

Although the public can now benefit from increasing information from the media,[120] particularly the newspapers (which, incidentally, would perform a great public service if they took the small step of routinely including bill numbers in their reports), and from the League of Women Voters and similar groups as a result of presently open meetings, the legislature's obligations for informing the public do not stop here. Rather, the legislature itself should assume, to some extent, the role of publicist.

At the present time, voting records are kept, and are, as are transcripts of committee hearings, accessible to the public if the public knows how to get them. Legislators have available subscriptions to the privately published Legislative Index, which they distribute to libraries, groups and individuals. The establishment this year of a toll free legislative hotline was a major step forward, as was the legislative leadership's role in providing for coverage of several sessions by public television. The legislature should encourage more television coverage, and both houses should provide, as the assembly has just done, for verbatim recording of debate, at least of floor proceedings.[121] Other states follow such practices. Sessions of the Georgia Legislature, for example, are broadcast live daily over public television.[122] Recordings are made of committee meetings in five states, and nineteen state legislatures record floor proceedings.[123]

In an affirmative effort to inform the public, the legislature should provide through the media a listing of the information sources which it does or will make available. Such an affirmative action would help dispel continuing widespread beliefs that not only does government operate in secret, but also that even when veils are lifted, it is too remote and too complicated for the average citizen to do anything about. If we allow these beliefs to persist, we are diluting the effects of other efforts toward making the legislature more accountable to the public and thus more ethical.

Role of Leadership In Controlling Ethical Behavior

A further aspect of the New Jersey Legislature, which is little understood but which can play an important part in the initiation, adoption, and enforcement of reforms directed toward legislative

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120 The New Jersey Senate has established a commission to explore ways of improving television coverage of New Jersey news.

121 N.J. ASSEMBLY RULE 8:14 (Feb., 1975).

122 *Supra* note 28 at 131.

123 *Supra* note 28 at 113-114.

ethics, is leadership, narrowly defined to mean the chosen leaders of the two houses.

Legislative leaders are chosen by each political party, in theory by the other legislators of that party. The Speaker of the Assembly and the President of the Senate are chosen by the whole house and ordinarily are members of the majority party. In practice, county and state party chairmen often play a major role in leadership selection as does the governor. It would be possible and desirable to work out a system whereby the contenders for leadership posts would engage in a mini-campaign during which they would inform other legislators of their stands and their views of the leadership role. In this way legislators could have a larger, better informed part in choosing their leaders and could be expected to be more amenable to guidance by those leaders.

The result could be a more united legislature which could more effectively assert itself as an equal branch of government and, thus, hold a higher self-image. Further, the development, adoption and enforcement of both rules of procedure and of laws which would influence legislative ethics could be accomplished more effectively if the rank and file established those as clear goals through its selection of leaders.

In addition to working to encourage other legislators to support such rules and laws, leadership can be effective in working for the improved staffing which can create a better informed legislature that is less dependent on outside interests. Leadership can accomplish this through influence on the legislative budget and through assuring that money spent on the staff over which it has direct control—that is, session-day and partisan staff—is spent for effective service and never for mere political plums. Leadership action in each house has led to recent requirements regarding performance by such staff, as well as by legislators' personal staff.[124] Each legislator is now limited to no more than six compensated aides, for each of whom a job description must be submitted to the chief officer of the house. Strict enforcement of these and additional requirements will work toward a truly well staffed legislature.

[124] In a directive issued by executive director of the Senate, George Callas, State Senators were informed that rules against employee absenteeism from Legislative sessions would be rigidly enforced, and that Senate aide positions must now be filled according to a list of job descriptions which delineates duties and limits the number of aides each Senator may employ. The Assembly has adopted similar provisions on a voluntary basis. Randy Young, *Senate Adopts Job Rules to Curb Abuse By Aides,* Newark Star-Ledger (February 23, 1974) p. 1. At this time, it is too early to tell whether the new directives will achieve the desired result of increased staff effectiveness, but this first step is encouraging.

As has been said, the top leadership is chiefly responsible for the makeup of committees. The present leaders have expressed concern about possible conflicts of interest among committee members. Although standards in law for the composition of committees are preferable, the powers of leadership can be used to accomplish a situation where the possibilities for conflict are greatly reduced.

Leadership, too, through its powers of appointment to and service on the Rules Committees and the Ethical Standards Committees as well as through its personal prestige, can work for more open meetings, elimination of such non-accountable practices as senatorial courtesy, and the enforcement of existing rules and laws governing ethical conduct. The latter can range from keeping lobbyists off the floor to assuring that legislators do actually submit the information required by the present conflicts of interest law, and that pressures against an unethical vote are applied.

It can be concluded that despite steps that have been taken both through practice and the law to enhance the ethical climate of the New Jersey Legislature, legislators and leaders have a continuing opportunity to work for improvement.

