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Public demand for strict and effective accountability of public officials engaged in political election campaigns has increased dramatically in recent times. Development of concrete measures to implement the objective, however, has been less quick to materialize. In this article, Professor Rodgers proposes model state legislation to require reporting of campaign contributions and expenditures by most political candidates and committees. The controlling principle of the proposed legislation is total disclosure of all aspects of political campaign financing. The Model Bill contains an effective procedure for administration and enforcement of its provisions.

I. INTRODUCTION

Money speaks with authority in American politics. Spiraling costs discourage qualified persons from seeking office. Those who run without adequate financial support are disadvantaged because they are unable to present their views to the voters comprehensively and intelligently. Major contributors, increasingly essential to a successful campaign, threaten the independence of all candidates. Worse, upon occasion they can dictate the selection and guarantee the election of men who are unashamed apologists for the special interests who put them in office. Given the expanding big money demands of modern media campaigns, the growing influence of major contributors poses a grave threat to the continued integrity of the electoral process.

Past efforts to regulate the use of funds in political campaigns in this country often have taken the form of artificial ceilings upon contributions and expenditures.[1] Such laws, opposed as they are to

* Assistant Professor of Law, University of Washington. This bill was drafted originally by Roger M. Leed and William H. Rodgers, Jr., of the Statutory Reform Committee of the Young Lawyers Section of the Seattle-King County Bar Association. With slight modifications, it was introdueed as Senate Bill No. 500 by Executive and Departmental Request of Governor Daniel Evans and Secretary of State A. Ludlow Kramer during the 1969 regular session of the legislature of the State of Washington. On February 18, 1969, it was referred to the Senate Committee on Constitutions, Elections and Legislative Process, where it was quietly interred. The bill will be reintroduced during future legislative sessions and may appear on the ballot in 1970 as an initiative measure.

1. For a comprehensive discussion of existing legislation, see H. ALEXANDER, REGULATION OF POLITICAL FINANCE (1966). Another classic is A. HEARD, THE COSTS OF DEMOCRACY (1960).

apparently irreversible trends in modern campaigning, have proven to be largely unenforceable. According to the President's Commission on Campaign Costs:

> Many of the existing legal regulations of campaign finance have become a mockery. They are not realistic in light of today's campaign requirements. As a consequence, many provisions of the law are evaded or avoided, a condition contributing to the unfavorable climate that has surrounded fund-raising efforts.[2]

Campaign financing remains a mysterious and, unfortunately, an increasingly ominous influence in the conduct of government. The Model Bill and accompanying commentary are addressed to this evil.[3]

> Section 1. FINDINGS AND DECLARATION OF LEGISLATIVE PURPOSE. The legislature of the [State of . . .] finds that secreey in the sources and applications of political funding contributes to citizen misunderstanding and distrust of elected officials and alienation from thc processes of government. It is declared to be the public policy of the [State of . . .] to require full disclosure of campaign contributions and expenditures, in order to foster informed judgments by the electorate, enhance public confidence in the probity of elected officials, and strengthen faith in the quality and rcliability of governmental institutions. It is thus the purpose of the legislature that this act be construed, wherever possible, to promote complete disclosure of all information regarding the finances of political campaigns.

The controlling principle of the bill, here articulated, is total disclosure. By prescribing a uniform accounting system for all money expended in a campaign, the bill is designed to assure that the public is informed fully about who contributes, who receives, and how the funds are spent. Whether a candidate will be influenced unduly by heavy and strategically placed gifts from a few contributors is a question that is left to the good judgment of the voters. Full disclosure, in addition, should protect the contributor against the contingency that his money will be improperly spent. It will shield the candidate from the demeaning exercise of circumventing the present laws according to accepted norms. Disclosure may yield incidental benefits by broadening the base of contributions and, indirectly, curbing campaign expenditures.

Admittedly, the principle of full disclosure, though crucial, is but

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The Citizens' Research Foundation, of which Mr. Alexander is the Director, is the one institution in the country that has sponsored a series of insightful studies by several scholars in the domain of political finance. Among the major works are H. ALEXANDER, FINANCING THE 1960 ELECTION (Citizens' Research Foundation Study No. 5, 1962); H. ALEXANDER, FINANCING THE 1964 ELECTION (Citizens' Research Foundation Study No. 9, 1966); BIBBY & ALEXANDER, THE POLITICS OF NATIONAL CONVENTION FINANCES AND ARRANGEMENTS (Citizens' Research Foundation Study No. 14, 1968).

2. THE PRESIDENT'S COMMISSION ON CAMPAIGN COSTS, FINANCING PRESIDENTIAL CAMPAIGNS 3 (1962).

3. On the need for renewed enforcement efforts at the state level, see Alexander, *Too Costly Politics*, NAT'L CIVIC REV., Feb. 1969.

one aspect of a comprehensive program of reform in political finance. Other recommendations, advanced in 1962 by the President's Commission on Campaign Costs, include tax credits for individual contributions and modifications in provisions governing the availability of the media.[4] A more recent series of recommendations, which recite familiar dogma, were advanced by the Committee for Economic Development in 1968.[5]

Informing the public about campaign financing requires no sacrifice of the values of free expression and full participation in the political process. Obstacles to the spending of money and circulation of ideas are avoidcd throughout the draft. In fact, disclosure of the sources of contributions and the purposes of expenditures is designed to shed additional light upon influences that too often escape unnoticed. In the words of Mr. Justice Brandeis, "Publicity is justly commended as a remedy for social . . . diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[6]

II. THE MODEL BILL

A. Applicability

Section 2. APPLICABILITY. The provisions of this chapter shall apply in all election campaigns other than campaigns for:

(1) Municipal offices of cities below ten thousand in population;

(2) County offices of cities below eighteen thousand in population;

(3) School board offices of school districts below fifty thousand in population;

(4) Offices of port districts, fire districts, sewer districts, water districts, irrigation districts, local improvement districts, hospital districts, and all other offices of special districts below fifty thousand in population;

(5) Precinct committeemen.

This section poses several serious policy issues. The determination to apply the act to "all election campaigns," as that phrase is defined in subsection 3(6), means that all local elections, judicial elections, and elections involving ballot propositions will be subjected to the reporting requirements.

Coverage of local elections in small constituencies would be justified only if the obligations imposed are not unduly burdensome.

4. FINANCING PRESIDENTIAL CAMPAIGNS, *supra* note 2, at 4-7.

5. COMMITTEE FOR ECONOMIC DEVELOPMENT, FINANCING A BETTER ELECTION SYSTEM 20-26 (1968). *Compare* Lobel, *Federal Control of Campaign Contributions*, 51 MINN. L. REV. 1 (1966).

