JOINT HEARING
ASSEMBLY ELECTIONS COMMITTEE AND
SENATE GOVERNMENT AFFAIRS
MARCH 28, 1977
5:00 p.m.

SENATORS PRESENT: Senator Gibson, Chairman
Senator Foote
Senator Hilbrecht
Senator Faiss
Senator Schofield
Senator Gojack
Senator Raggio

ASSEMBLYMAN PRESENT: Mr. Mann, Chairman
Mr. Sena
Mr. Chaney
Mr. Goodman
Mr. Kosinski
Mrs. Wagner

MEMBERS ABSENT: Mr. Horn (excused)

GUESTS PRESENT: Senator Bryan
Assemblyman Dini
Assemblyman Polish
Senator Hernstadt
Bob Warren, League of Cities
Pat Gothberg, Common Cause
Phil Hannifan
Daisy Talvitie, League of Women Voters
Don Klasic, Deputy Attorney General

JOINT HEARING
SENATE GOVERNMENT AFFAIRS AND ASSEMBLY ELECTIONS COMMITTEE
MARCH 28, 1977

At 5:00 p.m. Chairman Mann called the joint hearing to order. The purpose of the hearing was to hear testimony on the two pieces of legislation dealing with creation of an Ethics Commission, SB 351 and AB 450

SB 351, Creates State Ethics Commission and provides procedures and ethical rules to govern conduct of elective public officers other than judicial.

Senator Bryan, sponsor of the bill, stated that this bill makes an attempt to revive similar legislation passed during the 1975 Session which the Supreme Court has declared to be unconstitutional. Frank Daykin has stated that in this form it is constitutionally sound. The Senator stated that this bill is couched in general lanuage because it applies to all elected officials with the exception of the judicial branch. It provides for Ethics Commission. The Ethics Commission would have the duty to render advisory opinions when requested. The purpose of this advisory opinion is for the protection of the public and in those areas where there may be a substantial question, for the protection of the elected official himself. Where there is question of conflict, this law provides for a mechanism to receive an impartial opinion as to whether the proposed course of conduct is in violation of the provisions of law.

Senator Bryan went on to state that in addition to the advisory opinion procedures, there is a disclosure requirement in section 18. This requirement is substantially modified from the previous disclosure requirement adopted in 1975. With respect to those provisions, the Supreme Court found there was constitutional vagueness which forced them to reach the conclusion that the act was unconstitutional. This section requires the disclosure of the source of income not the dollar amount. Also requires discription of any self employment in which there is an interest of $1,000 or more and the discription of any real property located in Nevada except for real property used for residence or recreational purposes. It also requires the reporting of gifts and loans. This declaration must be made 30 days after filing for office.

Pages 6-12 address the relationship of the official in terms of contractural relationship with the entity upon which he serves. This bill essentially parallels those provisions of the 1975 bill; however this is confined to elected public officials and the 1975 one was more broadly construed.

At this point, Mr. Mann placed into the record the letter received from Frank Daykin regarding AB 450. Mr. Mann pointed out that he felt that this letter also applies to SB 351. A copy of this letter is attached to these minutes as Exhibit A and herewith made a part of this record.

Mrs. Wagner inquired if the amount of appropriation provided for would be large enough to carry out the workload of the commission

once it is established. Senator Bryan stated that it probably is not but that this would get on the books a workable piece of legislation.

Senator Hilbrecht inquired about the legal definition of "on behalf of". Senator Bryan stated that this would mean doing something "at the request of". Senator Hilbrecht went on to cite a situation of another legislator introducing a bill on behalf of someone that was perhaps his client. Mr. Hilbrecht desired to know how he could participate in action on the bill. Senator Bryan stated that the prohibitions attached to Senator Hilbrecht in that case would be on line 13, that he could vote upon or exercise any influence with respect to that legislation. He added that it would also depend on the relationship with the client. Senator Hilbrecht stated that he would disapprove of this concept. He stated that he would approve of the concept where they could ferret out what was meant by special interest. The concept of "if it affects me more than it does anyone else of the class".

Senator Bryan stated that an alternative has been proposed whereby once you make disclosure, then you should be allowed to vote in all cases.

Senator Hilbrecht went on to say that he was also concerned about "exert an influence." He stated that he felt some of the best imput in committees comes from the people who are obvious partisans, which is disclosed. These are some of the best experts on the various specific issues. This would apply to legislators and the committee should have the benefit of his thinking. Senator Bryan stated that he felt this bill was a better approach in that it did not require a lawyer to divulge the names of their clients which involves, in his judgement, a breach of the attorney-client relationship. This bill imposes upon the official the prohibition that if they do have an interest they can not vote. He stated that he was less troubled with the committee imput aspect of this.

Mr. Mann stated that he would like to continue along this line with respect to his profession of teaching. He stated that he did not feel that they should tie the hands of any elected official in terms of meeting his obligations that he contracted with, with the people who sent him up here. He stated that he could not see precluding a legislator who had expertise on a subject from giving his advise because of this bill. Conflict should be when some legislation that a legislator is involved in results in a monetary gain for him. Senator Bryan stated that he felt that with respect to Mr. Mann's profession he should not be introducing any legislation on behalf of the school district but would not see that Mr. Mann would be precluded from voting on legislation that would effect the school district.

Senator Schofield stated that he felt that the legislative body is made strong because of the amount of imput that is present from a variety of people. He added that he felt if they start to restrict legislators so that they can't give testimony and vote they will defeat the purpose of having a lay legislative body. Senator Bryan stated that he would have to agree that you do run into that problem when you do not have a full time legislative body but he doesn't feel that it is defensible for him as a lawyer to litigate a case and then come up and introduce legislation respecting that particular case to influence the outcome of it.

Senator Raggio stated that a legislative body is not required to be composed of people who do not have prejudices or bias s. It is not a judicial system and you can not challenge a legislator because they might be biased on one particular issue. He went on to say that an attorney may represent an individual, a company, a goup on a continuing basis or some gaming clients. In the course of his experience he may find it necessary to suggest an amendment because he honestly believes it is needed in the industry. Do not believe that a legislator should be precluded from initiating legislation, discussing or voting on legislation merely because it is something that may be desirable to a client. Ethics should deal with the problems where a legislator is fincially rewarded because of introducing a measure that a client wanted. Senator Raggio stated that an legislator could have direct involvement in legislation and abstain from voting and by abstaining in effect cast a no vote which would have just as much impact as active participation would.

Senator Bryan stated that it would be impossible to draft an ethics legislation that would cover every possible case but that the saving grace of this legislation is that the individual in a "twilight" area can request an opinion before taking an action. He added that the language on page 6, lines 5-8 would probably somewhat address these questions in a broader way.

Mrs. Wagner stated that perhaps if there was some extensive economic disclosure required and once that is done, then allow everyone to vote on everything. She stated this could be based on Oregon statutes and that the State of Washington is also using some language of this type. Senator Bryan stated that the thrust of it is not to preclude everybody in a particular class to vote on anything that might effect their industry but cannot justify introducing legislation on behalf of client or on behalf of own personal business.

Senator Schofield stated that he believed that the voter will eventually get the legislator or elected offical that has been unethical. He stated that he wondered if this was not strong enough with the lay legislative body that we have, rather than to go into such specifics. Senator Bryan stated that the thrust of this is not confined just to the legislative process. If the definition found in Section 23 is not desirable to retain the rest of the bill is, according to Senator Bryan.

Mr. Kosinski stated that he has never seen a situation where in his mind under our representative form of government it would be justified to deny the right to vote. He stated that he would like to see the restriction on voting deleted and more emphasis be placed on disclosure. Senator Bryan stated that if this portion were to be deleted you would have to require complete disclosure in order to make it effective. This again would bring back the problem of confidential relationship between client and lawyer or whatever the profession is. He stated that he does not feel that it is appropriate to require the disclosure of a full list of clients who may have come with no idea that they will become involved in this.

Senator Gojack stated that she noticed differences between the sanctions whether it is a gross misdemeanor or a misdemeanor. Senator Bryan explained that failure to file would be a misdemeanor, filing a false statement would be a gross misdemeaner and for violation of the contractual arrangements would be a gross misdemeanor.

AB 450, Creates State Ethics Commission, establishes code of ethical standards for public officers and employees and requires financial disclosure by candidates for and holders of elective public offices.

Assemblyman Dini, sponsor of the bill, gave a brief background on the ethics bill development. This was originally brought about by an interim study. He stated that when he had requested this bill be drafted he had asked that they redraft the bill from the previous session into a workable form. There were several differences between this bill and SB 351, however they are not in the basic concept of the bills.

At this point Chairman Mann introduced the Attorney General's opinion on the bill which is attached to these minutes as Exhibit B and herewith made a part of this record.

Mr. Mann pointed out that he felt that each committee would have to have some work sessions on these bills and therefore would ask that testimony be limited to philosophical concepts regarding the bill as well as legislative intent.

Mr. Dini went on to state that this bill eliminates the lesser boards and commissions of the state and at the local level. These people are basically volunteering their work and including them creates a mirage of paper work for the Ethics Commission. He stated that there have been objections to bringing the League of Cities and County Commissioners under this but that he feels that this is the level of government where they should get this started.

Mr. Dini stated that his basic concept on the code of ethics is that nobody should be trying to line their pockets by serving in an public office. However, he stated that he feels there is latitude for a man of a given profession to represent that profession within

the legislature and not be in conflict of interest if he does in the best interests of the State of Nevada. The role of the Ethics Commission is important in its advisory capacity as a official could go to it to help determine how far he could go in representing himself.

Mr. Goodman stated that as a member of organized labor would this bill exclude him from voting on all bills dealing with labor. Mr. Dini stated that he feels that an legislator is elected by the people of his district and that basically he is not going to be helping himself with the average bill that comes through here. Mr. Dini stated that in Mr. Goodman's case it would be unethical to introduce a bill dealing with raise in unemployment compensation or something like that. He added that he would not want to see any legislation like this that would eliminate the average man in the state from becoming a representative.

Mr. Mann stated that he would interpret this to mean that it would not be a conflict to vote on an issue as long as it is for the good of the mass. It would be a conflict if you knew when the session was over the you would benefit from this legislation.

Senator Schofield asked Mr. Dini if he did not feel that some type of ethical behavior has been already established through the leadership of the legislature and therefore would this restrictive legislation really be necessary. Mr. Dini stated that he felt there was a need for some standards to be set down. The Commission would be a useful tool as there would be several outside opinions on what is conflict of interest.

Mrs. Wagner inquired if there was a section within this bill that deals with what a role of the elected official is in introducing, voting upon or influencing legislation. Mr. Dini stated that this was dealt with in Section 9, subsection 6 on page 4.

Senator Raggio stated that he had some concerns regarding that section in that a legislator-attorney in a large firm would not be able to appear personally before many things on an ongoing matter. Mr. Dini stated that he felt that during the session it would not be proper to appear before various agencies especially if one of the decisions went against his firm he would be able to take reprisal steps in the legislature. This is one of the things they have to be careful of according to Mr. Dini.

Senator Raggio stated that this would necessitate the law firm in order to accomodate the legislature to divest itself of any clients that have any interests before these boards. He used the example of a client who might have a case before NIC and in the course of this matter a hearing might come up during a legislative session. This would preclude any attorney in that firm carrying forth this claim during the session.

Mr. Dini stated that he felt that was the intent of the law to prevent these things from happening during a legislative session. Senator Raggio stated that he couldn't conceive of law firm that could have a legislator as a member under these conditions. Mr. Dini stated that he was not that firm that the clause could be amended to take care of this situation. He admitted that attorneys would have more problems then other professions with this concept.

Senator Raggio stated that if Nevada had a full time legislature where it would be the members' whole endeavor this type of legislation could be made a lot stronger. In Nevada's case some of these limitations seem good in print but do not work out to well in practice.

Mr. Dini stated that the average business person would not be hurt as bad as a lawyer.

Senator Foote inquired if Mr. Dini felt there had been times in the past when people have really used their position of being a legislator or an elected official for their own benefit. Mr. Dini stated that they have tried to come out with simple bill and were challenged that it was too vague and it was killed. They then came out with some more specific and it was declared unconstitutional because it does too much.

Mr. Mann stated that he felt one of things that each person had to address himself too was whether legislature can legislate morality. He stated that he felt there was need for this type of legislation.

Mr. Dini stated that the disclosure section of the bill which was basically the same as last session except they have tried to tighten it up in answer to the Supreme Courts contention that the last bill was vague in this area. He went on to say that the rest of the bill goes into areas that define what conflict is for state officers contracting and this type of thing. He stated that he felt it takes a lot of the vagueness out of the previous law.

Senator Raggio stated that he felt there could be some problems involving the appointment of the Commission. He felt there should probably be some type of order included as to how they should be appointed. Mr. Dini stated that he would have no objections to changing this to make it more workable.

<u>SB 172, Repeals Nevada Ethics in Government Law and reenacts or restores statutory provisions which had been repealed or amended by that law.</u>

This bill has been passed by the Senate. Senator Gibson stated that this was a bill drafter bill which removes what was done at the last session and restores it to what it was before that time. He added that this bill had to be passed because the bill drafter

does not have the authority to remove language from statutes even though it has been ruled unconstitutional.

Pat Gothberg, Common Cause, presented a statement in favor of AB 450 and SB 351. A copy of the material she presented is attached to these minutes as Exhibits C, D, and E and herewith made a part of this record.

Mrs. Gothberg explained that the material she had presented was divided into three areas. The first was their statement, Exhibit C, the second was a model piece of legislation on this subject which the committees might find useful in their work sessions, Exhibit D, and final was a statement from Common Cause national office regarding Conflict of Interest Legislation in the States, Exhibit E.

Phil Hannifin stated that he was appearing on a personal level and not for the agency he normally represents. He stated the first ethics bill he came in contact with was with regards to the gaming industry. This provided that a person holding a position on this Board may not have any monetary interest in a licensed establishment, may not have any other form of employment, may not participate in partisan politics and it has worked. They would support this kind of thing. With respect to SB 351, he would find difficulty with page 6, line 21. This section would really hurt the gaming control as it is pretty strict. Members serve the Commission a very short time and then have to find another job. After this time a person is best prepared to go into that industry and if this provision is left in it will really take a real whack out of the professional people they are trying to recruit. This would apply to other boards and commissions also. Section 24, subsection 2 is extremely difficult and what it does to people on boards and commissions is far more restrictive then what it does to legislators.

Mr. Mann inquired how Mr. Hannifin would address himself to the situation of a person who comes onto a commission and through the nature of the experience on this is able to go and generate a job for a large amount of money. Mr. Hannifin stated that there is a need for understanding and knowledge in the various businesses.

Mr. Hannifin stated that if this bill is passed the committee should change the term "serve" to a "member of a commission" otherwise this would apply to everyone that is employed and would place the same restrictions on them.

Mr. Mann stated that he felt there was still a real danger of a person being on a board, making decisions, and as a result of these decisions and help that he gives, he is able to get a real lucrative position after he through serving on the board.

Mr. Hannifin stated that if you have an abuse you attack it and if you don't have an abuse he could not understand what they are attacking. This bill is talking about total employment.

This would also apply to employment in the industry and could get pretty wide spread. It could also be applied to providers of services.

Daisy Talvitie, League of Women Voters, stated that she had no specific testimony to give on the bills but that the League of Women Voters does support ethics legislation if it can be possibly worked out.

