

# State of Conflict of Interest Laws: A Panacea for Better Government?

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## LEGISLATION NOTES

### STATE CONFLICT OF INTEREST LAWS: A PANACEA FOR BETTER GOVERNMENT?

There has been a persistent drive in federal, state, and local government to achieve political responsibility amongst legislators as a means of getting a more honest and effective representative government.<sup>1</sup> Recent studies by congressional committees, by the Association of the Bar of the City of New York, by a special study group appointed by the late President Kennedy, and by several state commissions and groups, illustrate the interest of many in improving and refining the statutes pertaining to ethical standards. As a result of these studies and others, the federal government<sup>2</sup> and a number of states<sup>3</sup> have recently enacted rather comprehensive conflict of interest statutes or have expanded existing laws in this area. During this period of inquiry there were numerous attempts to define a conflict of interest; perhaps the most precise is the following:

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 that 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.<sup>4</sup>

Advocates of new legislation feel that our present laws are inadequate and that more intrusive methods should be implemented to preserve the public's trust and confidence in government.<sup>5</sup> There is also a strong feeling

<sup>1</sup> President John F. Kennedy recognized the urgency of this problem in a message to Congress on Conflict of Interest, April 27, 1961: "No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality, and complete devotion to the public interest." 17 CONG. QUAR. 918 (1961).

<sup>2</sup> 76 Stat. 1119 (1962) (amended by 78 Stat. 204 (1964), amended by 80 Stat. 249 (1966), as amended, 18 U.S.C. § 201 (Supp. 1966)).

<sup>3</sup> Some of the recent state enactments are: KY. REV. STAT. ANN. §§ 61.092-.096, 61.990 (1962); MASS. GEN. LAWS ANN. ch. 268A § 23, (Supp. 1966); MINN. STAT. ANN. § 3.87-.92 (Supp. 1966); N.Y. LEGIS. LAW §§ 80-88; TEX. REV. CIVIL STAT. ANN., art. 6252-9 (Supp. 1963); WASH. REV. CODE §§ 42.22 42.20.010 (Supp. 1963); MD. ANN. CODE art. 19a §§ 1-9 (1966).

<sup>4</sup> MINNESOTA GOVERNOR'S COMMITTEE ON ETHICS IN GOVERNMENT, REPORT 17 (1959).

<sup>5</sup> EXTRACTS FROM THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, p. 3 (New York, March 6, 1964); see statement by Adlai E. Stevenson III to STATE OF ILLINOIS CONFLICT OF

amongst those proponents that greater public confidence will make service in government more attractive.

Questions of the ethics of action in public life are not simple, and conflict of interest is at the heart of government ethics. With government's increasing complexity and broader intervention into private affairs, conflict of interest is almost inescapable,<sup>6</sup> particularly for part-time public officials such as legislators on the state level. Membership in most state legislatures is not a full time occupation<sup>7</sup> and is not compensated on that basis. This means that most legislators have to seek income from private sources to support their families. It follows that some private interests either on a small or larger scale, will likely be in some way either immediately or remotely affected by the policies the legislator will be asked to vote upon.

The presence of a conflict of interest does not always presume that the official will resolve the conflict to his own personal advantage without regard to the interest of the people he represents. Often times the outside private interest proves "useful both in providing information and perspective on the problems of legislating and administering so as to secure desired ends."<sup>8</sup> For example, a legislator who is also a farmer can provide very pertinent information in regard to legislation pertaining to agricultural redevelopment. He may have been elected by constituents from his rural farm area solely because he is a farmer and could best represent their views. His essential responsibility is to those who elected him. The public official would be expected to support and vote for advantageous farm legislation even though he had a private interest involved.

If the restoration of public confidence, which many people think is badly needed, is to become a reality, then it is not enough that elected public officers of the state solely avoid the outward acts of misconduct;

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INTEREST LAWS COMMISSION, p. 2 Chicago, Illinois, June 23, 1966 at which time he said: "The conscious or unconscious subordination by public servants of the public interest to their own economic interests probably does more to corrode public confidence in state government than anything else."

