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The Illinois Governmental Ethics Act - A Step Ahead toward Better Government

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THE ILLINOIS GOVERNMENTAL ETHICS ACT—
A STEP AHEAD TOWARD BETTER GOVERNMENT

A serious problem which faces our system of government is the inadequate maintenance of moral and ethical standards in public affairs. Despite the many incidents of impropriety, dishonesty, and corrupt behavior among our public officials, Congress has steadfastly refused to set any meaningful standards prohibiting such conduct.[1] The time when Congress has taken disciplinary action was when issues have been forced upon them by the press or other outside pressures.[2]

1. Throughout the forties, fifties, and sixties numerous proposals have been brought before the U.S. Senate and House of Representatives concerning ethics legislation. However, it was not until 1968 that both houses had created a permanent committee on ethics and had a written ethics code. *See* KIRBY, CONGRESS AND THE PUBLIC TRUST 211-232 (1970). *See also* 88 CONG. REC. 25275-78 (remarks of Senator Morse). This reluctance has been attributed to a "club spirit" or institutional self-protectiveness which causes members of Congress either to ignore misconduct or to close ranks in defense of an impugned member. WILSON, CONGRESS: CORRUPTION AND COMPROMISE 221, 222, 323 (1951). Professor Robert Getz concluded that the delay of Congress in establishing an effective congressional code of ethics resulted partly from the legislator's belief that "an objective settling for the enforcement of such a code cannot be achieved within the halls of Congress." *See* GETZ, CONGRESSIONAL ETHICS 100 (1966). James Kirby notes that congressional inaction may be due to (1) "the belief that the electoral process should be the exclusive discipline and that fundamental rights of people to choose representatives of their choice might be imperiled by regular congressional discipline of members," (2) "the fear that repercussions from individual cases may produce more harm than good in over-all effects upon public confidence in the Congress," (3) the belief in a "general need for harmony among members if it is to function effectively," and (4) the belief that "[m]ost Members understandably regard it (discipline) as a diversion from their main business." KIRBY, *supra*, at 213-215. *See also* ROGOW and LASSWELL, POWER, CORRUPTION AND RECTITUDE 60-62 (1963).

2. In 1963, Representative Thomas F. Johnson (D-Md.) was convicted of accepting compensation for using his office to assist Maryland savings-and-loan institutions which were under federal indictment for mail fraud. *See* United States v. Johnson, 215 F.2d 180 (4th Cir. 1965), *aff'd.* 383 U.S. 169 (1966). In 1963, a Senate investigation revealed that Senate Majority Secretary Bobby Baker had heavily exploited his public office for private economic gains. *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). Senator Thomas Dodd (D-Conn.) was accused of using his Senatorial powers to aid private clients and was censured by the Senate for misuse of political funds. *See* 113 Cong. Rec. 15,695 (1967) and SENATE ETHICS COMMITTEE, J. BOYD, ABOVE THE LAW 271-74 (1968). In 1967, Representative Adam Clayton Powell was censured, denied seniority, and fined $40,000 for various acts of misconduct. *See* HOUSE SELECT COMM. PURSUANT TO H. RES. 1, IN RE ADAM CLAYTON POWELL,

In the years following the Bobby Baker, Congressman Adam Clayton Powell, and Senator Thomas Dodd "scandals",[3] major steps have been taken to eliminate financially induced dishonesty and impropriety in government. After the successful investigation of Senate Majority Secretary Bobby Baker, which caused him to subsequently resign his position, the Senate unanimously authorized the Committee on Rules and Administration to investigate financial interests of any Senate employee or former employee.[4] In 1964, the Rules Committee recommended passage of a resolution requiring limited disclosure of assets and income by senators and public employees.[5] On October 21, 1965, the Ethics Committee—designed to establish rules and standards of conduct in the field of senatorial responsibility—was officially organized.[6] Finally, on March 22, 1968, the Senate approved the Senate Ethics Code.[7]

In the House of Representatives, ethical reform developed at a slower pace. The House Rules Committee reported a resolution establishing a Select Committee on Standards and Conduct late in the 88th Congress. The resolution was amended to create a study committee charged with "recommending" a code of ethics for the House and was passed in this form.[8] In 1968, the study committee proposed a code of ethical conduct, disclosure rules, and also that it be made a permanent committee to police

H.R. Rep. No. 27, 90th Cong., 1st Sess. 33 (1967). Also *see generally*, ANDERSON AND PEARSON, THE CASE AGAINST CONGRESS (1968) and DOUGLAS, ETHICS IN GOVERNMENT (1952).

