

Campaign Financing, Ethics Act & Open Meetings

Conflicting Interests for Citizen Legislators

by Bertha (B) Merrill Holt

“In framing a government which is to be administered over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

— James Madison, *Federalist Paper Number 51*, 1788

At the dawn of the republic, James Madison recognized the need for ethics legislation in America. A student of colonial governments, Madison might have reflected on the 1757 campaign that George Washington waged for a position in the Virginia House of Burgesses. Washington allegedly won his seat by doling out 28 gallons of rum, 50 gallons of rum punch, 34 gallons of wine, and 46 gallons of beer.

By the bicentennial birthday of the nation, the American voters were probably more skeptical of their politicians than at any point since Madison first contemplated how the government might “control itself.” Watergate had destroyed the hope that Thomas Jefferson had expressed 200 years before, that “the whole art of government consists in the art of being honest.” In the wake of Watergate, the Congress and state legislatures passed the most dramatic spurt of ethics legislation ever codified into American law.

During the 1970s, the N.C. General Assembly attempted to regulate through statute that group of people perhaps most difficult to oversee in the entire state — themselves. In 1973, the legislators passed the Campaign Finance Reporting Act,¹ in 1975 the Legislative Ethics Act,² and in 1979 an

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expanded and updated Open Meetings Law.³ This body of statutes, at the least, enables today's voters to make more informed decisions about elected officials than were possible in 1972. At the most, the laws require elected officials to function at standards higher than those expected in everyday business, to reveal their personal finances, and to be sensitive to the inherent conflicts of interests for "citizen" lawmakers, persons who divide their time between the state's business and their personal careers.

Some feel that, collectively, these laws have already gone beyond what ethics law should do — inform the electorate so that the burden of honest government rests on the voters as much as the officials themselves. Advocates of more controls argue, on the other hand, that ethics regulations should not only inform citizens but also protect

them by including specific prohibitions and restrictions which prevent special interests from using the law-making process for their own advantage.

In the General Assembly, the legislators concerned about ethics seem to agree on one thing at this point: we have a lot of relatively new legislation on the books, let's try to make these laws work before passing any more. The existing laws do not seem to have raised the level of public trust in government. Why should more legislation build more trust?

But while we may not need more ethics legislation at this time, we do need an increased awareness of ethics and the way in which the existing ethics laws function. Legislators, the media, and the public need to go through an education process about ethics. One way to begin that process is to understand exactly what the existing laws say.



The State of the Law

The Campaign Finance Reporting Act (1973) specifies the way state and local campaigns may be financed and requires strict reporting processes for both contributions and expenses. (See "Major Provisions" box.) The State Board of Elections administers the Act; various district attorneys enforce it, depending upon the county of infraction. This Act makes a great deal of information available to the public which could formerly be kept secret. The campaign reports, however, do not have to include the profession or business of individual contributors, which makes a full assessment of the influence of contributors difficult.

Provisions of the Act also attempt to eliminate the ability of large contributors — both individual and organizational — from dominating campaign spending. These provisions have resulted in the rapid growth of political action committees (PACs). A PAC provides a mechanism through which employees or members of corporations, business entities, insurance companies, labor unions, or professional associations can contribute to a candidate. All of the above groups are prohibited from making contributions directly to a candidate.

The Legislative Ethics Act (1975) went a step further, establishing for the first time in North Carolina standards of conduct for the legislators themselves. The Ethics Act has three primary

components:

1) It defines what constitutes bribery, prohibits a legislator from using for personal gain confidential information which was received because of his position, and prohibits a legislator who has an economic interest which would impair his independence of judgment from acting in a legislative matter to further his interest.

2) It requires each candidate for nomination to the General Assembly as well as all elected legislators to file a statement of economic interest with either the county Boards of Election (candidates) or the Legislative Services Office (where legislators must file every other year). These statements are open to the public. (See "What Must be Disclosed" box.)

3) It creates a nine-member Legislative Ethics Committee to administer and enforce the Act. The chairman of the Committee alternates each year between a representative and a senator. Of the other eight members, the Senate and House each get four; they are selected from lists submitted by majority and minority leaders in each chamber. (See "Powers of the Committee" box.)

In 1979 significant revisions in the state's Open Meetings Law passed the General Assembly. This "sunshine legislation" requires most meetings of public officials to be open to the public, but contains some notable — and controversial — exceptions such as meetings of the Advisory Budget Commission and the Council of State. In the long run, open meeting legislation may prove to have

Major Provisions of Campaign Finance Reporting Act

- Anonymous contributions and contributions made in someone else's name are prohibited.
- No contributions over \$100 can be made in cash.
- Candidates, political committees, or parties cannot accept contributions from corporations.
- Only the campaign treasurer can accept contributions and appropriate funds.
- No individual or political committee can contribute more than \$3,000 to any candidate or political committee.
- Violations can result in fines and imprisonment for contributors as well as candidates.

- An out-of-state contribution over \$100 must be accompanied by a written statement containing the name and address of the contributor.
- Contributions records must include names and addresses of out-of-state contributors over \$100 and all in-state contributors over \$50. Expenses must be reported in detail by type and amount. All media payments must be made by check, each item recorded separately.
- Corporations, business entities, insurance companies, labor unions, and professional associations cannot make any contributions, cannot use money or property, and cannot reimburse any organization or individual for money and property-use on behalf of, or in opposition to, any candidate or political committee — or for any political purpose.

