

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

In re: Sunset Review of Pennsylvania  
State Ethics Commission

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Stenographic report of hearing  
held in the Majority Caucus Room,  
Harrisburg, Pennsylvania, on

Thursday  
May 7, 1987  
10:00 a.m.

HON. H. WILLIAM DEWEESE, CHAIRMAN

MEMBERS OF JUDICIARY COMMITTEE

|                            |                            |
|----------------------------|----------------------------|
| Hon. Kevin Blaum           | Hon. Paul McHale           |
| Hon. Michael E. Bortner    | Hon. Nicholas B. Moehlmann |
| Hon. Thomas R. Caltagirone | Hon. Robert D. Reber, Jr.  |
| Hon. Gerard A. Kosinski    |                            |

Also Present:

Michael P. Edmiston, Chief Counsel, Majority Committee  
Mary Woolley, Chief Counsel, Minority Committee

Reported by:  
Dorothy M. Malone, RPR

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Dorothy M. Malone  
Registered Professional Reporter  
135 S. Landis Street  
Hummelstown, Pennsylvania 17036

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|---|-----|
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| Charlotte Glauser, State Board Director<br>League of Women Voters of Pennsylvania   |     |
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| Joseph Marshall, Vice Chairman<br>Pennsylvania State Ethics Commission  |     |
| John Contino, Executive Director<br>Pennsylvania State Ethics Commission  |     |
| Paul Smith,<br>Pennsylvania State Ethics Commission   |     |
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1                   CHAIRMAN DEWEESE: Good morning, ladies and  
 2 gentlemen, and welcome to the House Judiciary Committee's  
 3 May 7, 1987 meeting where we are going to overview the Sunset  
 4 of the Pennsylvania State Ethics Commission.

5                   We would like to lead off our meeting this morning  
 6 by welcoming Miss Marilyn Brill, Vice-president of the League  
 7 of Women Voters of Pennsylvania. As we do that and as Miss  
 8 Brill comes to the table and activates her microphone, I would  
 9 like to introduce our Subcommittee Chairman, Kevin Blaum from  
 10 Wilkes-Barre. To my far left, Mike Bortner of York; Tom  
 11 Caltagirone of Berks and Bob Reber of Montgomery County at my  
 12 far right. We also have the Chief Counsel for our Committee,  
 13 Mike Edmiston and Chief Counsel for the Republican side, Mary  
 14 Woolley. They are with us this morning and I am hopeful that  
 15 other members might be coming in. We are expecting at least  
 16 two or three more.

17                   Thank you very much for joining us this morning  
 18 and we look forward to your testimony.

19                   MS. BRILL: Thank you, Representative DeWeese.  
 20 I am Marilyn Brill, Vice-president of the League of Women  
 21 Voters of Pennsylvania, representing 60 local Leagues from  
 22 across the Commonwealth. The League appreciates the  
 23 opportunity to appear before the House Judiciary Committee  
 24 today as you deliberate the Sunset Review of the State Ethics  
 25 Commission.

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1           The League has always been a strong advocate of  
2 procedures that make government more open, accountable, and  
3 responsive to its citizens. We believe that disclosure of  
4 financial interests by state and local officials is an important  
5 ingredient in making government more accountable and promoting  
6 public confidence in government.

7           The League believes that strong ethics laws are as  
8 important today as they were when most states passed ethics  
9 legislation in the 1970's. Everyday ethical questions about  
10 officials and people in power are front page news - Wall  
11 Street scandals, bribery charges against judges and indictments  
12 of White House officials. In a recent U.S. News and World  
13 Report cover story entitled "Lying in America", Gary Edwards  
14 of the Ethics Resource Center says "A free and open society  
15 needs a high degree of ethical conduct, because people must  
16 have trust in their institutions and in the leaders of those  
17 institutions. In business, where that doesn't happen, you  
18 lose economic freedom and get more regulation. In government,  
19 when trust and confidence break down, you get apathy, cynicism  
20 and ultimately, anarchy."

21           Government cannot legislate ethics but it can  
22 create a uniform system, a standard of conduct for officials  
23 and specific prohibitions which are consistently enforced.  
24 Ethics laws outline procedures for officials in order to avoid  
25 conflicts of interest and the appearance of impropriety. With



1 strong, uniform ethics laws, the public confidence in  
2 government increases and the respect for office grows. The  
3 public knows that all are abiding by this uniform standard and  
4 politics becomes a more ethical profession in the public's  
5 mind.

6 Pennsylvania's Ethics Act states that "the people  
7 have the right to be assured that the financial interests of  
8 the holders of and candidates for public office present neither  
9 a conflict nor the appearance of a conflict with the public  
10 trust". Our government is built on that trust. The League  
11 believes that the State Ethics Commission, as an independent  
12 body, protects that trust and benefits all levels of  
13 government. Therefore, we support the reauthorization of the  
14 State Ethics Commission.

15 The League suggests the following improvements in  
16 the Ethics Act and the State Ethics Commission:

17 (1) Expansion of the definition of immediate  
18 family. Presently only a spouse and dependent children are  
19 included in the definition of immediate family. Many questions  
20 have been raised about public officials using their position  
21 to benefit nondependent children or other relatives. The  
22 League believes it is inappropriate for public officials to  
23 use their positions to benefit any relative and that expansion  
24 of the definition of immediate family would prevent such  
25 activities.

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(2) Penalties for late filing of financial disclosure statements and for filing false or incomplete statements. The Act presently contains no penalties for filing late, false, or incomplete financial disclosure statements. Without such penalties information presented on financial disclosure statements would be of little value in determining possible conflicts of interest. In addition, the State Ethics Commission or the Attorney General should enforce these penalties promptly. The power of enforcement is the necessary final step in the effectiveness of the Act.

(3) Adequate funding for sufficient staff and inspection by the State Ethics Commission. The Legislative Budget and Finance Committee's performance audit of the State Ethics Commission points out that an ever increasing backlog of cases can be overcome by full funding and staffing. Currently only a few inspectors handle the case load across the state.

Adequate funding would also assure that public reports by the State Ethics Commission, such as the Annual Report, would be completed on schedule. Currently the latest Annual Report is for 1985, with 1986 unfinished. These reports, as well as listing of opinions, should be made widely available to the public through a mailing list including newspapers and organizations, in addition to notices in the Pennsylvania Bulletin.

1                   (4) Financial reports, management and performance  
2 audits, and long-range plans by the Ethics Commission should  
3 be conducted on a regular basis and be made available to the  
4 public. By undergoing performance audits regularly, the State  
5 Ethics Commission may avoid some of the management criticisms  
6 contained in the recent Legislative Finance and Budget  
7 Commission's report.

8                   (5) The Commission itself should have a full  
9 complement of members at all times, rather than operating with  
10 a partial Commission as has happened in the past. We would  
11 also recommend that the public be represented on the Commission  
12 by the appointment of a representative of a public interest  
13 group. As it now is composed, all of the Commission members  
14 have connections with a political party. We believe that a  
15 specific representative of the public would help increase  
16 confidence in the Commission.

17                   The League believes that lawyers serving as public  
18 officials should be brought under the provisions of the State  
19 Ethics Act. Recently, the Commonwealth Court ruled that state  
20 employees who are attorneys do not have to file financial  
21 disclosure statements with the Ethics Commission. The Court  
22 held that attorneys are accountable only to the Code of  
23 Professional Responsibility of the Pennsylvania Supreme Court.

24                   We believe that this decision weakens the  
25 jurisdiction of the State Ethics Commission. All public

1 officials and employees who determine public policy or expend  
2 public funds must be included in the Pennsylvania Ethics Act.  
3 Exemptions only weaken and diminish the law. Allowing lawyers  
4 who are public officials to keep their sources of income from  
5 the public does not build public trust in government. We also  
6 believe that lawyers should be restricted from providing legal  
7 representation to conflicting parties or agencies.

8           We applaud the House Judiciary Committee for  
9 calling this hearing to assess the effectiveness of the State  
10 Ethics Commission in a timely fashion and adhering to the  
11 timetable as outlined in the Sunset Act. The reauthorization  
12 of the State Ethics Commission should be handled with clear and  
13 orderly deliberations. Delays will not benefit the citizens of  
14 Pennsylvania.

15           Stephan Stover, of the Council on Governmental  
16 Ethics Laws recently said that "eternal vigilance is the price  
17 of ethics". The League will continue to work to strengthen  
18 ethics laws in Pennsylvania and build a strong State Ethics  
19 Commission to enforce the Ethics Act. The State Ethics  
20 Commission should be reauthorized with provisions for  
21 sufficient staff and enforcement powers to meet its needs.  
22 The League appreciates the opportunity to work with the  
23 legislature to continue the State Ethics Commission in its  
24 mission of protecting the public trust in public office.  
25 Thank you.

1                   CHAIRMAN DEWEESE: Thank you, Marilyn. Do you  
2 have some other members of your organization you would like to  
3 introduce or come up in case we have a couple of questions?

4                   MS. BRILL: Well, Charlotte Glauser is a state  
5 board director and has also worked on ethics legislation, is  
6 here today.

7                   CHAIRMAN DEWEESE: She is welcome to come up and  
8 join you. She may have a few observations and questions.  
9 Bob Reber.

10                  REPRESENTATIVE REBER: Thank you, Mr. Chairman.  
11 BY REPRESENTATIVE REBER (To Ms. Glauser):

12                  Q       On page three at the end of the paragraph at the  
13 start of the page, you made the statement, "We also believe  
14 that lawyers should be restricted from providing legal  
15 representation to conflicting parties or agencies."

16                  I'm not sure if I quite clearly understand what the  
17 import of that statement means.

18                  A       The League the past two years did a study on  
19 authorities in Pennsylvania. During the course of the study,  
20 we discovered that there are certain instances where  
21 solicitors for municipalities also are solicitors for an  
22 authority, and we felt that there might be a conflict because  
23 they are representing two parties that might possibly be in  
24 conflict. In addition, we found that there were certain  
25 instances where attorneys represented parties who were

1 applying for certain parts of an authority when they were also  
2 solicitors for the authority.

3 So, it struck us that there was a direct conflict  
4 and the question came up as to who was representing who.

5 REPRESENTATIVE REBER: Okay. Thank you.

6 CHAIRMAN DEWEESE: Kevin Blaum.

7 BY REPRESENTATIVE BLAUM (To Ms. Brill):

8 Q How broad a definition of immediate family would  
9 the League be interested in seeing?

10 A Well, we don't have a specific wording to propose  
11 to you this morning.

12 Q Mother, father?

13 A Immediate family and dependent and nondependent  
14 children I think certainly should be included. Whether we go  
15 down to cousins and second cousins and things like that, I  
16 think it would be worthwhile --

17 Q Some people want to?

18 A Yes, I am aware of that as discussed. I think it  
19 would be worthwhile to look into other states and model ethics  
20 codes to find out how this is handled, and there are states  
21 that do have strong ethics laws that we would be able to  
22 utilize this information.

23 But we don't have specific wording to present  
24 this morning. We would be interested, as I say, in anything  
25 that would protect candidates and public officials from an

1 appearance of impropriety. We think it should include at  
2 least the immediate family and dependent and nondependent  
3 children. The question has been raised with adult children  
4 and the financial interests of adult children.

5 Q But beyond that you are not willing to include  
6 cousins and parents?

7 A I would like to research it a little further and  
8 find out how it has worked in other states.

9 CHAIRMAN DEWEESE: Representative Caltagirone and  
10 then Mike Bortner.

11 REPRESENTATIVE CALTAGIRONE: Thank you. I was  
12 quite intrigued by your comparison of the attorney that might  
13 have conflict by serving on an authority and a municipality.  
14 Let me give you another illustration of conflict right here in  
15 this legislature, a lot closer to home.

16 When you have, let's say, a gas crisis in 1977 and  
17 people are attempting to push alternatives such as gasohol  
18 to help our farmers in the state. And you have an attorney  
19 in a very very high position who also happened to be a  
20 legislator. He is on retainer to Gulf Oil Company, Gulf Oil  
21 Corporation at the time, for a very nice fee. Would you  
22 assume that that could provide for potential conflict?

23 MRS. GLAUSER: I would certainly think so.

24 MS. BRILL: Certainly the appearance of a conflict  
25 and it would certainly deter the public trust in government.

1 REPRESENTATIVE CALTAGIRONE: I thought so, too, at  
2 the time because the bill should never have gotten out of  
3 committee and we always wondered why. It happens to be Leroy  
4 Irvis, who is the Speaker of the House of Representatives.

5 I also am intrigued by this because what we have is  
6 a situation where in the State House of Representatives and  
7 the State Senate right here in Harrisburg, all of the leaders  
8 of both parties, House and Senate, happen to be attorneys.  
9 I would imagine that they are probably practicing attorneys.

10 Do you think that they should forego their practice  
11 of law if they really want to have truly public service in their  
12 heart without having retainers on the side with different  
13 businesses and interests in this state?

14 MS. BRILL: I don't know about foregoing, but I  
15 think public disclosure of some of their financial interests  
16 would certainly clarify where there might be conflicts of  
17 interest if they arise. And then if there is a conflict,  
18 then they should not be able to vote on certain questions.

19 MRS. GLAUSER: I would agree with Marilyn on that.  
20 I think the idea of using any public office to further private  
21 gain is something that we are dead set against. Now, what  
22 form it takes is something that would have to take some  
23 looking into.

24 REPRESENTATIVE CALTAGIRONE: Well, as you  
25 probably know, our courts in this state ruled that judges and



1 attorneys, who also happen to be public employees, are  
2 excluded from this Act. But in the state of Wisconsin, the  
3 comparison is made that even judges have to file.

4 MS. BRILL: Pennsylvania is one of the few states  
5 that has excluded lawyers from such laws as this ethics law.  
6 As said in our testimony, we would believe that this needs to  
7 be corrected and that lawyers who do serve as public officials  
8 need to be brought under the provisions of the Ethics Act.  
9 Wisconsin is one of the several states that has very strong  
10 ethics laws, and I think we could look very carefully at that  
11 law to see how it is handled.

