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Nicholas Esposito

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THE ILLINOIS GOVERNMENTAL ETHICS ACT— A NEED FOR STRONGER REFORM

In 1967 the Illinois General Assembly enacted the Illinois Governmental Ethics Act.¹ For the first time Illinois legislators provided the state with an instrument aimed at ridding government of dishonest and corrupt public officials. However, since its passage the Act has come under severe criticism from the press, legislators and other interest groups.² It now appears that the Act has done little to fulfill its primary objective, that of providing the public with adequate information concerning possible financial conflicts of interest among officeholders.

The need for a potent and workable ethics act has been felt on the national level as well as on the state level.³ As a result of several well-publicized scandals in the mid-sixties,⁴ both the United States Senate and

1. The Illinois Governmental Ethics Act, *as amended*, ILL. REV. STAT. ch. 127, §§ 601-101 *et seq.* (1971).

2. In 1973, the Better Government Association and the Chicago Sun-Times investigated charges made by many of the ethics law's critics that the act is not functioning in the manner intended. Further, Representative Joseph R. Lundy (D-Evanston) and Senator John B. Roe (R-Rochelle) criticized the law as a weak beginning toward ethics reform in Illinois and proposed bills which would tighten the present act. *See* Chicago Sun-Times, June 4, 1973, at 5, col. 1.

3. Twenty-four states now have ethics laws. *See* N.Y. PUB. OFFICERS LAW § 73-80 (McKinney 1970); HAWAII REV. STAT. §§ 84-1 to 84-37 (1971); PENN. STAT. ANN. tit. 46 §§ 143.1-143.8 (1969); WASH. REV. CODE ANN. §§ 42.21.010-42.21.090 (1969); VA. CODE ANN. §§ 2.1-347 to 2.1-358 (1972); W. VA. CODE ANN. §§ 6B-1-1 to 6B-1-3 (1972); N.M. STAT. ANN. §§ 5-12-1 to 5-12-15 (1971); NEB. REV. STAT. §§ 49-1101 to 49-1117 (1972); MO. ANN. STAT. §§ 105.450-105.495 (1972); KAN. STAT. ANN. §§ 75-4301 to 75-4316 (1972); ILL. REV. STAT. ch. 127, §§ 601-101 *et seq.* (1972); ARIZ. REV. STAT. ANN. §§ 41-1291 to 41-1297 (1972); ARK. STAT. ANN. §§ 12-3001 to 12-3008 (1971); CONN. GEN. STAT. ANN. §§ 1-66 to 1-78 (1972); FLA. STAT. ANN. §§ 112.311 *et seq.* (1972); GA. CODE § 89-925 (1972); IOWA CODE ANN. §§ 68B.1-68B.10 (1973); LA. REV. STAT. ANN. §§ 42:1101-42:1148 (1972); ME. REV. STAT. ANN. ch. 17, § 3104 (1972); MASS. GEN. LAWS ANN. ch. 268A, §§ 1-24 (1970); MICH. COMP. LAWS ANN. §§ 15.301 *et seq.* (1972); MINN. STAT. ANN. §§ 3.87-3.92 (1973); N.J. STAT. ANN. 52:13D-23 (1972).

4. In 1963, Senate Majority Secretary Bobby Baker was investigated on charges of misuse of public office. *See* SENATE COMM. ON RULES AND ADMINISTRATION, FINANCIAL OR BUSINESS INTERESTS OF OFFICERS OF EMPLOYEES OF THE SENATE, S. REP. NO. 1176, 88th Cong., 2d Sess. 15 (1964). In 1963, Rep. Thomas F. Johnson (D-Md.) was convicted of using his office for personal financial gains. *See* United States v. Johnson, 337 F.2d 180 (4th Cir. 1964), *aff'd*, 383 U.S. 169 (1966). In 1967, Senator Thomas Dodd was censured by the Senate for misuse of

the House of Representatives passed ethics codes designed to thwart corruption by requiring limited disclosure of financial interests.⁵ In response, an executive order,⁶ Civil Service regulations⁷ and other codes were amended to establish guidelines by which federal employees may be cautioned as to governmental improprieties. Although much has been accomplished to combat solicitation, graft and bribery,⁸ national concern has lately focused on the more covert, but equally pervasive, area of legislative conflicts of interest.⁹