<sup>6</sup> See testimony by Illinois State Representative James B. Moran to STATE OF ILLINOIS CONFLICT OF INTEREST LAWS COMMISSION, p. 1 Chicago, Illinois, June 23, 1966: "Every legislator in a part-time legislature inevitably has conflict of interests. They cannot be avoided." See generally Note, *Conflict of Interest of State Legislators*, 76 HARV. L. REV. 1209 (1963).

<sup>7</sup> Extracts from THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, *supra* note 5, at 3; see AUERBACH, GARRISON, HURST & MERMIN, THE LEGAL PROCESS 583 (1961); COMM. ON AMERICAN LEGISLATURES, AMERICAN POLITICAL SCIENCE ASS'N., AMERICAN STATE LEGISLATURES 70-73 (1954); Regular sessions are convened biennially in thirty states and are subject to specific time limitations in forty-four states. COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 1962-1963, pp. 42-43 (1962).

<sup>8</sup> Statement by Phillip Monypenny, Professor of Political Science at the University of Illinois, to STATE OF ILLINOIS CONFLICT OF INTEREST LAWS COMMISSION, p. 1, Springfield, Illinois, June 30, 1966.

they must also advertently avoid acts which may create an appearance of misconduct.<sup>9</sup> One prime objective of conflict of interest legislation is to influence legislators who may otherwise be dominated by their private economic interests to resist that domination. Appropriate legislation should encourage legislators to assess their own motivations and positions on measures they are asked to vote on, and prevent situations of temptation from arising. It is naive to believe that each and every legislator is proficient and expertly knowledgeable on every subject he is asked to vote upon. Accordingly, it is also hoped that well drafted conflict of interest legislation, with some type of provision for disclosure of interests, would give the other legislators in the general assembly important knowledge upon which to intelligently and objectively evaluate a legislator's position on a measure. Being able to know another legislator's private interests beforehand, would help in determining how much credence should be afforded a fellow legislator's arguments. A final objective, but not the least important, is to increase the public confidence in the veracity and integrity of the legislative process.<sup>10</sup>

#### SOME INNATE PROBLEMS WITH CONFLICT OF INTEREST STATUTES

The current body of law in Illinois relating to conflict of interest is very complex, muddled, and disorganized. We have at least forty-six different constitutional and statutory provisions purporting to prohibit or limit conflict of interests.<sup>11</sup> There are more than a dozen different kinds of identifiable rules with many inconsistencies in the rule governing various agencies. This complexity points up the confusion in the General Assembly in trying to develop workable principles. It is doubtful that the public official, particularly a part time legislator, reads and is conscious of all of these laws.<sup>12</sup> As a result of this lack of uniformity, there remains a possibility that the honest but unsuspecting public official may be guilty of an act

<sup>9</sup> Extracts from THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, *supra* note 5, at 3; See SPECIAL COMMISSION ON THE FEDERAL CONFLICT OF INTEREST LAWS, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, CONFLICT OF INTEREST AND FEDERAL SERVICE 17 (1960); See generally, Manning, *The Purity Potlatch: An Essay on Conflicts of Interest, American Government, And Moral Escalation*, 24 FED. B.J. 239 (1964).

<sup>10</sup> Moran, *supra* note 6, at 1.

<sup>11</sup> ILL. CONST., art. IV, §§15, 25; ILL. REV. STAT. ch. 15½, §§ 68.5, 88, 156; ch. 19, 264, 298, 365, 415, 469; ch. 23, § 1263; ch. 24, §§ 3-14-4, 4-8-6, 4-8-7; ch. 34, §§ 163, 193, §§ 3306, 5106, 5135, 6024, 6208; ch. 42, §§ 331.18, 386(b), 414(d), 457; ch. 48, § 845; ch. 67½, §§ 5, 70, 91.11; ch. 91½, § 100-44; ch. 102, § 3; ch. 104, § 15; ch. 105, § 4-1(a), 333.3; ch. 111½, §§ 4, 191, 332, 354; ch. 114, § 366; ch. 121, § 314(a) (49); ch. 122, §§ 22-5, 24-22. 33-5, 435.4; ch. 127, § 75; ch. 144, § 43 (1965).