It has been the feeling of many, that the force of public opinion via the press and other outside pressures, which grew extensively out of the Baker, Powell, and Dodd "scandals," had a great effect on Congress. Within four years of these "scandals" both houses of Congress had enacted a code of ethics and a committee to enforce them. *See* Senate Ethics Code Rules XLI-XLIV of the Standing Rules of the Senate, adopted March 22, 1968. House Ethics Code. Rules XLIII-XLIV of the Standing Rules of the Senate, adopted March 22, 1968. House Ethics Code. Rules XLIII-XLIV of the Rules of the House of Representatives, adopted April 3, 1968. *See also*, Kirby, note 1, p. 220.

3. *See supra* note 2.

4. S. Res. 212, 88th Cong., 1st Sess., 109 Cong. Rec. 19181-82 (1963).

5. SENATE COMM. ON RULES AND ADMINISTRATION, FINANCIAL OR BUSINESS INTERESTS OF OFFICERS OR EMPLOYEES OF THE SENATE, S. Rep. No. 1175, 88th Cong., 2d Sess. 107 (1964).

6. SENATE SELECT COMM. ON STANDARDS AND CONDUCT, STANDARD OF CONDUCT FOR MEMBERS OF THE SENATE AND OFFICERS AND EMPLOYEES OF THE SENATE, S. Rep. No. 1015, 90th Cong., 2d Sess. 2 (1968).

7. Rules XLI-XLIV of the Standing Rules of the Senate (adopted, March 22, 1968).

8. 112 Cong. Rec. 27,729 (1966). For the complete debate on this matter *see* 112 Cong. Rec. 27,713-30 (1966). This committee was re-established in the 90th Congress to continue its efforts on establishing a House ethics code. *See* 113 Cong. Rec. 9448 (1967).

the code. On April 3, 1968, the House Ethics Code and Ethics Committee were adopted by the House of Representatives.[9]

On the state level, in 1954, New York adopted the first governmental ethics act.[10] The New York code set forth general standards of conduct to be used as guidelines for state officers and employees in the performance of their public duties. Finding this to be an excellent method of promoting proper ethical conduct, other states[11] have adopted their own ethics act. In 1958, a code of conduct was adopted for the guidance of all in federal government service.[12] In the executive branch, officials are subject to separate ethical rules contained in an executive order,[13] Civil Service regulations,[14] and other such codes as prescribed in the individual department and agency. The effect of these acts and government regulations along with various sections of state constitutions[15] and statutes[16] have produced favorable results.

Although much has been accomplished in the area of overt corruption, such as embezzlement, graft, and bribery little has been done in the more

9. Rules XI (19) and Rules XLIII-XLIV of the Rule of the House of Representatives (adopted April 3, 1968).

10. Laws 1954, c.696 § 1 *et seq.*, eff. Jan. 1, 1955.

11. A total of 24 states currently have some sort of ethics legislation—all of which provide for a specific code of legislative conduct. *See* N.Y. PUB. OFFICERS LAW § 73-80 (McKinney 1970); HAWAII REV. STAT. §§ 84-1—84-36 (1971); Purdon's PENN. STAT. ANN. 46 §§ 143.1—143.8 (1969); REV. CODE OF WASH. ANN. §§ 42.21.010—42.21.090 (1969); CODE OF VA. §§ 2.1-347—2.1-358 (1972); W. VA. CODE §§ 6B-1-1—6B-1-3 (1972); N.M. STAT. §§ 5-12-1—5-12-15 (1971); REV. STAT. OF NEB. §§ 49-1101—49-1117 (1971); Vernon's ANN. MO. STAT. §§ 105.450—105.495 (1966); KAN. STAT. ANN., §§ 75-4301—75-4316 (1971); ILL. REV. STAT. ch. 127, §§ 601-101, *et seq.* (1971); ARIZ. REV. STAT. §§ 41-1291—41-1297 (1972); ARK. STAT. §§ 12-3001—12-3008 (1971); CONN. GOV'T STAT. ANN. §§ 1-16—1-78 (1972); FLA. STAT. ANN. §§ 112.311 *et seq.* (1972); GA. CODE ANN. §§ 89-925 (1972); IOWA CODE ANN. §§ 68B.1—68B.10 (1971); LA. STAT. ANN. §§ 1101-1148 (1972); MAINE REV. STAT. ANN. §§ 371-381 (1972); MASS. ANN. LAWS ch. 268A, §§ 1-24 (1968); MICH. COM. LAWS ANN. §§ 15.301 *et seq.* (1972); MINN. STAT. ANN. §§ 3.87-3.92 (1961); N.J. STAT. ANN. 52:13D-23 (1972).