12 REPRESENTATIVE CALTAGIPONE: I find it very  
13 difficult for a person, who is on retainer with his or her  
14 law firm, working as a public official in any capacity in this  
15 state. I am having a difficulty when things come up either in  
16 legislation or issues that come before that body, that elected  
17 body, that that person is elected to. How they weigh those  
18 issues as opposed to the interests protecting their retainers  
19 that they have with those companies and to corporations. I  
20 find that that is an absolute and obvious conflict at times on  
21 issues that we discuss, debate on or vote on. Whether it is  
22 at this level or any other level of government.

23 MS. BRILL: We would concur with your  
24 reservations.

25 MRS. GLAUSER: I think this applies not only to

1 attorneys, but there are also people in the legislature who  
2 have other business interests. Insurance, who do vote on  
3 issues that relate to their private income, frankly. I think  
4 that some sort of opting out of a vote, if it conflicts with  
5 your private interests, ought to be at least a rule of the two  
6 Houses that I think would be very helpful even if we didn't  
7 get it written into law.

8 REPRESENTATIVE CALTAGIRONE: Or possibly put it  
9 into a trust such as they do in Washington. So that there is  
10 no conflict. So you are not participating in anything that  
11 you benefit directly or indirectly by.

12 MRS. GLAUSER: The judicial disclosure that Chief  
13 Justice Nix instituted when he became chief justice is very  
14 helpful because he does require financial disclosure and  
15 spousal disclosure of financial interests, but they are not  
16 open to the public. That is just a court administrative thing  
17 and we would like to see it open to the public.

18 REPRESENTATIVE CALTAGIRONE: Thank you. Thank you,  
19 Mr. Chairman.

20 CHAIRMAN DEWEESE: Mike Bortner, York County.

21 BY REPRESENTATIVE BORTNER (To Ms. Brill):

22 Q To follow up on that then, you would feel that,  
23 for example, somebody who is an insurance man or an insurance  
24 agent in the legislature shouldn't be voting on any insurance  
25 issues that come before the legislature?

1           A     We think there would be a question of impropriety  
2 there. We think they should withdraw themselves from votes.

3           Q     How about farmers that vote on issues like a  
4 bottle bill or other farm related issues that they would seem  
5 to have some special interest? You think they should not vote  
6 on those kinds of issues?

7           A     I don't see that they would be getting a monetary  
8 reward from something such as a bottle bill.

9           Q     Well, it costs farmers money and by requiring  
10 returnable containers would eliminate that problem for them.  
11 They certainly have some financial gain. It seems to me you  
12 could take this --

13          A     You could take this ad infinitum all the way down  
14 the line. I am sure that there are certain parameters that  
15 would need to be set.

16          Q     Well, that is what the Ethics Commission did in  
17 a decision before they reversed themselves. I, frankly, kind  
18 of resent the attention that is always focused on lawyers who  
19 happen to be one profession that practices in this House.  
20 I think the beauty of this system of a citizen legislature is  
21 that we have people from all different walks of life. And the  
22 fact that you come in here as a small businessman and vote on  
23 issues that affect small business people and vote on reduction  
24 of corporate net income tax, to me that is not a conflict of  
25 interest. Do you think that is a conflict of interest?

1           A     I don't believe so, no.

2           Q     I mean, do you see that as the same kind of  
3 question or totally different issue? Well, let me ask you,  
4 what is the difference between a small business person voting  
5 on an issue that affects small business and a lawyer voting on  
6 an issue that affects some client he may have done work for or  
7 a business he may have done work for sometime?

8           A     He has a direct financial benefit from the client  
9 that he has worked for. You also get into whether they have  
10 investments of a certain percentage in business, something like  
11 that. I think that is where the conflict arises where there is  
12 a direct personal gain.

13          Q     But you would see that different as a small  
14 business person who is voting on --

15          A     Generic type --

16          Q     -- on unemployment compensation laws that they feel  
17 are too high and ought to be reduced or workmens' compensation  
18 contributions that are too high and ought to be reduced?  
19 You see that as a different issue?

20          A     Well, I think lines would have to be drawn  
21 somewhere because people do have outside interests and are  
22 involved in a variety of things. So, there has to be certain  
23 parameters that are drawn about whether you have a direct  
24 financial gain and what the percentage of the gain is or a  
25 direct holding in a company, something along those lines.

1           Q     I think the distinction has to be drawn as to  
2 whether you benefit personally as opposed to having some  
3 indirect benefit because of a relationship with an organization  
4 or membership on the board. I think everybody has these  
5 questions that they have got to decide personally when they  
6 feel a conflict of interest arises. Frankly, lawyers do that  
7 all the time. Either decline representation because of a  
8 conflict or an apparent conflict and I think they do that here.

9                     I certainly don't feel that I am disqualified from  
10 voting on criminal justice issues because I represented a  
11 criminal defendant or would continue to represent one. I just  
12 see that as not a whole lot different than the way it affects  
13 other businesses or other professions.

14                    I have one other thing I would like to follow up  
15 sort of in the same vein. Your recommendation that there be a  
16 public member appointed to the commission. What would make  
17 you a public member as opposed to the members who are on the  
18 commission right now?

19                    A     Well, the members who are on the commission right  
20 now are appointed by the Governor, the leadership of the House  
21 and the Senate. We think that there should be a  
22 representative from a public interest group that would not  
23 be appointed by a member of a political party.

24                    Q     Who makes the appointment? Somebody has got to put  
25 the person on there?

1 A Right.

2 Q Are you suggesting that we have a designated spot  
3 for Common Cause or the League of Women Voters?

4 A We would be open to that, yes. I think could be  
5 appointed by the State Ethics Commission or somebody like that,  
6 but a recommendation from a public interest group to be seated  
7 on the commission I think would be beneficial.

8 Q Would that person have to be an independent or  
9 nonpartisan as far as their registration? I mean, you seem to  
10 object to the fact that people have a political affiliation.

11 A Well, I think that there would be the appearance  
12 of some conflict if they are appointed by the political  
13 parties and I don't think that we necessarily need to disen-  
14 franchise this person and say that they would have to be an  
15 independent or not registered as one party or the other. But  
16 the appointment process I think would need to be looked at.

17 Q So, you feel making gubernatorial appointments,  
18 in your view, does not get adequate representation from  
19 members of the public?

20 A I think there might be an appearance of a conflict  
21 if something concerning the Governor comes up for a vote and  
22 these people are appointed by the Governor.

23 REPRESENTATIVE BORTNER: To me, you have very little  
24 confidence in the ability of people to assume a position and put those  
25 past relationships aside. I don't have any difficulty with that at

1 all. And I don't think that people appointed to this  
2 commission or a lot of others by the Governor are ever  
3 expected to deliver votes or make a decision on that basis.  
4 I think a lot of those appointments are made, and I'm not  
5 sure even the Governor remembers who he has appointed as  
6 time goes on.

7 Thank you, Mr. Chairman.

8 CHAIRMAN DEWEESE: With all due respect to the  
9 gentleman from York County, I think he is living in Never  
10 Never Land if he doesn't think that Richard Thornburgh knew  
11 who he was appointing to the Ethics Commission when he  
12 appointed the Secretary of Legislative Affairs' wife to the  
13 Ethics Commission.

14 I think you are on target when you want to take  
15 away some of the partisan aspects of things. These people  
16 right here are politicians. If Bob Casey is going to appoint  
17 people, they are going to be politicians, too. We're going to  
18 have to do something to make the Ethics Commission less parti-  
19 san. Because when we have the Governor's Mansion Bill or the  
20 Governor's Mansion issue decided on a party line vote and Dick  
21 Thornburgh's people vote to say he could raise private money,  
22 political money, private money; the same thing, and use a state  
23 facility for that kind of aggrandizement, it is baldly, blatant-  
24 ly and incontrovertibly political. So, I think Mr. Bornter  
25 is wrong and I want to state that for the record.

1                   Also, I want to state for the record that's not  
2 the only time, in my opinion, that the State Ethics Commission  
3 acted in an abjectly political manner. And I think the State  
4 Ethics Commission is replete with politicians, appointed by  
5 politicians and I can't figure out why you are not more  
6 vehement and more acerbic in your observations about their  
7 recent performance. But anyway, that is just my observation.

8                   Thank you very much for joining us, ladies, and we  
9 are going to take your comments into account. I am sure we  
10 will be working with you over the next several weeks because  
11 I think most of the members, and I am sure the staff, don't  
12 have quite the jaundice that I have relative to this issue.

13 Thank you very much.

14                   MS. BRILL: Thank you.

15                   MRS. GLAUSER: Thank you.

16                   CHAIRMAN DEWEESE: Our next person on the agenda  
17 is G. Sieber Pancoast, Chairman, Pennsylvania State Ethics  
18 Commission. Sieb, I think if you would like to invite the  
19 other members or any of the staff, that certainly would be  
20 appropriate and they would be welcome. Good morning and  
21 welcome.

22                   DR. PANCOAST: Thank you very much. We appreciate  
23 the opportunity to come before you today. The members of the  
24 commission that are present with us, to my left, Helena Hughes,  
25 Joe Marshall, who is the vice chairman of the commission, Paul



1 Smith, the most experienced member of the commission and our  
2 executive director, John Contino is also present here.

3 Honorable Chairman DeWeese and Honorable members  
4 of the Judiciary Committee, I am pleased to offer a formal  
5 statement on behalf of all of the members of the State Ethics  
6 Commission.

7 As chairman of the State Ethics Commission I am  
8 here today pursuant to the Sunset Act to testify concerning  
9 the need for the continued existence of the commission. In  
10 1978, the General Assembly of Pennsylvania enacted the  
11 Conflicts of Interest law, more commonly referred to as the  
12 State Ethics Act. With the promulgation of this law, there  
13 was simultaneously created an agency independent of the three  
14 branches of government, the State Ethics Commission. This  
15 landmark legislation codified a long-standing common law  
16 public policy that public office is a public trust and any  
17 effort to realize personal financial gain through public  
18 office is a violation of this trust.

19 In order to effectuate this policy the law vested  
20 in the commission three primary functions:

21 (1) To administer and enforce the financial  
22 disclosure requirement of the law;

23 (2) To issue advisory opinions and advice to  
24 public officials and employees regarding their duties and  
25 responsibilities under the law, and;

1 (3) To investigate, upon sworn complaint or upon  
2 the commission's own motion, alleged violations of the  
3 provisions of the Ethics Act.

4 One of the more important aspects of this  
5 legislation is the fact that it applies to public officials  
6 and employees at both the state and local levels of  
7 government. Thus, for the first time in the history of the  
8 Commonwealth of Pennsylvania, a uniform and comprehensive  
9 statute was established setting forth standards of conduct for  
10 virtually all individuals serving in the public sector.

11 This commission, for the past nine years, has  
12 diligently pursued its statutory mandate in the most efficient  
13 and effective manner possible. The first several years of the  
14 commission were concentrated on establishing an operational  
15 framework from which the commission could proceed. Now that  
16 this structure has been developed, the commission may continue  
17 to fulfill the duties and responsibilities vested in it by law.

18 The State Ethics Act has undergone many legal  
19 challenges and while there has been some erosion of the Act's  
20 application to certain groups of individuals such as judges  
21 and lawyers, the Act has survived a substantial number of  
22 other constitutional attacks.

23 In fact, there have been approximately 35 court  
24 decisions regarding the various provisions of the Ethics Act  
25 during the commission's history. The vast majority of these

1 court decisions have upheld the provisions of the law and have  
2 affirmed this commission's application of the law. The court's  
3 validation of this law and the decisions establishing the  
4 parameters of the law's purview have laid a legal foundation  
5 for the commission's continued existence. The body of law  
6 that has been created and the public policy as enunciated by  
7 the General Assembly is now well rooted. This law and policy  
8 should not be allowed to deteriorate.

9           The need for the continued existence of the State  
10 Ethics Commission is nowhere better evidenced than through the  
11 myriad of functions performed by the agency and the degree to  
12 which the commission is called upon to carry out these  
13 functions.

14           During the past nine years, this commission has  
15 issued approximately 1200 advices and more than 230 opinions.  
16 In addition, the commission staff responds to hundreds of  
17 inquiries each week by way of telephone. These opinions and  
18 advices have been issued directly to public officials and  
19 employees at all levels of government and were in response to  
20 questions that had been posed by these individuals.

21           The resultant decisions have addressed issues  
22 ranging from the routine to the extremely complex. Many of  
23 these decisions involved questions of first impression for  
24 which there existed no prior guidance. For the most part, the  
25 public officials and employees who seek the advice of the

1 commission have no other avenue available for the resolution  
2 of their questions. The Commission, in this respect, provides  
3 an independent forum from which public officials and  
4 employees are able to obtain advice and guidance regarding  
5 their activities as public servants. Not only does the  
6 commission perform this vital advisory role, the power to  
7 issue such opinions also provides a protection to persons who  
8 seek advance determination as to the propriety of certain  
9 activities. Public officials who obtain such advisory  
10 opinions also are able to perform the duties and  
11 responsibilities of their office with confidence and certainty  
12 that their actions will not later be subject to review.

13           The presence of the commission thus plays an  
14 important role from a broader perspective in government  
15 operations.

16           Indeed, public officials, employees and candidates  
17 for public office have, to a great extent, come to rely upon  
18 the State Ethics Commission's ability to issue these opinions  
19 in a prospective manner. As such, there is no doubt that the  
20 termination of this agency and the mechanism set forth above  
21 would create a major void in an area where there now exists a  
22 vital need.

23           As noted, the Ethics Act for the first time in  
24 the history of the Commonwealth of Pennsylvania required  
25 public disclosure of certain financial interests of public

1 officials and employees. This unprecedented requirement of  
2 public office was promulgated in order to strengthen the faith  
3 and confidence of the people of the state in their government.  
4 The General Assembly further set forth the intent of this  
5 requirement and specifically delineated that the disclosure  
6 was to assure the public that the financial interest of  
7 holders of or candidates for public office present neither a  
8 conflict nor the appearance of a conflict with the public  
9 trust.