As there was no further testimony to be heard the joint hearing was adjourned.

Respectfully submitted,

Sandra Gagnier

Sandra Gagnier,
Assembly Attache

Exhibit A

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

LEGISLATIVE COMMISSION (702) 885-5627
JAMES I. GIBSON, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
John F. Dolan, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
EARL T. OLIVER, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

March 28, 1977

Assemblyman Lloyd W. Mann
Chairman of the Committee on Elections
Legislative Building
Carson City, Nevada 89710

Dear Mr. Mann:

You have requested a written explanation of how A.B. 450 avoids the constitutional problems which led the supreme court to hold the preceding "Nevada Ethics in Government Law," enacted in 1975, to be unconstitutional.

In its decision so holding, Dunphy v. Sheehan, 92 Nev. Adv. Opn. 84 (1976), the court examined section 26 of that act, which appears as NRS 281.650. This was the disclosure requirement. Subsection 1 described the kinds of economic interest to be disclosed; subsection 2 excused any such interest from disclosure if it "could not be affected materially by" the acts, omissions or decisions of the public officer as such; and subsection 3 required disclosure if real property or an enterprise was situated, or an enterprise did business, "within the jurisdiction" of the public officer. The court found the latter quoted phrase too vague for a criminal statute, and rejected the entire law because this provision was "its very heart and soul" and therefore inseparable. A.B. 450, on the contrary, in sections 14-16 limits the required disclosures to those economic interests which are important enough to affect materially the judgment of a reasonable person, and requires each of them to be disclosed. The ambiguity mentioned by the court is thus avoided.

The court also mentioned the "consideration * * * for which the income was received" as perhaps requiring disclosure of the amount of income and cost of income producing property. A.B. 450 avoids this phrase, and so this difficulty,

Exhibit A

entirely. The court also mentioned a New Jersey lower court holding that a public officer could not be required to disclose the economic interests of his spouse or children. A.B. 450 does so require. Our supreme court did not say that this would be unconstitutional, but suggested that it be carefully considered.

Since receiving your request, I have received a copy of the letter addressed to you by Don Klasic on behalf of the attorney general. His suggested definition of "indirect ownership" might well aid in the administration of the statute, though as explained above, I believe it is constitutional without further definitions. His suggested definition of "income" would distort the effect of section 15, because the percentages are to be measured before the exclusion of dividends, etc., but a proper definition could be supplied. The basic election law, chapter 293 of NRS, has been administered for 17 years without a definition of the well understood term "candidate," but the suggested definition could be used here.

With his objection to the inclusion of members on the state ethics commission who would be appointed by officers of the legislature, I must respectfully disagree. On this point, Buckley v. Valeo depends upon that provision of the second clause of Section 2 of Article II of the United States Constitution which empowers the President to appoint "all other Officers of the United States." The Nevada constitution contains no analogous provision, and the supreme court in Dunphy v. Sheehan discussed article 3 of the Nevada constitution without intimating any doubts about the composition of the commission. Mr. Klasic's other comments do not relate to constitutional issues.

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD:jll

Exhibit B

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

March 25, 1977

Honorable Lloyd W. Mann
Nevada State Assemblyman
Elections Committee
Legislative Building
Carson City, Nevada 89710

Re: AB 450 - The Proposed Nevada Ethics in Government Law

Dear Assemblyman Mann:

As a Deputy Attorney General for the State of Nevada, I served as legal counsel to the State Ethics Commission during its eight months of existence between September, 1975, and April, 1976. I attended every meeting of the Commission and attended every Commission discussion relating to advisory opinions. In addition, I wrote a number of opinions to state and local governmental officials interpreting NRS 281.410 - 281.750, which was formerly known as the Nevada Ethics in Government Law and which was subsequently declared unconstitutional by the Nevada Supreme Court in Dunphy v. Sheehan, 92 Nev., Advance Opinion 84 (April 29, 1976). In fact, I was the attorney who represented the State Ethics Commission before the Nevada Supreme Court in Dunphy v. Sheehan, supra.

I therefore believe that my experiences in working with the Commission, interpreting the previous law and defending the Commission in its lawsuit before the Supreme Court permit me to make some rather detailed comments regarding the possible effect and operation of AB 450 in its present form, in particular Sections 4 through 18. The remaining sections of AB 450, with the possible exception of Section 45, appear to present no difficulty and can be implemented and enforced without too much trouble. I will refer to Section 45 later in this letter.

Section 4 of AB 450 is the section devoted to definitions. I would note that two definitions previously included in the former Ethics in Government Law are excluded from AB 450. These are the definitions of the terms "candidate" and "income".

Since AB 450 makes numerous references to candidates with respect to the filing of financial disclosure statements, it would appear to be proper to include a definition of "candidate". The reason for this is that Section 14 of AB 450 requires a candidate for elective public office to file a statement of financial disclosre no later than the tenth day after the last day to qualify as a candidate for the office. The thrust of this section would appear to be directed toward those candidates who file affidavits of candidacy. However, under NRS 293.165, whenever a vacancy occurs in a party nomination for office, the vacancy may be filled by the appropriate political party. In nonpartisan nominations, whenever a vacancy occurs, the person who received the next highest vote in the primaries becomes the candidate. Unless the term candidate is defined to include these persons, the question is unclear whether, under Section 14 of AB 450, such persons must file statements of financial disclosure. If such persons are included in the definition of the term "candidate" then Section 14 could be interpreted to mean that such persons must file a statement of financial disclosure within ten days after being appointed to fill the vacancy in the party or non-partisan nomination. Accordingly, we would recommend that the term "candidate" be defined as it was defined in NRS 281.450 of the previous Nevada Ethics in Government Law, as follows:

> "'Candidate' means any person who has filed a declaration of candidacy or an acceptance of candidacy or has been designated to fill a vacancy in a party or non-partisan nomination."

Next, I would note that the term "income" is used frequently in AB 450, particularly with regard to what must be included in a statement of financial disclosure. Section 15 of AB 450 refers to "income" in two of the four sections relating to what must be contained in the statement. It should be noted that the reason that the previous Ethics in Government Law was declared unconstitutional was because, in the Supreme Court's opinion, those provisions of the former

law relating to financial disclosure were vague in what they required of persons filing such statements. In other words, the Court held that, because persons had to guess as to what they had to include on their statements of financial disclosure and were subject to being prosecuted for a misdemeanor if they guessed wrong, the law was unconstitutionally vague. By not defining the term "income" and giving a definite enough guideline to public officers in determining what should be listed as income, AB 450 runs the risk of being declared unconstitutional on the grounds of vagueness.

For example, Section 15(2) contains a reverse definition of "income" in providing that a public officer, when reporting income, does not have to report dividends, interest, bequests, alimony, child support, retirement or disability compensation and other compensation derived from any level of government service. On the other hand, Section 15(3) merely refers to the word "income" without containing these exclusions. The question may then arise as to whether a person reporting his income under Section 15(3) may exclude dividends, interest, bequests, etc. While one may argue that this is implied, the Supreme Court, in striking down the previous Ethics in Government Law, indicated that when a criminal statute was involved, a person should not have to rely on guesswork when complying with the statute. If the term "income" remains undefined for the purposes of Section 15, AB 450 would possibly once again invite a constitutional attack on the grounds of vagueness. Accordingly, I would recommend that the term "income" be defined in Section 4 of AB 450 as follows:

> "'Income' means any economic gain or profit, excluding dividends, interest, bequests, alimony, child support, retirement or disability compensation and other compensation derived from any level of government service."

With regard to the definitions which are contained in Section 4 of AB 450, I would refer you to Section 4(6) which defines the term "material interest". This currently reads as follows:

> "'Material interest' means direct or indirect ownership of 10% or more of the capital stock or other assets of any business entity."

It would appear that this definition is insufficient in that it does not define the term "indirect ownership". What is meant by this term? Does it mean ownership of 10% of a business entity by a public officer's spouse or children? Or does it include other persons or other means of indirect ownership? The statute contains no guidance on this point. Therefore, since the term "material interest" is an integral part of the disclosure provisions of Section 15, it would appear that AB 450 is vague on this point and, as a consequence, would invite direct constitutional attack on the basis of vagueness, in accordance with the decision of the Nevada Supreme Court in the case of Dunphy v. Sheehan, supra.

Accordingly, I would recommend that the term "indirect ownership" be defined as follows:

> "'Indirect ownership' means any financial interest owned by the spouse or dependent children of a public officer or candidate, by an agent on his behalf or by any business entity in which he has a direct ownership of 10 percent or more of the capital stock or other assets."

Section 5 of AB 450 provides, in part, as follows:

> "1. A state ethics commission, consisting of five members, is hereby created.
>
> "2. The members shall be appointed as follows:
>
> "(a) One member by the governor.
>
> "(b) One member by the speaker of the assembly.
>
> "(c) One member by the majority leader of the senate.
>
> "(d) One member by the Nevada Association of County Commissioners.
>
> "(e) One member by the Nevada League of Cities."

Section 5(2)(b) and (c) present constitutional difficulties by virtue of the fact that they permit members of the Legislature to choose persons who will serve upon an

executive agency. This would appear to be in violation of Article III of the Nevada Constitution which requires that the three branches of government shall be kept separate. This problem of separation of powers was most recently brought up in the case of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976).

In the Buckley case, the United States Supreme Court considered the constitutionality of the Federal Elections Commission, two members of which were appointed by the President, two members by the President Pro Tem of the Senate and two members by the Speaker of the House of Representatives. Two ex officio members were the Secretary of the Senate and the Clerk of the House of Representatives. The United States Supreme Court considered that this arrangement, in view of the executive functions performed by the Federal Elections Commission, constituted a violation of the separation of powers provisions of the United States Constitution. The Court noted that insofar as the powers which were given to the Commission were merely investigative and informative in nature, the appointment provisions of the Federal Elections Commission were constitutionally permissible. However, when the Commission's powers went beyond mere investigation and information, which are simply adjuncts to the legislative process, and into the more substantial powers of carrying out and enforcing the law, i.e., an executive function, the method of appointment to the Commission did violate the separation of powers provisions. The Court noted that the legislative branch may not exercise executive authority by retaining the power to appoint those who would execute its laws. Buckley, supra, at 96 S.Ct. 682. The Court noted that the Commission's authority to make rules and render advisory opinions along with its enforcement function made the Federal Elections Commission an executive agency. The Court concluded that the Commission's functions were not merely in aid of Congressional authority to legislate, but instead, were part of the administration and enforcement of a public law. Accordingly, the Supreme Court concluded that the Federal Elections Commission was unconstitutionally created. Buckley, supra, at 96 S.Ct. 692.

In the case of AB 450, it should be noted that Section 8 grants rule making, advisory opinion and enforcement powers to the State Ethics Commission. Accordingly, it

would appear that the Commission is performing an executive function rather than a legislative investigative function. In this connection, therefore, it would appear that Section 5 of AB 450, which permits the Speaker of the Assembly and the Majority Leader of the Senate to appoint members to the State Ethics Commission, would be a violation of Article III of the Nevada Constitution. Accordingly, it is recommended that Section 5(2)(b) and (c) of AB 450 be amended to provide that these two members of the Ethics Commission be appointed by some non-legislative authority.

Section 6(2) of AB 450 provides as follows:

> "No member of the commission may be a full-time or part-time public officer or employee or be a contractor with the state or any county or city."

This provision is legally permissible. However, I wish to draw your attention to the experience faced by the former Ethics Commission in choosing its members in September, 1975. The above-quoted section was part of the former Ethics in Government Law as NRS 281.580(4). However, the appointing authorities had a difficult time in finding persons who were eligible to serve upon the Commission since many of the people that they picked were contractors in one form or another with the State or with counties or cities. Indeed, at the first meeting of the Ethics Commission in September, 1975, two appointed members were disqualified because it was discovered at the last moment that they had contracts with their respective counties or cities. I bring this matter to your attention only for the purpose of recalling to your mind the difficulty of finding eligible persons to serve on the Commission in light of the requirements of Section 6(2).

Section 9(3) of AB 450 provides that no public officer or employee may approve, disapprove, vote, abstain from voting or otherwise act in any manner in which he has a "direct financial interest" without disclosing same. The term "direct financial interest" is rather confusing since, under Section 4, "financial interest" includes a "material interest" in the ownership of a business entity. A "material interest" under Section 4 includes both direct and indirect

ownership of a certain percentage of a business entity. In view of this definition of material interest which includes the word "indirect", the word "direct" in Section 9(3) rather confuses the issue. Since the term "financial interest" is adequately defined in Section 4, it is recommended that the word "direct" located on line 43 of page 3 of AB 450 be eliminated.

Section 9(4) contains on line 5 of page 4 of AB 450 the word "private business". To be consistent with the definitions contained in Section 4 of AB 450 of the term "business entity," it is recommended that the words "private business" be eliminated and that there should be substituted therefor the words "business entity".

In Section 9(4) of AB 450 it is also provided that a public officer or an employee is not precluded from making a bid on a government contract if the contracting process is controlled by the rules of competitive bidding, the officer has not taken part in developing the contract plans, the officer will not be personally involved in the opening or accepting of the offers and the "sources of supply are limited". This latter term, however, is somewhat vague. What is meant by the term "sources of supply are limited"? Does this mean one source, two or three? In order to avoid allegations of vagueness in this section of the law, it would appear to be important to define this term. You might wish to adopt the language of Section 20(2) of AB 450 and limit contracts from such public officers only if they are the "sole source of supply."

Section 9(5) of AB 450 contains two sentences. The first sentence is rather straight-forward. It reads as follows:

> "No public officer or employee serving in an agency which makes decisions may accept compensation from any private person to represent or counsel him on any issue pending before that agency."

The second sentence presents some language difficulties. It reads as follows:

> "No other public officer or employee may represent any private person for compensation before any agency which makes decisions with which such public officer or employee must

> associate in the course of his official duties, except that the opportunity to engage in such representation before an agency other than his own is not hereby denied if his public employment and pay are specifically to part-time service."

The purpose of the first sentence of Section 9(5) of AB 450 is obviously to prevent any public officer or employee from representing persons for compensation before his own particular agency. The purpose of the second sentence is to prevent public officers and employees from representing persons for compensation before other agencies except when public employment and pay are part-time. However, the term "other" when placed before the term "public officer" on line 14 of page 4 of AB 450 rather confuses the issue. For clarification it would seem better to place this word before the word "agency" on line 16 of page 4 of AB 450 so that this second sentence would read as follows:

> "No public officer or employee may represent any private person for compensation before any other agency which makes decisions with which such public officer or employee must associate in the course of his official duties, except that the opportunity to engage in such representation before an agency other than his own is not hereby denied if his public employment and pay are specifically limited to part-time service."

The words "...with which such public officer or employee must associate in the course of his official duties..." is also subject to confusion since there is no guarantee when a public officer may or may not come into official contact with any other public agency in the course of his official duties. The words might be eliminated from Section 9(5) for this reason.

Section 9(5) and (6) of AB 450 contain the word "compensation". The question which arises is what does this term mean? Is it limited only to income, or does it also include gifts, complimentary services and the like? In order to avoid a challenge to the law on the question of vagueness, it is recommended that the term "compensation" should be defined in Section 4 of AB 450 as follows:

> "'Compensation' means remuneration, consideration or payment in any form."