12. H.R. Comm. Res. 175, 85th Cong., 2d Sess., 72 Stat. 312 (1958).

13. Exec. Order No. 11,222, 3 C.F.R. at 591 (1968).

14. CIVIL SERVICE COMM., EMPLOYEE RESPONSIBILITIES AND CONDUCT, 5 C.F.R. § 735 (1968).

15. For instance, the Illinois Constitution of 1970 provides several sections which prohibit certain conduct. *See* Art. IV, sec. 6, Art. IV, sec. 2, Art. XIII, sec. 1 and 2.

16. In 1965, the Illinois General Assembly passed a bribery statute making it illegal for taking money or property while knowing the corrupt motive of the other party. The statute also punishes the person conferring the benefit. *See* ILL. REV. STAT. ch. 38, sec. 33-1 (1969). Another existing control on legislative conduct is a law which prohibits public officials from accepting or soliciting rewards for official action. *See* ILL. REV. STAT. ch. 38, sec. 33-3 (1969).

subtle but equally insidious and pervasive area of legislative conflicts of interests.[17] The term "conflict of interest" is generally limited to the situation where a public official's duties in office conflict with his own private economic affairs.[18] Although the term is definitively simple, it encompasses a wide range of legislative behavior—i.e. a "gray area" between overt corruption on the one hand, and the reasonable maintenance of an outside source of income, on the other hand.[19] It is in this area where the public official is most vulnerable and susceptible to acts of impropriety.

Today, "[m]embers of Congress consider and enact measures that influence all sectors of the nation's economy. Coupled with the legislator's own financial interest,[20] this makes it difficult (for him) to avoid possible or actual conflict between . . . legislative duties and . . . private interests."[21] Moreover, the ever-increasing role of government increases the temptation for private interests to attempt to obtain influence with legislators through the giving of excessive gifts or hospitality or to influence them by making available lucrative economic opportunities.[22] The need, therefore, for appropriate legislation to deter legislative conflicts of interest is compelling.

Recently, the legislature in Illinois enacted into law the Illinois Governmental Ethics Act,[23] with which the balance of this note will basically be concerned. An analysis of the Act will be divided into three parts: (1) a discussion of various conditions and factors leading to its enactment; (2) a general outline of the Ethics Act and a discussion of it in relation to

17. The Senate and House Code of Ethics appears to have had little success in this area. In support of the Senate Code, Ethics Committee Chairman Stennis has referred to it as "not a finished product . . . but a substantial beginning." *See* 114 Cong. Rec. E 9547 (daily ed. Nov. 1, 1968) (remarks of Senator Stennis) and 114 Cong. Rec. S 2906 (daily ed. Mar. 15, 1968). The same feeling is generated from the House Ethics Committee. *See* H.R. Rep. No. 1176, 90th Cong., 2d Sess. 5 (1968).

18. *See* R. GETZ, CONGRESSIONAL ETHICS: THE CONFLICT OF INTEREST ISSUE, 5 (1966).

19. *Id.* p.3.

20. Today an ever increasing number of citizens assume public office while continuing to engage in private enterprises. This may or may not create a conflict of interest. Such will depend upon the degree of involvement the public official puts into these affairs. *See* Kaufman and Widas, *California Conflict of Interest Laws*, 36 SO. CAL. L. REV. 186 (1969).

21. *Supra* note 18, at 5.

22. *See* Conflict of Interest Laws Commission, *Ethical Standards in Ill. State Gov't* (Springfield: The Commission, 1967).

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

the problems it seeks to remedy; and (3) a discussion of the judicial interpretations of the Illinois Ethics Act as compared with other various acts.

I.