10                   The State Ethics Commission has administered and  
11 enforced this statutory requirement. The commission has  
12 promulgated rules and regulations to carry out this function.  
13 Additionally, the commission has established an extremely  
14 efficient mechanism for the receipt, indexing, and retrieval of  
15 these documents. For example, over the past month we have  
16 received in our office 18,000 forms for filing in relation to  
17 the 1987 municipal primary election. Within several weeks  
18 after the last day for filing, our staff had compiled a master  
19 index of all statements on file, and had also identified  
20 non-filers by cross referencing that master index to lists  
21 of candidates that were obtained from the 67 county boards of  
22 elections. Within that same time frame, all non-filers were  
23 notified of the filing obligations and appropriate enforcement  
24 or legal procedures will follow for those who continue to  
25 ignore the law. We have attempted to further streamline this

1 process during each filing period and the commission has now  
2 established a sound foundation to administer the disclosure  
3 requirements.

4           At this time it is important to note and I have no  
5 doubt that at some point during the course of your hearings,  
6 you will be told that this particular requirement of the law  
7 has distracted qualified individuals from seeking public  
8 office. There is, however, no empirical data to support this  
9 contention. In fact, a review of the filing statistics will  
10 reveal that the number of individuals seeking public office in  
11 Pennsylvania has not declined.

12           The State Ethics Commission, as can be seen, has  
13 played a useful role in developing an informed electorate.  
14 The loss of an important source of public information would  
15 result from the termination of the agency.

16           The third major area of the commission's statutory  
17 mandate relates to its authority to investigate alleged  
18 violations of the State Ethics Act. In this respect, the  
19 commission has issued over 500 orders during the course of its  
20 existence. These orders were issued as a result of either  
21 sworn complaints that had been received by the commission or  
22 as a result of investigations that were initiated upon the  
23 commission's own motion. While all investigations must, by  
24 law, remain confidential during the course of investigation,  
25 the commission does have public accountability. As such, upon

1 the final determination of an investigation, the commission  
2 issues an order outlining the allegation, the findings of fact  
3 and the conclusions of law.

4 The investigative activities of the commission,  
5 especially during the past three years, have produced impressive  
6 results. The commission has been responsible for securing in  
7 excess of \$100,000 in restitution to state and local  
8 government, representing the financial gains received by some  
9 public officials or employees in violation of the Act.

10 Additionally, the commission has ordered the  
11 termination of certain activities that had resulted in specific  
12 conflicts of interests or that represented the use of public  
13 office for personal gain.

14 It is also important to note that the Ethics Act  
15 has been increasingly utilized by state and local prosecutors  
16 as a criminal tool. During the past three years, a number of  
17 Ethics Act charges have been initiated and successfully  
18 prosecuted and the Act, in this respect, has provided a new  
19 avenue to address many areas that previously were ignored.

20 We thus agree with the finding of the Legislative  
21 Budget and Financial Committee report of September 1986,  
22 wherein it was specifically noted that: "The combination of  
23 the penalties provided for in law and the presence and functions  
24 of the SEC appear to provide a potential deterrent to corrupt  
25 or unethical practices. Termination of the SEC and the

1 functions it performs would eliminate this deterrent force and  
2 the public would lose a body through which concerns and  
3 complaints regarding the activities of public officials,  
4 candidates, and employees could be filed and evaluated by an  
5 organization that is separate and independent from the  
6 Executive and Legislative Branches of State Government."

7           The Sunset Audit pointed out several areas where  
8 the administrative operations of the commission could be  
9 improved. As I noted in the commission's response to the  
10 report there was no substantial difference of opinion in  
11 relation to these areas. Additionally, as pointed out before  
12 the Legislative Budget and Finance Committee in September and  
13 before this Honorable Committee in March, a number of the  
14 concerns outlined in the report have already been corrected.  
15 We have taken full advantage of this independent inspection of  
16 our operation and have implemented many of the recommendations  
17 resulting therefrom.

18           While there is no doubt that the State Ethics  
19 Commission must be continued, the sunset review process  
20 presents an ideal opportunity to review the law as it  
21 currently exists, and to correct problem areas or otherwise  
22 address areas in the law that may be unclear. The commission  
23 has recently undertaken a review of the law. We have, as a  
24 body, agreed that certain recommendations must be made for  
25 amendments to the Act. We have attached to this statement as



1 an appendix, a complete analysis of our recommendations.  
2 While I will not present each recommendation in detail at  
3 this time, some areas of vital importance and concern, the need  
4 for an expanded definition of the term immediate family;  
5 amendments regarding the location for local candidate filings;  
6 clarification of the enforcement powers of the commission,  
7 penalties for late filing of the statement of financial  
8 interest and an amendment to a related statute regarding access  
9 to certain information.

10 An in-depth analysis of such recommendations is set  
11 forth in the appendix to this statement. Additionally, while  
12 there may be a need to conduct an in-depth study of other  
13 currently existing provisions of law, insofar as there may be  
14 inconsistencies therein or lack of enforcement thereof, we at  
15 this time have only recommended those changes to the law that  
16 we believe are essential for the more effective implementation  
17 of the intent of the State Ethics Act. In the future, if this  
18 agency is continued, we would be more than ready to assist the  
19 General Assembly in gathering the necessary information to  
20 determine if a more coordinated approach is in order.

21 In closing, I would like to reiterate a statement  
22 contained in the Legislative Budget and Finance Committee's  
23 audit report on the State Ethics commission. That comment  
24 stated that: "It appears that the functions of the State  
25 Ethics Commission (SEC), to identify, expose and alleviate

1 activities and conditions that reduce the public's confidence  
2 and trust in government officials and employees, are important  
3 to public welfare. The State Ethics Commission, if  
4 continued, will in the future, as it has in the past, play an  
5 important role in providing both a forum and a mechanism  
6 through which public officials, public employees and more  
7 importantly the citizens of Pennsylvania, will be able to  
8 address issues of extreme importance. Thank you.

9 CHAIRMAN DEVERSE: Thank you, Doctor.

10 I would like to welcome Jerry Kosinski, from  
11 Philadelphia, a member of our Committee and Nick Moehlmann,  
12 the Republican Chairman of our Committee.

13 I would also like to thank you and Paul, Joe,  
14 Helena and the staff because this is the second time you have  
15 been gracious enough to listen to my protuberations. So, I do  
16 want to say thanks for being with us this morning. We  
17 probably will have some questions and observations from some  
18 of the members this morning. Do I see any? Tom Caltagirone  
19 will lead off for us.

20 REPRESENTATIVE CALTAGIRONE: Doctor, it is good to  
21 see you again. As a fellow colleague from the House of  
22 Representatives, I'm going to get back to the issue about  
23 attorneys that serve in public office and especially up here  
24 and there are a lot of fine people that serve the public as  
25 attorneys and continue to practice. And I think have a very

1 high regard for the balance and the ethics of both the  
2 profession that they come from, the legal profession and the  
3 office that they hold.

4           However, I find it kind of interesting, in your  
5 remarks, you didn't make any recommendation, since the courts  
6 through their decision to exclude judges and attorneys from the  
7 Act, that there wasn't some kind of recommendation as to how  
8 we could address that issue so that they could be included  
9 with some type of coverage in this Act.

10           DR. PANCOAST: As you probably know, whether  
11 attorneys are to be covered by the Act, particularly those who  
12 are not the legal counsel but attorneys who are working in the  
13 state and local government, we believe should be required to  
14 file financial interest statements. And that case, of course,  
15 is now on appeal from the Commonwealth Court to the Supreme  
16 Court of Pennsylvania.

17           MR. MARSHALL: The only other way would be through  
18 a constitutional amendment. If the Commonwealth Court's  
19 opinion is ultimately upheld on constitutional grounds, as I  
20 understand it, there would be no independent authority for the  
21 legislature to reimpose that requirement even if it were done  
22 more clearly. So, it would require a constitutional amendment.

23           REPRESENTATIVE CALTAGIRONE: Would you suggest  
24 that if in fact --

25           MR. MARSHALL: Personally?

1                   REPRESENTATIVE CALTAGIRONE: Yes. If the Supreme  
2 Court upheld the lower court's ruling.

3                   MR. MARSHALL: I personally would like to see it  
4 happen. How it happens, I am not sure is up to us to suggest.  
5 I think the question that you raise really has to get down to,  
6 the legislature has to address the balance, assuming that you  
7 can require disclosure between absolute prohibition, which was  
8 getting at, I think, at your point.

9                   REPRESENTATIVE CALTAGIRONE: You raise a very good  
10 point and I think it is well taken. The only problem that we  
11 have, you see, with attorneys in key positions, I'm not talking  
12 about the rank and file attorneys in the House and Senate, but  
13 attorneys that are in key positions of leadership and power  
14 and we know what that means and how that translates that appear  
15 on the Hill. It is the same thing in Washington. What abuses  
16 can and do in fact take place with that kind of power. I think  
17 it is absolute that if you are going to have somebody covered  
18 under this Act, that is in a position like that, then what is  
19 fair for one should be fair for all. Because they happen to  
20 have an esquire behind their name, I don't think they should be  
21 excluded. That is my own personal opinion and I feel very  
22 strongly about that.

23                   MR. MARSHALL: Well, I am an attorney and I have  
24 to fill out the statement. I would agree. I think that there  
25 is, it might be a different issue if the legislature decided

1 to have all the attorneys, whether public officials or not,  
2 but you are not entitled to be a public official or a public  
3 employee. That seems to me, nobody is forcing you to do it.  
4 Therefore, if you voluntarily accept that position, I would  
5 presume that the legislature ought to be able to impose some  
6 requirements on that employment. But again, I think from our  
7 perspective, the issue is, do you impose an absolute  
8 prohibition and then where do you stop it, or I think where we  
9 come out is the public disclosure we believe leaves a trail.  
10 That in the case of a situation that a question may arise, at  
11 least there is something there that could be looked at.

12 REPRESENTATIVE CALTAGIRONE: I feel if you're going  
13 to have a balance, and we made the law, let's face it, if we  
14 are going to set ourselves up to enforce the law through the  
15 Ethics Commission on every other elected official in this  
16 Commonwealth, then we who write the law ought to be covered by  
17 it and that includes everybody and there should be no  
18 exceptions. When you start to make exceptions, then what good  
19 is the law? In this particular case, that is, public officials  
20 I am talking about as public officials. Thank you.

21 CHAIRMAN DEWEESE: Mike Bortner.

22 REPRESENTATIVE BORTNER: I want to follow up on  
23 that and one or two other areas. First of all, so this is  
24 clear, all public officials are required to file the public  
25 disclosure statement, is that correct; lawyers, nonlawyers,

1 doctors, Indian Chiefs, everybody has to file the statement?

2 MR. MARSHALL: Except judges.

3 REPRESENTATIVE BORTNER: But lawyers who are  
4 running for office, be it school board, borough council, the  
5 legislature, are required to file the statement.

6 DR. PANCOAST: Any candidate.

7 MR. MARSHALL: Except that is the issue right now.  
8 We have only really addressed it with the attorneys from the  
9 Liquor Control Board. If you read the Commonwealth Court's  
10 opinion, I am not sure where you could draw that line.  
11 Meaning, if I were a candidate and a lawyer and I chose, I  
12 didn't want to file, I think I could assert the same grounds  
13 for nonfiling.

14 REPRESENTATIVE BORTNER: I'm asking because that  
15 is not my reading of the case. Is that your reading of the case?

16 MR. MARSHALL: Yes. That basically the Commonwealth  
17 Court is saying that lawyers are under the sole supervision of  
18 the judicial branch of government. That is the constitutional  
19 foundation and that is why we don't believe it can be corrected  
20 legislatively.

21 DR. PANCOAST: Presently, any candidate, not one  
22 who is in public office, any candidate is required to file.

23 REPRESENTATIVE BORTNER: Right.

24 MR. MARSHALL: And the conflict, again, though  
25 is the Commonwealth Court opinion Maunus and Thau

1 Citation 515 A.2D 83 (Pa.CMWLTH.1986).

2 REPRESENTATIVE BORTNER: My question is, your  
3 position is that that opinion removes candidates as well as  
4 individuals who are working for, serving as public officials  
5 in the sense that they are working for a government agency?

6 MR. MARSHALL: My position is that the basis on  
7 which the Commonwealth Court took away the requirement for the  
8 Liquor Control Board attorneys to file could be used  
9 successfully by any attorney in the Commonwealth. With the  
10 possible exception, I guess, of a high level or high ranking  
11 official who is not acting as an attorney but who happens to be  
12 an attorney. But even then if you follow the logical  
13 conclusion in the court's opinion that anyone who is a lawyer  
14 receives legislative immunity.

15 REPRESENTATIVE BORTNER: It seems to me you could  
16 legislate the requirement that candidates and/or I would think  
17 elected officials. When you get to nonofficials, solicitors  
18 serving for school board authority, who are truly practicing  
19 law and acting as lawyers as opposed to acting as public  
20 officials or in policy making, official policy making  
21 decisions, it seems to me that could be changed legislatively.  
22 Although the constitutional change would certainly cover  
23 everybody.

24 I, frankly, have always filed the statement before  
25 I was elected when I was a solicitor. And I honestly can't

1 understand the objection anybody would have. I find this to  
2 be a very minimal requirement. Since you are only asked to  
3 list sources of income and not income. I really don't  
4 understand the objection from anybody, lawyers or nonlawyers.

5 MR. MARSHALL: I would agree. I am also a lawyer  
6 and I would think that the practical reality is if the  
7 legislature decides that it has to do something, chances are  
8 that form is going to be a lot more in depth if the legislature  
9 has to go through the hassle of a constitutional amendment.  
10 So, there is a proper philosophical reason to fill it out.  
11 I also think there is a practical reason to fill it out.

12 REPRESENTATIVE BORTNER: On the subject of gifts  
13 and honoraria where there is a dollar threshold that has to be  
14 exceeded before the requirement to file, the report comes into  
15 play, is that a total amount that may have been received during  
16 the year?

17 MR. MARSHALL: From an individual source?

18 REPRESENTATIVE BORTNER: Right. I mean, to give a  
19 specific example. If you have gone out to dinner with a  
20 lobbyist ten times during the year and the bill would have  
21 been \$20, that is \$200. Are you required to list that as a  
22 gift under the ethics section of the report?

23 MR. MARSHALL: My understanding is that it would  
24 be one instance. You had a \$201 dinner one time, that would  
25 be --



1 REPRESENTATIVE BORTNER: Because if that is the  
2 case, I think that is a serious oversight. I know the law  
3 reads aggregate, but I'm not sure how that was interpreted.