6. L.D. BRANDEIS, OTHER PEOPLE'S MONEY 62 (1933); *see* Note, *Disclosure as a Legislative Device*, 76 HARV. L. REV. 1273 (1963).

All five exclusions in section 2 reflect a judgment, concededly arbitrary, that the imposition of even modest reporting requirements in some campaigns for minor offices would be both unproductive and inconvenient. Also, as in the case of the exception for precinct committeemen, it was thought that an individual seeking an office without a salary should be excused from reporting the few expenditures he might make. This judgment is further reflected in the definition of "public office" in subsection 3(12), which includes only an office to which a salary attaches.

Arguably, non-partisan elections should be excluded from the reporting requirements. This distinction, however, not only would excuse many campaigns of political significance, including mayoralty races in several cities, but also would appear to be based upon a faulty premise, namely, that the dangers of undue influence appear only when organized political parties participate.

Judicial offices, neither in theory nor practice, are excluded from the political domain. States that require a judge to win the approval of the electorate perforce encourage him to be responsive to political considerations. Nor is there any question that the expenditure of money may be of decisive import in the close contests that occasionally occur. Given the twin suppositions of political power and the relevance of funds, the argument favoring disclosure in a campaign for a judgeship is compelling.

Ballot propositions, further defined in subsection 3(1), are included in the reporting provisions on the rationale that the public interest requiring reporting during the campaign of a person who seeks to become a lawmaker a fortiori must be vindicated during the campaign to determine whether a submitted measure will become law directly by vote of the people.[7] Indeed, voter opinion on initiative measures, which often present complex issues, may be peculiarly responsive to strategic spending by special interests.

B. Definitions

Section 3. DEFINITIONS. Unless the context of this act requires otherwise:

(1) "Ballot proposition" means any constitutional amendment, initiative or referendum that has been certified by the secretary of state to the county auditors for inclusion on the ballot for submission to the voters of the state.

(2) "Candidate" means any person who seeks nomination for, or election to, public office. For purposes of this definition a person shall be deemed to seek nomination or election when he first:

7. This principle is acknowledged in WASH. REV. CODE ANN. § 29.79.130 (1965).

(a) receives contributions or makes expenditures or reserves space or facilities with the intent to promote his own nomination or election; or

(b) announces publicly or files for office.

(3) "Commercial advertiser" means any person including, but not limited to, newspapers, magazines, television and radio stations, billboard companies, and direct mail advertising agencies who sell the service of communicating messages to the general public or segments of the general public.

(4) "Contribution" includes a loan, gift, donation, advance, pledge, payment, or transfer of anything of value, including personal services for less than full consideration, for the purpose of furthering or opposing any election campaign. *Provided,* contribution shall not include the rendering of personal services of the sort commonly performed by a volunteer campaign worker or his travel or other personal expenses, paid for by such volunteer campaign workcr.

(5) "Election" includes both primary and general elections for a public offiee to be filled by the voters and any election in which a ballot proposition is submitted to the voters.

(6) "Election campaign" means any campaign of a candidate for nomination for, or election to, public offiee and any campaign in support of, or in opposition to, a ballot proposition.

(7) "Elections commission" or "commission" means the body established under section 4 of this act.

(8) "Expenditure" includes a loan, gift, donation, advance, pledge, payment or transfer of anything of value, including personal serviees for less than full consideration, for the purpose of furthering or opposing any election campaign.

(9) "Office facilities" include, but are not limited to, stationery, postage, machines and equipment, vehicles, office space, and clientele lists.

(10) "Person" means an individual, partnership, joint venture, corporation, association, political party, executive committee thereof, or any other group, however organized.

(11) "Political advertising" includes any advertising displays, signs, articles, tabloids, letters, radio or television presentations or other means of communication, presented for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(12) "Political committee" means any person having the expectation of receiving contributions or making expenditures in support of, or in opposition to, the candidaey of any person, or in support of, or in opposition to, any ballot proposition, in an aggregate sum of five hundred dollars or morc.

(13) "Public office" means any federal, state, county or city office to which a salary attaches and which is filled by the voters.

This definitions section is intended to be exhaustive and is designed to control the substantive features of the act. Some of the subsections require no comment. Others will be discussed in connection with specific provisions that follow. A few of the major policy decisions here resolved will be explored at this point.

"Contribution" is defined expansively in subsection 3(4) to include every conceivable type of financial support given to a campaigner. Some existing legislation[8] mentions specifically certain gifts deemed to be contributions: sales of goods to a candidate at less

8. MASS. ANN. LAWS ch. 55, § 1 (1964).

than full value; promises or guarantees of payment; loans of property or other facilities; the granting of discounts or rebates not available to the general public; and the cancellation of any indebtedness. The obvious purpose of the bill is to foreclose evasion of the reporting requirements by invocation of the familiar devices that in the past have served to disguise contributions.

Hard questions of valuation arise. A familiar objection to reporting requirements is that some forms of manifestly valuable assistance, such as an endorsement by a political group or a helpful editorial, cannot be expressed in monetary terms. Conceding this, the draft seeks only to compel the diselosure of all forms of tangible assistance. Plainly, it would be an exercise in futility to attempt to evaluate and report expressions of support from groups or persons whose views already are identified publicly.

A further concession to the practicalities of campaigning is expressed in the exception for the "rendering of personal services of the sort commonly performed by a volunteer campaign worker." Massachusetts excludes "the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, . . . the payment by those rendering such services of such personal expenses as may be incidental thereto, [and] the exercise of ordinary hospitality."[9] It is simply unrealistic to require an effort to evaluate personal services rendered during a campaign, such as doorbelling and telephoning. Even if valuation were feasible, it would be unduly burdensome and doctrinaire to require the reporting of these efforts. Impossibility of enforcement would be reason enough to exclude personal services. Note also that the requirement that the services be performed and paid for by the volunteer withdraws the exception from the individual who contributes the services of his employees. The man who pays the salary of another to work for a candidate has made a "contribution" within the meaning of the bill.

The de minimis principle is reflected throughout the bill and deserves emphasis. The overriding objective of a sound reporting law is to identify for the public the major influences in campaign financing. No purpose would be served by attempting to trace every dollar or to identify each partisan, however minor. Construed within these objectives, the language of the draft should suffice.

The definition of "expenditure" in subsection 3(8), in language and breadth, parallels the definition of "contribution." The bill

9. *Id.*

requires the disclosure of everything of value that is expended in the course of a campaign. Obviously all expenditures are not absorbed into the campaign fund as contributions. One important source of revenue in any campaign is the personal assets of the candidate. The act requires the disclosure of expenditures of personal funds though they were not contributed by another. The conclusion was that the public is entitled to information about the popular but rarely verified charge that a candidate "bought" the election with his personal fortune.