See N.C. General Statutes 163-278.1 through 163-278.26.

more influence than any other ethics-oriented law in raising the ethical standards of elected officials.

In addition to these three pieces of legislation, there is a Governmental Ethics Committee in the House and a North Carolina Board of Ethics in the executive branch. In 1979, House Speaker Carl Stewart established Governmental Ethics as a "select" committee. Liston Ramsey, who is expected to be the House speaker in 1981, plans to upgrade the committee from "select" to "standing," giving it a more permanent position in legislative affairs.

In 1977, Governor James Hunt established the N.C. Board of Ethics by issuing Executive Order Number One. The Order requires that certain executive branch employees and appointees publicly disclose financial interests annually. Voters do not have the direct control over appointed officials that they do over those who are elected. Hence, providing financial information may not be as effective a deterrent to conflict-of-interest situations for administrative personnel as it is for elected officials. The N.C. Board of Ethics can help to watchdog ethics problems within the administrative branch of state government by identifying potential conflicts and recommending remedial action.

Despite these laws and committees, enforcement of ethics has been difficult. Legislators, the media, and the public often do not understand the sentiment behind the ethics laws. Because members of the General Assembly are "citizen" legislators, they must often call upon colleagues who have expertise in an area for advice and assistance concerning an issue under consideration. Legislators who are attorneys for insurance companies, for example, may know best how insurance functions. Because most legislators support themselves in a professional enterprise which inevitably is affected in some way by state law, almost all of them face potential conflicts-of-interest in the lawmaking process. The Ethics Act attempts to address conflicts within this body of citizen lawmakers. "The real question you must look at is, 'Have they profited in a way someone else couldn't?'" says former Sen. Willis Whichard, now a judge on the N.C. Court of Appeals.

Since the Legislative Ethics Act passed, only one conflict-of-interest complaint has been filed — against a member of the House. In that instance, the Legislative Ethics Committee held a hearing and exonerated the member. The voters in the home district, however, did not re-elect this member to the next General Assembly. The people have the final judgement, after all, to "hire" their representatives and to "fire" them. But short of hiring and firing, the quality of lawmaking can improve if a knowledge of ethics becomes more widespread.

Powers of Legislative Ethics Committee

- Prepare forms for and receive statements of economic interest.
- Prepare list of ethical principles and guidelines to aid legislators in dealing with conflicts of interest.
- Identify potential conflicts of interest and suggest rules of conduct.
- Advise committees regarding conflict problems in considering specific legislation.
- Issue advisory opinions on specific questions raised by individual legislators.
- Investigate complaints both on own motion or by formal public hearing (includes subpoena power) and dispose of the complaints (dismiss; refer to Attorney General if criminal statute allegedly violated; or refer to appropriate house of General Assembly for censure, suspension, or expulsion).

What Must Be Disclosed?

Includes interests held by filer and members of his or her immediate household.

- Business associations.
- Real estate at a fair market value in excess of \$5,000.
- Indebtedness in excess of \$5,000.
- Vested trusts valued in excess of \$5,000.
- Occupations of members of immediate household and types of clients/customers.
- Business associations which do business with the state.
- If professional person, a list of categories of clients; from which fees in excess of \$2,500 were received.

See N.C. General Statutes 120-85 through 120-106.

In January of this year, the Center for Legislative Improvement (LEGIS/50) sponsored a workshop for the members of the House Select Governmental Ethics Committee and the Senate Rules Committee. Part of a five-state Legislative Ethics Project funded by the National Endowment for the Humanities and the U.S. Office of Personnel Management, the seminar was held, as LEGIS/50 puts it, "to assist citizen legislators in coping with the ethical dilemmas that arise during public service." LEGIS/50 used videotapes to depict conflict-of-interest predicaments which citizen legislators have faced in other states. The 18 members of the General Assembly who attended completed questionnaires about the situations and discussed the ethical dimensions of each. Most felt the exercise was a valuable tool.

Plans for an orientation seminar for new 1981 legislators is now underway. This conference would utilize such aids as the videotapes from the LEGIS/50 meeting. Plans are also being made to utilize the services of the National Conference of State Legislatures for a workshop designed especially for the N.C. General Assembly; this session would analyze the status of the state's ethics legislation.

Anticipating conflict-of-interest situations for citizen legislators — and dealing with such situations when they arise — is not an easy task. American governmental bodies face real dilemmas in the world of ethics, perhaps best identified in a 1962 speech which former Chief Justice Earl Warren delivered, called "Law Floats in a Sea of Ethics." In it, he said: "Not everything which is wrong can be outlawed, although everything which is outlawed, is, in our Western conception, wrong. For many years, legislatures and courts have endeavored to define for corporate and government officials what constitutes a conflict between their public responsibilities and their private interests. None has yet been able to state in legal terms rules that will at the same time afford both freedom of dynamic action by the individual and protection of the public interest."□

**“Have they profited in a way
someone else couldn’t?”**

N.C. Court of Appeals
Judge Willis Whichard

FOOTNOTES

¹ Commonly known as the Campaign Finance Reporting Act, its official name is An Act to Regulate Contributions and Expenditures in Political Campaigns. See Chapter 1272, 1973 Session Laws, 2nd Session, 1974.

² See Chapter 564, 1975 Session Laws.

³ See Chapter 655, 1979 Session Laws.