Section 10(1) of AB 450 provides that each advisory opinion rendered by the Ethics Commission shall be confidential unless released by the requester. This provision was contained in the former Ethics in Government Law and the Commission interpreted it to mean that this provision constituted an exception to the Open Meeting Law, since an opinion could not remain confidential if it was discussed by the Commission members in open meeting,. In order to clarify this point, and to protect members of the Ethics Commission from any future liability, it is recommended that Section 10 of AB 450 should be amended to include the sentence:

> "Those portions of the meetings of the commission devoted to considering and rendering advisory opinions interpreting the code of ethical standards shall be closed to the public."

Section 11(1) of AB 450 reads as follows:

> "The Commission's advisory opinions may include guidance to any public officer or employee on questions whether:
>
> "1. A conflict exists between his personal interest and his official duty and if so, whether he has a more substantial personal interest in the particular matter than other persons who belong to the same economic group or general class."

The portion of subsection 1 which begins with the words "and if so" and end with the words "general class" appears to be obsolete language left over from the former Ethics in Government Law. As you may recall, the former Ethics in Government Law provided that persons with a conflict of interest could not vote on matters before their agencies unless they were able to demonstrate that they did not have a more substantial personal interest in a particular matter that any person who belonged to same economic group or

or general class. However, these provisions are not contained in AB 450. Indeed, under Section 9(3) a public officer, upon declaring that he has a conflict of interest, is not precluded from voting on that matter so long as he does make the declaration public. There is no longer a question of whether a person has or has not a more substantial personal interest in a particular matter than other persons in the same economic group or general class. Accordingly, it is recommended that Section 11(1) be amended merely to read as follows:

> "The Commission's advisory opinions may include guidance to any public officer or employee on questions whether:
>
> "1. A conflict exists between his personal interests and his official duties."

Section 15 of AB 450 relates to the statements of financial disclosure which are to be filed by elective public officers and candidates for such offices. Subsection 1 requires such officers to disclose their length of residence in the State of Nevada and the district in which they are registered to vote. However, with the exception of partisan primary elections, it is not necessary for an elective public officer or candidate for public office to be a registered voter. It is only necessary that they be qualified electors. Under the Nevada Constitution, a qualified elector is a citizen of the United States over the age of 18 and a resident of the State of Nevada and the county or district from which he seeks election for at least thirty days prior to the election. Registration to vote is not an essential element in this definition. Furthermore, what district is referred to? Assembly district, Senate district, county commissioners district, judicial district? The boundaries of each are not necessarily the same. Accordingly, it is recommended that Section 15(1) be amended to read as follows:

> "His length of residence in the State of Nevada and in the district or county from which he is elected or is a candidate for election."

With regard to Section 15(2) if the definition of "income" is adopted in Section 4 as recommended earlier in this letter, the Legislature may wish to consider eliminating the language in subsection 2 of Section 15 found on lines 12-

14 on page 6, beginning with the words "excluding dividends".

Section 15(3) provides for financial disclosure as follows:

> "If he or any member of his household receives 15 per cent or more of his income from a business entity in which he has a material interest, each source of the entity's gross income which provided 15 per cent or more or its gross income for the preceding taxable year and amounted to $1,500 or more." (Emphasis added)

This section presents a problem which arose before the former Ethics Commission under the former Nevada Ethics in Government Law. This was the question of whether professional persons, such as doctors, lawyers, accountants and etc. were required to reveal the names of their clients since, obviously, such clients were the source of their professional business entity's gross income. By an opinion from this Office, it was determined that requiring the revealing of such sources would be in violation of certain provisions of the Nevada Evidence Code which prohibits the revealing of any confidences transmitted through a professional-client relationship. The problem, however, is again brought up by Section 15(3). This is a matter which should be resolved by the Legislature. Is it the policy of the Legislature, if AB 450 is adopted, that the names of clients of doctors, lawyers, accountants and etc. who pay more than $1,500 in fees to a professional business entity be revealed? As this is a policy matter, this office has no recommendation one way or the other. However, the question should be addressed and should be cleared up once and for all.

Section 15(4) provides for financial disclosure regarding:

> "The existence of his interest, or that of any member of his household, in excess of 10 percent in any bank, savings and loan association, small loan company, alcohol and alcoholic beverage business (whether retail or wholesale), gaming enterprise, public utility company, cemetery company, insurance company, mortgage or title insurance company, credit union or any business entity regulated by the Public Service Commission of Nevada or granted a franchise to operate by any municipal or county government."

The term "existence of his interest, or that of any member of his household, in excess of 10 percent" is vague since it does not address itself to the question of 10 percent of what. It is recommended that this initial sentence be amended, in accordance with the definition of "material interest" in Section 4 of AB 450, as follows:

> "The existence of his interest, or that of any member of his household, in excess of 10 percent of the capital stock or other assets in any bank...."

Another problem exists with regard to the listing of these particular entities in a statement of financial disclosure. It is apparent from reading the names of these entities which are listed in Section 15(4) that they are concerned with regulated businesses. However, not all of these regulated businesses have any relation to the particular functions of a particular public officer. For example, while it is true that banks and savings and loan associations are regulated on a State level and, therefore, it is appropriate for a State public officer to list any interests in such businesses, banks and savings and loan associations are not regulated on a local level. Accordingly, it would not seem to be proper to require a city officer to list his interest in such organizations. This factor becomes important because of the Nevada Supreme Court's reference, in the case of Dunphy v. Sheehan, supra, to the California case of City of Carmel--By-The-Sea v. Young, 466 P.2d 225 (Cal. 1970). The California Supreme Court stated specifically in the Carmel-By-The-Sea case:

> "The financial disclosure requirements of the statute now before us encompass indiscriminately persons holding office in a statewide agency, as well as those whose offices are local in nature (i.e., with 'a city, a county, a city and county, or a district, or any division, department, board, commission, body or agency of the foregoing'. § 3601, see also § 3605.
>
> No effort is made to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is to those having some rational connection with or bearing upon, or which might be affected by, the functions or jurisdiction of any particular agency,

whether statewide or local, or on the functions or jurisdiction of any particular officer or employee." (Emphasis added) Carmel-By-The-Sea, supra, at 232.

Therefore, it is the opinion of this office that Section 15(4) must be drastically rewritten in order to avoid constitutional challenges to AB 450 on the basis that, in requiring public officers to disclose their financial standing, the law is overbroad and infringes upon constitutional rights of privacy. The defect of Section 15(4), as presently constituted, is that it makes no attempt to relate the interest in the enumerated business entities to the actual functions of a public officer or candidate for a particular public office, i.e., statewide or local office.

Section 16 of AB 450 appears to be totally inconsistent with the provisions of Section 9(5) of the bill. Section 9(5) prohibits, if you will remember, public officers or employees from representing, for compensation, anyone before their particular agencies. However, despite this prohibition, Section 16 then purports to provide that public officers who do represent persons, for compensation, before their agencies, must make a report of that representation. The question may thus be asked, does AB 450 permit or prohibit a public officer from representing someone, for compensation, before his particular agency? Section 9 prohibits it, but Section 16 appears to permit it.

Section 9(5) also prohibits a public officer from representing any person, for compensation, before any other agency except when the public service of the public officer is part-time. Section 16, on the other hand, appears to permit the public officer, despite the prohibition of Section 9(5), to represent a person, for compensation, before some other public agency, regardless of whether the public officer performs full-time or part-time public employment.

Since Section 9(5) and Section 16 are so obviously in conflict, the Legislature is going to have to determine which of these provisions it wishes to retain and which it wishes to reject.

Furthermore, there appears to be no rational reason for requiring a candidate for elective public office to reveal the fact that he represented a private client

before the agency for which he is running or before some other agency on the same level of government as the agency for which he is running. If the candidate is an incumbent, then these activities are prohibited by Section 9(5) since he is already a public officer. On the other hand, if the candidate is not an incumbent, he is a private individual and is fully entitled to represent persons before any agency he desires. Therefore, there appears to be no justification which would hold up in court which would require a non-incumbent candidate to report the names of persons whom he represented in a private capacity for compensation before any public agency prior to being elected.

Furthermore, should Section 16 be retained by the Legislature and should it be amended to reflect the above concerns, it should be pointed out that Section 16(1)(b) requires that a public officer making the disclosures must reveal the name of each client whom he represented. Once again, this raises the question of whether a doctor, lawyer, accountant, etc. must reveal the names of his clients in contravention to the Nevada Evidence Code dealing with privileged communications.

Sections 19 through 44 make certain amendments to existing Nevada law regarding conflicts of interest. Because of the existence of these provisions, it is recommended that Section 13 of AB 450 be amended to include the following sentence:

> "Nothing in the Nevada Ethics in Government Law exempts any person from applicable provisions of any other law of this state relating to conflicts of interest of public officers and employees."

Section 45 of AB 450 appropriates $5,000 for the fiscal year 1977-78 for the use of the State Ethics Commission. It appropriates a like sum for the fiscal year 1978-79. Although the question of appropriations is a policy matter wholly within the jurisdiction of the Legislature, I feel obliged to discuss my experience with the actual workload of the former Ethics Commission.

If you will recall, the former Ethics Commission was also given a $5,000 appropriation for each fiscal year in the preceding biennium, apparently on the theory that because the law provided that the Ethics Commission must

meet at least quarterly, the sum of $5,000 would be sufficient for the Commission's needs. However, the press of business required the Ethics Commission to meet at least once a month. It is safe to assume that a newly formed Ethics Commission, presuming AB 450 is enacted, would also be quite busy. As a matter of experience, I can report to you that numerous requests for advisory opinions were received by the Commission. The necessity of determining these matters in an expeditious manner almost naturally precludes quarterly meetings. As a matter of necessity, the Commission is going to have to meet at least once a month.

It may safely be assumed, therefore, that the Ethics Commission will meet at least twelve times a year. However, as attached Exhibit "A" demonstrates, each meeting of the former State Ethics Commission cost the Commission in excess of $500.00 just for salary, travel costs and per diem alone. Exhibit "A" was prepared by the Budget Division of the Department of Administration for the Ethics Commission's use. It represents the approximate costs of meetings held in either Carson City or Las Vegas. (The Commission met only in those two cities.) At $500.00 per meeting, and assuming that the Ethics Commission to be established by AB 450 will meet twelve times a year, this will mean that by the end of the first fiscal year of operation, the Ethics Commission will be "in the red" by at least $1,000.00.

Furthermore, if all of the economic resources of the Ethics Commission is thus to be devoted only to the payment of salaries, travel costs and per diem necessary for meetings, there will be no funds available at all for any of the necessary clerical responsibilities of the Commission. The Commission, as was the case with the former Ethics Commission in 1975-76, will be unable to hire any clerical help, purchase any stationery or office equipment, or maintain any office space. Previous experience with the former Ethics Commission reveals that the only reason it was able to function in these clerical matters was because its Chairman, Father Larry Dunphy, was willing to spend the time and effort to perform all clerical functions on his own.

It should also be noted that Section 15 of AB 450 requires the Ethics Commission to prepare forms for financial disclosure. This, however, costs money and if the resources of the Commission are to be expended on meetings, there will

be no funds available for the printing of such forms nor will there be funds available for the Commission to publish hypothetical opinions, as is required by Section 10 of AB 450. Nor will there be any funds available for the Commission to maintain files of statements of financial disclosure nor to rent office space for the purpose of making such statements available for public inspection as is required by Section 8 of AB 450. Certainly, no member of the Ethics Commission is going to make his home available for such public inspection of these records.

In short, previous experience with the operations of the former Ethics Commission reveals that, in light of the increased duties of the Ethics Commission imposed by AB 450 and the proven experience of the former Ethics Commission that a newly formed Ethics Commission will be inundated by requests for opinions by public officers, the $5,000.00 per fiscal year appropriation simply will not be enough for the Commission to do its job effectively.

Finally, I wish to address the question of the drafting of advisory opinions pursuant to Section 10 of AB 450. Previous experience with the former Ethics Commission reveals that none of the lay members of that Board had any experience in drafting legal opinions. Indeed, you may recall that opinions which were previously issued by the former Ethics Commission were deficient in applying the facts of a particular public officer's conflict situation with the provisions of the Nevada Ethics in Government Law. In short, the opinions drafted by the lay members of the Ethics Commission were poorly drafted and, in some instances, were poorly reasoned.

It is apparent to me, as a lawyer, that an Ethics Commission, composed of non-lawyers, who have as one of their prime functions the rendering of legal advisory opinions on the conduct of public officers, will not be able to adequately do the job. At the very least, the Commission should have some legal expertise available for the purpose of drafting such opinions.

Since the purpose of the previous Ethics In Government Law was to insure that the Ethics Commission was completely independent of any connection with any public officer,

the Office of the Attorney General took the position that, although willing to advise the Commission on interpretations of the statute, it would not draft or write the advisory opinions for the Commission itself. This was a function which was placed in the hands of the Ethics Commission itself and which it had to do on its own. Our Office would take the same position with regard to the Ethics Commission which is proposed to be established by AB 450. In that connection, therefore, it appears to be essential that the Legislature authorize the Commission to hire its own attorney and for this purpose to increase the Commission's appropriations to permit the expense of same.

I trust that the above information will prove useful to you in considering this bill.

Sincerely,

ROBERT LIST
Attorney General

By Donald Klasic
Donald Klasic
Deputy Attorney General

DK/ema

cc: Honorable Joseph Dini
Honorable Nash Sena
Honorable Lonie Chaney
Honorable Dale Goodman
Honorable Nicholas Horn
Honorable James Kosinski
Honorable Sue Wagoner

Exhibit B

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

March 25, 1977

The Honorable James I. Gibson
Nevada State Senator
Senate Committee on Government Affairs
Legislative Building
Carson City, Nevada 89710

Re: SB 351 - The Proposed Nevada Ethics In Government Law

Dear Senator Gibson:

As a Deputy Attorney General for the State of Nevada, I served as legal counsel for the State Ethics Commission during its eight months of existence between September, 1975 and April, 1976. I attended every meeting of the Commission and attended every Commission discussion relating to advisory opinions. In addition, I wrote a number of opinions to State and local government officials interpreting NRS 281.410-281.570, which was formerly known as the Nevada Ethics In Government Law and which was subsequently declared unconstitutional by the Nevada Supreme Court in the case of Dunphy v. Sheehan, 92 Nev. Adv. Op. 84 (April 29, 1976). In fact, I was the attorney who represented the State Ethics Commission before the Nevada Supreme Court in that case.

I, therefore, believe that my experience in working with the Commission, interpreting the previous law and defending the Commission in its lawsuit before the Supreme Court, permit me to make some rather detailed comments regarding the possible effect and operation of SB 351 in its present form, in particular Sections 3 through 26. The remaining sections of SB 351, with the possible exception of Section 54, appear to present no difficulty and can be implemented and enforced without too much trouble. I will refer to Section 54 later in this letter.

Sections 4 through 8 provide definitions of certain terms used in the bill. I would recommend the addition of two other definitions. First, it should be noted that Section 14 (2),

which is part of the Code of Ethical Standards, makes reference to an elective officer's household. It would seem desirable to define this term and I would recommend the definition contained in AB 450, which is the ethics legislation which was introduced in the Assembly, as follows:

> "'Household' means an association of persons who live in the same home or dwelling, sharing its furnishings, facilities, accommodations and expenses, and who are related by blood, adoption or marriage."