The bill contains no limitations against expenditures and contributions by any person. This omission is consistent with the central purpose of requiring full disclosure without restricting in any way the sources and applications of campaign funds. Indeed, the draft assumes that the right to contribute to a political cause, no less than the right to speak on its behalf, is a form of speech protected by the first amendment to the federal constitution.

This is not to say that government is without the power to suppress activity that threatens the fairness of the elective process. The principle that justifies depriving a convicted felon of the right to vote[10] undoubtedly is broad enough to sustain the exclusion of contributors who create a special danger of exercising undue influence in the political process. In fact, many states and the federal government have legislated to bar contributions by groups[11] and individuals[12] who are suspect for various reasons.

The rationales for these exclusions are many and varied. A corporation or union may be barred from contributing to deter the possible disproportionate influence of these heavy spenders or to protect an individual shareholder or union member who may disagree with the judgment of his organization. Government employees may be foreclosed from contributing to protect them from coercion by superiors who must run for office. Officers of a regulated industry may be disqualified to eliminate the temptation to resort to campaign contributions to maintain their preferred position with government officials. Gifts from professional gamblers or convicted felons may be forbidden to immunize political officials from the corrupt influences of the underworld.

Whatever the explanation, most bans against sources of political

10. *See* Green v. Board of Elections, 380 F.2d 445 (2d Cir. 1967), *cert. denied*, 389 U.S. 1048 (1968).

11. *E.g.*, 18 U.S.C. § 610 (1964); MASS. ANN. LAWS ch. 55, § 7 (1964); ORE. REV. STAT. § 260.280 (1968).

12. *E.g.*, 15 U.S.C. § 79(l)(h) (1964); FLA. STAT. ANN. § 99.161(1) (1964).

contributions have remained unenforced and unenforceable.[13] Recognizing this, the bill is drafted upon the assumption that full disclosure assuredly is the "best disinfectant" for these undue influences. The voters can decide if they are informed that a certain corporation or union contributed 10,000 dollars to a single candidate; or that each of the eighty deputy prosecutors made a "voluntary" 50 dollar contribution to the prosecutor's campaign chest; or that each insurance company doing business in the state contributed to the campaign of the incumbent insurance commissioner; or that the local gambling kingpin contributed 1000 dollars to the mayoralty candidate who was wavering on the issue of a tolerance policy for gambling violations. Disclosing these facts, which are admittedly relevant to a voter's decision, is thought to be a more meaningful measure of reform than attempting to bar contributions from individuals or groups who may have legitimate reasons for advancing funds to their preferred candidates or causes.

C. *The Enforcement Authority*

Section 4. COMMISSION ESTABLISHED. There is hereby established the ["State Elections Commission"], which shall be composed of five members.

The lax reporting provisions of most states are undermined further by inadequate investigation and enforcement. Typically, each candidate mails any required reports to a central depository, usually the office of the secretary of state, where they remain undigested, unpublicized and perhaps unread. Similarly, the criminal process and civil actions by aggrieved voters or candidates, though occassionally effective, are an expensive and unpredictable means for maintaining surveillance over the reporting requirements.

The commission created by section 4 is designed to supervise continuously the statutory obligations. Establishing a nonpartisan agency with precise responsibilities for detecting infractions and coercing compliance, independently of the political office of secretary of state, should increase the likelihood of effective enforcement. The extraordinary step of vesting part-time citizen commissioners with significant powers over political contributions is justifiable in light of the recognized inability of established officials to operate effectively in this intensely political domain. On a pragmatic level, citizen commissioners are able to plan their participation to coincide with

13. Occasional and sporadic enforcement campaigns become major news stories. *See* Wall St. J., Nov. 21, 1969, at 1, col. 6.

peak reporting periods. An independent, administrative authority, moreover, is well suited to coordinate the development of forms and procedures and to supervise the personnel necessary to implement the broad reporting obligations of the bill. Lastly, and most importantly, an agency recognized as the responsible expert in the field could generate a continuing flow of widespread publicity that is essential to effective enforcement.

Section 5. MEMBERSHIP AND COMPENSATION. (1) The membership of the commission shall be chosen as follows: Two members, who shall not belong to the same political party, shall be appointed by the governor to serve four-year terms. Two members, who shall not belong to the same political party, shall be appointed by the chief justice to serve four-year terms. One member shall be appointed by the attorney general to serve a four-year term. One of the original members appointed by the governor and one appointed by the chief justice shall be appointed to two-year terms. All terms of original members shall commence upon January 1, 19___. No member of the commission, during his tenure, shall hold or campaign for elective public office, nor be an officer of any political party. Any member shall be eligible for reappointment. A vacancy shall be filled within thirty days. Such vacancy shall not impair the rights of the remaining members to exercise all the powers of the commission; three members shall constitute a quorum. The commission shall elect its own chairman and adopt its own rules of procedure in the manner provided in [state law]. Any member of the commission may be removed by the governor for neglect of duty or malfeasance or misconduct in office.

(2) Members of the commission shall serve without compensation, but shall be reimbursed twenty-five dollars per diem for each day or portion thereof spent in serving as members of the commission. They shall be paid their necessary traveling expenses while engaged in the business of the commission as prescribed under [state law].

Being recognized as nonpartisan is the *sine qua non* of the effectiveness of the commission. Hopefully, this objective is within the range of possibility. The qualifications of members and the method of selection must be defined so as to avoid all suspicion that political considerations will affect the agency's deliberations. The need to disqualify candidates, public officers, and political party officials is obvious. It is anticipated that the commission's prestige will be further enhanced by the selection of men of independence, integrity, and experience although these qualities are not identified in the bill. The division of the responsibility for appointment between the governor, chief justice, and attorney general was thought to be desirable to assure balance in the delicate politics of selection. There is, however, plainly no foolproof method for immunizing the commission from the political sphere. Section 5 is one suitable alternative among many.

Section 6. POWERS. The elections commission shall have the following powers:

(1) To adopt, promulgate, amend and rescind suitable rules and regulations

to carry out the provisions of this act, and the policies and practices of the commission in the process of administration;

(2) To develop prescribed forms for the filing of the reports and statements required by this aet;

(3) To prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this act;

(4) To make each report and statement filed with it available for public inspection and copying during regular office hours at the expense of any person requesting copies;

(5) To preserve such reports and statements for a period not less than ten years from the date of receipt;

(6) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate;

(7) To determine whether the required reports and statements have been filed and, if so, whether they conform to the requirements of this act;

(8) To prepare and publish, within sixty days after each general election, a report setting forth, as to each candidate and political committee who filed a final report, the amounts and sources of all contributions and the amounts and purposes of all expenditures; and the names and addresses of any candidates or political committees who failed to file a final report or who filed an incomplete final report;

(9) To prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this act;

(10) To receive, investigate and pass upon complaints alleging violations of this act;

(11) To make from time to time, on its own motion, audits and field investigations with respect to reports and statements filed under the provisions of this act and with respect to suspected failures to file reports and statements required under the provisions of this act;

(12) To issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence;

(13) To report apparent violations of law to the appropriate law enforcement authorities;

(14) To issue orders, after the completion of appropriate proceedings, imposing a fine or penalty authorized by this act, directing compliance with the act, or prohibiting the actual or threatened commission of any conduct constituting a violation;

(15) To make public the fact that a violation has occurred and the nature thereof;

(16) To petition the superior court within the county where the hearing was or is being conducted for the enforcement of any order issued in connection with such hearing.