The impetus of the Illinois General Assembly in adopting an act which regulates and polices their conduct did not arise out of a vacuum. There were several reasons—perhaps the most compelling of which was the existence of blatant corruption among the members of the General Assembly. In 1964, Senator Paul Simon stated that in his opinion as many as one-third of the legislators in the General Assembly had accepted "payoffs" for favors in the form of campaign contributions, legal or public relations fees. Others, he noted, accepted outright cash payments. He estimated that about as many legislators received as much as $10,000 annually and in some cases $100,000 "under-the-table."[24]

In 1967, the Conflict of Interest Laws Commission reported that legislators were lobbying on behalf of private interests, they they, adverse to the interest of the state, represented personal clients in matters pending before the Court of Claims and Industrial Commission, and that conflicts of interest existed in certain aspects of contracts between private concerns and the state.[25]

It should be noted here that the Illinois judiciary has also been an active arena for conflicts of interest. On June 17, 1969, the Illinois Supreme Court appointed a special commission to investigate the integrity of the judgment entered by the court in *People v. Isaacs*.[26] The Commission found that Judges Klingbiel and/or Solfisburg were guilty of acts of impropriety, creating a substantial doubt about their impartiality, integrity, and fairness in the decision of the *Isaacs* case, and recommended that they both resign.[27]

Another fact compelling the adoption of ethical controls on Illinois legislators is that lawmaking in the Illinois General Assembly is only on a part-time basis.[28] Because of this, the likelihood of conflict between public duty and private economic interest is most pronounced. There are a number of factors which contribute to this. First, the General Assembly

24. Paul Simon (as told by Alfred Balk), *Ill. Legislature: Study in Corruption*, HARPER'S, September, 1964, at 74.

25. Conflict of Interest Laws Commission, *Ethical Standards in Ill. State Gov't* (Springfield: The Commission, 1967), pp. 15-16, 19-30.

26. 37 Ill. 2d 205, 226 N.E.2d 38 (1967).

27. Ill. Sup. Ct. Report of the Special Comm. *in re* to No. 39797 (People of the State of Ill. v. Isaacs).

28. Even the Ethics Act takes note of this. *See* § 3-201.

is in session for approximately six months, and, even during this period, the legislator has a generous amount of time to devote to other interests. The regular session of the General Assembly begins in January and ends in June, during which time activity is usually limited to a Monday-through-Thursday sequence, with Thursday often devoted to a perfunctory session at which few members are present.[29] Through the years 1951 to 1969 the members of the House spent an average of 76 days out of 183 in regular and perfunctory sessions.[30] During this same period the Senate membership spent an average of 81 days in regular and perfunctory sessions.[31] Although the trend shows an increase in the number of days the General Assembly spends in session, "[c]ustom has dictated that legislators need only devote a portion of their time to the lawmaking task."[32]

A second factor contributing to the part time status of lawmaking is that the salary is deemed insufficient to allow members to abandon their private sources of income.[33] Although legislators in only eight states[34] receive higher salaries, the Illinois legislators have demonstrated no interest in abandoning their private economic interests. A breakdown of the 76th General Assembly revealed that 58 members of the Senate and 177 members of the House continued with their present occupations.[35]

Thirdly, political life is too insecure.[36] According to one authority:

> There is no reason to expect the concern for legislative business to be either exclusive or dominant in the affairs of any member. Political advancement to the state judiciary, to the national Congress, or to full time administrative office only

29. *See* Frederic H. Guild, *Behavioral Patterns for Handling the Legislative Workload*, Public Affairs Research Bureau, Southern Illinois University, Carbondale, Illinois, May 27, 1968.

30. *See* GOVE, AN INTRODUCTION TO THE ILLINOIS GENERAL ASSEMBLY, 48 (1970).

31. *Id.* at 48.

32. *Id.*

33. *Id.* at 50.

34. California, New York, Michigan, Florida, Hawaii, Massachusetts, Ohio, and Pennsylvania. *See* Citizens Conference on State Legislatures Research Memorandum No. 12, June 1970.

35. *Senate*: (58 members) 20 lawyers, 11 insurance and/or real estate, 3 accountants, 1 automobile dealer, 1 building contractor, 1 farmer, 1 health director, 1 heating oil director, 1 public supervisor, 1 public relations, 1 publisher, 1 restaurant owner, 1 retired, 1 school teacher, 1 superintendent of water collection. *House*: (177 members) 50 lawyers, 31 insurance and/or real estate, 8 farmers, 8 city employees, 6 legislators, 6 contractors, 7 executives, 4 educators, 4 housewives, 3 restaurant owners, 3 merchants, 3 county employees, 2 public relations, 2 investments, 1 minister, 1 advertising, 1 journalist, 1 finance, 1 banker, and 31 other occupations. *See* GOVE, *supra* note 30, at 50.