In addition, Section 18 (2), which contains a description of the items which should be enumerated in an elected officer's statement of financial disclosure, refers to the "place of business" of any business entity or self-employment in the State of Nevada. Again, for clarification, it would seem desirable to have a definition of this term. I would recommend one of the definitions contained in 32A Words and Phrases, "Place of Business," as follows:

> "'Place of Business' means a location where business is transacted or conducted."

Section 10 of SB 351 provides, in part, as follows:

> "1. A State Ethics Commission, consisting of five members, is hereby created.
>
> "2. The members shall be appointed as follows:
>
> "(a) One member by the governor.
>
> "(b) One member by the speaker of the assembly.
>
> "(c) One member by the majority leader of the senate.
>
> "(d) One member by the Nevada Association of County Commissioners.
>
> "(e) One member by the Nevada League of Cities."

Section 10 (2)(b) and (c) present constitutional difficulties by virtue of the fact that they permit members of the legislature to choose persons who will serve in an executive agency. This would appear to be in violation of Article III of the Nevada Constitution which requires that the three branches of government shall be kept separate. This problem of separation of powers was most recently brought up in the case of Buckley v. Valeo, 421 U.S. 1, 96 Sup. Ct. 612 (1976).

In the Buckley case, the United States Supreme Court considered the constitutionality of the Federal Elections Commission, two members of which were appointed by the President, two members by the President Pro Tem of the Senate and two members by the Speaker of the House of Representatives. In addition, two ex officio members of the Commission were the Secretary of the Senate and the Clerk of the House of Representatives. The United States Supreme Court considered that this arrangement, in view of the executive functions performed by the Federal Elections Commission, constituted a violation of the separation of powers provisions of the United States Constitution. The Court noted that insofar as the powers which were given to the Commission were merely investigative and informative in nature, the appointment provisions of the Federal Elections Commission would be constitutionally permissible. However, when the Commission's powers went beyond mere investigation and information, which are simply adjuncts to the legislative process, and into the more substantial powers of carrying out and enforcing the law, i.e., an executive function, the method of appointment to the Commission did violate the separation of powers provisions. The Court noted that the legislative branch may not exercise executive authority by retaining the power to appoint those who would execute its laws. Buckley, supra, at 96 Sup. Ct. 682. The Court noted that the Commission's rule making authority, its power to render advisory opinions and its enforcement functions made the Federal Elections Commission an executive agency. The Court concluded that the Commission's functions were not merely in aid of congressional authority to legislate, but instead, were part of the administration and enforcement of a public law. Accordingly, the Supreme Court concluded that the Federal Elections Commission was unconstitutionally created. Buckley, supra, at 96 Sup. Ct. 692.

In the case of SB 351, it should be noted that the proposed State Ethics Commission is granted by Section 13 (1) and (2) the authority to render advisory opinions and to make

general regulations as may be necessary to carry out the purposes of Sections 2 to 26 of SB 351. Accordingly, it would appear that the Commission is performing an executive function rather than a legislative investigative function. In this connection, therefore, it would appear that Section 10 of SB 351, which permits the Speaker of the Assembly and the Majority Leader of the Senate to appoint members of the proposed State Ethics Commission, would be a violation of Article III of the Nevada Constitution. Accordingly, it is recommended that Section 10 (2)(b) and (c) of SB 351 be amended to provide that these two members of the Ethics Commission be appointed by some non-legislative authority.

Section 11 (3) of SB 351 provides as follows:

> "No member of the commission may be a full-time or part-time public officer or employee or be a contractor with the State or any county or city."

This provision is legally permissible. However, I wish to draw your attention to the experience faced by the former Ethics Commission in choosing its members in September, 1975. The above quoted section was part of the former Ethics In Government Law as NRS 281.580 (4). However, the appointing authorities had a difficult time finding persons who were eligible to serve upon the Commission since many of the people that they initially picked were contractors in one form or another with the State or with counties or cities. Indeed, at the first meeting of the Ethics Commission in September, 1975, two appointed members were disqualified because it was discovered at the last moment that they had contracts with their respective counties or cities. I bring this matter to your attention only for the purpose of recalling to your mind the difficulty of finding eligible persons to serve on the Commission in light of the requirements of Section 11 (3).

Section 14 of SB 351 promulgates a code of ethical standards. Each standard, however, utilizes the word "should" as the operable verb, setting down the ethical standard. It would seem that the word "should" as opposed to the word "shall" is somewhat equivocal. Black's Law Dictionary (4th Ed. 1951) at page 1549 defines the word "should" as the past tense of "shall," but the term ordinarily implies duty or obligation. It does not ordinarily express certainty. According to Words and Phrases, the word "should" denotes an obligation in various degrees, usually milder than the word "ought." 39 Words and Phrases 313 "Should." The word "shall," on the other hand, is generally imperative or mandatory. Black's Law Dictionary, 1541 (4th Ed. 1951).

Of course, it is strictly a policy matter within the Legislature's determination as to whether it wishes the code of ethical standards, as promulgated in Section 14 of SB 351, to flatly prohibit certain types of conduct or merely to serve as a desirable guide. I merely offer these comments on the definitions of the terms "should" and "shall" for the Legislature's consideration on this point.

Section 15 (1) of SB 351 provides that each advisory opinion rendered by the Ethics Commission shall be confidential unless released by the requester. This provision was contained in the former Ethics In Government Law and the Commission interpreted it to mean that this provision constituted an exception to the Open Meeting Law, since an opinion could not remain confidential if it was discussed by the Commission members in open meeting. In order to clarify this point, and to protect members of the Ethics Commission from any future liability, it is recommended that Section 15 of SB 351 should be amended to include the sentence:

> "Those portions of the meetings of the commission devoted to considering and rendering advisory opinions interpreting the code of ethical standards shall be closed to the public."

Section 16 (1) provides as follows:

> "The Commission's advisory opinions may include guidance to any elective officer on questions as to whether or not:
>
> "1. A conflict exists between his personal interest and his official duty and if so, whether he has a more substantial personal interest in a particular matter than other persons who belong to the same economic group or general class."

This provision appears to relate to Section 22 (1)(b) which provides that no elective officer may participate in or attempt to influence the outcome of any action by his agency if the action would increase the value of his property or interest. An exception is provided if the action would affect that property or interest.

> "(b) To no greater extent than the action would affect similar property or interest of other persons who are engaged in the same industry, profession or occupation or are part of the same significant segment of the general public."

Since this appears to be the provision to which Section 16 (1) seems to be related, it would seem appropriate and consistent to amend the language of Section 16 (1) to more accurately reflect the provisions of Section 22 (1)(b). Therefore, it is recommended that Section 16 (1) be amended to read as follows:

> "1. A conflict exists between his personal interest and his official duty and if so, whether he has a more substantial personal interest in a particular matter than exists for similar property or interests of other persons who are engaged in the same industry, profession or occupation or are part of the same significant segment of the general public."

This office would also recommend the elimination of Section 16 (4) since it seems to imply that the Commission can issue an opinion that a public official can participate in an agency action in which he has a conflict of interest, provided he has special knowledge which is an indispensable asset of the agency and is needed by it to reach a decision. However, this is in direct conflict with Section 22 of SB 351 which specifies certain instances in which a person who has a conflict of interest can participate in his agency's decision. The possession of special knowledge is not one of the criteria listed in Section 22 for permitting such a public official to vote in such an action.

Section 18 of SB 351 provides that the statement of financial disclosure which elected public officers and candidates must file should be filed on or before May 1 of each year and should cover the preceding 12 month period ending April 1. However, past experience with the former Ethics In Government Law, in which public officers had filed financial disclosure statements prior to the law being declared unconstitutional, indicates that this time period of disclosure presents problems of convenience to public officials in preparing their statements. Generally, many public officials will have already prepared their income tax returns on the basis of the preceding taxable year and to require them, instead, to furnish financial information for the period of April of the preceding year and April of the year of filing will create some accounting difficulties for them. Accordingly, we would recommend that the time period used in AB 450, which is the Ethics Commission Law proposed in the Assembly, be adopted instead so that Section 18 would read as follows:

> "On or before May 1 of each year, each elective officer shall file a statement of disclosure covering the preceding taxable year, subscribed by him and containing...."

Section 18 (1) requires an elective officer to file a statement containing a description of each source from which he received "...any wages, salaries or commissions...." The term "wages" presents some problems with respect to the question of whether professionals, such as lawyers, doctors, accountants, etc., are required to disclose the sources of their professional fees. The term "wages" is given a broad definition in Black's Law Dictionary, 1750-1751 (4th Ed. 1951) where it is defined as, "A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him." (Emphasis added.) It is also described as, "Every form of remuneration payable for a given period to an individual for personal services..." and as a, "...specified sum for a given time of service or a fixed sum for a specified piece of work." Black's Law Dictionary, supra. These definitions could conceivably embrace professional fees.

On the other hand, Words and Phrases is somewhat equivocal. It indicates that there are cases which interpret "wages" to include professional fees such as an attorney's fee, but that other cases hold generally that the term "wages" is

usually employed to distinguish the sum which is paid to persons hired to perform menial labor and that, instead, the compensation paid to professionals is known as a "fee." 44A Words and Phrases, 79-85, "Wages."

It would seem important to have this matter cleared up now since the question of whether professional persons must report their compensation will surely, as it happened in the past under the former Ethics In Government Law, come up in the future.

Under the former Ethics In Government Law the question came up under the context of public officers reporting their "income." By an opinion from this office, it was determined that requiring professional persons to reveal the sources of their income would be in violation of certain provisions of the Nevada Evidence Code which prohibits the revealing of any confidences transmitted through a professional-client relationship. It would seem important, therefore, to determine the policy of the Legislature, first with respect to a definition of the term "wages" and, second, whether the Legislature does wish to have the names of clients of doctors, lawyers, accountants and etc., revealed as the sources of "wages."

Section 19 of SB 351 also requires a statement of financial disclosure to be filed by nonincumbent candidates for election to office. Experience under the former Ethics In Government Law reveals that it is important to require a time limit within which nonincumbent candidates should file such a statement. The way the bill currently reads, nonincumbent candidates are to file the statement at the time they file their declarations of candidacy for the office. However, past experience under the former law reveals that many nonincumbent candidates were unaware of this fact and, therefore, when preparing to file their affidavits of candidacy were not prepared to simultaneously file their statements of financial disclosure. This could, conceivably, result in the Secretary of State or County Clerk refusing to accept a declaration of candidacy until such statement of financial disclosure is also filed. Where filings of affidavits of candidacy are put off until the last day for filing, this refusal could be fatal to that candidate's attempt to run for election. It is, therefore, recommended that Section 19 (1) should be amended to read, as follows:

> "1. Each nonincumbent candidate for election to a public office within 30 days after he files his declaration of candidacy or acceptance of candidacy or has been designated to fill a vacancy in a party or non-partisan nomination."

The 30 day time limit would be consistent with the 30 day time limit under Section 19 (2) relating to officers appointed to serve in an office.

Section 25 (1) provides that a civil suit to enjoin any violations of Sections 22 to 24 of SB 351 may be brought by the district attorney in any county where a violation of said sections occur or, alternatively, such action may be brought by, "...the attorney general if the district attorney fails to take action...." In the opinion of this office, this language is merely a "red flag" to any district attorney to encourage him not to take any action for any violations of Section 22 to 24 of SB 351 in the confident knowledge that if he does not choose to take such action, the attorney general must ultimately do so. This appears to be placing an unfair burden upon the Attorney General's Office to carry out the responsibilities of local district attorneys. We would note that under NRS 252.190, a district attorney may be prosecuted for neglect of duty and may be punished for the same as a gross misdemeanor. In the opinion of this office, this would constitute a sufficient incentive to a district attorney to enforce the provisions of SB 351. Accordingly, it is recommended that the language, "...the attorney general if the district attorney fails to take action...," found on lines 26 and 27 of page 6 of SB 351 be eliminated.

Section 25 (2) provides that a court may temporarily restrain the execution of any decision, contract, etc., if a violation of Section 22 to 24 of SB 351 would occur thereby. Such a temporary restraint is to be issued "upon a preliminary showing" that there are reasonable grounds to believe that such violation has occurred. It would appear important to define this term, "preliminary showing." As the victim of numerous ex parte restraining and stay orders perpetrated upon agencies which I represent by local attorneys, it would seem important to know whether the Legislature intends this term to mean a preliminary "hearing" or whether merely an ex parte order supported by verified affidavit is sufficient.

Section 54 of SB 351 appropriates $5,000 for the fiscal year 1977-1978 for the use of the proposed State Ethics Commission. It appropriates a like sum for the fiscal year 1978-1979. Although the question of appropriations is a policy matter wholly within the jurisdiction of the Legislature, I feel obliged to discuss my experience with the actual workload of the former Ethics Commission.

If you will recall, the former Ethics Commission was also given a $5,000 appropriation for each fiscal year in the preceding biennium, apparently on the theory that because the law provided that the Ethics Commission must meet at least quarterly, a sum of $5,000 would be sufficient for the Commission's needs. However, the press of business required the Ethics Commission to meet at least once a month for every month of its existence. It is safe to assume that the proposed Ethics Commission, presuming SB 351 is enacted, would also be quite busy. As a matter of experience, I can report to you that numerous requests for advisory opinions were received by the Commission. The necessity of determining these matters in an expeditious manner almost naturally precludes quarterly meetings. These requests simply could not wait three months to be resolved by a quarterly meeting of the Commission. As a matter of necessity, the Ethics Commission proposed by SB 351 is going to have to meet at least once a month.

It may safely be assumed, therefore, that the Ethics Commission will meet at least twelve times a year. However, as the attached Exhibit "A" demonstrates, each meeting of the former State Ethics Commission cost the Commission in excess of $500 just for salary, travel costs and per diem alone. Exhibit "A" was prepared by the Budget Division of the Department of Administration for the Ethics Commission's use. It represents the approximate costs of meetings held in either Carson City or Las Vegas. (The Commission met only in those two cities.) At $500 per meeting, and assuming that the Ethics Commission to be established by SB 351 will meet twelve times a year, this will mean that by the end of the first fiscal year of operation, the Ethics Commission will be "in the red" by at least $1,000.

Furthermore, if all of the economic resources of the Ethics Commission is thus to be devoted only to the payment of salaries, travel costs and per diem necessary for meetings, there will be no funds available for any of the necessary clerical

responsibilities of the Commission. The Commission, as was the case with the former Ethics Commission in 1975-76, will be unable to hire any clerical help, will be limited in its purchases of office equipment, and will not be able to maintain any office space. Previous experience with the former Ethics Commission reveals that the only reason it was able to function in these clerical matters was because its chairman, Father Larry Dunphy, was willing to spend the time and effort necessary to perform all clerical functions on his own.

It should also be noted that there is no specific provision in SB 351 for anyone to prepare financial disclosure forms. Assuming that the State Ethics Commission would have this authority under Section 13 (2), which is the authority to promulgate such regulations as are necessary to carry out the purposes of sections 2 to 26 of SB 351, this would mean that the State Ethics Commission would have to prepare these forms. This, however, costs money and if the resources of the Commission are to be expended solely on meetings, there will be no funds available for the printing of such forms. Nor will there be funds available for the Commission to publish hypothetical opinions, as is required by Section 15 (2) of SB 351.