Usually the term "conflict of interest" refers to a situation in which one's official responsibilities overlap with one's own financial interests.¹⁰ One of the primary sources for conflicts of interest has been the realization that effective campaigning for public office requires substantial contributions from outside sources.¹¹ However, it is not these contributions themselves that lead to difficulties; rather, it is the benefits which the donors may seek to obtain as a quid pro quo. Furthermore, an increasing number of citizens who hold public office find it necessary to supplement their income by engaging in outside activities.¹² This may not create conflicts of interest, but the *possibility* of influencing legislators

political funds. See 113 CONG. REC. 15,695 (1967). Also in 1967, Rep. Adam Clayton Powell was censured, fined \$40,000 and denied seniority for misuse of his office. See HOUSE SELECT COMM. PURSUANT TO H.RES. 1, IN RE ADAM CLAYTON POWELL, H.R. REP. NO. 27, 90th Cong., 1st Sess. 33 (1967).

5. Rule XI and Rules XLIII-XLIV of the House of Representatives (adopted April 3, 1968), and Rules XLI-XLIV of the Standing Rules of the Senate (adopted March 22, 1968).

6. Exec. Order No. 11,222, 3 C.F.R. 160 (1973).

7. CIVIL SERVICE COMM., EMPLOYEE RESPONSIBILITIES AND CONDUCT, 5 C.F.R. § 735 (1973).

8. A series of laws makes it a federal crime for members of Congress to engage in certain actions. Such prohibited acts include: soliciting or receiving anything of value for himself or because of any official act performed or to be performed by him, 18 U.S.C. 201g (1970); soliciting or receiving a bribe for the performance of an official act, 18 U.S.C. 201c (1970); soliciting or receiving any compensation for services in relation to any proceeding, contract, claim or controversy in which the United States is a party, 18 U.S.C. 203a (1970); and entering into or benefiting from contracts with the United States or any agency thereof, 18 U.S.C. 431 (1970). See CONGRESSIONAL QUARTERLY SERVICE, GUIDE TO THE CONGRESS OF THE UNITED STATES 630 (1972).

9. Note, *The Illinois Governmental Ethics Act—A Step Ahead Toward Better Government*, 22 DEPAUL L. REV. 302, 304 (1972).

10. *Id.*, at 305.

11. See Note, *Illinois Campaign Finance Disclosure*, 23 DEPAUL L. REV. 546 (1973).

12. See R. GETZ, CONGRESSIONAL ETHICS: THE CONFLICTS OF INTEREST ISSUE 3 (1966).

through gifts, compensation, or "investment" opportunities is greatly increased.¹³ Since we are unwilling to curtail private funding of elections, adequate devices are needed to detect when these possibilities become abuses of the public confidence.¹⁴ Such abuses have occurred in Illinois government for many years,¹⁵ and they will continue to exist unless more rigid penalties are placed upon such activities.

At the time of its passage, the Illinois Governmental Ethics Act¹⁶ was considered the most comprehensive and most effective ethics legislation in the nation.¹⁷ The Act presently consists of a section restricting some activities for legislators, a code of conduct for legislators and a section outlining the procedures necessary for filing a disclosure of economic interests. It is in this area of disclosure of economic interests¹⁸ that most of the criticism has evolved.

The financial disclosure provision requires economic disclosure by members of the legislature, persons holding elected office in the executive branch of state government, members of any constitutional commission or board, office holders in the judicial branch, government employees receiving \$20,000 salary per year or more, appointed or elected members of the school districts, zoning boards or other governmental boards or commissions and candidates for nomination or election to any of these offices.¹⁹ Additionally, the Act specifies that anyone qualifying under one of the above categories must file a financial statement consisting of the office holder's "economic interests" and the interests of his spouse and children, "if constructively controlled by that person."²⁰ The most problem-prone section of the Act concerns the "economic interests" to be disclosed and the extent to which these interests must be disclosed.