36. *Id.* at 52.

infrequently comes to members of the General Assembly. Consequently, a continued interest in private business or professional life is a necessity.[37]

A more lofty consideration in the enactment of the Ethics Act, or at least a beneficial by-product thereof, is the promotion of public confidence. According to one authority, properly conceived financial disclosure may serve three functions: first, to dispel public suspicion engendered by past governmental impropriety and to instill in citizens trust and confidence in government; second, to inform the public of facts revelevant to decisions made by government officials; and third, to provide a means of deterring undesirable and improper conduct which may arise from avoidable conflicts of interests.[38] By informing the public of those economic interests and relationships which are likely to produce conflicts, disclosure would encourage legislators to be more careful in their extralegislative economic activities. Furthermore, it would provide useful information to voters and help eliminate needless suspicion and rumors concerning the integrity of innocent legislators and other government officials.

In order to insure, then, that private interests would not interfere with the unbiased discharge of public responsibilities, the legislature enacted into law the Illinois Governmental Ethics Act.[39] The Act consists of five parts: Article 1. Short Title and Definitions; Article 2. Restricted Legislative Activities; Article 3. A Code of Conduct for legislators, persons with legislative interests, and persons who are close economic associates of legislators; Article 4A. Disclosure of Economic Interests; and Article 8. Severability—which together form one of the most comprehensive acts in ethics legislation to date.[40] Although each section is instrumental in the prevention and elimination of conflict of interest situations, the one most effective in deterring these conflict situations is the section regarding the disclosure of economic interests.[41]

The financial disclosure provision as provided in the Illinois Ethics Act is designed to deter and prevent possible conflicts of interest situations that may arise throughout the entire government. Accordingly, the Act requires economic disclosure by all members in the legislative, executive

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37. STEINER AND GOVE, LEGISLATIVE POLITICS IN ILLINOIS, 3 (1960).

38. KIRBY, CONGRESS AND THE PUBLIC TRUST 73 (1970).

39. *See* note 23.

40. At the end of 1969 only eleven states required the disclosure of economic interests—i.e., California, Hawaii, Illinois, Kansas, Missouri, Nebraska, New Mexico, New York, Pennsylvania, Washington and West Virginia. *See* Cal. Ass. Off. of Research and Comm. on Gov't Ethical Conduct and Gov't Integrity: The Conflict of Interest Issue.

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

and judiciary branches of government and by candidates for nomination or election to these offices.[42] In addition, all government employees receiving $20,000 per year or more for their services, and all other persons who serve on various governmental boards or commissions created by the Illinois Constitution are required to file a statement of economic interests.[43] The Act further requires local government officials to disclose their economic interests.[44]

As stated earlier, the term "conflict of interest" encompasses a wide range of behavior. Although some overt conflicts can be effectively prohibited by the legislature, others may arise in so many different forms and under such a variety of circumstances that it would be unwise and unjust to proscribe them by an inflexible statute.[45] For matters of such complexity and close distinctions, an ethics act must be broad enough in scope to sufficiently cover this "gray" area, yet, at the same time, limited so as not to be unconstitutionally defective—*i.e.,* overbroad or vague.

The Illinois Ethics Act requires that a person subject to its provisions must file a statement disclosing the interest of himself and possibly those of his spouse and children if he "constructively controls" their economic interest.[46] The major interests which are to be included in the financial statement are:

(1) The name, address, and type of practice of any professional organization or individual professional practice in which the person making the statement was an officer, director, associate, partner or proprietor, or served in any advisory capacity, from which in excess of *$1,200* was derived during the preceding calendar year;

(2) The nature of professional services . . . and the nature of the entity to which they were rendered if fees exceeding *$5,000* were received . . . ;

(3) The identity . . . of any capital asset from which a capital gain of *$5000* or more was realized . . . ;

(4) The name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of *$500* . . . ;

(5) The name and instrument of ownership in any entity doing business in the State of Illinois, in which an ownership interest . . . is in excess of *$5,000* fair market value or from which dividends of in excess of *$1,200* were derived. . . . No

42. ILL. REV. STAT. ch. 123, § 604A-101(a), (b), and (e) (Supp. 1972).

43. ILL. REV. STAT. ch. 127, § 604A-101(b), (c), (d), and (f) (Supp. 1972). *Also see* ILL. CONST. art. XIII, § 2.

44. ILL. REV. STAT. ch. 127, § 604A-101(g), (h), and (i) (1971).

45. When adopting Art. XIII, § 2 of the 1970 Illinois Constitution, the delegates to the Illinois Constitutional Convention were faced with the problem of how flexible the financial disclosure should or should not be. *See* Con Con Debates, 1st reading, Proposition No. 13, No. p. 14-132, June 16, 1970.