In short, previous experience with the operations of the former Ethics Commission reveals that in light of the duties imposed upon the proposed Ethics Commission by SB 351 and the proven experience of the former Ethics Commission that a newly formed Ethics Commission will be inundated by requests for opinions by public officers, the $5,000 per fiscal year appropriation simply will not be enough for the Commission to effectively do its job.

Finally, I wish to address the question of the drafting of advisory opinions pursuant to Section 15 of SB 351. Previous experience with the former Ethics Commission reveals that none of the lay members of that board had any experience in drafting legal opinions. Indeed, you may recall that opinions which were previously issued by the former Ethics Commission were deficient in applying the facts of a particular public officer's conflict situation with the provisions of the Nevada Ethics In Government Law. In short, the opinions drafted by the lay members of the Ethics Commission were poorly drafted and, in some instances, were poorly reasoned.

It is apparent to me, as a lawyer, that an Ethics Commission, composed of non-lawyers, who have as one of their prime functions the rendering of legal advisory opinions on the conduct of public officers, will not be able to adequately do the job. At the very least, the Commission should have some legal expertise available for the purpose of drafting such opinions.

Since the purpose of the previous Ethics In Government Law was to insure that the Ethics Commission was completely independent of any connection with any public officer, the office of the Attorney General took the position that, although it was willing to advise the Commission on interpretations of the statute, it would not draft or write the advisory opinions for the Commission itself. This was a function which was placed in the hands of the Ethics Commission and which it had to do on its own. Our office would take the same position with regard to the Ethics Commission which is proposed to be established by SB 351. In that connection, therefore, it appears to be essential that the Legislature authorize the Commission to hire its own attorney and for this purpose to increase the Commission's appropriations to permit the expense of same.

I trust the above information will prove useful to you in considering this bill.

Sincerely,

ROBERT LIST
Attorney General

By Donald Klasic
Donald Klasic
Deputy Attorney General

DK:dj

Attachment: Exhibit "A"

cc: Honorable Margie Foote
Honorable Wilbur Faiss
Honorable Mary Gojack
Honorable Norman Hilbrecht
Honorable Jack L. Schofield
Honorable William J. Raggio
Honorable Richard Bryan
Honorable Thomas Wilson

Ex. B

State of Nevada
State Ethics Commission
1976 Statement of Operation
As of 1/31/76

Approximate Costs Per Meeting - Carson City:

Salaries 5 @ $40.00			$200.00
V.H. McDowell-	Phone	$ 60.22	
	Meals	10.00	
	Reno-CC	10.20	80.42
M. Settlemeyer			8.60
K. Mcdonald			0
R. Prince	- Per Diem	$ 38.00	
	Vehicle	109.82	147.82
Fr. L. Dunphy-	Phone	$ 60.22	
	- Meals	10.00	
	- Reno-CC	10.20	80.42
NIC - 1 month $1,250.00 @ .30/$100.00			3.75
			$521.01

Approximate Costs Per Meeting - Las Vegas:

Salaries 5 @ $40.00			$200.00
V.H. McDowell			0
Fr. L. Dunphy			0
K. Mcdonald -	Plane	$60.22	
	- Per Diem	10.00	
	- Vehicle CC-Reno	10.20	80.42
M. Settlemeyer--	Plane	$60.22	
	- Per Diem	10.00	
	- Vehicle	15.30	85.52
R. Prince	- Per Diem	$38.00	
	- Vehicle 570 @ .17	96.90	134.90
NIC - 1 month $1,250.00 @ .30/$100.00			3.75
			$504.59

EXHIBIT "A"

Exhibit C

common cause NEVADA

March 28, 1977
Testimony before the Senate Government Affairs Committee, Assembly Elections Committee
Re: SB 351 and AB 450 / Ethics Bills
By: Pat Gothberg, CC / Nevada

Common Cause commends this legislature's effort at passing a constitutionally sound Ethics Law. There are some basic principles which we feel should be included in a law of this kind. In using those principles as a guideline, there is room for consideration of varying approaches. We believe that there is a unique quality about Nevada. What might be workable in another state might not necessarily be workable in Nevada. If the threads of good sense and workability are combined with an understanding of our goal, we believe a law can be written which will do what it should. The goal, as much as anything, should be to dispel common suspicions that corruption is a part of the democratic system.

It would be silly to attempt to eliminate conflicts of interest. After all, we all have conflicts of one sort or another. We can, however, provide for a mechanism to help dispense information to the public of where conflicts exist. This can be done, not clothed in the attitude that conflicts are somehow bad, but in an effort to recognize that public office is a public trust and any effort to realize personal gain through public office is a violation of that trust.

Basically, the following ingredients would blend to make a good Ethics Law:

1. a comprehensive code of ethics

2. coverage of all elected state and local officials and candidates for such offices, in the executive and legislative branches of government as well as employees in top policy-making positions. There is room for discussion on which appointed officials, if any, should be covered.

3. mandatory and detailed disclosure of economic interests and sources of income by officials and members of their families living in the household

4. Tough sanctions enforced by an independent enforcement commission

Ex. C

In looking at AB 450 and SB 351, I have decided to use AB 450 and make suggestions, many of them from SB 351 and other model bills, where needed.

1. The definition of "public officer" on page 2, line 21 excludes any officers of irrigation districts and special districts. You may choose to bracket that out when you consider that Incline Village GID is bigger in assessed valuation than seven Nevada Counties. The Las Vegas Valley Water District and the Clark County Sanitation District would both be excluded the way the definition now reads.

2. On page 2, line 31 and 32, "Public Employee" is defined. We would suggest the addition of the following wording, "'Public Employee' shall not include individuals who are employed by the state or any political subdivision thereof in teaching as distinguished from administrative duties." (For your information the definition of "public employee" is considerably different in model bills. Refer to attached model bill.)

3. Section 5 on page 2 maps out the establishment of the State Ethics Commission. It seems appropriate to add wording here to cover, a) how many members would constitute a quorum, , b) what procedure would enable the calling of a meeting (such as the chairman or any 3 members), and , c) if there should be a vice chairman to act in the chairman's absence. (Refer to model bill, pg. 12, 13)

4. Section 6 on pages 2 and 3 gives guidelines for the selection of members of the Ethics Commission. We would suggest the following wording be added here, "No individual shall be appointed to more than one full four-year term on the Commission."

For your consideration, the following is taken from a different model bill than the one attached. If you decide to use any of this, it seems appropriate to include it in Section 6:

(d) No individual, while a member or employee of the commission, shall:

a) hold or campaign for any other public office;

b) hold office in any political party or political committee;

c) participate in or contribute to any political campaign; or

d) directly or indirectly attempt to influence any decision by a governmental body, other than as a representative of the commission on a matter within the jurisdiction of the commission.

(e) The governor shall declare vacant the position on the commission of any member who takes part in activities prohibited by subsection (d) of this section. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the

unexpired term of the member he succeeds, and is eligible for appointment to one full five (four) year term thereafter. Any vacancy occurring on the commission shall be filled within thirty days in the manner in which that position was originally filled.

5. Section 9 on pages 3 and 4 establishes a code of ethical standards which applies to elected and appointed officials. We support this code as it seems to cover more than the one in section 14 of SB 351.

6. Neither AB 450 or SB 351 give many duties to the Commission. We strongly urge that you look carefully at what you are doing here in establishing and funding a State Ethics Commission. Surely it makes sense to prescribe duties so that the Commission can work as an effective tool within the system. This is a serious shortcoming of both bills under consideration, and it is hoped that you will take a few minutes to compare AB 450 and SB 351 with the attached model bill. This attached bill is not a Common Cause bill. The attached bill came out of the National Conference of State Legislatures and was approved by the NCSL at its annual meeting in Kansas City on September 3, 1976. Assemblyman Demers was the Nevada member on the Committee on Legislative Ethics and Elections of that conference. We would also suggest that wording should be added as follows: "The Commission shall act as the primary civil and criminal enforcement agency for violations of the provisions of this act."

7. Section 11 on pages 4 and 5 in AB 450 is basically the same as the comparable section in SB 351. We have no problems with this section which outlines areas of consideration of the commission.

8. Section 12 on page 5 provides for your being able to establish a Senate or Assembly committee on ethics as was discussed in committees last week. (AR 20, SR 13) It also provides for the establishment of local ethics committees. We have no additional suggestions to make in this section.

9. As we move on to section 14 which requires the filing of financial disclosure statements, we would prefer to see top level state officials be required to file. We recognize that the coverage of appointed officials was at the base of the problems with the law two years ago. We would not propose to alter the concept here so greatly that problems may again arise. We are simply pointing out that the key in who should file should be the question of are those people who spend funds, grant licenses, etc. covered? If they are covered here, there is no reason to change. If not, possibly the definition of "public employee" on the attached model bill might help to provide a basis for their inclusion in this section. By changing the wording on page 5, lines 40 and 41, the new idea would be, "Every candidate for elective public office, every public officer holding an elective office, and every top level public employee shall file with the Commission a statement of financial disclosure, as follows"

10. Section 14 also provides for statements to be filed every two years. This is generally one year in most other laws and is one year in SB 351. I would wonder why two-year intervals were selected here. Might the bi-annual legislative sessions be the reason? Would annual reporting be better?

11. If you will look at Section 15 on page 6 of AB 450 and compare it to section 18 on page 4 and 5 of SB 351, you will see that two entirely different concepts are used to determine what information must be disclosed on financial disclosure statements. It is at this point that SB 351 seems to have a better grasp of what should be disclosed and how. Rather than go through either of these sections point by point, I have listed here the sources from which we feel disclosure should be made. For the most part, we would support section 18 on page 4 of SB 351. We question the percentage approach as is used in AB 450. 10% of a millionaire's income represents a different kind of impact than, say, does 10% of the income of a person who earns $10,000 per year. Likewise, SB 351 requires disclosure of all income; This also seems unnecessary. We would prefer to see sources listed as follows:

a) the name, address, and nature of association of any business entity in which the official had an interest worth of $1,000 or more . If the business or entity had done business with or been regulated by the state or any political subdivision thereof, the date and nature of such business or regulation should be reported.

b) The name, address and activity from which the official received income over $1,000, as well as position held.

c) the legal description of all real property in the state, the fair market value of which exceeds $2,500 in which a direct or indirect financial interest was held.

d) the name and address of each creditor to whomthe value of $1,000 or more was owed

e) the nature and amount of any interest of $1,000 or more (interest earned)

f) the name and address of any person from whom a gift or gifts valued in excess of an amount certain were received

Again, may I say that AB 450 needs strengthening in this section. Real property and gifts and loans are not covered in AB 450. The six areas listed above are covered in SB 351. Why require half-hearted disclosure statements? If we are going to do this, let's do it right.

(Please refer to the bottom of page 11 in the attached model bill, lines 48-51.)

12. You might care to discuss where the reports should be filed. We support their being filed with the commission as is done in AB 450. The Common Cause model bill says filing must be done with the county clerk or public employees must file with the clerk of the court as well as with the commission. You might want to consider adding a duty to the duties of the commission and require that copies of statements be sent to the county clerks for those officials in each county.

13. We support the addition of section 16 on page 6 of AB 450. This section was eliminated from the old original bill, AB 610, of the last session. It deals with representation of clients and is important.

14. We would like to see a section added to AB 450 similar to section 21 of SB 351 which would say, "Every statement of disclosure is a public record and shall be made available at reasonable times for inspection by any person."

15. We have now covered, from the principles mentioned at the beginning, the code of ethics, who should be covered, disclosure, and make-up of an independent commission. The one area remaining is to set up tough sanctions to be enforced by the commission. Both AB 450 and SB 351 make non-compliance a misdemeanor. We would suggest that a new section be added giving the commission power to investigate and enforce the act. This was touched upon in #6 of this statement. Page 13, section 7, of the attached model bill provides for investigations by the commission. I might add that this section in the NCSL bill represents a compromise, as I might have just as well included here the section from the Common Cause bill which is much stronger. It seems more reasonable to start with the attached in view of the almost total lack of effort to provide the commission with any clout at all. I can't state strongly enough the importance of your consideration here. I question if we are wasting our time discussing the establishment of an Ethics Commission if that commission will have the power to do nothing more than give advisory opinions and publish hypothetical opinions. We certainly don't need another useless law on the books let alone another commission that doesn't really do much of anything.

In dealing with who should enforce this law, we should consider section 25 on page 6 of SB 351. AB 450 has no such section outlining the citizen's right to bring suit. You may choose to not use this section, but again, we feel that thought should be given to enforcement if this is to be a good law.

16. In keeping with what is said in #15, the last point is equally important. What would be done with the $5,000? Is that even enough to hire a secretary? What about all the other needs of the commission? Surely, we are involved in an exercise in futility if we are going to go to all this trouble and then not fund the project adequately. It is possible that the $5,000 might be enough, but it does seem that if any staff is to be hired, the appropriation of $5,000 per year will not go very far. Possibly, the members who served on the commission two years ago for its short duration might be able to give an estimate of what it would cost to operate.

Exhibit D

CONFLICT OF INTEREST ACT
As Approved by Committee on Suggested State Legislation

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This act may be cited as the [State] Conflict of Interest Act.

Section 2. [Definitions.] As used in this act:

(1) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit.

(2) "Business with which he is associated" means any business in which the person or a member of the person's immediate family is a director, officer, owner, or employee.

(3) "Candidate for public office" means any person who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official and any person who has been nominated by a public official or governmental body for appointment to serve as a public employee.

(4) "Commission" means the state ethics commission.

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received.

(6) "Governmental body" means any department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the executive or legislative branch of the State or political subdivision thereof.

(7) "Immediate family" means a spouse residing in the person's household and dependent children.

(8) "Income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forebearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof.

(9) "Ministerial action" means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, the person's own judgment upon the propriety of the action being taken.

(10) "Person" means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

(11) "Public employee" means any individual who receives compensation at an annual rate of $[ ] or more from the State or any political subdivision thereof or who is responsible for taking or recommending official action of a non-ministerial nature with regard to:

(i) contracting or procurement;

(ii) administering or monitoring grants or subsidies;

(iii) planning or zoning;

(iv) inspecting, licensing, regulating, or auditing any person; or

(v) any other activity where the official action has an economic impact of greater than a de minimus nature on the interests of any person.

Ex. D

(12) "Public official" means an elected official in the executive, legislative, or judicial branch of the State or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the State or any political subdivision thereof.

Section 3. [Statement of Financial Interest Required to be Filed.]

(a) Each public official and public employee shall file a statement of financial interests for the preceding calendar year with the commission on or before [ ] of each year that he holds such a position.

(b) Each candidate for elective public office shall file a statement of financial interests for the preceding calendar year with the commission within 10 days of filing his legal declaration of candidacy or petition to appear on the ballot for election as a public official; provided that this subsection shall not apply to a person who has filed a statement pursuant to subsection (a). A declaration of candidacy or petition to appear on the ballot shall not be considered legal unless a statement of financial interests is timely filed in proper form, and the name shall not appear on the ballot.

(c) If the candidate files his legal declaration of candidacy or petition to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall also file a statement for the year preceding the year in which the election is held.

(d) Each candidate for public office nominated by a public official or governmental body and subject to confirmation by a public official or governmental body shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least 10 days before the official or body shall approve or reject the nomination.