<sup>12</sup> Statement of Illinois State Representative Harold A. Katz to STATE OF ILLINOIS CONFLICT OF INTEREST LAWS COMMISSION, p. 3, Springfield, Illinois, June 30, 1966: "It is naive to expect that public officials will have even read the present laws relating to bribery and misconduct which are scattered through 19 chapters of the Illinois Revised Statutes."

which is disallowed by statute, where he had no actual prior knowledge as to its illegality. This tends to dissipate the allurements of public service. "[P]romising individuals are dissuaded from accepting government positions due to harassing or overly protective conflict of interest provisions . . . ."<sup>13</sup>

There is concern by some authorities about the effectiveness of a statutory approach to this problem.<sup>14</sup> Many believe that public morality is basically a political problem and conflicts of interest cannot be abolished by statutes; at best, only the evils which attend conflicts can be restrained. This especially appears to be true where the elected part-time public official is concerned. For example, the state legislator holds his office by virtue of public election. If he hopes to be re-elected he must acknowledge the realities of politics, which in the American political party system includes patronage, campaign contributions, compromise and promises designed to produce significant group support. Large amounts of funds and group support are requisite to the operation of a successful campaign, although they may create personal obligations producing conflicts once the candidate is elected. Passing legislation which seeks to nullify these conflicting interests appears extremely difficult if not impossible. How is one to know which political necessities are ethically acceptable and which are not? Here we would be asking legislators to pass legislation which would, so to speak, cut off the hand that feeds them. "The line itself must be placed where it may afford some remedy to collapses of public morality without being destructive to the system itself."<sup>15</sup> If such legislation was to be passed, would it not be probable that many competent promising young men would be discouraged from seeking public office because they would not otherwise have the economic wherewithal to compete in our present political system?

Another problem which develops in drafting new conflict of interest statutes is the construction of the legislation itself. Should conflict of interest legislation be specific and detailed, and should it be an explicit statute carrying criminal penalties defining forbidden acts with precision and clarity? If it is to be this type of legislation its meaning must be clear, otherwise its vagueness will make it extremely difficult to prosecute and convict violators.<sup>16</sup> An alternative formation is drawing up guidelines of

<sup>13</sup> CALIFORNIA LEGISLATIVE ASSEMBLY COMMITTEE ON GOVERNMENT ORGANIZATION, REPORTS 1961-1963, vol. 12, No. 6, CONFLICT OF INTEREST, January, 1963.

<sup>14</sup> See DAVIS, UNIVERSITY OF CHICAGO LAW SCHOOL, CONFERENCE ON CONFLICT OF INTEREST No. 17, p. 80 (1961); See generally, Eisenberg, *Conflict of Interest Situations and Remedies*, 13 RUTGERS L. REV. 666 (1959).

<sup>15</sup> Eisenberg, *supra* note 14, at 667, 668.

<sup>16</sup> Davis, *supra* note 14, at 82: "If we remedy the vagueness and generality which characterizes the existing statutes by a more specific and detailed catalogue of conflicts of interests, may we not find ourselves . . . in the position of granting absolution to all acts

conduct in the form of a code of ethics, with the designation of some legislative committee to give direction to those who are not clear as to what is expected of them in a particular situation. Statutes may have a conglomeration of these alternatives whereby they are clear with respect to some prohibited actions, and set out only general guidelines in other areas.<sup>17</sup>

Another problem for consideration is whether the elected part-time public official should be required to disclose his private interests, and if so, to what degree should such disclosures be made.<sup>18</sup> Should they be specific (e.g. one thousand shares of American Telephone and Telegraph), or should they be general, with a limitation on what must be disclosed? (E.g. disclosure of interest would only be required if legislator's interest was more than five thousand dollars. The disclosure would be general in that the legislator would merely have to indicate that he holds an interest above the limitation, in the field of public utilities.) Disclosure itself brings up another question: should the legislator also be required to disclose the interests of his family, and if so, which members should be included in this category? The area of disclosure is a very difficult one because once a disclosure is made, it may lead to unjustifiable conclusions about the public official's connection between his possibly minor private interests and his official actions.<sup>19</sup> As shown earlier, public and private gains may occur simultaneously, and the existence of private gains does not in itself mean the public interest is not being served.