Section 6 spells out the powers and duties of the commission in considerable detail.[14] The content is dictated largely by the substantive provisions that follow. Most of the subsections are boilerplate; a few provisions deserve comment.

14. A valuable source for the draftsmen was H.R. 18162, 89th Cong., 2d Sess. (1966), a bill that would have established a federal elections commission to supervise the financing of campaigns for federal office.

Subsection 6(2), authorizing the commission to develop forms for filing purposes, is very important but should be easily implemented. Systematic procedures minimize the imposition upon those who must report and simplify the processing of data. Several states, notably Florida, have devised forms that have worked well in practice.[15]

The reports authorized under subsection 6(9) should be of great utility to scholars, candidates, and members of the general public who are interested in tracing and analyzing the impact of expenditures on the strategy and outcome of elections. This in turn could improve enforcement. A recent empirical investigation in New Jersey concluded that "where noncompliance is the rule and nonenforcement its antecedent, a simple inquiry, even by researchers, may stimulate the appropriate officials to take some formal action."[16]

Section 7. MINISTERIAL FUNCTIONS BY SECRETARY OF STATE. The secretary of state, through his office shall perform the ministerial functions which the commission may require. The office of the secretary of state shall be designated as the place where the public may file papers or correspond with the commission and receive any form or instruction from the commission. The secretary of state or his designee shall serve as secretary to the commission.

In jurisdictions where the secretary of state is engaged in continuing supervision of the election laws, it is advisable to coordinate his office with the proposed elections commission. Informally, this could be done without legislation. An explicit designation of the secretary of state as secretary to the commission, however, eliminates doubt about their respective functions. The secretary is a ministerial officer who implements the policies of the commission. The section does not delegate enforcement powers to a political official and thus seeks to avoid an unwise and dangerous compromise of the commission's independence.

Section 8. COMPLAINT PROCEDURE; JUDICIAL REVIEW. (1) Any registered voter who believes a violation of this act has occurred may file a complaint with the commission which shall conduct a preliminary investigation of the merits of the complaint. If the commission determines that there are no reasonable grounds to believe that a violation has occurred, the complaint shall be dismissed. If the commission determines that there are such reasonable grounds, it shall give notice summoning the persons believed to have committed the violation to a hearing. The hearing shall in all respects be conducted in accordance with the procedures governing a "contested case" within the meaning of [state law].

(2) The commission is empowered, upon its own motion, to file a complaint charging violations of the act.

15. *See generally* Roady, *Ten Years of Florida's "Who Gave It—Who Got It" Law*, 27 LAW & CONTEMP. PROB. 434 (1962).

16. Alexander & McKeough, *Campaign Fund Reporting in New Jersey*, 6 HARV. J. LEGIS. 190, 197 (1969).

(3) Any person aggrieved by a final decision of the commission is entitled to judicial review in accordance with the provisions of [state law].

The complaint procedure, including the review provision, is straightforward and conforms to customary administrative practice. A formal hearing which, among other things, could result in the loss of an elective office or the imposition of a severe monetary penalty certainly must be conducted with the usual indicia of procedural due process. For this reason the section explicitly incorporates the procedural protections prescribed for a "contested case" under local administrative procedures.

Section 9. REMEDIES. (1) If, on the basis of the preliminary investigation and subsequent hearing, the commission determines a violation has occurred, it may issue an order directing the violator to take such action as the commission determines may be necessary in the public interest to correct the injury occasioned by the violation. An order may include a provision requiring the violator:

(a) to pay the fine or penalty authorized by section 22 of this act;

(b) to cease and desist from committing further violations;

(c) to make public the fact that a violation has occurred and the nature thereof;

(d) to make public complete statements, in corrected form, containing the information required by this act;

(e) to relinquish his office which shall be treated as vacant in accordance with the provisions of section 22(2) of this act.

Under this section the commission is empowered to issue orders directing the violator to take steps necessary to vindicate the purposes of the legislation. The equitable discretion to fashion a formal order after a full hearing is assumed to be a fortiori available to deal with lesser infractions that are not treated as technical violations. Two important remedial provisions, the monetary penalty and disqualification from office, are discussed under section 22 *infra*.

D. The Disclosure Procedure

Section 10. OBLIGATION OF POLITICAL COMMITTEES TO FILE STATEMENT OF ORGANIZATION. (1) Each political committee, within ten days after its organization or, if later, within ten days after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign in an aggregate amount of five hundred dollars or more, shall file with the elections commission a statement of organization. Each political committee in existence on the effective date of this act shall file a statement of organization with the commission at such time as the commission may prescribe.

(2) The statement of organization shall include:

(a) the name and address of the committee;

(b) the names and addresses of all related or affiliated persons;

(c) the purposes of the committee;

(d) the name, address, and title of the custodian of books and accounts;

(e) the names, addresses, and titles of its officers;

(f) if it has no officers, the names, addresses and titles of its responsible leaders;

(g) the name and address of its campaign treasurer and campaign depository;

(h) if applicable, the name, office sought, and party affiliation of (i) each candidate whom the organization is supporting, and (ii) any other persons whom the organization is supporting for nomination for, or election to, public office; and, if the committee is supporting the entire ticket of any party, the name of the party;

(i) if applicable, the ballot proposition concerned and whether the committee is in favor of or opposed to such proposition;

(j) an indication whether the committee is a continuing one;

(k) what disposition of surplus funds will be made in the event of dissolution;

(l) such other information as the commission may prescribe, consistently with the purposes of this act.

(3) Any change in information previously submitted in a statement of organization shall be reported to the commission within ten days following the change.

This section endorses registration as a primary means of regulating campaign financing. The political committees required to register, as defined in subsection 3(11), include any person who has the expectation of receiving contributions or making expenditures in excess of 500 dollars in a political campaign. Anticipated involvement to this extent imposes an obligation upon the committee to identify itself to the commission by filing a "Statement of Organization." Registrants might include groups as diverse as the Republican State Committee, the Black Panthers, the LaLeschi League, and the Citizens to Protect Our Right to Bear Arms, Inc. The detailed information required of the registrant should disclose to the public the nature of the committee, its leadership, and the candidates or propositions it is supporting. Identifying the major participants is thought to be of crucial importance. The purpose is to expose to the voters the major forces in a political campaign as soon as they can be identified.