Conclusion

An important element in the overall picture of ethical controls as regards a number of bodies and organizations, including legislatures, is the *esprit de corps,* the "club spirit." Skepticism of a legislature's inability to keep its own house in order was expressed by Wilson and Graham in the early '50's.[125] Both authors reached similar conclusions that because of the "club spirit" which characterized relations among individual congressmen, Congress was incapable of policing itself. In their view, the strong *esprit de corps* resulted in a consequent defensive reaction whenever charges were brought against one of the members. Hence, the authors concluded that Congress had failed in its constitutional prerogative and responsibility to judge the actions of its own members.[126] Similar criticisms can be levelled at state legislators.

Revelations of wrongdoing are often met with the political rhetoric of the "club." Anyone in politics or substantially versed as to the rules of the game can recognize such reactions. In defense of the wrongdoer, politicians of the same party will refer to

125 H. Hubert Wilson, Congress: Corruption and Compromise (1951) at 1-12; George Graham, Morality In American Politics (1952) at 82-96.

126 *Id.*

the cruel nature of an attack waged against a partisan member, while the opposition party will equivocate in various degrees of criticism ranging from "unfortunate" to "reprehensible." Furthermore, the strongest critic had best beware to keep his or her affairs in good order because the system can eventually be used to retaliate against those who are too harsh. Even among the most honorable of persons, resistance to the magnetism of loyalty to the "club" is difficult.

It should be noted here that the recent entry of greater numbers of women into the "club" have generated some feelings of uncertainty as to whether the rules of the "club" will be altered. It is impossible to predict the long term outcome, but it is fair to say at this juncture that the entry of women may cause some dislocations.

Further evidence of the impact of personal considerations and the manner in which they can override devotion to principle and ethics can be found. For example, some time ago, a New Jersey legislator was convicted of financial skullduggery committed while he held public office and he was sentenced to prison. It was reported that when he left his colleagues for the last time, he received a standing ovation. More recently we have heard cries of moral indignation in defense of a President who, it has been shown, not only lacked moral character and leadership, but proceeded, quite methodically, to erode many of the basic freedoms guaranteed in our Constitution. He too was applauded by some. In both instances, the law was finally able to overcome the man, but the image of the man remained intact for some time thereafter.

Inasmuch as government is carried out by persons who can be expected to possess empathy for their colleagues, it becomes even more necessary to replace a system of peer control with that of an independent third entity. Such a system need not be insensitive to persons who serve in government by engaging in a purist's pursuit of theoretical perfection. Rather it can rest on the assumption that the person is important to the system as long as he attends to his obligations and duties with devotion. However, with proper regulation, he can be removed from those temptations which, from time to time, provide extraordinary pressure to divert him from his purpose and responsibilities.

Accepting this view then, it is incumbent upon us to devise laws and means of enforcement to effectuate such a policy. Some will respond that media coverage is a satisfactory means of monitoring public ethics. However, this is simply not their job. Though the media have made substantial improvements in coverage of Trenton affairs, they have neither the staff nor the responsibility for over-

seeing the detail that is necessary to effective control of ethics. Thus, it becomes evident that leaving the job of exercising ethical controls to the media is tantamount to an abdication of public responsibility.

Undoubtedly, some will object to the contention that the right of absolute individual privacy is sacrificed as one of the obligations of power. In fact, former Attorney General George F. Kugler recognized the dilemma posed by such objections in his report upon leaving office. He stated:

> [I]t becomes necessary that government be ever aware of its increasing potential to abrogate individual privacy through the misuse of its information stockpile. This intensified potential is acknowledged and has been a significant consideration in weighing the public's right to individual privacy against the public's right to know. The result is an attempt to protect that information which would, if disclosed, be considered an invasion of privacy, while not, at the same time, allowing a person to thwart the public's right to know by claiming every piece of information he submits to the government demands confidential treatment.[127]

While the report dealt primarily with the executive branch and agencies thereof, the same principles should apply to legislators as well. The former Attorney General included a long list of specific categories of information which could justifiably remain private. A similar list of exclusions could be adopted by an independent ethics board to insure personal privacy of legislators.

The most effective controls to assure ethical conduct of legislators can be achieved through legislation which assures full access to pertinent information by the public. Such information would include financial disclosure by public officials as a deterrent to actions taken on behalf of private rather than public interest. It is further necessary to require meetings of all public bodies to be open to the public. Finally, conduct of legislators should be regulated to the extent necessary to assure that all official actions taken by legislators are in the public interest, for the only legitimate interest a public servant may possess in performing public duties is the public interest.

In conclusion, it is reasonable to state that:

1. Conflict of interest is a problem in New Jersey;
2. The problem is especially prevalent in the nature of part-time legislators;

[127] *Supra* note 106, at 139-140.

3. The people's right to know and weigh all existing evidence and to judge such matters and their effect upon legislation is inherent in the guarantees found in our national and state constitutions.
4. Acceptable alternatives exist which can alleviate the problem;
5. The solution rests with the very body so involved.

James Madison once said: "First we must learn how to govern, then we must learn how to control those who govern." Recognizing where natural difficulties lie is the first step toward "controlling those who govern."