The weakest provision in the legislation is the section which requires that one indicate only the type of practice which one engages in if his to-

13. *Supra* note 9, at 305.

14. In 1970, a Committee of the Association of the Bar of the City of New York published a study of Congressional Ethics. The report made major recommendations in the areas of: Conflicts of Interest; Law Practice; Campaign Financing; Salaries and Allowances; and Gifts, Supplemental Funds and Honoraria. See KIRBY, CONGRESS AND THE PUBLIC TRUST (1970).

15. See Conflicts of Interest Laws Commission, *Ethical Standards in Ill. State Gov't.* 16-29 (Springfield: The Commission, 1967).

16. ILL. REV. STAT. ch. 127, §§ 601-101 *et seq.* (1971).

17. *Supra* note 9, at 308, 315.

18. ILL. REV. STAT. ch. 127, §§ 604A-101 to 604A-107 (Supp. 1972).

19. ILL. REV. STAT. ch. 127, §§ 604A-101(a)-(i) (Supp. 1972).

20. ILL. REV. STAT. ch. 127, § 604A-102 (Supp. 1972).

tal income in a year exceeds \$1,200 from that practice and that one need report only the commercial nature of a client if the fees from that client exceed \$5,000 within that year.²¹ Critics of the Act have argued that by complying with this section lawyers may be violating their obligation of confidentiality to their clients. However, there is no provision in the Ethics Act which *requires* a lawyer to *disclose the names of clients* or the exact amount of fees received from them, thus disposing of the confidentiality objection.

A workable disclosure law should require disclosure of *any* corporation, financial institution, or other organization or individual from whom a legislator may have received compensation, gifts, or other gratuities. Additionally, the "over \$5,000" fee requirement should be drastically lowered in order to include those fees which may have resulted from a conflict of interest, but which need not be disclosed now, because they are under \$5,000.²² Such revisions in the present Act would, in effect, require full disclosure of all financial interests.

Such disclosure would be meaningless, however, without rigid enforcement. At the present time, the filing of a false or incomplete statement subjects the public official to either imprisonment, not to exceed one year, or a fine not to exceed \$1,000, or both.²³ Initially, Illinois legislators neglected to include penalties for failure to file the financial statement. The only punitive measure available is a provision in the Illinois Constitution, which maintains that failure to file by the legal deadline shall result in ineligibility for, or forfeiture of, office.²⁴ Recently, however, the legislature amended the Ethics Act to include penalties for failure to file the financial interests statement.²⁵ The section is similar to its constitutional counterpart in that it also states that failure to file the statement will result in ineligibility for, or forfeiture of, office,²⁶ but it also includes the possibility of prosecution for official misconduct for

21. See ILL. REV. STAT. ch. 127, §§ 604A-102(a)(1), (2), (3) (Supp. 1972).

22. Recently, U.S. Senator Adlai E. Stevenson III (D-Ill.) sponsored a financial disclosure bill for congressmen that might serve as a model for ethics reform legislation in Illinois. Senator Stevenson's bill would require disclosure of: the amount and source of each item of income, reimbursement and gift over \$100; the value of each asset worth more than \$5,000; and full and complete details of any business transactions made by or for an official if the aggregate amount involved exceeds \$5,000. Chicago Sun-Times, June 4, 1973, at 40, col. 1.

23. ILL. REV. STAT. ch. 127, § 604A-107 (Supp. 1973).

24. ILL. CONST. art. XIII, § 2.

25. ILL. REV. STAT. ch. 127, § 604A-107 (Supp. 1973).

26. ILL. REV. STAT. ch. 127, § 604A-107 (Supp. 1973).

those who intentionally or unintentionally fail to file.²⁷

This new section has become another area of controversy, for the Act fails to provide a method of notifying candidates and office holders that they must file statements. As a result, scores of state and local officials who filed late or who failed to file faced possible removal from office.²⁸ In order to prevent this, the legislature passed a bill which grants to the officials added time to submit their statements.²⁹ The retroactive effect of the measure has been criticized on the grounds that it violates the Constitution's equal protection and due process clauses. More specifically, the financial disclosure section of the Ethics Act has been attacked on constitutional grounds as an invasion of privacy.