Registration alone imposes no restrictions upon political activity. The committee is free to spend money according to its best judgment in support of the candidates or propositions of its choice. Registration usually will take place early in the campaign. Many participants, such as political parties, will remain registered indefinitely. New committees may arise; old committees may disband. Some will be closely allied to the candidate; others will be unwanted supporters who operate totally beyond his control. This fluid situation is acknowledged by subsection (3), which requires the submission of new information to the commission. The central purpose of section 10 is to assure a continuing

flow of information about the groups and persons who are spending a significant amount of money in a political campaign.

Section 11. CAMPAIGN TREASURER AND DEPOSITORIES. (1) Each candidate, at or before the time he announces publicly or files for office, and each political committee, at or before the time it files a statement of organization, shall designate and file with the elections commission the names and addresses of:

(a) one legally competent individual, who may be the candidate, who will serve as a campaign treasurer;

(b) one bank doing business in this state which will serve as a campaign depository;

(2) A candidate, a political committee or a campaign treasurer may appoint as many deputy treasurers as are deemed necessary and may designate not more than one additional campaign depository in each county in which the campaign is conducted. The candidate or political committee shall file the names and addresses of the deputy campaign treasurers and additional campaign depositories with the elections commission;

(3) (a) A candidate or political committee may at any time for any reason remove a campaign treasurer, deputy campaign treasurer or campaign depository;

(b) In the event of the death, resignation or removal of a campaign treasurer or deputy campaign treasurer the candidate or political committee shall designate and file with the elections commission the name and address of a successor;

(4) No campaign treasurer, deputy campaign treasurer, or depository shall be qualified until his name and address is filed with the elections commission.

Section 11 requires each candidate and political committee to designate a campaign treasurer and a campaign depository at the commencement of the election campaign.[17] Compliance is crucial to the effective enforcement of the act since full disclosure is assured largely through the imposition of reporting obligations on the treasurers and banks.

Subsections 11(2) and (3), dealing with the appointment of additional treasurers and depositories and the removal of those already designated, are mechanical provisions needing little explanation. It should be noted, however, that allowing the appointment of more treasurers and depositories tends to dissipate the centralization of finance anticipated by this section. For this reason limitations upon the number of additional treasurers and banks may be desirable.

Subsection 11(4) states that no treasurer or depository shall be qualified until his name and address has been filed with the commission. No penalty is imposed upon an unqualified treasurer or depository. But the candidate's or committee's failure to file may be punished criminally under subsection 23(f). And no contributions or

17. This section is based, in large measure, upon the NATIONAL MUNCIIPAL LEAGUE'S MODEL STATE CAMPAIGN CONTRIBUTIONS AND EXPENDITURES REPORTING LAW (4th Draft, 1961).

expenditures can be channeled lawfully through an unqualified treasurer or depository.

> Section 12. DEPOSIT OF CONTRIBUTIONS; STATEMENT OF CAMPAIGN TREASURER; ANONYMOUS CONTRIBUTIONS. (1) All monetary contributions received by a candidate or political committee shall be deposited by the campaign treasurer or deputy treasurer in a campaign depository in an account designed "Campaign Fund of . . ." (name of candidate or political committee) no later than the next regular day of business of such depository.
>
> (2) All deposits made by a campaign treasurer or deputy campaign treasurer shall be accompanied by a statement containing the name of each person contributing the funds so desposited and the amount contributed by each person. The statement shall be in triplicate, upon a form prescribed by the elections commission, one copy to be retained by the campaign depository for its records, one copy to be filed by the depository with the elections commission, and one copy to be retained by the campaign treasurer for his records. In the event of deposits made by a deputy campaign treasurer, the third copy shall be forwarded to the campaign treasurer to be retained by him for his records. Each statement shall be certified as correct by the campaign treasurer or deputy campaign treasurer to be retained by him for his records. Each statement shall be certified as correct by the campaign treasurer or deputy campaign treasurer making the deposit.
>
> (3) An anonymous contribution received by a campaign treasurer or deputy campaign treasurer shall not be deposited, used, or expended, but shall be returned to the donor, if his identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state.

The Florida Act[18] and the Municipal League's Model Law[19] designate the candidate's treasurer as the exclusive conduit of all expenditures and contributions. No committees or individuals are allowed to spend on behalf of a political cause through separate funds. Whether such limitations upon political activity work an abridgement of freedom of speech is a question that has divided the courts.[20] Faced with the obstacle, however, the draftsman decided to allow each political committee to designate its own treasurer and depository. By granting financial autonomy to each committee and at the same time enforcing strict accounting responsibility within the organization, the bill strikes a balance between the values of free participation in political affairs and the public's need to know who is spending how much.

Section 12, which is based upon section 5 of the Municipal League's Model Law, prescribes the formalities by which each treasurer deposits money contributions.[21] The statement required of the treasurer under subsection 12(2) is no more complex than the deposit slip routinely filled out by any person having a bank account. A

18. FLA. STAT. ANN. § 99.161(4)(a) (1960).

19. *See* note 17 *supra.*

20. *Compare* State v. Pierce, 163 Wis. 615, 158 N.W. 696 (1916), *with* Smith v. Ervin, 64 So. 2d 166 (Fla. 1953).

21. Similar provisions are found in FLA. STAT. ANN. § 99.161(5) (1960), and MASS. ANN. LAWS ch. 55, § 17(b) (1964).

triplicate form has been developed in Florida which has worked satisfactorily, although plainly the details can differ in practice. Requiring the depository bank to send a copy of the treasurer's statement to the commission is a minimal imposition and is essential to verify the deposits.

The requirement in subsection 12(3), that anonymous contributions be returned to the owner or escheat to the state, is compatible with the principle of full disclosure reiterated throughout the bill. Either the source of the funds is disclosed or the money cannot be used. Following effective enforcement, contributions from nameless sources are likely to disappear. Once again, the de minimis principle would apply. The provision, for example, would not preclude the use of 75 dollars collected at an open meeting of the Jaycees even though each dollar could not be traced to a specific donor.