#### PROPOSALS FOR NEW LEGISLATION

One proposal for updating and streamlining conflict of interest statutes, deals with the question of whether the affected public official should be forbidden from soliciting or accepting compensation, gifts, loans, travel, entertainment and hospitality from other than the state, under circumstances in which it could be reasonably inferred that the gifts were intended to influence, or could reasonably be expected to influence, the performance of official duties or were intended as a reward for official action.

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not clearly included in such a compendium? Traditional rules of statutory interpretation, those applicable to criminal statutes, and to those statutes which seem to be all-inclusive may well give us a narrow area of prohibition, which at the same time leaves a larger, variable and ill-defined area of improper influences cloaked in legal sanction."

<sup>17</sup> Memorandum to Illinois State Senator Arthur R. Gottschalk, Illinois Legislative Council, File 5-160, Some Examples of State Conflict of Interest Laws, Nov. 24, 1964.

<sup>18</sup> Monypenny, *supra* note 8, at 2: "The effect of blanket disclosure provisions is to tend to brand certain kinds of interests as illegitimate regardless of their merits and to focus attention on the lesser aspects of matters—who will immediately selfishly benefit—rather than upon the major question; what will the general effect of this action be, and what do we think about it?"

<sup>19</sup> Monypenny, *supra* note 8, at 2.

The degree of control can range from absolute prohibition to no control whatsoever. Massachusetts, New York, Washington, and Texas have taken an absolute stand against any such action.<sup>20</sup> Sometimes it is proposed that compensation only be forbidden in connection with a particular activity, for instance, in connection with negotiations by the state for purchase of real estate.<sup>21</sup> Some people advocate that a limit which would be a fairly nominal sum, such as fifty dollars, should be set, and any gifts to legislators in excess should be prohibited.<sup>22</sup> Others advise that the practical criterion is to prohibit gifts "of value" that might influence him,<sup>23</sup> whereby still others would require that the official who receives a gift merely report it.

Another statutory provision to be contemplated when making proposals involves the interest that a public official may have in a contract with a public body where the official was in a position to influence the award of the contract. The present Illinois law forbids such an interest on the part of a public officer "in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote."<sup>24</sup> Some of the other states in this area have enacted much broader statutes, but at the same time they specify exclusions. For example, a recurrent form of forbidden interest is where the public servant is concerned with a contract with a corporation in which he owns stock, but in this era of widespread stockholding in great corporations with which most governmental bodies must necessarily do business (*e.g.*, telephone companies), modern statutes set lower limits on the percentage of stock ownership which is forbidden.<sup>25</sup> Drafters must be aware of a situation that may arise where the state allows open bidding.<sup>26</sup> A legislator may have a private in-

<sup>20</sup> MASS. GEN. LAWS ANN. ch. 268A (Supp. 1966); N. Y. LEGIS. LAW §§ 80-88; WASH. REV. CODE §§ 42.22, 42.20.010 (Supp. 1963); TEX. REV. CIVIL STAT. ANN. art. 6252-9 (Supp. 1963). A good example is the aforementioned Massachusetts statute § 4: "No state employee shall . . . receive or request compensation from anyone other than the commonwealth . . . in relation to any particular matter in which the commonwealth . . . is a party or has a direct or substantial interest."

<sup>21</sup> KY. REV. STAT. ANN. §§ 61.092-61.096, 61.990 (1963).

<sup>22</sup> Stevenson, *supra* note 5, at 3.

<sup>23</sup> THE ADVISORY COMMITTEE ON ETHICAL CONDUCT, A SUGGESTED CODE OF ETHICS FOR MUNICIPAL OFFICIALS AND EMPLOYEES, CHICAGO, THE INTERNATIONAL CITY MANAGERS' ASSOCIATION, p. 21, 1962.

<sup>24</sup> ILL. REV. STAT., ch. 102 § 3 (1963).

<sup>25</sup> The Kentucky statute says: "the holding of less than five percent of the stock of a corporation is not considered an interest." KY. REV. STAT. ANN. § 61.096 (1963). Massachusetts sets the exempted stock ownership in general at one percent, and New York law uses ten percent when applying it to legislators. The Texas and Washington Acts speak of a "controlling interest."