The first case in which the constitutionality of the Ethics Act was tested before the Illinois Supreme Court was *Stein v. Howlett*.³⁰ In that case a taxpayer brought suit to enjoin the expenditure of public funds in order to enforce the Illinois Governmental Ethics Act. He challenged the constitutionality of the Act on the grounds that it was an unconstitutional invasion of privacy, that it unduly restricted the right to hold office and that it was overbroad and unconstitutionally vague.³¹ It was further argued that the law was *ex post facto* since, under the provisions of this Act, public officials who were elected prior to July 1, 1972, are required to meet qualifications which did not exist when they assumed office.³² However, the supreme court rejected those constitutional claims.

In its decision the court stated that "one purpose of the Act was to disclose any abuse of office and to instill in the public, trust and confidence in its government and officials."³³ The court went on to hold that the statute was not overbroad as an unconstitutional invasion of privacy, and responded that it would be inconsistent with the purpose of the Act to permit an office holder to decide when a financial interest does or does

27. ILL. REV. STAT. ch. 127, § 604A-107 (Supp. 1973).

28. *Supra* note 2, at 40, col. 2.

29. The Act provides for a 30-day extension of the filing period for persons who, within 10 days before or after the final filing date, file a declaration of intention to defer the filing of such statement. It further provides for a 30-day grace period after the effective date of this amendatory act for the filing of statements of economic interests which were due before that date. See ILL. REV. STAT. ch. 127, § 604A-105 (Supp. 1972). However, the legislature has also extended the statute of limitations from 18 months to 3 years on prosecutions of violations of the Act. See ILL. REV. STAT. ch. 127, § 604A-107 (Supp. 1973).

30. 52 Ill. 2d 570, 289 N.E.2d 409 (1972).

31. *Id.* at 573, 289 N.E.2d at 411.

32. *Id.* at 574, 289 N.E.2d at 411.

33. *Id.* at 578, 289 N.E.2d at 413.

not relate to his public employment. As to the question of unconstitutionally restricting the right to seek and hold office, the court merely found that since the Illinois Constitution required such disclosure the section should be upheld. Finally, the court quickly dismissed the *ex post facto* defense by maintaining that it is appropriate only where criminal sanctions are imposed. Although the supreme court held the Illinois Governmental Ethics Act constitutional in *Stein v. Howlett*, the Act has once again come under constitutional attack in *Illinois v. Kennedy*.³⁴

In *Kennedy* the court ruled unconstitutional that portion of the Ethics Act which requires financial disclosure by public officials. The decision, in effect, prohibits the state from requiring any office holder in Will County to file an ethics statement, thereby diluting the Ethics Act which had been ruled constitutional³⁵ only a year earlier. The court maintained that the requirement that candidates file statements of economic interest at the time they file to run for public office was unreasonable, discriminatory and violative of due process and of the civil rights of the candidate.³⁶ Although the court ruled that only the section of the Act which stipulates the time at which a statement must be submitted is unconstitutional, the effect of the ruling is that statements may not be required of candidates or officials in Will County. Following his ruling, the judge stated that it was "not in the public interest to declare elected officials out of office just because they failed to file this statement when the law says they had to."³⁷ He felt that the cost of holding a new election would override the public interest involved in financial disclosure. Regardless of the reasoning used in the decision, the fact remains that it has put more pressure upon the legislators to amend the current act so as to satisfy the public and the office holder or potential candidate.

In response to this pressure, legislators acknowledged a need for immediate action by the legislature. Consequently, Illinois Governor Daniel Walker,³⁸ and members of the Illinois House³⁹ and Senate⁴⁰ submitted

34. On September 10, 1973, a Will County Circuit Court granted summary judgments to seventy-five defendants who had failed to file financial disclosure statements as required by law. The court, in effect, held that the financial disclosure section of the Illinois Governmental Ethics Act was unconstitutional. *Illinois v. Kennedy*, No. W736-1275-MR (Circuit Court of Will County, Sept. 10, 1973).