4 MR. MARSHALL: I think, again, the conflict and you  
5 raise the reason why it should be in the aggregate. The other  
6 side of it is the level is \$200, and I guess maybe what you  
7 would have to do is work backwards. Maybe we could do that by  
8 regulation. Exempting out gifts between family members and  
9 things like that.

10 You raise a good point because it is pretty easy  
11 to have a total that is much higher than \$200 and yet no one  
12 thing being underneath.

13 REPRESENTATIVE BORTNER: The easy answer would be  
14 not to have any, any gift that you receive. Whether it is  
15 \$200 or ten dollars has to be reported in the financial  
16 disclosure form.

17 MR. MARSHALL: Well, I think you are right. I  
18 think we are just trying to deal with some administrative  
19 history.

20 CHAIRMAN DEVEESE: Any meal? Does that include  
21 any meal?

22 REPRESENTATIVE BORTNER: Why not?

23 CHAIRMAN DEVEESE: I'm just curious.

24 MR. MARSHALL: That is ultimately the conflict,  
25 is that you are going to put an awful lot of recording burden,

1 and I guess the query is do you impose this kind of a hassle  
2 that you really can't monitor.

3 REPRESENTATIVE BORTNER: It is an easy thing to  
4 avoid. Don't take anything for free. You don't have to eat  
5 free meals. You don't have to accept free tickets and you  
6 don't have to accept gifts. Then you don't have to report  
7 anything.

8 MR. MARSHALL: That is true.

9 REPRESENTATIVE BORTNER: Would that be unwieldy?  
10 Do you feel that would be an unwieldy administrative task for  
11 the commission?

12 MR. MARSHALL: Well, it is not from that  
13 standpoint. I am not sure that we can effect -- we don't  
14 generate a whole lot of business by reviewing forms because  
15 there are 65,000 filings and you are kind of stuck with what  
16 people put on them unless it comes out. If you get the  
17 information from another source, you can go back and then  
18 you've got a problem.

19 REPRESENTATIVE BORTNER: I did want to ask about  
20 that also. I would assume that all filings that you receive  
21 aren't reviewed or investigated or aren't probably looked at.  
22 Would that be accurate?

23 MR. MARSHALL: I think Mr. Contino could probably  
24 give --

25 MR. CONTINO: We review all forms to make sure that

1 when they come in that they are signed. We do not review them  
2 as far as investigative content.

3 REPRESENTATIVE BORTNER: Do you do, are any of  
4 them audited like tax returns? You know, the IRS, there are  
5 certain things either that they look for or the computers do  
6 or they may kick out every so many and just do a little bit of  
7 investigation or analysis? Nothing like that is done?

8 MR. SMITH: If we find an omission.

9 MR. CONTINO: Oh, yes, if we become aware of it  
10 we do that process. We do not take, for example, a percentage  
11 and do a financial audit. We will do what we call a compliance  
12 audit. We will go into a locality and make sure that the  
13 people who are required to file are filing. But that is a  
14 compliance audit as opposed to a financial audit.

15 REPRESENTATIVE BORTNER: So, I mean, most of the  
16 reviews or investigations would be on complaints then?

17 MR. CONTINO: Complaint or information that we  
18 receive as a result of maybe some other investigations.

19 DR. PANCOAST: Financial statements are public  
20 information.

21 REPRESENTATIVE BORTNER: So, anybody can come there  
22 and file.

23 MR. MARSHALL: Also, I think the beauty of the  
24 financial interest statement is that you sign the perjury  
25 statement. So, if we have word there is a real legal problem

1 that the false filer has.

2 REPRESENTATIVE BORTNER: This may be in the Act,  
3 but I am not sure. People that would call with a complaint  
4 or with information, I would assume they are assured some kind  
5 of confidentiality for making a report or complaint or reporting  
6 what they feel may be a violation.

7 MR. MARSHALL: We are required under the law.

8 REPRESENTATIVE BORTNER: The Act requires that.

9 MR. MARSHALL: Yes.

10 DR. PANCOAST: What I referred to in my statement,  
11 of course, was telephone calls that we receive and that is  
12 purely for advice and many, many calls are received in the  
13 office. A quick answer can be given to the individual making  
14 the call. This is, of course, for his own protection.

15 REPRESENTATIVE BORTNER: Well, it is my feeling,  
16 and I may be in some disagreement with other members up here,  
17 I think most people that serve in public office, I'm talking  
18 about a lot of borough council people and township supervisors,  
19 do want to comply with the law and do want to do what is right.  
20 I think that is why you receive so many questions. I get some  
21 in my office from local officials who want some advice as to  
22 whether they can do this or whether they can proceed. I  
23 always refer them to you because I figure you are the experts.  
24 But your statistics certainly seem to bear that out and an  
25 awful lot of people are asking you for advice.

1                   How often is the advice reported? There is a  
2 little booklet we get, right?

3                   DR. PANCOAST: You mean in the annual report?

4                   REPRESENTATIVE BORTNER: Opinions and advisory  
5 opinions.

6                   MR. MARSHALL: Which is a summary of our opinions.

7                   REPRESENTATIVE BORTNER: Right. Is that annual?

8                   MR. CONTINO: The opinions and orders of the  
9 commission are printed annually in our annual report. Every  
10 several years we consolidate all the opinions into one volume.  
11 But they are published every year in our annual report also.

12                   REPRESENTATIVE BORTNER: I think that is the one I  
13 am talking about. The one that says a township supervisor  
14 can do this, this and this under certain circumstances.

15                   MR. CONTINO: They are published yearly in our  
16 annual report.

17                   REPRESENTATIVE BORTNER: Specific cases that you  
18 have actually given advice.

19                   MR. MARSHALL: But the important thing to  
20 remember is you are just getting a blurb.

21                   REPRESENTATIVE BORTNER: I understand that, but I  
22 think that is important because people have told me that,  
23 believe me, I think people read that. I think the public  
24 officials read that. I have had people tell me that they have  
25 read things in there that either they weren't aware of or there

1 was some situation that came up before their board and they  
2 learned about it or they were sort of enlightened about it  
3 through reading that report. I think it is a good thing to  
4 put out and I think you ought to keep doing it.

5 MR. MARSHALL: Absolutely. But what we need to  
6 impress upon people is that you gave us the power to issue  
7 advice so that we can give an individualized opinion. You know  
8 how tough it is. You read a blurb and it may not apply where  
9 it may apply.

10 REPRESENTATIVE BORTNER: When somebody seeks that  
11 advice, they are given a written opinion?

12 MR. MARSHALL: Yes.

13 REPRESENTATIVE BORTNER: They are not proceeding  
14 at their peril and have to worry about whoever they talked about  
15 on the phone is still with the commission or is identified or  
16 they remember who it was?

17 MR. MARSHALL: No, and it is a complete defense,  
18 the written opinion. It is an advisory opinion. You recite  
19 the facts. As long as you stay within the factual parameters  
20 of your request. As I understand it, you can rely on that as a  
21 complete defense.

22 DR. PANCOAST: They also get, when they ask for  
23 advice, a written answer to the advice. But that cannot be  
24 relied upon in the court of law like the opinion can.

25 MR. SMITH: It states that right in the opinion.

1 REPRESENTATIVE BORTNER: It is on every --

2 DR. PANCOAST: Every advice.

3 REPRESENTATIVE BORTNER: Thank you.

4 CHAIRMAN DEWEESE: Chairman Nick Moehlmann.

5 REPRESENTATIVE MOEHLMANN: Thank you, Mr. Chairman.

6 Good morning.

7 DR. PANCOAST: Good morning.

8 REPRESENTATIVE MOEHLMANN: I would like to get back  
9 to the subject that Representative Caltagirone opened the  
10 question of whether state employed attorneys are required by  
11 the disclosure portion of the Ethics Act to file a disclosure  
12 statement. Chairman DeWeese and I recently introduced  
13 legislation that would create a constitutional amendment to  
14 require state employed attorneys to disclose sources of income  
15 and many members of this Committee are signatory to that. But  
16 I am not sure it is perfect. And I think the question that  
17 usually arises, particularly from attorney members of the  
18 legislature is the effect on the attorney that is -- would he  
19 have to disclose his entire client list for those who are  
20 employed part time by the state government and also practice  
21 law privately.

22 And further than that, in the situation where such  
23 an employee were practicing law privately and also had a  
24 spouse who was practicing law privately. Would the spouse  
25 have to disclose the entire client list? That's a hang-up for

1 me. Would any of you have any comment on it?

2 MR. MARSHALL: Well, right now we don't, spouses  
3 are not required to file. I have not seen your proposed  
4 amendment. So, I don't know whether you include that or not.

5 REPRESENTATIVE MOEHLMANN: The amendment is  
6 couched in pretty general language. It really only requires  
7 the Supreme Court to promulgate rules, disclosure rules, for  
8 attorneys that are not less stringent than those imposed on  
9 nonattorney employees, and perhaps I am seeking advice on whether  
10 that is how the bill should read also.

11 DR. PANCOAST: We have particular regulations with  
12 respect to the client issue. Mr. Contino could explain that  
13 to you.

14 MR. CONTINO: When the commission was first  
15 established back in 1978-79, it promulgated a 51 Pennsylvania Code  
16 series of regulations. To some extent, the issue of clientele  
17 disclosure is addressed in there. Basically, the position  
18 that the commission took then is that you would have to  
19 reveal specific clients if you are representing them before the  
20 governmental entity of which you are employed. Other than  
21 that, the source of income would be your private practice of  
22 law.

23 So, to some extent, we tried to balance the  
24 privileges, the attorney-client privilege, and the potential  
25 that the attorney would be required to reveal something that is



1 confidential against the intent of the Ethics Act.

2           So, the 51 Code, we do have some regulation on  
3 that issue.

4           REPRESENTATIVE MOEHLMANN: A corollary question,  
5 I have pretty accurately, I think, indicated what the  
6 legislation said and it is an intent basically not to get into  
7 a war with the Supreme Court by attempting to usurp their  
8 jurisdiction, but simply by saying they must do this rather  
9 than saying -- imposing our rules on their jurisdiction. Is  
10 that the best way to do it or do you think we should simply  
11 make the rules?

12           MR. CONTINO: As far as attorney disclosure?

13           REPRESENTATIVE MOEHLMANN: As far as attorney  
14 disclosure.

15           MR. CONTINO: I was the attorney who was involved  
16 in the Maunus and Thau case and I did most of the work. My  
17 legal opinion to this commission has been, it is only by  
18 constitutional amendment that you are going to be able to bring  
19 attorneys and judges, if that is a desire, back into the  
20 purview of a legislatively created commission.

21           The constitutional provisions, of course, could  
22 provide that rules could be drafted at some point in time.  
23 But the start-off point, the whole origination of the issue  
24 has to be in the constitution. There has to be a power and  
25 authorities somewhere in the constitution that allows the

1 General Assembly to pass the statute that regulates the  
2 conduct of publicly employed attorneys. Once that  
3 constitutional provision is in there, it can also then maybe  
4 be implemented by further statute.

5 REPRESENTATIVE MOEHLMANN: I thoroughly agree that  
6 it must be done by constitutional amendment. And the bill  
7 of which I speak is a proposed constitutional amendment. My  
8 question really is, should the constitutional amendment say  
9 you judges do this or should the constitutional amendment say  
10 make the rules or permit the legislature itself to make the  
11 rules?

12 MR. MARSHALL: Well, I think from our perspective,  
13 we have debated this issue. If you are talking about attorneys  
14 who are public employees, then I think structurally,  
15 philosophically the legislature has the most popular branch,  
16 should impose its conditions of public employment. That is  
17 really how we look at it. We have not attempted to assert our  
18 jurisdiction into the private practice of law and see that as a  
19 separate issue. Obviously, we don't have the jurisdiction to  
20 get involved in that.

21 But we have always looked at it as public  
22 employment being a public official is a voluntary act on the  
23 part of the person who happens to be an attorney. So, we have  
24 always seen it in a condition of public service or condition of  
25 public employment. So, the specific answer to your question,

1 and I will probably be thrown out of the practice of law for  
2 saying this, I think the legislature ought to do it. I think  
3 it is an employment issue not a jurisdictional issue or a  
4 separation of civics. It is really not, I don't see it as  
5 that kind of question.

6 MR. CONTINO: If I may, to answer your question  
7 more specifically, I would suggest you take a look at the  
8 provisions regarding district attorneys which is now a  
9 constitutional office. The office of district attorney is  
10 established in the Pennsylvania constitution, but the county  
11 code sets up specific requirements by statute on district  
12 attorneys. Take a look at those provisions sometime because I  
13 have argued those in Commonwealth Court in the Maunus and Thau  
14 case that the legislature has imposed very strict conflict of  
15 interest provisions on district attorneys, and that has been  
16 done by statute once the constitutional provision has enabled  
17 the General Assembly to do that. So, that might be a good  
18 analogy.

19 REPRESENTATIVE MOEHLMANN: Thank you very much.  
20 I appreciate your input. Thank you, Mr. Chairman.

21 CHAIRMAN DEWEESE: You're very welcome. Bob Reber  
22 from Montgomery County.

23 REPRESENTATIVE REBER: Thank you, Mr. Chairman.  
24 Just following up on that while it is fresh in everyone's  
25 mind. I would submit to the commission and I would submit to

1 members of this Committee that we should consider the fact that  
2 we are talking about a bifurcated type of attorney problem or  
3 possibly even a troika type, if you will. Because I think what  
4 you have are public officials, Mr. Bortner alluded to that,  
5 being an attorney and running for public office. My personal  
6 feeling is that you are not forced to do that. When you do  
7 make that decision, you possibly waive the right to take on  
8 any separation of powers constitutional argument. You have no  
9 problem in an attorney client confidentiality problem because  
10 you would not be doing anything to that extent in the way of  
11 disclosing anything other than your own personal situation,  
12 and you do not have to disclose who you had past practices  
13 with naming names type thing. So, I think you have a public  
14 official candidate type scenario that falls into a niche in and  
15 of itself.

16 I think you then drop down one additional rung to  
17 the public employee attorney being the counsel for the Liquor  
18 Control Board types. The types that are in essence directly  
19 employed by a Commonwealth agency working as their primary  
20 occupation as an attorney for that.

21 So, I think there is a secondary type of situation,  
22 and again, I think that, in most respects, lends itself to a  
23 particular type of niche exception, if you will.