<sup>26</sup> Memorandum to Senator Arthur R. Gottschalk, *supra* note 17, at 6: "[T]he New York prohibition does not apply to legislators and legislative employees where a con-

terest in one of the companies bidding for the contract. That company may be the one that makes the best offer to do the work at the lowest cost without sacrificing quality. The drafters must be careful not to overlook this possibility and thereby pass stringent legislation that would disqualify that company from performing the work due to its ties with the public official.

The extent to which elected public officials, such as lawyers, may practice or appear before state agencies is another area where proposed conflict of interest legislation has arisen. Kentucky has a statute<sup>27</sup> disallowing any member of its General Assembly from appearing before an agency as a paid expert witness. New York's statute<sup>28</sup> bans any representation by a legislator before a state agency on a contingent fee basis. These agencies are acutely aware of their dependence on the General Assembly. State administrators are in many respects subject to the control of the legislature, which approves their budgets, including their salaries, and may change or limit their jurisdiction. These agencies are therefore susceptible to the wishes of a legislator seeking special treatment in his private capacity. Appearances by legislators before agencies of the government in behalf of private interests does not necessarily involve the use of undue influence, but these circumstances give an appearance *malum in se* which is almost as damaging to public confidence as an actual act of bad conduct.<sup>29</sup> Forbidding these appearances would also be useful as a prohibition against bribery or solicitation of bribes. Some proposals<sup>30</sup> do not advocate the rigid controls found in the New York law. It has been proposed that legislators should in some way be discouraged and prohibited from accepting cases which they have reason to believe may have been offered them in an attempt to gain influence over a state agency. The prohibition would also extend to accepting cases where there is a reasonable possibility that the agency might be improperly influenced because of participation by the legislator. However, if the legislator honestly and reasonably believes that the potential client should win, then he should be allowed to take the case. The proposed method of enforcing these prohibitions would be by requiring the legislators to report publicly and periodically their cases involving

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tract to a State agency has been awarded 'after public notice and bidding, and it does not apply in any event to contracts or payments for the publication of legal notices, etc., for which rates are fixed by law. Massachusetts has a similar exclusion that pertains to the case of a state employee where (a) the contract was made through publicly advertised competitive bidding and (b) the interests of the employee do not amount to 10 percent of the total proprietary interests in the corporation or other business entity having the contract.'

<sup>27</sup> KY. REV. STAT. ANN. § 61.096 (1963).

<sup>28</sup> N.Y. LEGIS. LAW §§ 80-88.

<sup>29</sup> Extracts from THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, *supra* note 5, at 5.

<sup>30</sup> Stevenson, *supra* note 5, at 4.



representation before state agencies. In addition, these restrictions are to apply to persons closely associated with legislators such as law partners.<sup>31</sup> Such proposals as these seem to lose sight of the underlying dilemma created when the legislator is allowed to appear before the state agency. The lack of public confidence and the opportunity for accepting bribes have not been totally corrected by this suggestion. A dishonest legislator can easily say that he thought his client should win.

Conflict of interest statutes<sup>32</sup> and proposals often include provisions forbidding public servants from accepting or rendering any employment or services for private interests incompatible with their public duties. It is felt that to allow otherwise would impair the public servants independence of judgment while performing his official duties. Even if the public official is of the highest integrity, the presumption of conflict continues. It appears that by restricting some areas of outside private employment the part-time public official is allowed to engage in, we would at the same time eliminate a wide range of potentially talented candidates for office. The otherwise qualified candidate may feel that his prior investment in the forbidden private employment is too great at the time he is ready to enter part-time public service to risk starting over again at something new. As one observer recently stated, "The public has a right to choose the representatives it wants and if their choice is not always to be wise, restricting it is a greater evil than the abuses which may now occur."<sup>33</sup>

Perhaps the greatest disparity in opinion on conflict of interest legislation lies in the area of disclosure. This can be seen by the varied ways in which the Massachusetts,<sup>34</sup> New York,<sup>35</sup> and Washington<sup>36</sup> laws handle

<sup>31</sup> Stevenson, *supra* note 5, at 4.

<sup>32</sup> TEX. REV. CIVIL STAT. ANN. art. 6252-9 (Supp. 1963).

<sup>33</sup> Monypenny, *supra* note 8, at 1.