> Section 13. AUTHORIZATION OF EXPENDITURES AND RESTRICTIONS THEREON. (1) During the relevant reporting period no expenditure from the campaign fund shall be made or incurred by any candidate or political committee unless it is authorized in writing by a campaign treasurer or deputy campaign treasurer. The authorization, which may be in the form of a check, shall state the amount and purpose of the proposed expenditure and shall be signed by the campaign treasurer or deputy campaign treasurer;
>
> (2) No funds shall be withdrawn from or paid by a campaign depository from any campaign fund account except upon the presentation of the written authorization from a campaign treasurer, accompanied by an order for payment signed by the campaign treasurer or deputy campaign treasurer;
>
> (3) The authorization and the order for payment shall be part of a single form to be prescribed by the elections commission;
>
> (4) When funds are withdrawn from or paid by a campaign despository from any campaign fund account upon the authorization of a deputy campaign treasurer, such deputy campaign treasurer shall forward a copy or microfilm of the form containing the authorization and order for payment to the campaign treasurer on the day of such authorization.

The authorization required of the campaign treasurer, together with the order for payment, is equivalent to a draft or check drawn upon the campaign fund account. Requiring, in addition, a statement of the purpose of the expenditures is neither unusual nor burdensome. Massachusetts prescribes a form that would appear on the back of all checks signed by the treasurer disclosing various categories of expenditures.[22] The bill, in subsection 13(3), leaves the particulars of a form to the discretion of the commission. Obviously, specific definitions enhance the clarity of the information itemized.

A possible addition to this section would be the inclusion of a provision directing a campaign treasurer to comply with a

22. MASS. ANN. LAWS ch. 55, § 17(c) (1964).

contributor's request that all or part of his money be applied to a specified purpose which is not prohibited by law.[23] Such an earmarking provision obviously is not essential to the exercise of free expression since the contributor may give to any political committee or spend the money himself if he has no confidence in the judgment of the candidate's treasurer. On the other hand, an earmarking provision might be justified as a courtesy to a contributor, a reassurance that his funds will be spent properly and, indirectly, a means for encouraging the centralization of expenditures through designated treasurers.

> Section 14. DUTY TO REPORT OF CANDIDATES AND TREASURERS. (1) On the day the campaign treasurer is designated each candidate or political committee shall file with the elections commission a report of all contributions received and expenditures made in the election campaign prior to that date. *Provided,* the initial report of the treasurer of a political committee in existence at the time this act becomes effective shall include only such information as may be required by the commission;
>
> (2) At regular intervals each campaign treasurer shall file with the elections commission a further report of the contributions received and expenditures made sinee the date of the last report. The campaign treasurer's report shall be filed with the elections commission on:
>
> (a) the first Monday of each of the three calendar months preceding the date of election;
>
> (b) the thirtieth day after each election.

Enforcing compliance with the reporting obligations of this section is essential to assure the disclosure that is the central purpose of the bill. Under subsection 14(1) a candidate or committee must file with the commission a report of all contributions and expenditures made in the election campaign prior to that date. Since a treasurer must be designated at or before the time the candidate announces or files for office, the information in this initial report will disclose activity occurring before the candidate formally enters the race. As a practical matter, contributions will be accruing during the entire tenure of some officeholders.

Florida law, with minor exceptions, forbids expenditures prior to the date of announcement or filing lest the candidate be encouraged to make unreported expenditures while delaying a formal announcement of candidacy.[24] This prohibition was eliminated as unnecessary because all money expended in the pre-announcement period must be reported under subsection 14(1). The argument that sums need not be reported because they were expended before an individual actually became a

23. A comparable provision appears as § 6(f) of the Municipal League's Model Law to assure that campaign treasurers, installed as the exclusive conduits for fundings, could not censor the views of contributors who are forbidden from spending independently. *See* note 17 *supra*.

24. FLA. STAT. ANN. § 99.161(2)(d) (Supp. 1969).

candidate is foreclosed by subsection 3(2)(a), which identifies a person as a "candidate" as soon as he "receives contributions or makes expenditures or reserves space or facilities with intent to promote his own nomination or election." Moreover, in the rare situation of the genuine draft movement disclosure also is assured since supporters of a reluctant man may nonetheless be obliged to file and report as a political committee.

Subsection 14(2) maintains throughout the reporting period the disclosure that is mandated at the outset by subsection 14(1). The monthly intervals set by subsection 14(2)(b) are concededly arbitrary but should guarantee continuing disclosure. The requirement that a report be filed on the first Monday of each month assures that the last report will be filed eight days before the election so that the public will have an adequate opportunity to evaluate and consider the information disclosed. Unquestionably, publicity is most valuable prior to the election when it may have the greatest impact.

Florida law requires the return of all contributions made after the filing of the last pre-election report.[25] The concerns of the draftsmen evidently were that a last minute flood of contributions would render the report misleading; that money strategically spent on the eve of a close election would have a disproportionate influence on the outcome; and that a candidate might be tempted to buy financial support in the waning moments of a campaign by promising concessions to the contributor. The bill rejects this limitation on the theory that last minute contributions not only represent a significant share of the money in a campaign but also may be essential to defend against a personal attack—or another surprise issue—raised a few days before the election.

The flurry of spending that takes place in the waning hours of a campaign will be disclosed in the wrap-up report required under subsection 14(2)(b) on the thirtieth day after each election. The thirty day limitation is necessary so that disgruntled losers or voters as well as the commission may be afforded an opportuntiy to evaluate promptly a full report of the entire campaign experience. Violations are likely to surface at this time since the verifying information from the campaign depository and commercial advertisers will be available to test the accuracy of all reports filed by the treasurers.

Section 15. CONTENTS OF REPORT. (1) Each report required under section 13 of this act shall disclose for the period covered:

(a) the funds on hand at the beginning of the period;

25. *Id.* § 99.161(4)(b) (1960).

(b) the name, address and occupation of each person who has made one or more contributions in the aggregate amount of one hundred dollars or more during the period, together with the date of such contributions;

(c) the total sum of individual cash contributions not reported under subdivision (b) of this subsection and how these sums were obtained;

(d) each loan, promissory note or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and endorsers, if any, and the date and amount of such loan;

(e) the name and address of each political committee from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all such transfers;

(f) all other contributions not otherwise listed;

(g) the name and address of each person to whom an expenditure or transfer of property was made in the aggregate amount of one hundred dollars or more, and the amount or value, date and purpose of each such expenditure or transfer;

(h) the name and address of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in the aggregate of one hundred dollars or more has been made, and which is not otherwise reported, including the amount, date and purpose of such expenditure;

(i) the total sum of expenditures;

(j) the surplus, if any, of contributions over expenditures;

(k) the disposition made of any surplus;

(l) any other information as may be required by the commission by regulation.

(2) The campaign treasurer and the candidate shall certify the correctness of each report.

(3) All reports required by this act shall be open to public inspection.

What is required by this section is a comprehensive but convenient account of all contributions received and expenditures incurred during the relevant period.[26] Of special interest is subsection 15(1)(e), which requires the disclosure of the transfer of funds between committees and candidates. No longer will the practice of establishing committees "independent" of the candidate serve to circumvent the reporting laws. While committees may function as they have in the past, the public is informed about the financial bonds connecting committees and candidates.