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

time or demand deposit in a financial institution, nor any debt instrument need be listed;

(6) Except for professional service entities, the name of any entity and any position held therein from which income of in excess of *$1,200* were derived, . . . if the entity does business in the State of Illinois. No time or demand deposit in a financial institution, nor any debt instrument need be listed (emphasis added).[47]

The Act restricts diclosure to investments in entities doing business "in" Illinois for state officials[48] and to those doing business "with" the local government for local officials.[49] Furthermore, disclosure of economic interests is limited to only those public officers and employees who are in fact involved in policy-making functions. In all instances, the Act does not require the public official or employee to disclose the actual amount of income received from the business entities named therein.

The Illinois Ethics Act also covers those conflict of interest situations that may arise in other ways. A state official is required to disclose any possible conflict that may arise within the government itself. Accordingly, he is required to name any unit of government which has employed him during the preceding year other than the unit of government in relation to which he was required to file.[50]

As stated previously, Senator Paul Simon found four areas of corruption existing within the Illinois General Assembly—*i.e.*, "payoffs" in the form of (1) campaign receipts, (2) legal fees, (3) public relations fees, and (4) outright "under-the-table" cash payments. The Conflict of Interest Laws Commission found other areas where legislators have misused their public offices—*i.e.*, (1) lobbying on behalf of private entities, (2) representing private interests before public boards against the interests of the state, and (3) using their public office to obtain favorable contracts for themselves or private interests. In regard to these areas, the Act is most effective in deterring legislative lobbying. The official is required to identify those persons who may have some influence over him in the exercise of his public duty. He must, for instance, disclose the identity of those compensated lobbyists with whom he maintains a close economic association, including the name of the lobbyist, the nature of the lobbying activity, and the type of economic activity of the client or principal on whose behalf that person is lobbying.[51] Also, under penalty of a fine not to exceed

47. ILL. REV. STAT. ch. 127, § 604A-102(a)(1), (2), (3), (5), (b), (1), (2) (Supp. 1972) (All emphasis added).

48. ILL. REV. STAT. ch. 127, § 604A-102(b)(1) (Supp. 1972).

49. ILL. REV. STAT. ch. 127, § 604A-102(c)(1) (Supp. 1972).

50. ILL. REV. STAT. ch. 127, § 604A-102(a)(4) (Supp. 1972).

51. ILL. REV. STAT. ch. 127, § 604A-102(b)(3) (Supp. 1972).

$5,000 and/or imprisonment, no legislator may engage in lobbying if he accepts compensation "specifically attributable to such lobbying."[52]

The Act is less effective in dealing with "payoffs," representation cases and economic opportunities stemming from contracts. It provides that "[n]o legislator may accept compensation . . . for performance of his official legislative duties."[53] The penalty for violation is a fine not to exceed $500.[54] The Act also prohibits legislators from accepting or participating in any way in any representation cases.[55] The penalty for violation of this section is punishment by a fine not to exceed $5,000 and/or imprisonment.[56] The Act further includes a section stating that no legislator may accept any economic opportunity where he knows that such opportunity has been made with the intent to influence him.[57]

There is no deterrent effect of the Act upon campaign contributions. It specifically excludes the disclosure of campaign receipts[58] which is a type of economic interest most likely to produce a conflict of interest.[59] Also, political contributions were specifically removed from the ambit of code of conduct.[60]

After the statements of economic interests have been completed and filed,[61] they are subject to public scrutiny.[62] If any statement is found to be false or incomplete, the public official may be subject to a fine of $1,000 or imprisonment in a penal institution.[63] However, the Act does not provide a penalty for those public officials who fail to file any state-

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52. ILL. REV. STAT. ch. 127, § 602-101 (1971).

53. ILL. REV. STAT. ch. 127, § 602-103 (1971).

54. *Id.*

55. ILL. REV. STAT. ch. 127, § 602-104 (1971). *See also* ILL. REV. STAT., ch. 127, § 603-105, 106 (1971).

56. ILL. REV. STAT. ch. 127, § 602-104 (1971).

57. ILL. REV. STAT. ch. 127, § 603-102 (1971).

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

59. In fact, the omission of campaign receipts was one of the grounds upon which the trial court held the statute invalid. *See* Stein v. Howlett, 72 Ch. 345 (Ill. Cir. Ct. 1972). Although the Illinois Supreme Court acknowledged that campaign receipts may have some influence upon the conduct of a public officer, it held that such an omission did not make the act invalid.