<sup>34</sup> The Massachusetts Act has a general provision under which any employee may ask the Attorney General for an opinion in a situation where the facts "raise a question as to whether the state is a party or has a direct and substantial interest" such as to bring penalty provisions into effect. The request is to be treated as confidential, although the final opinion is to be a matter of public record. Failure of the Attorney General to render an opinion in 30 days is to be construed as if an opinion favorable to the employee has been rendered. MASS. GEN. LAWS ANN. ch. 268A, § 10 (Supp. 1966).

<sup>35</sup> The New York law requires every legislator and legislative employee to file annually with the clerks of the two chambers a written statement of "each financial interest, direct or indirect of himself, his spouse and his children in any activity which is subject to the jurisdiction of a regulatory agency and whether such interest is over or under five thousand dollars in value, every office and directorship held by him in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency, [and] any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed." N.Y. LEGIS. LAW § 86. Copies of these reports are open for public inspection.

<sup>36</sup> The Washington statute makes it optional with the head of an agency as to whether or not officers and employees of his agency are to be required by regulation to

the problem. For effective conflict of interest legislation, disclosure in one form or another appears imperative. The disclosure usually relates to financial interest and business enterprises. Whose interests should be disclosed? Should the disclosure be specific or general? Should disclosure be permissive or mandatory? Should disclosure be confidential or public? Should disclosure be required on a continuing or periodic basis? At what time should the disclosure be made? These are some of the many questions commissions drafting conflict of interest laws have to face.

There is doubt by some experts<sup>37</sup> as to the value of disclosures of private economic interests only to some screening committee or board and not to other members and the public. There is no doubt that public disclosure of a legislator's conflicting economic interests would allow his colleagues and the public a chance to weigh and discount his actions accordingly. There may be more difficulty in passing legislation of this nature than if legislators were asked to pass provisions calling for a confidential disclosure.

Some proposals<sup>38</sup> suggest that legislators be required to report each of their economic interests and the interests of members of their families, their clients subject to regulation by state agencies, and their clients with legislative interests. What members of the family should be included in such a proposal? Should the emancipated married son or daughter's interests, or the famous octogenarian mother's interests be included? These are subjects of great debate and often times determines whether the proposed legislation will pass or not. There is also difficulty in gaining general agreement as to when the disclosure should be made. If the disclosure is made as a condition precedent to voting on proposals before the legislature, there may be occasions when the legislator may not be able to fully analyze the bills before him to be certain that no conflict exists. Such is the case when the legislator, in the closing days of the session, is bogged down with a large number of bills and he must rely upon committee recommendations with respect to many of the bills.<sup>39</sup>

#### GUIDES TO ENFORCING GOVERNMENTAL BEHAVIOR

One method used to deal with the problem of remedying conflict of interest provisions is to pass legislation exactly defining a conflict situation in

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file with the Secretary of State a sworn statement disclosing the nature and extent of the individual's interest in a business subject to state regulation. Such statements are to be kept in confidence, except that they can be disclosed to members of the legislature or to an appropriate legislative committee or to any other appropriate authority having the power of removal of a public official or employee. WASH. REV. CODE § 42.22 (Supp. 1963).

<sup>37</sup> Moran, *supra* note 6, at 2.

<sup>38</sup> Stevenson, *supra* note 5, at 2; See Extracts from THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, (New York), *supra* note 5, at 7.

<sup>39</sup> Extracts from THE REPORT OF THE SPECIAL COMMITTEE ON ETHICS, *supra* note 5, at 7.

a criminal statute with provisions for appropriate sanctions of imprisonment or fine or both.<sup>40</sup> To some people this method is offensive in that it may "embrace within a concept of criminality activities which may appear evil on the surface but involve no real misconduct."<sup>41</sup> A fault with this method is that it is virtually impossible to specifically define and set out every conflict of interest situation that may arise. Therefore, legislators may fortuitously exclude those activities that are noncognizable and which really constitute the essence of the problem.

Enforcement of a code of ethics is another method used to remedy the conflict of interest situation. A code of ethics is a statement of acceptable standards of behavior for government officials and employees. It is an act defining terms, requiring certain disclosures, defining crimes and often prescribing penalties.<sup>42</sup> The code of ethics is a mode of communicating, in advance, warnings and expectations to public officials, and at the same time informing the public as to what is acceptable behavior. The code often carries with it sanctions, such as dismissal from office, and hence may motivate the individual legislator's self-examination of his position. It creates a sense of security for the public and hopefully makes some legislators more aware of the guidelines.