Subsection 15(l)(k) requires that the report mention the disposition of any surplus of contributions over expenditures. Some instruction might be gained by specifying acceptable methods of disposing of a surplus, including, for example, donation to the state central committee of a political party, a refund ratably to all campaign contributors, or a donation to a charitable group or organization.

The requirement in subsection 15(3), that the reports be open to public inspection, is self-explanatory. The theme is full disclosure.

26. The provision is patterned after H.R. 18162, 89th Cong., 2d Sess. (1966).

Widespread dissemination will be encouraged if the commission distributes the information to newspapers throughout the state. The preparation of summaries of the reports may be desirable to transform turgid data into newsworthy information. Cooperation by the press has contributed materially to the successful enforcement of the reporting laws of several states. Under effective legislation release of the reports should be treated, by candidates and press alike, as a major political event.

> Section 16. CAMPAIGN DEPOSITORIES. (1) Once each month for the duration of the existence of the campaign fund the campaign depository shall file a sworn statement with the elections commission setting forth:
>
> (a) the balance in the account as of the date of the statement;
>
> (b) a list of the amounts of all deposits and of all orders of payment presented to the depository since the last such statement.
>
> (2) Within fifteen days after the primary or election, each campaign depository shall file with the elections commission the originals or true copies of all statements and orders filed with the campaign depository by the campaign treasurer or deputy campaign treasurers.

The monthly statement required of the depository under subsection 16(1) is indistinguishable from a statement routinely prepared for each checking account. The information is contained in the deposit statements and orders for payment supplied to the bank by the campaign treasurer. Under subsection (2) the bank is obliged to forward to the commission the originals or copies of all checks filed with the bank by the campaign treasurers. Plainly, the purpose of this section is to secure verification of receipts and expenditures elsewhere reported by the candidate and his treasurer.

> Section 17. DUTY TO REPORT OF CONTRIBUTORS. (1) For each contribution which, singly or in the aggregate, exceeds five hundred dollars ($500.00), the contributor shall file a sworn statement with the commission setting forth:
>
> (a) the amount of the contribution;
>
> (b) the recipient of the contribution;
>
> (c) the amounts of all prior contributions to the same recipient;
>
> (d) a statement that the contribution consists of funds or property belonging to the donor; and
>
> (e) such other information as the elections commission may by regulation prescribe.

This section prescribes still another means for verifying the reports of the campaign treasurers. A major contributor, defined here as one who gives in excess of 500 dollars, must file a form statement with the commission. If an individual spends the sum directly in support of a candidate or ballot proposition, he is obliged to file as a "political committee." Fixing the cut-off point at five hundred dollars in both

cases thus assists in clarifying the obligations of the individual contributor.

Identifying the point where it becomes justifiable to require a contributor to submit to the minimal imposition of filing a statement is not without difficulty. Plainly, the political significance of a 500 dollar contribution will vary depending upon the office at stake. In some cases Oregon's 50 dollar ceiling may be too low.[27] Perhaps the 500 dollar maximum set forth in the bill is too high. Initially, the figure is defensible, however, since it does not discourage contributions by the small man and nevertheless provides in some measure a check on the treasurers' reports. Subsequently, empirical investigations by the commission into spending practices in different campaigns could result in a substantial revision of the obligation, upwards or downwards, or even its complete elimination in some cases.

> Section 18. DUTY TO REPORT OF COMMERCIAL ADVERTISERS.
> (1) Within fifteen days after an election, each commercial advertiser which in any way during the election campaign has accepted and displayed or communicated political advertising to the public shall file a sworn statement with the elections commission setting forth:
> (a) the persons from whom it accepted political advertising;
> (b) the nature and extent of the advertising services rendered;
> (c) the consideration for such services; and
> (d) such other information as the elections commissioner may by regulation prescribe.

Verifying the reports is again the objective of this provision. All commercial advertisers who display political advertising during the course of a campaign must file a report with the commission. "Commercial advertisers" and "political advertising" are defined broadly in section 3 to include all types of paid-for communication designed to influence the outcome of an election campaign. The report is hardly onerous since all that is required is information about who paid how much for what kind of services.

In principle, commercial advertisers are indistinguishable from all other persons who are paid to render services during a political campaign. Once again, however, it was thought that the reporting obligation should be imposed only upon major influences. On this view, commercial advertisers are prime sources for cross-checking the reports. The use of the media in election campaigns has accelerated in recent years. The trend is likely to continue. It is estimated that costs of commercial advertising in many campaigns represent seventy-five or

27. ORE. REV. STAT. § 260.067(2) (1967).

eighty percent of all expenditures.[28] In so-called "media campaigns" the figures may be higher. Given this heavy concentration of dollars on a few expenditures for media services, imposition of a reporting obligation on the advertisers provides a significant means for securing verification at a minimum of inconvenience to those affected.

Section 19. DUTY TO PRESERVE STATEMENTS AND REPORTS. Persons with whom statements or reports or copies of statements or reports are required to be filed shall preserve them for two years. The elections commission, however, shall preserve such statements or reports for a period of not less than ten years.

This section is designed to assure the preservation of documents necessary to determine whether a violation has occurred. The ten-year obligation imposed upon the commission is inserted as a courtesy to researchers.

Section 20. IDENTIFICATION OF CONTRIBUTIONS AND COMMUNICATIONS. (1) No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person in the name of another, in any election campaign.

(2) All political advertising shall be signed or identified by the words "paid for by" followed by a statement of the name and address of the campaign treasurer or deputy campaign treasurer of the candidate or political committee on whose behalf the communication appears and the name of the candidate or political committee he is serving.

Subsection 20(1), by outlawing contributions in a fictitious name, anonymously, or in the name of another, is compatible with the principles of full disclosure espoused throughout. These shams tend to defeat the bill's overriding purpose of informing the public about the sources and amounts of contributions.

The principle of full disclosure also justifies subsection 18(2), which requires that the sponsors of all political advertising identify themselves. Many jurisdictions impose similar obligations.[29] The familiar argument that the restriction encroaches upon rights of free speech is spurious. In truth, the disclosure of the source enhances public discussion by allowing an assessment of the credibility and the interest of the spokesman.

Section 21. USE OF PUBLIC OFFICE FACILITIES AND PERSONNEL IN ELECTION CAMPAIGNS FORBIDDEN. No incumbent of a public office nor any employee of that office may use or authorize the use of any of the office facilities or personnel, directly or indirectly, for the purpose of furthering or opposing an election campaign.

28. On the high cost of communications in political campaigns, see the Report of the COMMITTEE FOR ECONOMIC DEVELOPMENT, *supra* note 5, at 41.