35. *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409 (1972).

36. *Illinois v. Kennedy*, No. W 736-1275-MR (Circuit Court of Will County, Sept. 10, 1973).

37. *Illinois State Journal*, September 11, 1973, at 1, col. 3.

38. On October 15, 1973, Representative Arthur S. Berman (D-Chicago) introduced an Open Campaigns and Honest Government Act on behalf of Governor Daniel Walker, providing for disclosure of campaign contributions and expendi-

various proposals to a special session of the Illinois General Assembly in October, 1973,⁴¹ aimed at tightening the Ethics Act. Although the proposals confront some of the problems in government, such as campaign contribution disclosure, financial disclosures of economic interests and establishment of a nonpartisan administering board of ethics, there is still hesitation among legislators to enact stronger measures which would remove any thought of impropriety among government officials. Whether this hesitation is the result of a fear of self-incrimination or the result of a true belief that strict financial disclosure is an unconstitutional invasion of privacy is a matter about which only the public can make a final determination. As stated in *Stein v. Howlett*, the Illinois Governmental Ethics Act "reflects the compelling governmental interest which is paramount to the rights of the individual"⁴² public employee. Therefore, it is not for the public employee "to decide when a financial interest relates to his public employment."⁴³ Rather it is for the public to scrutinize public officials through the use of effective financial disclosure of all necessary information. "Necessary information" would include any financial information concerning that official person's activities, such that an honest determination may be made as to whether a conflict of interest exists.

tures, and strengthening the present law requiring public officials to disclose their economic interests. The proposals include: full disclosure of campaign contributions to all state and county candidates and their committees; disclosure of personal finances and economic interests by all elected state officers, their appointees, and state employees who earn \$20,000 a year or more; a jail penalty upon conviction for failure to properly make disclosures; and a five-member bipartisan elections board, appointed by the Governor, confirmed by the Senate, and with subpoena powers to investigate violations of the Ethics Act. House Bill 10 of the first Special Session was introduced into the Illinois General Assembly on October 15, 1973. However, on November 15, 1973, the Illinois House rejected the Governor's program, charging it with being too broad and sweeping.

39. Representative Henry Hyde (R-Park Ridge) introduced an amendment to the present Ethics Act which would add a new paragraph, ILL. REV. STAT. ch. 127, §§ 606A-101, authorizing the establishment of a Board of Ethics composed of deans of the various Illinois law schools. House Bill 20 of the First Special Session introduced into the Illinois General Assembly on October 29, 1973.

40. On November 15, 1973, the Illinois Senate approved two bills. One was introduced by Senator John B. Roe (R-Rochelle) which establishes an eleven-member state ethics commission. S.B. 8 (S.S. 1), 78th Ill. Gen. Assembly (1973) (introduced October 29, 1973). Another bill introduced by Senate President William C. Harris (R-Pontiac) requires campaign disclosures to the State Board of Ethics, such disclosures being made public only if any contribution exceeds \$150. S.B. 12 (S.S. 1), 78th Ill. Gen. Assembly (1973) (introduced October 29, 1973).

41. On October 15, 1973, Illinois Governor Daniel Walker called a special session of the Illinois General Assembly to confront the problems of campaign contributions and economic disclosure.

42. 52 Ill. 2d 570, 578, 289 N.E.2d 409, 413 (1972).

43. *Id.*

While politicians recognize the importance of enacting ethics reform legislation as a means of restoring public confidence in the political process, the present proposals have been shelved by the Illinois legislature until the 1974 session as a subject which is too politically sensitive.⁴⁴ This delay should be tolerated by the electorate only if founded upon a genuine concern that thoughtful and effective—not merely cosmetic—measures are enacted.

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44. See Chicago Tribune, November 29, 1973, § 3, at 14, col. 1.