To be effective, the code of ethics requires some kind of enforcement system that is implemented on an objective and impartial basis. A formulation of a committee on ethics is most often suggested. Some states<sup>43</sup> prefer legislative committees to perform these functions without any outside public indulgence or disclosure. Others<sup>44</sup> feel that ethics committees should also be comprised of persons other than legislators so as to maintain impartiality and reduce suspicion that the charge was neither diligently investigated nor disposed of on its merits.<sup>45</sup> Perhaps from the standpoint of

<sup>40</sup> ILL. REV. STAT. ch. 127 § 75, ch. 38 § 33-1-3 (1965).

<sup>41</sup> Eisenberg, *supra* note 14, at 671.

<sup>42</sup> See State of Wash., Substitute S. 1, 39th G.A., passed April 30, 1965. See New York City, ADMINISTRATIVE CODE § 1106-1.0 (1959).

<sup>43</sup> In Minnesota, each house has its own committee on ethics, composed of four members, two from each party, appointed by the leadership in the house, and in the senate, the committee on committees for the majority party members and the minority leader for the others.

<sup>44</sup> In New York, each house has its committee on ethics, consisting of four legislative members appointed by the senate temporary president or speaker, plus two advisory members—the president of the New York state bar association and the dean of the Albany Law School, Union University.

<sup>45</sup> Governor Richard J. Hughes of New Jersey, in vetoing Senate Bill No. 40 (1964) on November 17, 1964 said: "The objective of impartial enforcement can be realized without resort to criminal penalties, but not by granting to the Legislature the executive power to hear and determine charges against its own members in closed session, or by

public confidence, there should be a nonpartisan, nonrepresentative committee.

The commission selected to review the legislator's conduct may have authority only to render an advisory opinion based on findings of fact when a legislator has a question as to interpretation of the legislation or otherwise needs advice as to whether a particular situation constitutes a conflict of interest. Some people object that a conflict of interest law with weak or no penalty provision is an incogitant action.<sup>46</sup> They may instead recommend direct disciplinary authority by allowing the commission to invoke varying degrees of sanctions against violators, such as removal from office or disqualification from voting on the bill.<sup>47</sup> There is controversy as to whether the identity of the legislator before review should be made public or remain confidential. Some people advocate making such reports public,<sup>48</sup> possibly to make violators more aware of the possibility that a large portion of his constituents may find out about his private gains. It has been suggested that the hearings and reports by the committee remain private unless the legislator charged with impropriety asks otherwise, and in addition, the reports should only become public when the committee makes adverse findings upon which disciplinary action might be based.<sup>49</sup> Another opinion is that only after deletions have been made that are necessary to prevent disclosure of the identity of the official, should opinions be published.<sup>50</sup>

The committee on ethics may be assigned the power to receive and consider complaints concerning alleged violations, investigate complaints and hold hearings, subpoena witnesses, render decisions, recommend action to the general assembly or deliver its findings to the attorney general for civil

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leaving accusations against State officers and employees exclusively to internal departmental disposition. . . . No man should be asked to act as his own judge.

"[P]ublic attention to the subject of conflicts of interest long has 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. . . . If Senate Bill No. 40 were approved, it could increase rather than dispel public cynicism toward the Legislature."

<sup>46</sup> Veto message by Governor Hughes, *supra* note 45.

<sup>47</sup> Monypenny, *supra* note 8, at 3: "It is doubtful . . . whether any such body should have direct disciplinary powers, other than admonition in extreme cases, because the possibility of discipline, where a difference of opinion exists between a member or a group of members and the ethical standards group, may inhibit members from acting as they should act in the interests of their constituents and of the public . . . [S]harp differences of opinion may exist between persons of the highest integrity."

<sup>48</sup> Stevenson, *supra* note 5, at 5.

<sup>49</sup> Moran, *supra* note 6, at 2.

<sup>50</sup> Letter from Hon. Earl W. Brydges, President Pro Tempore, New York State Senate, Albany, New York asking for support of Assembly Bill No. 32, April 22, 1966, on file in the Office of the *DePaul Law Review*.