60. ILL. REV. STAT. ch. 127, § 603-101 (1971).

61. State officials and employees must file with the Secretary of State. Local officials and employees must file with the county clerk of the county in which the person making the statement resides. *See* ILL. REV. STAT., ch. 127, § 604A-106 (Supp. 1972).

62. ILL. REV. STAT. ch. 127, § 604A-106 (Supp. 1972).

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

ment of economic interest.[64] Failure to file a statement shall result only in ineligibility for or forfeiture of office.[65] The Act only provides a sanction for those who "willfully" file a false or incomplete statement.[66]

III.

In order to preserve public confidence and respect in government, the people must be provided with sufficient safeguards that will insure integrity, impartiality, and devotion on the part of their public officials. The Illinois Governmental Ethics Act and the various other acts adopted throughout the nation have been the first real attempt by the legislatures to rid the government of corrupt politicians. However, despite this grave need for more effective legislation in this area, the existing legislation has been subject to rigorous constitutional scrutiny. In 1970, for example, the California Supreme Court in *City of Carmel-by-the-Sea v. Young*[67] struck down California's 1969 financial disclosure law[68] as being too broad and an unconstitutional invasion of privacy. On January 6, 1972, the Attorney General of Texas declared the Texas Ethics Code enacted in 1971[69] unconstitutional for similar reasons.[70] And most recently, in May, 1972, a case was brought before the Illinois Supreme Court challenging the constitutionality of the Illinois Governmental Ethics Act.[71]

In *Stein v. Howlett*, the plaintiff brought a taxpayer's suit to enjoin the expenditure of public funds for the purpose of enforcement of the Illinois Governmental Ethics Act. It was his contention that the Act was too broad and an unjust invasion of the right of privacy. Furthermore, he claimed that the Act was not reasonably designed to disclose financial dealings or assets which might be expected to give rise to conflicts of interest.[72] The Circuit Court of Cook County found the Act unconstitu-

64. The Illinois Constitution merely provides that *failure to file* an economic statement will result in ineligibility for, or forfeiture of, office. *See* ILL. CONST. art. XIII, § 2.

65. ILL. CONST. art. XIII, § 2 (1970).

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

67. 2 Cal. 3d 259, 466 P.2d 225, 85 Cal. Rptr. 1 (1970).

68. CAL. GOV'T CODE §§ 3500-3704 (West Supp. 1971). It is interesting to note that on February 5, 1970, the California Attorney General, Thomas Lynch, held the act constitutional. *See* Cal. Attorney General's Opinions No. 69-229, Feb. 5, 1970.

69. Tex. Acts 1971, 62nd Leg., Reg. Sess., ch. 962, pp. 2906-12.

70. The Att'y Gen. of Texas, Op. M-1039, Jan. 6, 1972. However, the act is still constitutional.

71. Stein v. Howlett, 72 Ch. 345 (Ill. Cir. Ct. 1972).

72. *Id.* at 1.

tional and granted an injunction restraining the use of funds in administering its provisions. The supreme court, however, did not agree and found the Illinois Ethics Act constitutional except insofar as it purported to authorize the Secretary of State to render advisory opinions.[73]

In arriving at the above conclusion, the Illinois Supreme Court recognized that the Ethics Act was designed to protect the decision-making process. More specifically, "[t]he Ethics Act was designed to avoid any conflict of interest between the government and its officers and employees; 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."[74] Unlike the California Supreme Court's decision in *City of Carmel-by-the-Sea v. Young* where the California disclosure statute was declared unconstitutional because of its broad restrictions, the Illinois Supreme Court found that the purpose of the legislation supported the necessity for broad statutory coverage. The court further stated that the "statute reflects a compelling governmental interest which is paramount to the right of the individual, and the statute is not overbroad and an unconstitutional invasion of privacy."[75]

In answering the plaintiff's allegation that the Act was not reasonably designed to disclose financial dealings or assets which might be expected to give rise to conflicts of interests, the court said:

> [W]e acknowledge that the disclosure of a business connection which is truly unrelated to any State activity cannot help to achieve the desired purpose. But who is to say whether or not there is a business connection or relation with the State? Who is to say that the business within the State which does not do business directly with the State, but which supplies another company which does, has no connection with the State? Who is to say that a capital gain from the sale of an asset to a stockbroker of a company doing business with the State has no connection with the position of the public official? . . . It would be an anomaly to enact a statute, designed to eliminate conflicts of interest between public trust and private gain, in such manner that the person affected is permitted to decide when a financial interest relates to his public employment.[76]

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73. ILL. REV. STAT. ch. 127, § 604A-106 (Supp. 1972). The record shows that for the purpose of taking a direct appeal to the Supreme Court of Illinois, the Attorney General elected to stand on the plaintiff's pleading, waived any evidentiary hearing, and requested the entry of a permanent injunction. Stein v. Howlett, 72 Ch. 345 (Ill. Cir. Ct. 1972).

74. Stein v. Howlett, 72 Ch. 345 (Ill. Cir. Ct. 1972).

75. *Id. See also* United States v. O'Brien, 391 U.S. 367 (1968); Zemel v. Rusk, 381 U.S. 1 (1965); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Bates v. City of Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama, 357 U.S. 449 (1956).

76. Stein v. Howlett, 72 Ch. 345, 348 (Ill. Cir. Ct. 1972).

In order for the statute to have any effect in curbing possible conflicts of interest, it must be broad enough in scope to sufficiently cover the area.

When the Illinois Supreme Court ruled the Illinois Governmental Ethics Act constitutional, it was aware that its decision was contrary to the decision reached in *City of Carmel-by-the-Sea v. Young*. Although the same constitutional questions were raised, the Illinois Supreme Court found the California case to be distinguishable in many ways: first, in California, many public agencies were faced with impending resignations of numerous officers and employees who were not willing to make public disclosure of private financial affairs.[77] Also, the plaintiff city alleged that many of its officials would resign rather than be subjected to what "they" contended was an unconstitutional invasion of their privacy. Plaintiff also alleged that "resignation of the . . . officers will have a crippling effect upon the affairs of municipal government. . . ."[78] In Illinois no such threats were ever made.

Second, the Illinois Constitution provides a mandate from the people, giving the power to the legislature to enact a strong governmental ethics act.[79] The California Constitution, on the other hand, does not. Third, the Illinois Ethics Act limits public disclosure to economic interests owned by the public official and possibly those of his wife and children if he "constructively controls" their economic interests.[80] The California statute requires that the public official must disclose the economic interest of himself, his or her spouse, and minor children whether he controls their interest or not. And fourth, the California statute makes no distinction between state and local public officials as to the degree of disclosure.[81] Under the Illinois Ethics Act, there is a distinction. State officials are required to list ownership interest in any entity doing business "in" the State of Illinois.[82] Local officials are required to list such interests only if the business entity does business "with" the local unit of government with which the person is connected.[83]

In summation, Governor Thomas E. Dewey once said that:

> [T]hose who exercise public and political power are trustees of the hopes and aspirations of all mankind. They are the trustees of a system of government in which

77. City of Carmel-by-the-Sea v. Young, 2 Cal. 3d 259, 466 P.2d 225, 85 Cal. Rptr. 1 (1970).

78. 2 Cal. 3d at 263, 466 P.2d at 227, 85 Cal. Rptr. at 3.

79. ILL. CONST. art. VIII, § 2.

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

81. CAL. GOV'T CODE §§ 3601, 3605, 3702, 3753 (West Supp. 1971).

82. ILL. REV. STAT. ch. 127, § 604A-102(b)(1) and (2) (Supp. 1972).

83. ILL. REV. STAT. ch. 127, § 604A-102(c)(1) and (2) (Supp. 1972).

the people must be able to place their absolute trust; for the preservation of their welfare, their safety and all they hold dear depends upon it.[84]

Those who exercise public and political power have the obligation to act with unwavering integrity, absolute impartiality, and complete devotion to the public interest. Where there exists the possibility of a conflict between public responsibility and private interests, the people are entitled to know. As stated earlier, the likelihood of conflict between public duty and private economic interest in the Illinois government is most pronounced. In order to insure that private interests would not interfere with the unbiased discharge of public responsibilities, the legislature enacted into the law the Illinois Governmental Ethics Act. It is one of the most significant advancements in the field of ethics legislation to date.

Barry L. Chaet

84. Hon. Thomas E. Dewey, Governor of N.Y., in his Jan. 6, 1954 message to the N.Y. legislature.