24 Where I find tremendous trouble is when you also  
25 take a public employee definition and bring it down to your

1 local municipal solicitors. The reason I have that is that it  
2 has been my feeling that these individuals are independent  
3 contractors not employed by that municipality on a full-time  
4 basis. If they were employed on a full-time basis, with the  
5 stipulation of their employment not having another practice of  
6 any sort, then I think they fall into one of the other two  
7 that I have enumerated. But the problem I have, you earlier  
8 heard the testimony from the League of Women Voters on the  
9 question of the conflicting parties or agency's comment that  
10 was made on page three of that statement. I frankly think that  
11 when and if that particular situation took place was an  
12 absolute violation of the code of professional ethics and was  
13 subject to a disciplinary proceeding before the disciplinary  
14 board.

15 So, I think to some extent, we are talking about  
16 how far do we want to sanction, how many times we want to  
17 impose sentence. I think there is enforcement sanctions out  
18 there. The mere fact that it was employed at a particular  
19 time, I don't think prostitutes, if you will, the profession  
20 or the process that may be going on.

21 But getting back to the independent contracting  
22 aspect, as I see it on the solicitor's level, I think there is  
23 a tremendously greater abuse, if you will, and I'm not aware  
24 of the kind of situation that was given as an example, but I  
25 am aware of numerous examples where you have engineers

1 appointed under the respective municipal code that in so many  
2 instances are submitting plot plans, subdivision plans, that  
3 are being considered by the governing bodies, the planning  
4 commissions in the municipalities and yet they sit as a  
5 consulting engineer appointed pursuant to their capacity under  
6 the respective municipal codes.

7 I think there is also that same problem developing  
8 because I understand there has been a tremendous influx of  
9 CPAs taking on the auditing roles in the appointed versus the  
10 professional auditors that are permitted. So, I think in these  
11 kind of areas, and I am not saying that there shouldn't be  
12 some form of regulation, but I am also not so sure that the  
13 regulation should not come within the professional society,  
14 if you will, or the professional agencies or disciplinary  
15 boards, however, you want to characterize them, of those  
16 respective types of professions. And that these individuals,  
17 for all intent and purposes, really don't find even the kind of  
18 sanction under the Ethics Act that they ought to get. There  
19 might be more stringent type of things in the way of  
20 disbarment, if you will, for conflicting situations or  
21 revocation of their licenses from the various licensing boards.

22 So, as an overview, I suggest this may be  
23 somewhere where this particular body as well as the commission  
24 is going, and I don't know if you have any comments pro or  
25 contra to that.

1 MR. MARSHALL: I think our analysis holds up.  
2 What we are basically saying is, you gave us an act in 1979  
3 that did not make distinctions, that perhaps after eight or  
4 nine years you get a little clearer picture. We are saying  
5 that we believe that you have the right to condition public  
6 employment, public involvement and really that is a  
7 legislative determination or delegated specifically. I don't  
8 think you are going to find a lot of fighting. It is just  
9 that I don't think we read the Act as allowing us to say some  
10 of you are in and some of you are not. I am not sure we have  
11 the authority to say anybody that is regulated by a professional  
12 society or board or whatever doesn't have to comply with.  
13 But I think what we are coming to you and saying, the reason  
14 we profess to cover attorneys is because of the public employment  
15 public trust that is really in your purview.

16 REPRESENTATIVE REBER: I guess what I am saying is,  
17 I keep hearing the word attorney, but from my own personal  
18 experience where I see the potential abuse or the appearance of  
19 abuse, I don't see it.

20 MR. MARSHALL: But, see, we can get that. The  
21 reason it is an attorney issue now is that some judges and  
22 attorneys have successfully asserted a separation of powers  
23 defense or immunity.

24 REPRESENTATIVE REBER: And personally, quite  
25 validly I content is the case, but that is not the issue I

1 am talking about now because I'm trying to segregate where  
2 this thing is personally going.

3 MR. MARSHALL: But we haven't said that a county  
4 contractor or engineer who has got a conflict isn't subject to  
5 the Act.

6 REPRESENTATIVE REBER: You think he is subject to  
7 the Act?

8 MR. MARSHALL: Yes.

9 REPRESENTATIVE REBER: Do you think that anyone  
10 that basically has any involvement, a doctor that is acting as  
11 a medical examiner, a fire marshall who is involved in  
12 insurance work as his principal profession yet sits in that  
13 capacity, all of these people for all intent and purposes,  
14 anyone who is associated in any way whatsoever with a local  
15 governing agency in an advisory capacity role, full, part time  
16 or independent contracting position, when he elects to get  
17 involved with that, he then subjects himself to the Act?  
18 Is that basically a fair, general statement?

19 MR. MARSHALL: It is a general statement. It is  
20 fair. I am not sure it is complete. Obviously, there is some  
21 distinctions, but I was addressing sort of the idea that if  
22 an engineer has intertwined himself or herself into the affairs  
23 of local government to the same degree that a solicitor has,  
24 really, does this person have the opportunity --

25 REPRESENTATIVE REBER: That is an interesting



1 statement and I have heard that type of argument used. It is  
2 intertwined to the extent that a solicitor has. What is so  
3 unique to that type of argument with a solicitor and a  
4 governing body as to make it any different from a bidding  
5 contractor, if you will, with a municipality who just happens  
6 to be a supplier on an ongoing basis with the president of the  
7 board, who just for instance happens to be a contractor himself  
8 by profession? Now, the logical extension then of that is, do  
9 those people that desire to enter into bids with local  
10 municipalities, and more importantly, for agencies of the  
11 Commonwealth on the state level as bidders, should they then  
12 be required to file that ethics statement so we know that  
13 those who are ultimately going to be making a determination on  
14 the bid have any type of appearance of conflict, if you will,  
15 with the so-called impartial bidder. I don't know. I'm just  
16 saying, if you're going to carry it out to the extent we are  
17 carrying it out with the intertwining argument, maybe that is  
18 where we ought to look to also. I don't know.

19 MR. MARSHALL: Well, I think you have hit the nail  
20 on the head in terms of the idea of disclosure is really  
21 associated so that we can know if the person who reaps the  
22 benefit has something to do with creating or proving the  
23 benefit.

24 REPRESENTATIVE REBER: Let's just get off of that.  
25 Let's move along to something else.

1 DR. PANCOAST: Before you get -- there have been  
2 some opinions and orders along this line and Mr. Contino would  
3 be glad to explain what we have done along that line.

4 REPRESENTATIVE REBER: I am very much familiar  
5 with those opinions that you're talking about. It is a fact  
6 that there doesn't seem to be compliance with those opinions  
7 in other communities other than the attorney community that  
8 causes me some trouble and consternation.

9 Sieb, let me ask you this question. I think we are  
10 privileged to have what I consider a rather unique set of  
11 circumstances with someone like yourself having had some  
12 involvement with the Ethics Commission and also being a  
13 pre '78-79 legislator. Now, I've been up here since the  
14 '78-79. You were up here prior to that. Let me ask you this.  
15 Going back, how many times do you recall one of our colleagues  
16 on the floor getting up during the course of your tenure  
17 up here and suggesting that they had -- that they inquired of  
18 the Chair and wanted to ask the question whether they should  
19 refrain from voting on a particular issue because they had  
20 a concern there might be a direct or indirect remuneration  
21 back to them as a result of that? How many times do you  
22 recall that having happened? And then I will tell you how  
23 many times I recall it in the past seven years having  
24 happened.

25 DR. PANCOAST: In my 14 years up here, only one

1 request was made of the speaker of the house by a member to  
2 ask to be excused from voting on a particular issue.

3 REPRESENTATIVE REBER: So, I think that it would  
4 be safe to say, as I understand the rules of the House as well  
5 as being a member myself of the Ethics Committee of the House  
6 of Representatives, that we are certainly charged with that  
7 particular concern to be vigilant of that appearance and/or  
8 direct or indirect at any time, is that correct?

9 Now, if I might answer the question that I posed,  
10 I can recall on two instances in the seven years I have been  
11 here where a particular request or disclosure, if you will,  
12 of concern on the issue is raised. So, there we have  
13 collectively 21 years between the two of us where it has  
14 been raised on possibly three occasions.

15 Let me suggest this. On the two occasions that I  
16 am thinking of neither of those times, the one time was it  
17 by a member of the legal profession and the other time it was  
18 by an educator as I recall. My thought is, as I listened to  
19 Representative Caltagirone's concerns about all of this, we  
20 must not really get involved in too many things that seem to  
21 have an apparent conflict of interest if in fact in 21 years  
22 only three times has there been any need to be concerned about  
23 that and disclose it. That is why I find some trouble that  
24 a particular profession be at the doctor's or dentist's or  
25 veterinarian's or the members of the cemetery association or

1 what have you are going to be directly involved in some  
2 particular type of remuneration back to them or benefit back  
3 to them as a result of what we do up here. I think it is  
4 somewhat unfair to single out particular types of professions.  
5 Let me tell you the minute we single out any profession from  
6 not being able to serve in the General Assembly, I don't care  
7 what they do in the Senate side, but on the House side, I think  
8 is of tremendous concern. That troubles me and troubles me  
9 to the extent that we would be moving in a direction in  
10 attempting to mold legislation or ask your commission or your  
11 fellows in the future on that commission to be looking in that  
12 kind of vein. I certainly will refrain from attempting to  
13 allow something like that to be molded.

14 Just one last -- I will pass along, Mr. Chairman,  
15 and say that is sufficient. Thank you. Thank you, gentlemen.

16 DR. PANCOAST: On voting on issues, of course,  
17 any vote refers to the whole Commonwealth of Pennsylvania and  
18 to the whole category. In that light, I can see no reason for  
19 a member of the House to abstain from voting so long as it is  
20 a general application throughout the Commonwealth of  
21 Pennsylvania. I was very conscious of that with respect to  
22 voting on education bills because I was an educator. But by  
23 the same token, I could see no relationship between my vote on  
24 the bill and direct personal gain which is the issue we tried  
25 to research with respect to the Ethics Act.

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MR. MARSHALL: We don't view it as the vote is the problem. It is the gain realized as a result of the vote. And that, I think, we tried to make clear in the Corrigan opinion.

REPRESENTATIVE REBER: Obviously, we understand that is the relationship of the causal nexus, if you will, to draw upon some of the language that our esteemed Chairman attempts to use on some occasions and very effectively does.

CHAIRMAN DEWEESE: Thank you. Your deportment is impeccable. Helena and I noted the mistake that you made when you talked about the fellows on the commission.

REPRESENTATIVE REBER: I said ladies.

CHAIRMAN DEWEESE: I'm sorry. I didn't hear that. Well, how about the other one, since we are buddies and since I am as informal as hell, the men in the legislature, you mean the men and the women in the legislature.

REPRESENTATIVE REBER: Did I say that?

CHAIRMAN DEWEESE: We were exchanging glances.

REPRESENTATIVE REBER: Again, you didn't hear the secondary comment.

CHAIRMAN DEWEESE: Well, you are, I think, one of the most enlightened men on your side of the aisle.

(Laughter.)

CHAIRMAN DEWEESE: I'll refrain from any further observations.

We did, for the record, invite the Pennsylvania

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1 Bar Association to come here and share some of their  
2 observations about the Ethics Commission and about attorneys  
3 and judges and they did not vouchsafe to come and be with us  
4 today. So, I wanted that to go on the record.

5 State Representative Paul McHale from Lehigh  
6 Valley has a few questions.

7 REPRESENTATIVE MCHALE: Thank you, Mr. Chairman.  
8 A few questions and a few comments. I tend to take a very  
9 pragmatic role or pragmatic view of the role that is played by  
10 a solicitor in many of our municipalities around the state.  
11 The other day when we began discussion on this issue, I  
12 mentioned that when I first started practicing law, I heard there  
13 was a very prominent form of government in Pennsylvania known  
14 as the strong solicitor form of government.

15 Over the last ten years I have served as a  
16 solicitor prior to my election to the House. I served as  
17 solicitor and legal counsel to a number of zoning boards,  
18 planning commissions, borough, county and prisons and had some  
19 experience in those areas in terms of how the role of  
20 solicitor can be extremely important in the formulation of  
21 public policy. I grant there is a very valid question of  
22 separation of power as to whether this is something within the  
23 authority of a judicial branch inherent in the regulation of  
24 the practice of law or whether it is a question of public  
25 ethics properly within the jurisdiction of the legislature.

1 But I think whatever theory we apply to the regulation,  
2 whatever theory we apply to the guarantee of ethical conduct  
3 on the part of solicitors, and I happen to think most  
4 solicitors are extremely ethical, clearly there are  
5 questions that must be addressed. The first point I would  
6 make is that although we're talking about part-time  
7 solicitors, in most cases, these are solicitorships that not  
8 infrequently pay 30, 40, \$50,000 per year. Particularly if  
9 you are talking about a developing community. Perhaps a  
10 first-class township that has extensive real estate  
11 development. That involves a great deal of that solicitor's  
12 time and often involves very significant compensation. We are  
13 not talking about a part-time job with a nominal remuneration.  
14 We are talking about a very substantial amount of money often  
15 being paid for these positions, and appropriately so.

16           The question that I would raise is, and I would  
17 like your opinion on this, in light of the fact that  
18 solicitors often will be providing legal counsel to a  
19 planning commission, zoning hearing board, hopefully not both,  
20 perhaps one or the other or the municipality itself  
21 simultaneously may be maintaining an extensive real estate  
22 practice that would conceivably benefit from the decision  
23 making process on the part of that municipality. How can we  
24 guarantee that the public may rest assured that the impartial-  
25 ity of the advice from the attorney in his role as solicitor when

1 considered the potential context of conflict with his private  
2 practice?

3 MR. MARSHALL: First of all, I don't think the  
4 commission is in a position to guarantee anything. I think  
5 what we have is, hopefully, some kind of public disclosure  
6 which will act in a sense as a deterrent. It creates a trail  
7 if something comes up or is questioned, it creates that  
8 deterrent effect, because presumably it is going to be filled  
9 out accurately. I think, as the Chairman said, a number of  
10 our financial interest statements are looked at by the press.  
11 That is really how government works in this state and in this  
12 country.