(e) No public employee shall be allowed to take the oath of office or enter or continue upon his duties unless he has filed a statement of financial interests with the commission as required by this act. Any public official, public employee, or candidate for public office who fails to file or falsely files a statement is guilty of a misdemeanor.

(f) Any public official filing a statement with the commission pursuant to this act shall file a copy of that statement with the clerk of the court in the local jurisdiction in which he retains his primary residence. The clerks of the court shall make such statements available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a cost not to exceed actual cost.

(g) The statement of financial interests shall be filed on a form prescribed by the commission and shall be signed under penalty of perjury by the person required to file the statement.

(h) The statement shall include the following information for the preceding calendar year in regard to the person required to file the statement and the members of his immediate family:

(1) The names of all businesses with which he is associated.

(2) The category or type and amount of all sources of income in excess of $1,000. It shall be sufficient to report whether the amount is: less than $2,500; $2,500 - $5,000; $5,000 - $10,000; $10,000 - $25,000; more than $25,000.

(3) The name and the amount of stock in excess of $1,000 at fair market value held in a business by the person.

Ex. D

(4) The legal description of all real property in the State, excluding the person's primary residence, the fair market value of which exceeds $2,500, in which a financial interest was held, and a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name and address of the person furnishing or receiving such consideration.

(5) The name, address, and type of security given of each creditor to whom the value of $5,000 or more was owed and still outstanding; provided that debts arising out of consumer credit transactions need not be included.

Section 4. [Restricted Activities.]

(a) No public official, or public employee, shall represent a person other than the State or political subdivision thereof for compensation before any governmental body where the matter before the governmental body is of a non-ministerial nature. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Comment: States may wish to allow public officials to represent clients before bodies such as Workmens' Compensation Commissions or other similar bodies whose proceedings are adversary in nature and before agencies at other levels of government. States may wish to insert a specific list of such boards, agencies or commissions.

(b) No person shall offer or give to a public official or public employee or a member of his immediate family and no public official or public employee shall solicit a gift to influence him in his official duties.

(c) No public official or public employee shall accept any benefit or compensation in addition to that received in his official capacity for having exercised his official powers or performed his official duties.

(d) No public official or public employee shall use or disclose confidential information gained in the course of or by reason of his official position or activities to further his own financial interests or those of anyone else.

(e) Any public official who has a substantial personal financial interest distinct from that of the general public in any governmental decision shall disqualify himself from voting on that decision.

Comment: In States where constitutional majorities are required, this provision may be troublesome. Such States may wish to change this clause to a statement of intent or to exempt it from the penalty provisions in Section 8.

(f) The majority of the members of a non-elective governmental body, or of a standing committee of a governmental body shall not have a substantial financial interest, distinct from that of the general public, in matters subject to the jurisdiction of the body or committee.

Section 5. [State Ethics Commission.]

(a) There is created a state ethics commission consisting of [ ] members and including public officials, public employees, and other citizens. Appointments to the commission shall be made by [ ]. No more than [ ] of the members of the commission shall be members of the same political party. Any vacancy occurring on the commission shall be filled within 30 days in the manner in which that position was originally filled.

(b) Members of the commission shall serve for [ ] year-staggered terms.

Ex. D

(c) The commission shall elect a chairman and vice chairman; in the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.

(d) The commission shall have the authority to appoint an executive director and such additional personnel as it requires to perform its duties. The executive director shall serve at the pleasure of the commission.

(e) Any action by the commission shall require the affirmative vote of [ ] of its members and [ ] members shall constitute a quorum.

(f) The chairman or any [ ] members of the commission may call a meeting provided that adequate advance notice of the meeting is given.

(g) Members of the commission shall be compensated at a rate of $[ ] per day and shall receive reimbursement for their actual and necessary expenses.

Section 6. [Duties of the Commission.] The commission shall:

(1) Prescribe and publish after notice and opportunity for public comment, rules, and regulations to carry out the provisions of this act.

(2) Prescribe forms for statements required by this act, and furnish such forms to persons required to file such statements.

(3) Prepare and publish a manual or guidelines setting forth recommended uniform methods of reporting for use by persons required to file under this act.

(4) Accept and file any information voluntarily supplied that exceeds the requirements of this act.

(5) Preserve the statements filed with it for six years from the date of receipt.

(6) Make statements and reports filed with the commission available for public inspection and copying for a reasonable cost during regular office hours.

(7) Compile and maintain a current list and summary of all statements filed.

(8) Prepare and publish reports as it may deem appropriate.

(9) Audit statements and reports filed with the commission.

(10) On its own initiative or upon request, issue and publish advisory opinions on the requirements of this act for those who wish to use the opinion to guide their own conduct.

(11) Prepare an annual report to the Legislature, the Governor and the public summarizing the activities of the commission and recommending any changes in the act.

Section 7. [Investigations by the Commission.]

(a) Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission shall investigate any alleged violation of this act. All commission proceedings and records relating to an investigation shall be confidential until a final determination is made by the commission. The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation and shall continue to provide information to the complainant and the person under investigation concerning action taken by the commission together with the reasons for such action or non-action.

(b) If after investigation, the commission finds that probable cause exists for believing the allegations of the complaint, after adequate notice to the accused, it shall conduct a hearing on the matter. Such hearings shall be at closed session unless the accused petitions for a public hearing.

Ex. D.

(c) The commission shall have the same power to compel the attendance of witnesses and to issue subpoenas as is granted legislative committees.

(d) Any person whose activities are under investigation shall be entitled to be represented by counsel of his own choosing and shall have an opportunity to examine all records to be used at the hearing.

(e) The commission shall keep a record of its investigations, inquiries, and proceedings; all records and transcripts of any investigations or inquiries under this section shall be confidential until a final determination is made by the commission.

(f) The commission shall report any finding of misconduct along with such information and documents as it deems appropriate to the appropriate law enforcement authorities.

Section 8. [Penalties.]

(a) Any person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not more than $[ ] or imprisoned for not more than [ ] or both.

(b) The penalties prescribed in this act do not limit the power of either house of the Legislature to discipline its own members, and do not limit the power of agencies or commissions to discipline officials or employees.

Section 9. [Severability.] [Insert severability clause.]

Section 10. [Repeal.] [Insert repealer clause.]

Section 11. [Effective Date.] [Insert effective date.]

Exhibit E

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

December 1976

CONFLICT OF INTEREST LEGISLATION IN THE STATES

Corrupt and unethical behavior by relatively few public officials has undermined the faith and trust of the governed. Public office is a public trust -- any effort to realize personal gain through public office is a violation of that trust.

Because of the part-time nature of most elected and appointed positions in state and local government, it is inevitable that officials will have private interests and sources of income that conflict with their public duties. The first step toward open and accountable government is for officials to make these potential conflicts known to the public. This will give citizens information on which to judge whether their representatives act in the public interest rather than for private gain. As Justice Brandeis wrote in 1941: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most effective policeman."

The Problem

Boodling is not dead in America. A Maryland engineer testifying at the trial of a since-convicted and deposed Baltimore County Executive described the System that brought down former Vice-President Agnew as "a soft criminal syndicate in which poli-

tical contributions are the initiation dues and kickbacks the sustaining membership. Public officials are on the receiving end."

However, old-style bribery is no longer the characteristic mode of exchanging political favors. It never really was necessary. As former New York State Senator George Washington Plunkitt, a Tammany district leader at the turn of the century, has explained: "The politician who steals is worse than a thief. He is a fool. With the grand opportunities all around for a man with political pull, there's no excuse for stealin' a cent."

Scores of recent convictions in Illinois, Maryland, New Jersey, Texas, and elsewhere are evidence that conflict of interest and corruption are pervasive in government today. A few examples of the conflict of interest problem in state government:

-- A 1976 Common Cause study of state public utility commissions revealed that only 10 states prohibit PUC commissioners from accepting employment with regulated businesses immediately following service on the commission despite the obvious conflict of interest that can result from job-hunting while in public service.

-- According to Dr. Benjamin Shimberg of the Center for Occupational and Professional Assessment, "A significant characteristic of most occupational licensing is that the regulatory agency is usually composed of practitioners from the trade or profession in question."

Exhibit E

-- Lawyer members of the South Carolina Legislature received a quarter-million dollars in 1974 to represent utilities before the State Public Service Commission. The Chairman of the Senate Finance Committee led the way with over $50,000.

-- When California enacted a strict financial disclosure law, several dozen of the local officials who had misplanned the sprawling suburbs for private gain resigned rather than disclose their interests as speculators, architects, and developers.

-- In 1973, the Maryland General Assembly considered a bill mandating an increase in liquor prices. When it was suggested that the Senator, a tavern owner, who was the bill's most enthusiastic supporter had a personal interest in passage of the bill, he replied: "There is no conflict with my interest."

-- A former Indiana Public Service Commissioner accepted employment with a tele-communications corporation while presiding over a case involving one of the corporation's subsidiaries. The Commissioner removed himself from the case only after pressure from citizens' groups.

-- It is no wonder that public confidence in government is at an all-time low. In 1974, pollster Louis Harris found that 76 percent of the people agree that "too many government leaders are just out for their own personal and financial gain."

Common Cause Proposals

Common Cause Chairman John W. Gardner has cited two reasons for lack of public confidence in government: "The two chief

obstacles to responsive government are money and secrecy: the scandalous capacity of money to buy political outcomes, and the bad habit of doing the public's business behind closed doors." Common Cause believes that only strong conflict of interest legislation and its vigorous enforcement can dispel common suspicions that cronyism and corruption are necessary costs of the democratic system. Each state should enact tough conflict of interest legislation that includes the following basic principles:

-- Coverage of all elected and appointed state and local officials, and candidates for such offices, in the executive, legislative, and judicial branches of government as well as employees in policy-making positions. Whenever public officials are given discretion over matters that carry economic consequences, the possibility for conflicts of interest exists no matter what level of government. A comprehensive state statute has the advantage of providing a uniform set of requirements for all state and local officials, while permitting state agencies and local governments to supplement the state law to provide for their specialized needs.

-- A comprehensive code of ethics that declares public office a public trust and that prohibits any attempt to realize personal financial gain through public office. The model code of ethics prohibits bribery, limits gifts to public officials, restricts contracts between public officials and their govern-

mental units, and prohibits officials from appearing before governmental bodies for compensation (and before their former governmental body for one year after leaving). Also, the majority of the members of a governmental body shall not have a personal economic interest in the matters subject to the jurisdiction of the body. The law should provide mechanisms for disqualification from potential conflict of interest actions, as well as procedures for seeking legally binding advisory decisions from an independent ethics commission.

-- Mandatory, annual, and detailed disclosure of economic interests and sources of income by officials and members of their families living in the household. Businesses of which the official is director, trustee, officer, owner, employee, or holder of stock worth $1,000 or more should be disclosed along with real property in the state valued in excess of $2,500, major creditors, and interests of $1,000 or more in a savings deposit or insurance or endowment policy. Persons from whom gifts of $25 or more or income of $1,000 or more were received should be disclosed. Identification of the major clients of lawyers is especially important because of the ease with which the interests of one's clients can become confused with the public interest. The weight of legal authority denies the lawyer-client privilege for the fact of employment as long as the substance of communications remains confidential. To lessen the sting of disclosure, the model provides that disclosure may be by category of value rather than the precise dollar amount.

We have taken precaution to meet current constitutional standards -- there must be a reasonable relationship between the information required to be disclosed and the public interest to be served. Not all assets and liabilities nor interests under certain dollar values need be disclosed.

-- Tough sanctions enforced by an independent enforcement commission. State and local prosecutors have shown an uncanny ability to ignore political corruption. An independent and bipartisan ethics commission will not feel the peer pressures against enforcement that local prosecutors and legislative committees too often cannot resist. In order to ensure confidence in the work of the commission, citizens should be given standing to sue to enforce the law if the commission does not.

Progress in the States

Virtually every state has anti-bribery provisions and statutes restricting public officials and employees from certain activities. Recent political scandals at every level of government have triggered legislation to strengthen these codes of ethics, require personal financial disclosure, and establish independent enforcement commissions.

Since November of 1972, states as diverse as Alabama and Ohio have enacted tough codes of ethics for public officials. Thirty-six states now require some form of financial disclosure by public officials. Twenty-eight of these requirements, including most of the better ones, have been adopted or strengthened

in the last four years.[1] Twenty-one of the state laws require local as well as state officials to file financial disclosure statements.[2]

Washington State has one of the earliest and best financial disclosure laws in the nation. State and local elected officials are required to disclose for themselves and their families living in the household: major financial interests, creditors, sources of compensation of $500 or more, real property of businesses in which the official or family holds an ownership of 10 percent or more.

During the 1972 initiative campaign that led to the law's approval by 72 percent of the voters of Washington, mass resig-

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[1] Alabama (Act No. 1056 of 1973 and Act No. 130 of 1975); Alaska (Initiative of 1974 and S.B. 62 of 1975); Arizona (S.B. 1121 of 1974); Arkansas (Ch. 172 of 1973); California (Proposition 9 of 1974 and A.B. 872, 905, and 959 of 1975); Colorado (Initiative No. 3 of 1972 and S.B. 102 of 1975); Florida (H.B. 3418 and 2346 of 1974; H.B. 660, 1100, and 2099 of 1975 and 1976 constitutional amendment); Indiana (S.B. 245 of 1974); Kansas (S.B. 689 of 1974); Kentucky (1975 executive order); Maine (Ch. 773 of 1974 and Ch. 621 of 1975); Maryland (Ch. 3 of 1973 Sp. Session and Ch. 848 of 1975); Minnesota (Ch. 470 of 1974 and Ch. 307 of 1976); Missouri (Initiative of 1974); Nebraska (L.B. 987 of 1976); New Jersey (executive order); New York (1975 and 1976 executive orders); North Carolina (S.B. 147 of 1975); North Dakota (Ch. 188 of 1975); Ohio (H.B. 55 of 1973 and H.B. 1040 of 1976); Oklahoma (S.B. 534 of 1974); Oregon (H.B. 3304 of 1974); Rhode Island (Ch. 93 of 1976); South Carolina (S.B. 89); South Dakota (Ch. 121 of 1974 and Ch. 127 of 1975); Texas (H.B. 1 of 1973); Virginia (H.B. 1088 of 1976); Washington (Initiative 276 of 1972, Ch. 294 of 1975, A.B. 1329 of 1976 and Referendum Bill 36 of 1976); and Wisconsin (Ch. 90 of 1973). States with disclosure requirements before 1972 not listed above: Connecticut, Hawaii, Illinois, New Mexico, Pennsylvania, Tennessee, Utah, and West Virginia.

[2] Alabama, Alaska, Arkansas, California, Florida, Illinois, Kansas, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Washington.

nations were threatened. Since its enactment, the law has been cited by opponents of reform as having triggered mass resignations. The Assistant Secretary of State of Washington has labeled such rumors "grossly exaggerated" and has pointed to these figures: of 275 elected state officials, one resignation has been attributed to the law; of 378 county officials, there have been two resignations. According to William Boyd of the National Municipal League, which has established a national clearinghouse for information on state ethics legislation, "there's been a lot more sound and fury than substance" to the threats of resignation in the states.