29. *E.g.*, WASH. REV. CODE § 29.85.270 (1965).

This section sets forth the single limitation upon campaign expenditures contained in the bill. It forbids the use of public office facilities and personnel to promote any election campaign. "Office facilities" arc broadly defined, in subsection 3(9), to include, among other things, "stationery, postage, machines and equipment, vehicles, office space and clientele lists." Condemning the wrongful appropriation of public property to support a private cause represents no revolutionary advance in our law. Nevertheless, the practice here forbidden is undoubtedly widespread and descrves condemnation. Perhaps an occasional culprit will be deterred by this specific prohibition.

E. Penalties

Section 22. MONETARY PENALTIES; LOSS OF OFFICE. (1) Any candidate or political committee who knowingly fails to file any report or statement required by this act, in proper form within the time alloted, in addition to any other sanctions that may be imposed, may be fined twenty-five dollars ($25) per day for each day the report is delinquent or deficient. Failure to file the report within thirty days of the due date shall subject the candidate or political committee to a further fine of five thousand dollars ($5000.00).

(2) The nomination for, or election to, an office of any candidate who knowingly violates a provision of this act, or whose campaign treasurer or deputy campaign treasurer violates a provision of this act with the knowledge of the candidate, shall be void and the office shall be filled as required by law in the case of a vacancy. Any registered voter may sue for injunctive relief, without exhausting administrative remedies, to enforce a right created by this subsection. All cases of this nature shall be in a preferred position for purposes of trial and appeal so as to assure a speedy disposition of the issues.

Flexibility in remedial powers is the *sine qua non* to the successful functioning of this agency. A modest monetary penalty, to be invoked in the discretion of the commission, should be sufficicntly stringent to encourage compliance yet not so severe as to discourage enforcement. The assessment of 25 dollars for each day a report fails to conform reflects this thinking. The draft reserves the heavy handed 5000 dollar fine for the organization which steadfastly refuses to cooperate with the commission. Used wisely, the monetary penalty may be the single remedial deivce which will prove serviceable on a regular basis in the domain of campaign financing.

Subsection 22(2) expressly authorizes any registered voter to commence an action to disqualify a candidate in the event of a culpable violation. The sanction of loss of office is concededly extreme and should be reserved for egrcgious cases.[30] It is, moreover, a remedy that

30. An illustrative case, which has become a *cause celebre*, is Thornton v. Johnson, 453 P.2d 178 (Ore. 1969).

suffers from a "sour grapes" connotation and therefore, in practice, will be rarely invoked. The losing candidate who resorts to an action of this sort or the lawyer who represents him can expect to be politically ostracized for resorting to a tactic deemed "unacceptable" according to the usual rules of the game. But these customs, like so many others in the field of campaign funding, have poorly served the public interest. A legislative threat to deprive the cheater of his ultimate prize seems eminently sensible and may contribute to an acceptance of a few new rules on campaign funding, a change of attitude which is so essential to maintaining the integrity of the political process. In a field where enforcement has been notoriously lax, no potentially effective remedial weapon should be overlooked.

Section 23. CRIMINAL PENALTIES; LIMITATIONS ON ACTIONS.

(1) Any person who knowingly violates a provision of this act shall be guilty of a misdemeanor and shall be punishable by a fine of not more than two hundred fifty dollars ($250.00) and imprisonment for not more than ninety (90) days. Violations include:

(a) failing to file any statement or report at the time required under this act;

(b) filing a statement or report containing any materially false information;

(c) making or receiving a contribution in violation of the act;

(d) making or receiving an expenditure in violation of the act;

(e) failing to return a contribution to an anonymous donor;

(f) failing to designate a campaign treasurer or depository at the time required under this act;

(g) paying funds from a campaign fund without requiring the presentation of a written authorization and an order of payment;

(h) failing to preserve statements or reports for the period of time prescribed by the commission;

(i) failing to identify political advertising in terms required by the act;

(j) accepting political advertising without a written authorization signed by the campaign treasurer or his deputy;

(k) in the case of a candidate or responsible person of a political committee, receiving or making a contribution or expenditure other than through a designated campaign treasurer;

(l) using public office facilities or personnel in an election campaign in violation of the act.

(2) Prosecution for a violation of this act must be commenced within two years after the date on which the violation occurred;

(3) The state attorney general shall be empowered to enforce the provisions of this act.

This general misdemeanor provision applies to every violation of the act. Limiting the criminal penalty to a misdemeanor fairly reflects the gravity of the offense and also may encourage enforcement. Experience with like criminal provisions gives little cause for optimism. Non-enforcement has been the rule. Consequently, the bill anticipates that the burden of enforcement will be carried by the commission. A further measure of relief is sought in subsection 23(3), which authorizes the state attorney general to enforce the criminal provisions of the bill.

This step, which runs counter to the practice in most states, is justifiable because of the unique demands of securing compliance with a law regulating political finances. Experience confirms the suspicion that local prosecutors may be less than energetic in filing criminal charges against his political allies. Especially is this so where the suspected violator is the prosecutor himself. In most states the prosecutor generally is not noted for his detachment from political activities. Party loyalty may have been a major factor in elevating him to public office; it may be the key to future success. In addition, criminal sanctions may be abused by local prosecutors who seek to harrass political enemies. For these reasons the attorney general should be vested with some responsibility for administration of the criminal penalties.

F. Miscellaneous

Section 24. DATE OF MAILING DEEMED DATE OF RECEIPT. When any statement, report, notice, or payment required to be made to any officer, agent or employee of the state under the provisions of this act has been deposited in the United States mail addressed to such officer, agent, or employee, it shall be deemed to have been received by him on the date of the deposit. It shall be presumed until the contrary is established that the date shown by the post office cancellation mark on the envelope containing the statement, report, notice, or payment is the date it was deposited in the United States mail.

Section 25. SEVERABILITY. If any provision of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Section 26. SECTION HEADINGS NOT PART OF LAW. Section headings, as used in this title, do not constitute any part of the law.

These sections, dealing with date of mailing, severability, and section headings are familiar boilerplate and deserve no special mention.

III. CONCLUSION

The regulation of political finance, at all levels of government, is largely a mockery. Yet no aspect of our political life could be more important. In the future, the availability of funds will play an increasingly important and sometimes decisive role in determining the quality of our political leadership. A continued inability to govern this aspect of practical politics jeopardizes concepts of political democracy widely espoused in this country. At stake ultimately is whether the American electorate will retain confidence in their governmental

institutions and elected officials. It is hoped that the draft bill and accompanying commentary will contribute to extending the rule of law into a domain that has remained too long immune from concepts of basic fairness, expressed here in terms of full disclosure.