13 REPRESENTATIVE MCHALE: I understand. Is the  
14 disclosure currently required under law adequate to allow for  
15 that kind of detailed examination so that the public may know  
16 if the solicitor has the possibility of a conflict of interest?

17 MR. MARSHALL: Well, first of all, there is a  
18 question because under the Ballew opinion part-time solicitors  
19 are not required to disclose. But assuming that you have, you  
20 can get the disclosure. As I understand our Act and the  
21 regulations and the opinions, what would have to happen is a  
22 solicitor who had represented a zoning board or represented a  
23 planning board would have to disclose that source of income.  
24 Maybe not dollar for dollar but certainly enough to lead a  
25 concerned citizen or a reporter to call him up and say how



1 municipality may face some very difficult ethical issues when  
2 he puts his hat on two days later as solicitor to that  
3 municipality in determining whether or not regulations con-  
4 cerning land development might be adopted that would  
5 dramatically and immediately impact on his private client.  
6 That really bothers me. And that gets back to the philosophic-  
7 al issue where you have a genuine conflict between the public's  
8 right to know and the attorney's right to maintain the privacy  
9 of his client list. And for the reasons I have articulated,  
10 I think when you run into that kind of conflict. the public's  
11 right to know outweighs the attorney's right to maintain the  
12 privacy of the client list.

13           It seems to me that under this kind of circumstance,  
14 whether we do it through judicial action governing the practice  
15 of law or legislative action governing the ethics of public  
16 office, we must constitutionally find a way to bring all the  
17 facts into public light. Because I am aware of far too many  
18 cases where I think there is a very real possibility of a con-  
19 flict of interest between the attorney's private practice and  
20 his very lucrative solicitorship.

21           MR. MARSHALL: I think that is right. I think also  
22 you point out a contradiction that we, as a society, feel that  
23 lawyers can police themselves. That is not really the question,  
24 but I think that is the attitude. So, when you interject the  
25 public employment, using your words, the public's right to

1 much did you make. And you could track back through the public  
2 records of the local government unit to find out that they  
3 spent X amount of legal. So, you would have some idea. I  
4 think you could then raise the question.

5           REPRESENTATIVE MCHALE: Under current law, if a  
6 solicitor in his private practice represents a number of  
7 developers, say, in a first-class township, he does not  
8 currently represent those developers in any proceeding before  
9 the municipality or before the zoning hearing board, but he  
10 advises them perhaps on a daily basis concerning compliance  
11 with the ordinances of that municipality. Would he at any time  
12 be required to reveal that representation in order that the  
13 public being served by that same attorney in his capacity as  
14 solicitor might rest assured there is no conflict of interest.

15           MR. MARCHALL: The regulations that we have speak  
16 to the disclosure of the relationship with the governing body  
17 not the individual client list.

18           REPRESENTATIVE MCHALE: That is what I'm getting  
19 at. That's what really concerns me about existing law.  
20 Because what I have described to you are not cases from theory.  
21 In fact, I was making references to very real situations of  
22 municipalities of which I am aware. I am concerned that a  
23 solicitor, for whatever reason, does not formally represent  
24 those clients before the municipality. But in fact advises  
25 them on a daily basis concerning compliance with the law in that

1 know, has never been factored into the equation of attorney  
2 discipline. Now the response I think by most attorneys would  
3 be that it is up to the individual attorney, the honor code  
4 system, whatever to resolve it. Now, you are shaking your  
5 head. You know enough.

6 REPRESENTATIVE MCHALE: I shake my head as I say  
7 this. I share what I think is the opinion of my colleague,  
8 Mr. Reber. The legal profession should not be singled out, and  
9 this is in no way a condemnation of the ethics of that  
10 particular profession. I am a lawyer and I am proud to be a  
11 lawyer. But I think to suggest because of that the profession  
12 ought to have exclusive control of its own discipline is, I  
13 think, expecting too much of any profession.

14 My view is you have a genuine conflict here  
15 between a legislative issue and that is the impartiality of  
16 legal advice and the ethical considerations involved in  
17 solicitings versus the judicial question of the regulation  
18 of law practice. And I don't know where the line is drawn  
19 between the two. I think clearly there is a blend here. But  
20 we must find a way constitutionally to guarantee to the public  
21 that the attorney providing the advice to that citizen's  
22 municipality does so without any undue influence or even the  
23 appearance of undue influence in terms of possible impact on  
24 his private law practice, and I find current law to be  
25 inadequate on that point. Whether that is a problem to be

1 solved by the Supreme Court or the legislative branch of  
2 government, I don't know. But clearly the status quo is not  
3 adequate in my view.

4 DR. PANCOAST: Under present law, of course, it is  
5 a question of if we have brought to us a sworn complaint with  
6 respect to this impropriety that we can pursue it.

7 REPRESENTATIVE MCHALE: Who would bring the  
8 complaint?

9 DR. PANCOAST: An individual.

10 REPRESENTATIVE MCHALE: How would the individual  
11 know of the conflict?

12 DR. PANCOAST: A citizen of the community who feels  
13 that there has been --

14 REPRESENTATIVE MCHALE: Yes. I grant you that.  
15 But my concern is that the basis for a complaint all too often  
16 is not a part of the public record and so the complaint filed  
17 might be effective, but in most cases no complaint will be  
18 filed because no citizen knows of the conflict. That is the  
19 problem.

20 MR. MARSHALL: Well, you also hope to have a  
21 deterrent, I think, having to put that on. I think it all  
22 dovetails back to what we have all been addressing the same  
23 issue from various standpoints. Our view is you, as the people's  
24 representatives, have the right to condition public employment.  
25 Again, a solicitor, we would, I guess, analyze that question.

1 Nobody is forcing you to be a solicitor. What we are saying  
 2 is, if you want to get money out of the public treasury,  
 3 whether it be at the state or local level, these are the  
 4 conditions we are going to impose upon that. That  
 5 contradiction, of course, is our Supreme Court, is saying that  
 6 we, as your creation, presumably having the power delegated  
 7 from you can't do it. We read the opinion as saying that you  
 8 can't do it. Now, we have to wait and see.

9           REPRESENTATIVE MCHALE: I understand. You may be  
 10 correct in that analysis. I very strongly agree with the first  
 11 part of your analysis and that is, here we are talking about a  
 12 condition of public employment not simply the private practice  
 13 of law. We are all bound by the Supreme Court's ruling in this  
 14 area and it may be that the court will ultimately determine  
 15 that this really is a matter exclusively within judicial  
 16 control.

17           On that issue, I am not going to draw a strong  
 18 opinion, but today, in closing, I am going to draw a strong  
 19 opinion with regard to the need for full disclosure. These  
 20 are part-time positions as solicitors. But often they are  
 21 high-paying positions particularly within developing  
 22 municipalities. The solicitor is not simply an independent  
 23 contractor providing professional advice. That may be the  
 24 theory. That is not the reality and those of us who have lived  
 25 in that world know better. Often the solicitor is the policy

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1 maker on the municipal level and as the solicitor gives legal  
2 advice and thereby formulates public policy. The people have  
3 the right to know whether or not a client represented privately  
4 by that solicitor raises the possibility of a conflict of  
5 interest. And so, as we talk about independent contractors  
6 and regulation of the Bar and part-time positions, I would urge  
7 a cold shower in the world of municipal practice. We have to  
8 be realistic about this. Solicitors make policy. They do it  
9 every day and because they do so, the public has the right to  
10 be absolutely certain there is no conflict of interest. Thank  
11 you, Mr. Chairman.

12 DR. PANCOAST: I agree with you wholeheartedly.  
13 In addition to sworn complaints, of course, we may initiate  
14 our own investigations and with investigative reporters, some  
15 material was brought to our attention. If we make a  
16 preliminary investigation and feel that there is a great deal of  
17 justification for a full investigation and decision by the  
18 commission, we can take that action too.

19 REPRESENTATIVE MCHALE: There is no question that  
20 either a sworn complaint, the process that is provided in  
21 that respect or action taken on your part can certainly be  
22 very, very helpful, but in my view, that addresses only the  
23 tip of the iceberg.

24 DR. PANCOAST: We would agree with what you are  
25 saying.

1 REPRESENTATIVE MICHALE: Thank you, Mr. Chairman.

2 CHAIRMAN DEWEESE: I have just a few moment's  
3 worth of questioning but I think our Court Reporter, Dorothy  
4 Malone, would like to take a couple-minute break. A  
5 three-minute break.

6 (Brief recess.)

7 CHAIRMAN DEWEESE: We will resume the final few  
8 moments of questioning to the State Ethics Commission  
9 themselves regarding the Sunset Review process.

10 Before I do that, I would like to state for the  
11 record, state Representative Dave Heckler would very much have  
12 liked to have been here with us today. He had a scheduling  
13 conflict and he will be here next week. Representative  
14 Heckler is one of our members and he did have some questions  
15 for a lot of people, but he might share those with you in  
16 writing. I am not certain what his method will be.

17 One other side bar comment from my friend and  
18 colleague, Bob Reber. As long as we are accumulating different  
19 numbers of years in assembly, I am starting my 12th year next  
20 week. And I'm sure maybe the reason I have not heard about  
21 them is because they are not public, but I don't remember our  
22 House Ethics Committee ever getting very involved in the  
23 process and I made a formal complaint to them only one time.  
24 The same thing I made to you people. The same complaint was  
25 made to both and at least you people wrote me back. I never

1 even got a reply from William Rieger, the Chairman of the  
2 House Ethics Committee.

3 REPRESENTATIVE REBER: We did consider the source,  
4 Mr. Chairman.

5 CHAIRMAN DEWEESE: I asked for that one.

6 Helena, I would like to ask you a question. It  
7 seems to me and it seems to the League of Women Voters and to  
8 other people that there is at least a possibility that  
9 partisanship is something that we should try to at least  
10 mollify, if not do away with, within the ranks of the  
11 commission, the State Ethics Commission. Do you have any  
12 observations or feelings on how we could possibly lessen  
13 partisanship?

14 MS. HUGHES: Well, I think that the legislative  
15 body decided how we would be constituted and I think that as  
16 we look at ourselves nine years later, there is a possibility  
17 and the timeliness to address that issue by that body. I  
18 probably have some private observations in terms of how I feel  
19 certain elements of the commission or certain representatives  
20 of the commission may express themselves, but it is kind of  
21 tongue in cheek as I defend myself or cut down on the  
22 pontification by my lawyer associates.

23 Now, in terms of the partisan kind of considerations  
24 I have not had that experience, that problem in my short stay  
25 on the commission. We have been able --



1                   CHAIRMAN DEWEEST: How long have you been on the  
2 commission?

3                   MS. HUCHES: Since February last year. And, as  
4 you know, we meet generally once a month. Sometimes every two  
5 months depending upon the press of the concerns that we have  
6 and how our schedules permit. But I have not had that  
7 experience. I listened with interest some of the comments  
8 that you made relative to some decisions prior to my coming  
9 aboard. But I have not had that problem since working with  
10 the commission. Since I have come, I have found that we have  
11 been a bit issue oriented and that has been gratifying to me.

12                   CHAIRMAN DEWEESE: Any other members want to  
13 comment on the partisanship? Sieh, as Bob said a little bit  
14 ago, you are a good guy. You have been on our side and on the  
15 other side. I would like to have you as a friend, uncle,  
16 father, anything else. But I don't think you belong on the  
17 Ethics Commission anymore than I think I belong on the Ethics  
18 Commission because I would be deciding things, it would be hard  
19 to extricate all of our backgrounds. I'm saying to you, is  
20 there any way we can do it with nonpoliticians?

21                   DP. PANCOAST: I don't see how you can do it with  
22 nonpoliticians. My experience in two and a half years on the  
23 commission, I have never seen any political identification of  
24 decisions on any of the commission members. I feel the same  
25 way as Felena does with respect to that.

1           Now, there have been some decisions made by the  
2 commission in the past, when I was not a member, that seemed to  
3 have political implications, but not in my experience. I have  
4 never identified one member as a Republican, another member as  
5 a Democrat and I have never seen that in any of the votes on  
6 the commission.

7           CHAIRMAN DEWEESF: Thank you. Paul, you've been  
8 around a long time. Am I way off? I'm not going to ask Reber that.

9           MR. SMITH: I would like to observe that we are  
10 all ex-politicians. Under the law, none of us are allowed to  
11 be associated in any way with any other form of government.  
12 We must be completely removed from it. On occasion, I have  
13 recommended to some of the appointing authority, that is the  
14 leadership in the House and to the Governor's office, that they  
15 consider the appointment of representatives from Common Cause,  
16 League of Women Voters and so on, but to no avail. But it can  
17 be done. The leader of the House, Mr. Pvan, has an appointment,  
18 let's say. He can appoint someone from the League of Women  
19 Voters if he pleases. The leader of the Senate, when his term  
20 comes up to make an appointment, he can appoint a member of the  
21 Veterans Association or whatever, but it hasn't been done.  
22 Some of our members never have held any public office.

23           MR. M/PSHALL: I would just add that I think, I  
24 came on a month after Helena. So, I have been here entirely  
25 under Sieb's leadership. And it has really been one where we

1 have tried, and I think pretty successfully, to reach  
2 consensus. We have our differences but ultimately we try to  
3 arrive at a position. I think that just reflects the practical  
4 realities that we don't have a division of the State Police to  
5 go out and enforce. We are only going to be as effective as  
6 we are perceived. If we come off as being partisan, then there  
7 is no point in having us because we have to be cleaner than  
8 clean.

9 CHAIRMAN DEWEESE: Thank you. The case with  
10 George Seidel, Secretary of Legislative Affairs after Rick  
11 Stafford, the way most lay people, Helena, Bill, especially  
12 most people in my district perceive the law, you are not  
13 allowed to lobby a group that you have been working with for a  
14 year after you leave. Well, George has been lobbying the state  
15 legislature aggressively, constantly, openly. That was his  
16 job. That is what Dick Thornburgh paid him to do and he was  
17 paid well. All of a sudden he is out lobbying for some oil  
18 companies, lobbying us. Somehow the Ethics Commission let him  
19 get away with that. Would you share with me your observations,  
20 Sieb, on why George Seidel ever was able to lobby the House  
21 and the Senate?