In upholding the extensive disclosure requirements of the Washington Initiative, the Supreme Court of Washington balanced two valued and conflicting societal interests and found:

> The right of the electorate to know most certainly is no less fundamental than the right of privacy. When the right of the people to be informed does not intrude upon intimate personal matters which are unrelated to fitness for public office, the candidate or officeholder may not complain that his own privacy is paramount to the interests of the people (517 P. 2d 911, at 925).

The United States Supreme Court declined to review the Washington Court's decision (417 U.S. 902), as it had declined to review a 1972 decision by the Supreme Court of Illinois upholding that state's disclosure requirement (289 N.E. 2d 409 and 412 U.S. 925). The Supreme Court of California found California's 1969 law unconstitutional (466 P. 2d 225), but subsequently declared the 1973 law constitutional (522 P. 2d 1345). In 1975,

the Maryland Court of Appeals upheld a county ordinance requiring broad financial disclosure (336 A. 2d 97) and the Supreme Court of Wisconsin upheld a Judicial Code of Ethics requiring annual personal financial disclosure (235 N.W. 2d 409). In 1976, the Alabama Supreme Court (Comer v. City of Mobile, Sept. 24, 1976), the Florida Supreme Court (Goldtrap v. Askew, June 17, 1976), and the Minnesota Supreme Court (Klaus v. Minnesota Ethics Commission, July 30, 1976) upheld financial disclosure laws. The Supreme Court of Nevada found Nevada's 1975 disclosure law unconstitutionally vague (Dunphy v. Sheehan, April 29, 1976).

Of the twenty-seven states that have independent ethics commissions to monitor and enforce conflict of interest and financial disclosure laws,[3] twenty-three have been created in the last four years. The strongest of these commissions is the newly created California Fair Political Practices Commission. The five-member Commission has a one-million dollar-a-year budget, subpoena power, and the authority to issue cease and desist orders and levy civil fines.

Governors in Colorado, Idaho, Illinois, Kentucky, Michigan, Missouri, New Jersey, New York, Pennsylvania, and Rhode Island have issued executive orders and directives designed to crack down on conflicts of interest by executive branch officials. One of the most sweeping of these executive orders was issued in

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[3] Alabama, Alaska, Arizona, California, Florida, Hawaii (1972), Illinois, Indiana, Kansas, Kentucky, Louisiana (1964), Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey (1971), New York, Ohio, Oklahoma (1968), Oregon, Pennsylvania, Rhode Island, South Carolina, Washington, and Wisconsin.

1973 by Illinois Governor Walker. The order required each gubernatorial appointee and each executive branch employee who receives $20,000 or more in salary to file complete net worth and income statements and created a Board of Ethics to enforce the order (Executive Order No. 4 of 1973). In March of 1974, the Illinois Supreme Court upheld the Governor's power to issue such an order and the constitutionality of the requirement (57 Ill. 2d 512), and the U.S. Supreme Court declined to review the decision(419 U.S. 1058).

New York Governor Hugh Carey's efforts in the conflict of interest area stand out. Prospective appointees for top state positions are required to fill out a detailed disclosure form prior to appointment. By executive order, Carey also required policy-making appointees and employees to file financial disclosure statements annually. The order included restrictions against outside employment and established a Board of Public Disclosure. The Board has been quite active in reviewing financial disclosure statements, pinpointing conflicts of interest, and recommending essential remedies.

Highlights of 1976 State Action

The wave of state reform that began in November of 1972 maintained its strength in 1976. Highlights of 1976 accountability action follow:

-- Nebraska's Political Accountability and Disclosure Act was the most far reaching reform act of 1976. The Act in-

cluded comprehensive revision of financial disclosure and conflict of interest laws. The Act created the Nebraska Accountability and Disclosure Commission with subpoena power and the authority to prosecute violators.

-- On November 2, Floridians gave overwhelming support to a Sunshine amendment requiring full financial disclosure by certain state and local officials and prohibiting state legislators from representation for compensation before state agencies. The constitutional amendment was petitioned to the ballot by initiative sponsored by Governor Reubin Askew and Common Cause. 79% of the voters approved the proposal.

-- The Maryland voters approved two constitutional amendments to put into effect a law to create an Office of State Prosecutor with authority to investigate criminal violations of the state election laws, conflict of interest, and bribery laws.

-- Rhode Island (Chapter 93) and Kentucky (S.B. 56) adopted comprehensive codes of ethics (the Kentucky law only applied to state legislators).

-- State Supreme Courts in Alabama, Florida, and Minnesota followed four other state supreme courts in upholding the constitutionality of personal financial disclosure laws.

There was one major setback for the forces of open and accountable government in 1976. The Supreme Court of Michigan

declared unconstitutional the Michigan Reform Act of 1975. The Court found that the Act violated the state constitution's limitation that each bill contain only a single subject. The decision was not on the substance of the Act, but does require the Legislature to re-enact the comprehensive reform Act in separate pieces in 1977 (campaign financing, financial disclosure, and lobbying disclosure).

National Conference of State Legislatures' Model Bill

The Committee on Ethics and Elections of the National Conference of State Legislatures has developed a model conflict of interest act. At its annual meeting in September of 1976, the National Conference of State Legislatures approved the bill. The act has been approved by the Council of State Government's Committee on Suggested State Legislation and appears in its publication 1976 Suggested State Legislation.

The NCSL act applies to state and local elected and top appointed officials and employees. It establishes certain restricted activities, including a prohibition against representation of a person for compensation before any governmental body on a non-ministerial matter. The act requires broad financial disclosure, including sources of income in excess of $1,000. The act establishes an ethics commission with subpoena power and provides criminal penalties.

Conflict of Interest Reference Materials

(1) Common Cause Model State Conflict of Interest Act;

(2) Common Cause Model State Financial Disclosure Report;

(3) Common Cause, "Money, Secrecy, and State Utility Regulation" (August 1976);

(4) Common Cause, "Serving Two Masters: A Common Cause Study of Conflicts of Interest in the Executive Branch" (Federal) (October 1976);

(5) Common Cause, "Ethics Legislation: Now That You Have It, What Do You Do with It?" (Nov. 21, 1974);

(6) Adams and Belford, "Restoring Confidence in Public Officials: An Overview of State and Local Government Ethics Legislation," printed in the 1975 Municipal Year Book of the International City Management Association (available from Common Cause).

(7) Citizens Conference on State Legislatures (now Legis 50), "Ethics: A Special Report on Conflict of Interest Legislation and Lobbying Regulation in Five States" (7503 Marin Drive, Greenwood Plaza, Englewood, Col. 80110) (April 1975).

(8) Council of State Governments, "Ethics: State Conflict of Interest/Financial Disclosure Legislation 1972-1975" (Iron Works Pike, Lexington, Ky. 40511) (August 1975).

(9) National Association of Attorneys General, "Legislative Approaches to Campaign Financing, Open Meetings, and Conflict of Interest," (1516 Glenwood Avenue, Raleigh, N.C. 27608) (December 1974).

(10) National Conference of State Legislatures, State Legislative Ethics contains a "Model Conflict of Interest Act" (contact: Carl Tubbesing, NCSL, 1405 Curtis Street, Denver, Colorado 80202).

(11) National League of Cities, "Sunshine, Ethics and Municipal Public Relations" (cassette 31 of Annual Congress of Cities 1975) (1620 Eye Street, N.W., Washington, D.C. 20006).

Ethics Clearinghouse

The National Conference on Government, a service of the National Municipal League, is headquarters for a clearinghouse of information on ethics, lobbying disclosure, and campaign financing. Contact: William J.D. Boyd, National Municipal League, 47 East 68th Street, New York, New York 10021.

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March 28, 1977

Assemblyman Lloyd W. Mann
Chairman of the Committee on Elections
Legislative Building
Carson City, Nevada 89710

Dear Mr. Mann:

You have requested a written explanation of how A.B. 450 avoids the constitutional problems which led the supreme court to hold the preceding "Nevada Ethics in Government Law," enacted in 1975, to be unconstitutional.

In its decision so holding, Dunphy v. Sheehan, 92 Nev. Adv. Opn. 84 (1976), the court examined section 26 of that act, which appears as NRS 281.650. This was the disclosure requirement. Subsection 1 described the kinds of economic interest to be disclosed; subsection 2 excused any such interest from disclosure if it "could not be affected materially by" the acts, omissions or decisions of the public officer as such; and subsection 3 required disclosure if real property or an enterprise was situated, or an enterprise did business, "within the jurisdiction" of the public officer. The court found the latter quoted phrase too vague for a criminal statute, and rejected the entire law because this provision was "its very heart and soul" and therefore inseparable. A.B. 450, on the contrary, in sections 14-16 limits the required disclosures to those economic interests which are important enough to affect materially the judgment of a reasonable person, and requires each of them to be disclosed. The ambiguity mentioned by the court is thus avoided.

The court also mentioned the "consideration * * * for which the income was received" as perhaps requiring disclosure of the amount of income and cost of income producing property. A.B. 450 avoids this phrase, and so this difficulty,

entirely. The court also mentioned a New Jersey lower court holding that a public officer could not be required to disclose the economic interests of his spouse or children. A.B. 450 does so require. Our supreme court did not say that this would be unconstitutional, but suggested that it be carefully considered.

Since receiving your request, I have received a copy of the letter addressed to you by Don Klasic on behalf of the attorney general. His suggested definition of "indirect ownership" might well aid in the administration of the statute, though as explained above, I believe it is constitutional without further definitions. His suggested definition of "income" would distort the effect of section 15, because the percentages are to be measured before the exclusion of dividends, etc., but a proper definition could be supplied. The basic election law, chapter 293 of NRS, has been administered for 17 years without a definition of the well understood term "candidate," but the suggested definition could be used here.

With his objection to the inclusion of members on the state ethics commission who would be appointed by officers of the legislature, I must respectfully disagree. On this point, Buckley v. Valeo depends upon that provision of the second clause of Section 2 of Article II of the United States Constitution which empowers the President to appoint "all other Officers of the United States." The Nevada constitution contains no analogous provision, and the supreme court in Dunphy v. Sheehan discussed article 3 of the Nevada constitution without intimating any doubts about the composition of the commission. Mr. Klasic's other comments do not relate to constitutional issues.

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD:jll

Senator Jacobsen

STATE OF NEVADA
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ROBERT LIST
ATTORNEY GENERAL

March 25, 1977

The Honorable James I. Gibson
Nevada State Senator
Senate Committee on Government Affairs
Legislative Building
Carson City, Nevada 89710

Re: SB 351 - The Proposed Nevada Ethics In Government Law

Dear Senator Gibson:

As a Deputy Attorney General for the State of Nevada, I served as legal counsel for the State Ethics Commission during its eight months of existence between September, 1975 and April, 1976. I attended every meeting of the Commission and attended every Commission discussion relating to advisory opinions. In addition, I wrote a number of opinions to State and local government officials interpreting NRS 281.410-281.570, which was formerly known as the Nevada Ethics In Government Law and which was subsequently declared unconstitutional by the Nevada Supreme Court in the case of Dunphy v. Sheehan, 92 Nev. Adv. Op. 84 (April 29, 1976). In fact, I was the attorney who represented the State Ethics Commission before the Nevada Supreme Court in that case.

I, therefore, believe that my experience in working with the Commission, interpreting the previous law and defending the Commission in its lawsuit before the Supreme Court, permit me to make some rather detailed comments regarding the possible effect and operation of SB 351 in its present form, in particular Sections 3 through 26. The remaining sections of SB 351, with the possible exception of Section 34, appear to present no difficulty and can be implemented and enforced without too much trouble. I will refer to Section 34 later in this letter.

Sections 4 through 8 provide definitions of certain terms used in the bill. I would recommend the addition of two other definitions. First, it should be noted that Section 14 (2),

which is part of the Code of Ethical Standards, makes reference to an elective officer's household. It would seem desirable to define this term and I would recommend the definition contained in AB 450, which is the ethics legislation which was introduced in the Assembly, as follows:

> "'Household' means an association of persons who live in the same home or dwelling, sharing its furnishings, facilities, accommodations and expenses, and who are related by blood, adoption or marriage."

In addition, Section 18 (2), which contains a description of the items which should be enumerated in an elected officer's statement of financial disclosure, refers to the "place of business" of any business entity or self-employment in the State of Nevada. Again, for clarification, it would seem desirable to have a definition of this term. I would recommend one of the definitions contained in 32A Words and Phrases, "Place of Business," as follows:

> "'Place of Business' means a location where business is transacted or conducted."

Section 10 of SB 351 provides, in part, as follows:

> "1. A State Ethics Commission, consisting of five members, is hereby created.
>
> "2. The members shall be appointed as follows:
>
> "(a) One member by the governor.
>
> "(b) One member by the speaker of the assembly.
>
> "(c) One member by the majority leader of the senate.
>
> "(d) One member by the Nevada Association of County Commissioners.
>
> "(e) One member by the Nevada League of Cities."

Section 10 (2)(b) and (c) present constitutional difficulties by virtue of the fact that they permit members of the legislature to choose persons who will serve in an executive agency. This would appear to be in violation of Article III of the Nevada Constitution which requires that the three branches of government shall be kept separate. This problem of separation of powers was most recently brought up in the case of Buckley v. Valeo, 421 U.S. 1, 96 Sup. Ct. 612 (1976).

In the Buckley case, the United States Supreme Court considered the constitutionality of the Federal Elections Commission, two members of which were appointed by the President, two members by the President Pro Tem of the Senate and two members by the Speaker of the House of Representatives. In addition, two ex officio members of the Commission were the Secretary of the Senate and the Clerk of the House of Representatives. The United States Supreme Court considered that this arrangement, in view of the executive functions performed by the Federal Elections Commission, constituted a violation of the separation of powers provisions of the United States Constitution. The Court noted that insofar as the powers which were given to the Commission were merely investigative and informative in nature, the appointment provisions of the Federal Elections Commission would be constitutionally permissible. However, when the Commission's powers went beyond mere investigation and information, which are simply adjuncts to the legislative process, and into the more substantial powers of carrying out and enforcing the law, i.e., an executive function, the method of appointment to the Commission did violate the separation of powers provisions. The Court noted that the legislative branch may not exercise executive authority by retaining the power to appoint those who would execute its laws. Buckley, supra, at 96 Sup. Ct. 682. The Court noted that the Commission's rule making authority, its power to render advisory opinions and its enforcement functions made the Federal Elections Commission an executive agency. The Court concluded that the Commission's functions were not merely in aid of congressional authority to legislate, but instead, were part of the administration and enforcement of a public law. Accordingly, the Supreme Court concluded that the Federal Elections Commission was unconstitutionally created. Buckley, supra, at 96 Sup. Ct. 692.

In the case of SB 351, it should be noted that the proposed State Ethics Commission is granted by Section 13 (1) and (2) the authority to render advisory opinions and to make

general regulations as may be necessary to carry out the purposes of Sections 2 to 26 of SB 351. Accordingly, it would appear that the Commission is performing an executive function rather than a legislative investigative function. In this connection, therefore, it would appear that Section 10 of SB 351, which permits the Speaker of the Assembly and the Majority Leader of the Senate to appoint members of the proposed State Ethics Commission, would be a violation of Article III of the Nevada Constitution. Accordingly, it is recommended that Section 10 (2)(b) and (c) of SB 351 be amended to provide that these two members of the Ethics Commission be appointed by some non-legislative authority.

Section 11 (3) of SB 351 provides as follows:

> "No member of the commission may be a full-time or part-time public officer or employee or be a contractor with the State or any county or city."