22 DR. PANCOAST: I'll have to call upon John Contino  
23 who may know the decision in that particular case.

24 CHAIRMAN DEWEESE: Was that prior to your --

25 DR. PANCOAST: Yes, that was prior to my -- and

1 George was a very good friend of mine.

2 CHAIRMAN DEWEESE: I mean, I am a good acquaintance  
3 of George's also. We can sit down and have some scrod  
4 together, shoot the breeze. And I don't have any enmitv for  
5 these people.

6 DR. PANCOAST: Had I been here at that particular  
7 time, however, knowing George as I knew George, I would have  
8 recused myself in sitting as a member of the commission in the  
9 disposition of that particular case.

10 CHAIRMAN DEWEESE: John.

11 MP. CONTINO: First of all, I think you are  
12 referring to an opinion, not an investigation that we conducted.  
13 I think it was a commission opinion.

14 CHAIRMAN DEWEESE: Yes.

15 MP. CONTINO: Mr. Seidel had requested advice as to  
16 what he could do within one year after he left the Governor's  
17 office. The commission and Representative Heckler raised this  
18 at the last meeting and it was a good point to raise because  
19 the issue is controlled by a court decision. The issue of  
20 governmental body, what is your governmental body? Because  
21 3D of the Act says you can't appear before or represent any  
22 person of your former governmental body. What is the extent of  
23 Mr. Seidel's governmental body? That's what the issue was  
24 before this commission.

25 Taking a step back in time there was a decision

1 with State Senator Kury. State Senator Kury went out after  
2 his service with the Commonwealth of Pennsylvania. He had  
3 asked for our opinion and we gave him an opinion. We extended  
4 the governmental body to the House, to the Senate, plus we  
5 extended it to the governmental bodies on the outside that he  
6 was dealing with on a regular basis. Forgive me if my memory  
7 is not quite clear, the Turnpike Commission or the PUC. I am  
8 not really sure which one. And we attempted to apply that in  
9 a very broad fashion. The court came back as they did much  
10 like the attorneys and said no. What you have to look for is  
11 what was his influence, responsibility and control. Over what  
12 governmental entity did he have control.

13 CHAIRMAN DEWEESE: Influence and responsibility  
14 and --

15 MR. CONTINO: And control.

16 CHAIRMAN DEWEESE: It has to be all? It just  
17 can't be influence and responsibility? George Seidel had  
18 influence with the legislature and responsibility for the  
19 legislature.

20 MR. CONTINO: But his real responsibility and  
21 influence was over his own governmental body. He could come  
22 in and lobby the House and Senate.

23 CHAIRMAN DEWEESE: This is not the appropriate  
24 place for us to get into the minutia.

25 MR. CONTINO: What I am trying to inform you, to

1 answer your question, why the commission decided that way.

2 The commission, based on the Kury decision, made an  
3 administrative agency determination that this was as broad as  
4 his governmental body could be without losing a board challenge.

5 CHAIRMAN DEWEESE: Thank you very much. Paul.

6 MR. SMITH: I voted against Seidel in that matter  
7 but for a different reason. He failed to mention in his  
8 request for an opinion who he was going to work for. I  
9 figured we shouldn't give anybody a blank check in a matter  
10 like that. It came out later in a news release that he was  
11 going to work for the petroleum industry. I think if we had  
12 known that, if that was on the record, I think some of the  
13 other members would have voted against him.

14 CHAIRMAN DEWEESE: I respect the other members and  
15 staff who worked with me on this and this is not the time to  
16 go into every case and I won't go into every case. But I did  
17 want to talk about that one for a little bit. The average  
18 person on the street would think that George Seidel, the  
19 Secretary of Legislative Affairs, had responsibility and  
20 influence with the state legislature. And all of a sudden we  
21 have a law that says you are not allowed to do any work with an  
22 area where you had a responsibility and influence for a year.  
23 And he's making \$100,000 a year lobbying for the oil companies,  
24 lobbying us who he had responsibility for and influence with.  
25 Anyway, these are some of the reasons that I have, some

1 tentativeness about the perpetuation of your agency. But,  
2 again, I realize that probably is not the prevailing view, but  
3 I want to share these things.

4 The last thing I want to talk about and we are  
5 going to ask our next witness to come up, not a witness, next  
6 quest. The extension applies to local officials, obviously.  
7 Do you think it would be healthy for the State Ethics  
8 Commission to have a local official on board, supervisor,  
9 county commissioner, borough council person? Do you have any  
10 feelings? Paul.

11 MR. SMITH: We have on occasion.

12 CHAIRMAN DEWEESE: Sieb.

13 DR. PANCOAST: As a former Collegeville Borough  
14 Council member and as a former mayor in a borough, maybe I'm  
15 a local government official. But I don't know as you  
16 designate certain ones shall be from certain areas. I think  
17 that the appointments that are made, any one of the seven  
18 members can certainly come from any walk of life. Certainly  
19 we have a mixture.

20 MR. SMITH: For a number of years our general  
21 counsel was a former solicitor for a borough and we picked her  
22 for that reason. She would have local experience.

23 CHAIRMAN DEWEESE: Thank you.

24 MR. MARSHALL: The problem you would have though,  
25 there is a political proscription in the Act. So, you would

1 have to exempt that person from coterminous service.

2 CHAIRMAN DEWEESE: Thank you, Helena and  
3 gentlemen, very much for your testimony.

4 We are going to have a change in our schedule.  
5 Doug Hill has been gracious enough to let Roth Judd jump in  
6 front of him. Roth has a plane to catch. Roth Judd is the  
7 Executive Director of the Wisconsin State Ethics Board, and  
8 the House Judiciary Committee would like to welcome you, Roth,  
9 for your observations and testimony. And, again, Doug Hill,  
10 thank you very much for your flexibility.

11 MR. JUDD: Thank you, Mr. Chairman. I have been  
12 the administrator of the Wisconsin board for about a thousand  
13 years now beginning in 1974. During that time I have had an  
14 opportunity to review the laws of other states, to meet my  
15 counterparts in other states, talk with them about what the  
16 practical application of their laws, what works, what does not  
17 work. My own ethics board went through a very detailed review  
18 of Wisconsin ethics laws. In that examination, we looked at  
19 the laws of all of the states. Not only do we read those laws  
20 but we ask the administrators of those laws if they had to do  
21 it all over again whether they would do it the same way or  
22 what they would change. The legislature, over a period of two  
23 legislative sessions, modified our law at the request of the  
24 ethics board and the effect of the legislature's action was to  
25 significantly strengthen our law in all areas of disclosure,



1 enforcement and otherwise.

2 I like the idea of sunset review. I gather the  
3 first question is, should Pennsylvania have an ethics code and  
4 an ethics commission? I think the answer is yes for many  
5 reasons expressed already today. I won't belabor that point.  
6 If you want to talk about that further, ask me.

7 Let me tell you I am not the Johnny Appleseed of  
8 ethics codes traveling the land to plant and nurture ethics  
9 commissions. Most states have them. Two-thirds,  
10 three-quarters do. Most of them are very good. There are one  
11 or two that are not very good. In looking at the laws of  
12 other states, I think Pennsylvania has a pretty good ethics  
13 code. I have read it. There are many ways to skin a cat.  
14 But the approach you have taken here, at least on paper, seems  
15 to be very good.

16 Then I learned in spite of what the statute says,  
17 that is not necessarily the law in the state of Pennsylvania.  
18 I just have to reflect upon the actions of the Pennsylvania  
19 courts before I proceed further. I know I overstate the case,  
20 but it apparently seems to be that the courts in this state  
21 have exempted from standard of conduct for public officials  
22 anybody who has ever attended law school. I think the  
23 citizenry may have long suspected that somehow lawyers  
24 considered themselves above the law. But to find that the  
25 court would articulate that as a public policy of the state is

1 absolutely unbelievable.

2           The chairman of the council on governmental ethics  
3 laws, the Association of Ethics Commissions and Boards of  
4 North America was in Pennsylvania last month. He labeled as  
5 hogwash Pennsylvania's courts claim that the Ethics Act  
6 improperly infringes on the courts powers over lawyers. I do  
7 not disagree with that assessment. I think somebody missed  
8 the class on separation of powers. It was taught to me what  
9 was to be protected against was the exercise of all the  
10 governmental powers, too much power, the arrogance of power by  
11 one branch, one office or one arm of state government. To  
12 protect against that, the powers were distributed so that you  
13 created a policy making arm. That is you, the legislature  
14 that creates the policy. And then you created a mechanism  
15 to execute those laws and you have an Ethics Commission to do  
16 that and you have a court system to adjudicate cases in  
17 controversy that arise from the application of those laws.

18           As I gather what has happened here, the court,  
19 under the banner of separation of powers has really wanted to  
20 gather to itself those powers to establish the policy, to  
21 administer it and to pass on how it will be applied as it  
22 affects all the lawyers in the state. I find that absolutely  
23 amazing.

24           Certainly each branch of government can, is able to,  
25 might well establish for itself its standards of conduct that

1 are more stringent than go beyond the requirements of general  
2 state law. That is what has happened in my own state. But in  
3 Wisconsin and in some other states, the ethics code applies to  
4 all legislators, all judges and to all key members of the  
5 executive branch.

6 Other than that, and perhaps an occasional court  
7 ruling on how the ethics code might apply to financial  
8 disclosure reports, including reporting on behalf of public  
9 officials families, it seems you have got the basis of a very  
10 good law in this state.

11 So, if I am to be recorded as anything, record me  
12 as recommending that you renew the lease of the Ethics  
13 Commission in this state.

14 Is this the ethics code or the Ethics Commission  
15 that you really want is the subsidiary question as I  
16 understand it. Well, these things are difficult to measure,  
17 aren't they? There are things you can count. You can count  
18 advisory opinions, you can count the number of complaints  
19 that have been filed, you can count things, about the accuracy  
20 of filings, the number of times these financial statements are  
21 examined by other people, you can count brochures and  
22 informational statements issued by the Ethics Commission. You  
23 can count the cost per opinion or the dollar cost per  
24 enforcement proceeding, that sort of thing. I think that kind  
25 of mechanical audit tells you how the staff is spending its

1 time, but I don't think it answers really the important  
2 question of whether the ethics code and commission is realizing  
3 the objectives that the legislature would really like it to  
4 realize which I hope is really fostering confidence in  
5 government, and helping decisions be made in furtherance of  
6 the public's interest rather than for some private interest.

7           Those things are very difficult to measure. Just  
8 because they are difficult to be measured or can't be  
9 measured though doesn't mean you can't draw some reasonable  
10 inference from information at hand. If I were looking to see  
11 how well the commission was doing, I would look first to the  
12 respect in which the Ethics Commission is held. It has just  
13 got to be known for its fairness. It should be a prestigious  
14 board, maybe the most prestigious board in the state of  
15 Pennsylvania. And when I say that, I am not referring  
16 necessarily to the prestige of individual members, somehow  
17 a star system of who you appoint to the board. But that the  
18 board itself, through its own conduct, is held in great esteem  
19 by members of your chamber, both sides of the aisle and by  
20 newspaper editors, reporters, civic groups, people who will  
21 look to this body as a fair, impartial institution.

22           Another place I look is to the advisory opinions.  
23 No official should have to guess as to what the law is. I  
24 would look to be certain that the advisory opinions are issued  
25 with accuracy, speed, clarity and that the advice is really

1 useful and there are ways to learn if that is the case.

2 Another place I would look is to how successful  
3 the Ethics Commission has been in establishing a general tone  
4 for the state to inculcating itself in the very fabric of  
5 government. Examples, an ethics board or commission should not  
6 have to take on every case, every matter case by case. In my  
7 own state, where there are limitations about public officials  
8 entering into contracts with state government, we don't have  
9 to do this case by case. We really have some boiler plate  
10 language put in every contract that is awarded by the state  
11 where there is some ordinary recital that signatories will  
12 understand, certify that no state official has an interest in  
13 that contract directly or indirectly. If that person could not  
14 find that in good conscience, that would put them on notice  
15 that something is going to have to change. They are going to  
16 have to seek advice or learn how to proceed, but it really  
17 becomes a normal part of daily occurrence. It is there. A  
18 person does not have to memorize the statutes.

19 I say with personnel policies, really, each agency  
20 of state government has really adapted for itself the general  
21 principles of the state ethics laws and makes this just a part  
22 of the regular expectation of employment anywhere in state  
23 government. The statement of economic interest or financial  
24 disclosure statements filed by state officials are used  
25 regularly by members of the Wisconsin senate in examining all

1 of the governor's appointees or nominees for appointment to  
2 public positions. The senate would not act on any nominations  
3 until that statement would be reviewed, and we would, as a  
4 matter of course, review those statements to each member of  
5 the standing committee of the senate to which a nomination  
6 was referred.

7           The governors of both political parties have been  
8 known to call the ethics board when they have a prospective  
9 nominee in mind and say, here is the situation. We want to  
10 make certain there will be no problem if I appoint this person  
11 and that there won't be any conflicts here. Would you look  
12 over this nominee, talk with the nominee, let's assure that  
13 there are no difficulties before an appointment is made. I  
14 have done that with governors of both political parties.  
15 Sometimes the appointment is later made. Sometimes it is not.  
16 The fact that this happened is not something especially known  
17 to people of Wisconsin. We operate very quietly,  
18 confidentially, the confidential relationship here. The  
19 governor was considering the appointment of a particular  
20 person, consulted the ethics board, decided not to go forward  
21 with that nomination, that would never be a matter of public  
22 record. It would be simply some advice to the governor.

23           Something I really want to caution you about is  
24 that in some jurisdictions is it legal? Is it right? I think  
25 it is understandable that that happens but I think that that

1 is wrong. My board, in reviewing any question that comes to  
2 it, first looks to what the law is. That is the touchstone  
3 for treatment of any request for advice that would come our  
4 way. But the board would always continue to comment on whether  
5 it thought the action asked about was appropriate or right or  
6 the appropriate thing to do. It is very difficult to draft  
7 laws for all situations and there are many things that are  
8 legal that are not right. My board has never been particularly  
9 bashful about saying that, to review a situation, yes, in fact  
10 this doesn't meet any, it is not contrary to any section of the  
11 law, but we think it stinks. We ought not to proceed. The  
12 board, because it has handled itself -- well, because the  
13 manner in which it has held itself, its opinion is given  
14 great weight and respect.