This provision is legally permissible. However, I wish to draw your attention to the experience faced by the former Ethics Commission in choosing its members in September, 1975. The above quoted section was part of the former Ethics In Government Law as NRS 281.580 (4). However, the appointing authorities had a difficult time finding persons who were eligible to serve upon the Commission since many of the people that they initially picked were contractors in one form or another with the State or with counties or cities. Indeed, at the first meeting of the Ethics Commission in September, 1975, two appointed members were disqualified because it was discovered at the last moment that they had contracts with their respective counties or cities. I bring this matter to your attention only for the purpose of recalling to your mind the difficulty of finding eligible persons to serve on the Commission in light of the requirements of Section 11 (3).

Section 14 of SB 351 promulgates a code of ethical standards. Each standard, however, utilizes the word "should" as the operable verb, setting down the ethical standard. It would seem that the word "should" as opposed to the word "shall" is somewhat equivocal. Black's Law Dictionary (4th Ed. 1951) at page 1549 defines the word "should" as the past tense of "shall," but the term ordinarily implies duty or obligation. It does not ordinarily express certainty. According to Words and Phrases, the word "should" denotes an obligation in various degrees, usually milder than the word "ought." 39 Words and Phrases 313 "Should." The word "shall," on the other hand, is generally imperative or mandatory. Black's Law Dictionary, 1541 (4th Ed. 1951).

Of course, it is strictly a policy matter within the Legislature's determination as to whether it wishes the code of ethical standards, as promulgated in Section 14 of SB 351, to flatly prohibit certain types of conduct or merely to serve as a desirable guide. I merely offer these comments on the definitions of the terms "should" and "shall" for the Legislature's consideration on this point.

Section 15 (1) of SB 351 provides that each advisory opinion rendered by the Ethics Commission shall be confidential unless released by the requester. This provision was contained in the former Ethics In Government Law and the Commission interpreted it to mean that this provision constituted an exception to the Open Meeting Law, since an opinion could not remain confidential if it was discussed by the Commission members in open meeting. In order to clarify this point, and to protect members of the Ethics Commission from any future liability, it is recommended that Section 15 of SB 351 should be amended to include the sentence:

> "Those portions of the meetings of the commission devoted to considering and rendering advisory opinions interpreting the code of ethical standards shall be closed to the public."

Section 16 (1) provides as follows:

> "The Commission's advisory opinions may include guidance to any elective officer on questions as to whether or not:
>
> "1. A conflict exists between his personal interest and his official duty and if so, whether he has a more substantial personal interest in a particular matter than other persons who belong to the same economic group or general class."

This provision appears to relate to Section 22 (1)(b) which provides that no elective officer may participate in or attempt to influence the outcome of any action by his agency if the action would increase the value of his property or interest. An exception is provided if the action would affect that property or interest.

> "(b) To no greater extent than the action would affect similar property or interest of other persons who are engaged in the same industry, profession or occupation or are part of the same significant segment of the general public."

Since this appears to be the provision to which Section 16 (1) seems to be related, it would seem appropriate and consistent to amend the language of Section 16 (1) to more accurately reflect the provisions of Section 22 (1)(b). Therefore, it is recommended that Section 16 (1) be amended to read as follows:

> "1. A conflict exists between his personal interest and his official duty and if so, whether he has a more substantial personal interest in a particular matter than exists for similar property or interests of other persons who are engaged in the same industry, profession or occupation or are part of the same significant segment of the general public."

This office would also recommend the elimination of Section 16 (4) since it seems to imply that the Commission can issue an opinion that a public official can participate in an agency action in which he has a conflict of interest, provided he has special knowledge which is an indispensable asset of the agency and is needed by it to reach a decision. However, this is in direct conflict with Section 22 of SB 351 which specifies certain instances in which a person who has a conflict of interest can participate in his agency's decision. The possession of special knowledge is not one of the criteria listed in Section 22 for permitting such a public official to vote in such an action.

Section 18 of SB 351 provides that the statement of financial disclosure which elected public officers and candidates must file should be filed on or before May 1 of each year and should cover the preceding 12 month period ending April 1. However, past experience with the former Ethics In Government Law, in which public officers had filed financial disclosure statements prior to the law being declared unconstitutional, indicates that this time period of disclosure presents problems of convenience to public officials in preparing their statements. Generally, many public officials will have already prepared their income tax returns on the basis of the preceding taxable year and to require them, instead, to furnish financial information for the period of April of the preceding year and April of the year of filing will create some accounting difficulties for them. Accordingly, we would recommend that the time period used in AB 450, which is the Ethics Commission Law proposed in the Assembly, be adopted instead so that Section 18 would read as follows:

> "On or before May 1 of each year, each elective officer shall file a statement of disclosure covering the preceding taxable year, subscribed by him and containing...."

Section 18 (1) requires an elective officer to file a statement containing a description of each source from which he received "...any wages, salaries or commissions...." The term "wages" presents some problems with respect to the question of whether professionals, such as lawyers, doctors, accountants, etc., are required to disclose the sources of their professional fees. The term "wages" is given a broad definition in Black's Law Dictionary, 1750-1751 (4th Ed. 1951) where it is defined as, "A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him." (Emphasis added.) It is also described as, "Every form of remuneration payable for a given period to an individual for personal services..." and as a, "...specified sum for a given time of service or a fixed sum for a specified piece of work." Black's Law Dictionary, supra. These definitions could conceivably embrace professional fees.

On the other hand, Words and Phrases is somewhat equivocal. It indicates that there are cases which interpret "wages" to include professional fees such as an attorney's fee, but that other cases hold generally that the term "wages" is

usually employed to distinguish the sum which is paid to persons hired to perform menial labor and that, instead, the compensation paid to professionals is known as a "fee." 44A Words and Phrases, 79-85, "Wages."

It would seem important to have this matter cleared up now since the question of whether professional persons must report their compensation will surely, as it happened in the past under the former Ethics In Government Law, come up in the future.

Under the former Ethics In Government Law the question came up under the context of public officers reporting their "income." By an opinion from this office, it was determined that requiring professional persons to reveal the sources of their income would be in violation of certain provisions of the Nevada Evidence Code which prohibits the revealing of any confidences transmitted through a professional-client relationship. It would seem important, therefore, to determine the policy of the Legislature, first with respect to a definition of the term "wages" and, second, whether the Legislature does wish to have the names of clients of doctors, lawyers, accountants and etc., revealed as the sources of "wages."

Section 19 of SB 351 also requires a statement of financial disclosure to be filed by nonincumbent candidates for election to office. Experience under the former Ethics In Government Law reveals that it is important to require a time limit within which nonincumbent candidates should file such a statement. The way the bill currently reads, nonincumbent candidates are to file the statement at the time they file their declarations of candidacy for the office. However, past experience under the former law reveals that many nonincumbent candidates were unaware of this fact and, therefore, when preparing to file their affidavits of candidacy were not prepared to simultaneously file their statements of financial disclosure. This could, conceivably, result in the Secretary of State or County Clerk refusing to accept a declaration of candidacy until such statement of financial disclosure is also filed. Where filings of affidavits of candidacy are put off until the last day for filing, this refusal could be fatal to that candidate's attempt to run for election. It is, therefore, recommended that Section 19 (1) should be amended to read, as follows:

> "1. Each nonincumbent candidate for election to a public office within 30 days after he files his declaration of candidacy or acceptance of candidacy or has been designated to fill a vacancy in a party or non-partisan nomination."

The 30 day time limit would be consistent with the 30 day time limit under Section 19 (2) relating to officers appointed to serve in an office.

Section 25 (1) provides that a civil suit to enjoin any violations of Sections 22 to 24 of SB 351 may be brought by the district attorney in any county where a violation of said sections occur or, alternatively, such action may be brought by, "...the attorney general if the district attorney fails to take action...." In the opinion of this office, this language is merely a "red flag" to any district attorney to encourage him not to take any action for any violations of Section 22 to 24 of SB 351 in the confident knowledge that if he does not choose to take such action, the attorney general must ultimately do so. This appears to be placing an unfair burden upon the Attorney General's Office to carry out the responsibilities of local district attorneys. We would note that under NRS 252.190, a district attorney may be prosecuted for neglect of duty and may be punished for the same as a gross misdemeanor. In the opinion of this office, this would constitute a sufficient incentive to a district attorney to enforce the provisions of SB 351. Accordingly, it is recommended that the language, "...the attorney general if the district attorney fails to take action...," found on lines 26 and 27 of page 6 of SB 351 be eliminated.

Section 25 (2) provides that a court may temporarily restrain the execution of any decision, contract, etc., if a violation of Section 22 to 24 of SB 351 would occur thereby. Such a temporary restraint is to be issued "upon a preliminary showing" that there are reasonable grounds to believe that such violation has occurred. It would appear important to define this term, "preliminary showing." As the victim of numerous ex parte restraining and stay orders perpetrated upon agencies which I represent by local attorneys, it would seem important to know whether the Legislature intends this term to mean a preliminary "hearing" or whether merely an ex parte order supported by verified affidavit is sufficient.

Section 54 of SB 351 appropriates $5,000 for the fiscal year 1977-1978 for the use of the proposed State Ethics Commission. It appropriates a like sum for the fiscal year 1978-1979. Although the question of appropriations is a policy matter wholly within the jurisdiction of the Legislature, I feel obliged to discuss my experience with the actual workload of the former Ethics Commission.

If you will recall, the former Ethics Commission was also given a $5,000 appropriation for each fiscal year in the preceding biennium, apparently on the theory that because the law provided that the Ethics Commission must meet at least quarterly, a sum of $5,000 would be sufficient for the Commission's needs. However, the press of business required the Ethics Commission to meet at least once a month for every month of its existence. It is safe to assume that the proposed Ethics Commission, presuming SB 351 is enacted, would also be quite busy. As a matter of experience, I can report to you that numerous requests for advisory opinions were received by the Commission. The necessity of determining these matters in an expeditious manner almost naturally precludes quarterly meetings. These requests simply could not wait three months to be resolved by a quarterly meeting of the Commission. As a matter of necessity, the Ethics Commission proposed by SB 351 is going to have to meet at least once a month.

It may safely be assumed, therefore, that the Ethics Commission will meet at least twelve times a year. However, as the attached Exhibit "A" demonstrates, each meeting of the former State Ethics Commission cost the Commission in excess of $500 just for salary, travel costs and per diem alone. Exhibit "A" was prepared by the Budget Division of the Department of Administration for the Ethics Commission's use. It represents the approximate costs of meetings held in either Carson City or Las Vegas. (The Commission met only in those two cities.) At $500 per meeting, and assuming that the Ethics Commission to be established by SB 351 will meet twelve times a year, this will mean that by the end of the first fiscal year of operation, the Ethics Commission will be "in the red" by at least $1,000.

Furthermore, if all of the economic resources of the Ethics Commission is thus to be devoted only to the payment of salaries, travel costs and per diem necessary for meetings, there will be no funds available for any of the necessary clerical

responsibilities of the Commission. The Commission, as was the case with the former Ethics Commission in 1975-76, will be unable to hire any clerical help, will be limited in its purchases of office equipment, and will not be able to maintain any office space. Previous experience with the former Ethics Commission reveals that the only reason it was able to function in these clerical matters was because its chairman, Father Larry Dunphy, was willing to spend the time and effort necessary to perform all clerical functions on his own.

It should also be noted that there is no specific provision in SB 351 for anyone to prepare financial disclosure forms. Assuming that the State Ethics Commission would have this authority under Section 13 (2), which is the authority to promulgate such regulations as are necessary to carry out the purposes of sections 2 to 26 of SB 351, this would mean that the State Ethics Commission would have to prepare these forms. This, however, costs money and if the resources of the Commission are to be expended solely on meetings, there will be no funds available for the printing of such forms. Nor will there be funds available for the Commission to publish hypothetical opinions, as is required by Section 15 (2) of SB 351.

In short, previous experience with the operations of the former Ethics Commission reveals that in light of the duties imposed upon the proposed Ethics Commission by SB 351 and the proven experience of the former Ethics Commission that a newly formed Ethics Commission will be inundated by requests for opinions by public officers, the $5,000 per fiscal year appropriation simply will not be enough for the Commission to effectively do its job.

Finally, I wish to address the question of the drafting of advisory opinions pursuant to Section 15 of SB 351. Previous experience with the former Ethics Commission reveals that none of the lay members of that board had any experience in drafting legal opinions. Indeed, you may recall that opinions which were previously issued by the former Ethics Commission were deficient in applying the facts of a particular public officer's conflict situation with the provisions of the Nevada Ethics In Government Law. In short, the opinions drafted by the lay members of the Ethics Commission were poorly drafted and, in some instances, were poorly reasoned.

It is apparent to me, as a lawyer, that an Ethics Commission, composed of non-lawyers, who have as one of their prime functions the rendering of legal advisory opinions on the conduct of public officers, will not be able to adequately do the job. At the very least, the Commission should have some legal expertise available for the purpose of drafting such opinions.

Since the purpose of the previous Ethics In Government Law was to insure that the Ethics Commission was completely independent of any connection with any public officer, the office of the Attorney General took the position that, although it was willing to advise the Commission on interpretations of the statute, it would not draft or write the advisory opinions for the Commission itself. This was a function which was placed in the hands of the Ethics Commission and which it had to do on its own. Our office would take the same position with regard to the Ethics Commission which is proposed to be established by SB 351. In that connection, therefore, it appears to be essential that the Legislature authorize the Commission to hire its own attorney and for this purpose to increase the Commission's appropriations to permit the expense of same.

I trust the above information will prove useful to you in considering this bill.

Sincerely,

ROBERT LIST
Attorney General

By
Donald Klasic
Deputy Attorney General

DK:dj

Attachment: Exhibit "A"

cc: Honorable Margie Foote
Honorable Wilbur Faiss
Honorable Mary Gojack
Honorable Norman Hilbrecht
Honorable Jack L. Schofield
Honorable William J. Raggio
Honorable Richard Bryan
Honorable Thomas Wilson

State of Nevada
State Ethics Commission
1976 Statement of Operation
As of 1/31/76

Approximate Costs Per Meeting - Carson City:

Salaries 5 @ $40.00			$200.00
V.H. McDowell-	Phone	$ 60.22	
	Meals	10.00	
	Reno-CC	10.20	80.42
M. Settlemeyer			8.60
K. Mcdonald			0
R. Prince	- Per Diem	$ 38.00	
	Vehicle	109.82	147.82
Fr. L. Dunphy-	Phone	$ 60.22	
	- Meals	10.00	
	- Reno-CC	10.20	80.42
NIC - 1 month $1,250.00 @ .30/$100.00			3.75
			$521.01

Approximate Costs Per Meeting - Las Vegas:

Salaries 5 @ $40.00			$200.00
V.H. McDowell			0
Fr. L. Dunphy			0
K. Mcdonald -	Plane	$60.22	
	- Per Diem	10.00	
	- Vehicle CC-Reno	10.20	80.42
M. Settlemeyer--	Plane	$60.22	
	- Per Diem	10.00	
	- Vehicle	15.30	85.52
R. Prince	- Per Diem	$38.00	
	- Vehicle 570 @ .17	96.90	134.90
NIC - 1 month $1,250.00 @ .30/$100.00			3.75
			$504.59

EXHIBIT "A"