15 I'm going to -- yes, I think you should have an  
16 Ethics Commission in this state. I think that your law seems  
17 to be a pretty good one. There have been different techniques  
18 tried in other states. I may be dumb, but I am not so  
19 foolhardy as to try to tell the legislature of Pennsylvania  
20 what the law in Pennsylvania ought to be. But I can tell you  
21 some things that have been tried in other states and I can  
22 tell you the consequences in some of those states. So, I  
23 invite your questions on these things. I am thinking now about  
24 questions on ethics commissions, can they be nonpartisan, how  
25 do you set that up, advisory opinions? Maybe they should be

1 confidential. Maybe you should be able to ask in confidence  
2 for those reports. Do you need to take on the whole state of  
3 Pennsylvania at all levels of government here or could you do  
4 something less grandiose? How do you deal with frivolous  
5 complaints? Thinking of penalties, it seems to me maybe your  
6 penalties might be too high in some cases.

7           As best as I know in Wisconsin, I have 100 percent  
8 compliance with the financial disclosure requirement. We do  
9 that with not much trouble. The law has become very much  
10 self-enforcing. The question about may farmers vote on farm  
11 legislation and insurance people vote on insurance legislation,  
12 I think they probably should. We talked about that. The  
13 lawyer client list, how you treat that, I've got some thoughts  
14 about that. I invite your questions and comments.

15           CHAIRMAN DEWEESE   Thank you very much, Roth.  
16 Mary Woolley, the Republican Counsel.

17 BY MS. WOOLLEY:

18           Q   I would like to ask a couple questions. First,  
19 regarding your treatment of the lawyer client confidentiality  
20 problem and how Wisconsin deals with requiring attorneys who  
21 are employees of the state or employees of local government  
22 who also engage in private practice. How do you require  
23 disclosure of their clients in regard to private practice?

24           A   First, our code applies to all three branches of  
25 government, but only the state officials, key policy makers and



1 key management people. We do not reach the local level.

2 BY REPRESENTATIVE BORTNER:

3 Q Your law does not apply at all to public officials  
4 at the local level, school boards --

5 A That is correct. That is correct. The Wisconsin  
6 legislature has explicitly authorized local governments to  
7 adopt and administer ethics ordinances if they wish to do that  
8 and give them guidance of what may be in those ordinances and  
9 what may not be. Basically, they may adopt an ethic ordinance  
10 similar to state law but it is left to local option.

11 REPRESENTATIVE BORTNER: I'm sorry I interrupted  
12 you. I just want to make sure I heard you.

13 CHAIRMAN DEWEESE: No problem.

14 MR. JUDD: All state officials list their sources  
15 of income except that a person need not list an individual  
16 person from whom the official receives income unless the person  
17 is a lobbyist. As a practical matter, each official will list  
18 all businesses, organizations, labor unions, municipalities  
19 from which that official derives income and would list any  
20 lobbyist from whom a person derived income if that were the  
21 case. But suppose the case would be of a legislator who has  
22 some rental income or owns some rental property or of the  
23 lawyer legislator who did some divorce work.

24 BY MS. WOOLLEY:

25 Q But substantial private practice, you would not

1 require disclosure of individual clients. You would not list  
2 individual people. It would simply say practice law. You  
3 would list all the businesses, organizations, municipalities  
4 that they represented.

5 My second question, I think Wisconsin uses similar  
6 language to Pennsylvania regarding the definition of what a  
7 governmental body is. Are they dealing with the scenario that  
8 we were discussing earlier in terms of when a public official or  
9 an employee leaves the employment of that governmental body  
10 and there is a one-year preclusion upon that person conducting  
11 any business with a governmental body with which he was  
12 associated, can you tell me how Wisconsin defines that with  
13 which he was associated concept? Does it, for example, in the  
14 case of someone, let me give you an example, someone employed  
15 as a district engineer for our Department of Transportation,  
16 leaves the Department of Transportation, is now in a private  
17 engineering firm. Would Wisconsin's law preclude him from  
18 doing any direct negotiations with your Department of  
19 Transportation for one year or would it preclude him from  
20 negotiating with a specific division within the Department of  
21 Transportation where he was employed?

22 A With the department. We have done that, with that  
23 very department.

24 Q What about the scenario that was discussed earlier  
25 by Chairman DeWeese where the Governor's secretary for

1 legislation leaves and is employed as a lobbyist by private  
2 industry? Would he be precluded from lobbying the legislature  
3 or would your test only apply to the executive side?

4 A Precluded from lobbying the office of the governor  
5 but not the legislature.

6 Q But not the legislature?

7 A Right.

8 CHAIRMAN DEWESE: Mike Bortner.

9 BY REPRESENTATIVE BORTNER:

10 Q I notice that under your prohibition on working for  
11 or working under or lobbying an agency within a year from  
12 leaving office which is similar, you have specifically  
13 exempted legislators and legislative employees? Am I reading  
14 that comparison accurately?

15 A That is right.

16 Q That would not at all apply to I, as a legislator,  
17 could complete my term of office next year, be hired by the  
18 trial lawyers and walking the halls around here doing lobbying  
19 the day after I left office, is that correct?

20 A That is the law in Wisconsin.

21 Q It doesn't sound, it sounds as though that is a  
22 part of the law you might like to see changed in Wisconsin?

23 A Reasonable people might differ on that.

24 Legislators write laws. The argument here was to be protected  
25 against patronage access, influence and that that influence was

1 most apparent, evident in the case of a three-person  
2 commission or six-member board where someone left and would  
3 know those people well. The argument was made in a large  
4 legislative body, it might exceed 100 people, simply that kind  
5 of influence was not -- just didn't exist, especially in the  
6 case of a former elected official.

7 Q How large is your legislature? How many members?

8 A Senate of 33 members and a House of 99.

9 Q You truly have a part-time legislature, do you not?

10 The members have outside --

11 A Most legislators today would identify themselves as  
12 being full-time legislators.

13 Q What are their salaries? Are they full time?

14 A I think the current salary is in the neighborhood  
15 of \$29,000 annually.

16 Q But there are other legislators that have  
17 businesses, professions that they practice at the same time?

18 A Yes, there are.

19 Q I have just one other area. Your gift section  
20 seems a little bit different than ours. You require the  
21 reporting of gifts in excess of \$50?

22 A Yes.

23 Q I guess I'd ask the same question I asked before.  
24 Would that be per gift, per incident? I am thinking in  
25 particular with regard to lobbyists doing things with

1 legislators. Would that be a total, a kind of accrual that  
2 you benefit during the year or on an individual basis?

3 A Gifts have to do, the person has to report each  
4 donor from which the person receives -- each donor other than  
5 a member of the person's family from which a person received any  
6 thing or things valued at \$50 over the course of a year. It  
7 is cumulative.

8 Q It is cumulative?

9 A Yes. As to lobbyists, there is a very simple rule  
10 in Wisconsin. It grows out of our lobbying on the ethics code.  
11 Lobbyists may not furnish anything of value to any state  
12 official or state employee.

13 Q Period.

14 A Period, very simple. It's nice. You don't have  
15 to remember a complicated formula. There's not a lot of  
16 thought. There is not a lot of record keeping involved. It's  
17 great for lobbyists. I mean, it really helps expense accounts.  
18 It saves, that's a lot of money that goes unspent.

19 CHAIRMAN DEWEESE: Lobster tail is not valuable?

20 MR. JUDD: Just, there are no meals. Lobbyists  
21 would not purchase a meal.

22 CHAIRMAN DEWEESE: In the state of Wisconsin?

23 MR. JUDD: Yes, sir. Very simple rule. Easy to  
24 remember.

25 BY REPRESENTATIVE BORTNER:

1 Q Has that been the law in Wisconsin or has that  
2 been a rule of recent change?

3 A That has been the law in Wisconsin for years and  
4 years. Well, it was long before my time. I don't know how  
5 far back it goes.

6 Q I just want to make sure I understand this because  
7 I am interested in this. That meant no mugs, no books,  
8 anything from a lobbyist is prohibited?

9 A Well, every law gets at least one loophole.  
10 Organizations that employ lobbyists, state associations of  
11 whatever it is may, generally is able to invite legislators,  
12 public officials to its annual meeting, a bona fide meeting  
13 for discussion of state issues and they do that. Usually  
14 each of the state associations, and it descends on the state  
15 capitol, over the course of a term and has some dinner as part  
16 of their annual meeting, invites legislators to that. That is  
17 the exception. But no notebooks, mugs, no tickets to sporting  
18 events.

19 Q I don't see that as a problem. Is that abused?

20 A No.

21 Q So, I mean, those annual meetings are in fact  
22 annual meetings?

23 A That is right. But outside of that in restaurants,  
24 people, just separate checks. It is just an easy rule to  
25 remember.

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REPRESENTATIVE BORTNER: Thank you.

CHAIRMAN DEWEESE: Any further questions? Mike Edmiston, Chief Counsel.

BY MR. EDMISTON:

Q Mr. Judd, I would like to get a few things clarified a bit further anyway. There was some mention of the exemption to legislators and employees of the legislature so far as Wisconsin's statute is concerned. But in your describing the applicability of your statute, you used a phrase key personnel. Can you give us an idea of what you mean when you say that? The impression I have is that you are talking about people in the executive, and as I understand it, the judicial branch is exclusively at the state level not at the local government level by way of your statute. How far down in the chain of command, so to speak, particularly as to the executive, does your statute reach?

A I will give you the Wisconsin model. The state ethics code reaches all legislators and legislative staff. It reaches all judges. It reaches all officials elected in statewide elections. It would apply to all of the governors appointees, members of the state various boards and commissions, part-time boards and commissions and to the key management. That might be maybe the top half dozen people in each department, generally a secretary, a deputy, executive assistant, all of the administrators. Another way to view

1 it, in Wisconsin, that applies to all of the unclassified  
2 positions, all those positions exempt from the state's classi-  
3 fied civil service system. As to that great body of other  
4 state employees in the classified civil service system, our  
5 legislature has determined there is a better way to deal with  
6 those people. Simply to deal with them in terms of the classi-  
7 fied civil service system. The director of that system has  
8 been directed to create, with the advice of the Ethics Code,  
9 with the concurrence of the Ethics Board, an ethics code for  
10 that other great body of classified civil servants. Then if  
11 there are violations of that, questions about it then can all  
12 be dealt with within the fabric of the state civil service  
13 system. Recognizing there are questions, peculiar questions,  
14 to educational institutions, the governing body of the University  
15 of Wisconsin was directed to establish a specific separate  
16 ethics code for teaching and academic staff in the university  
17 system.

18 In addition, local governments were all authorized  
19 but not required to establish a code of ethics for local officials.

20 Q I just have one other, one of the differences I  
21 understand between your board and Pennsylvania's Commission is  
22 the appointing authority. As I understand, Wisconsin's Board,  
23 your governor makes all the appointments?

24 A That is true. We have a six-member board. Each  
25 member is appointed for a six-year term, one term expiring each



1 year. The governor appoints all of those people subject to  
2 the senate's consent. Members of the Wisconsin Ethics Board  
3 may not serve on any boards or commissions at the state level  
4 or local level. I think that is the same as Pennsylvania's  
5 requirement. Members of Wisconsin's ethics board may not have  
6 been a candidate for election to any partisan office a year  
7 prior to appointment. In fact, members of Wisconsin's Ethics  
8 B o a r d may not be a member of any political party. It is  
9 a nonpartisan board. They may not be a member of any political  
10 party. It is a nonpartisan organization. I have no idea  
11 about political inclinations of any members of my board.  
12 Members of my board, as best as I know, at least during their  
13 tenure, never made a contribution, a financial contribution  
14 to any candidate for election to a partisan office or any  
15 political party. It is something that sets Wisconsin, it sets  
16 the ethics board apart from any other state in that it is a  
17 true citizen board.

18 This morning Ms. Brill talked about having a public  
19 member on the Pennsylvania Ethics Commission. I think it  
20 should all be so-called public members. It has worked out  
21 very well for us. We have a weak party system in Wisconsin.  
22 You don't have to register your party affiliation. Maybe that  
23 makes it easier.

24 There might be other techniques, I haven't even  
25 done this, it might be possible to, I think, also there is

1 kind of a merit board that can screen potential candidates.  
2 Another idea is simply by statute. Perhaps suggest that a  
3 member of the ethics commission could not have contributed to  
4 a political campaign. You must have official campaign  
5 disclosure requirements. You know who contributed to campaigns  
6 and who has not. That may be a way of moving partisanship,  
7 if that is ever the case, of a fellow commissioner.

8 CHAIRMAN DEWEESE: Mike Bortner.

9 BY REPRESENTATIVE BORTNER:

10 Q I just have one follow up. I did want to  
11 understand that. As I understand, the people don't register  
12 to vote by political party in Wisconsin, do they? You don't  
13 have to belong to a party to vote in the primary?

14 A That is correct.

15 Q It is a little easier to not be identified with a  
16 party?

17 A It is a little easier in Wisconsin.

18 Q I know that because I met Congressman Kostmayer  
19 who represents Madison. And I asked him what his district was  
20 like between Democrats and Republicans. He said, I don't know.  
21 We don't do it that way.

22 A The governors have looked and have found  
23 appointees to Wisconsin ethics boards, its colleges, private  
24 universities, maybe former newspaper reporters, retired law  
25 school deans, members of the clergy, representatives of the

1 League of Women Voters, business executives, people, who for  
2 some reason, I think each of these people has been very  
3 interested in and an observer of government and of politics,  
4 but for some reason has not been a participant.

5 CHAIRMAN DEWEESE: Anything else from any other  
6 members?

7 (No response.)

8 CHAIRMAN DEWEESE: From what I know about Madison,  
9 Wisconsin, if they did have political parties, Democrats and  
10 Republicans, you still might not be able to tell, is that  
11 accurate or inaccurate?

12 MR. JUDD: Everybody is a party.

13 CHAIRMAN DEWEESE: Anyway, thank you very much,  
14 both Judd, for coming from Wisconsin. You were highly  
15 recommended by all the big ethics honchos in the United States  
16 to come down here. So, thanks very much for your jaundice.

17 MR. JUDD: Thank you.

18 CHAIRMAN DEWEESE: And I hope you catch your  
19 airplane.

20 Our final witness, not witness, excuse me. Our  
21 final person to give some testimony, Doug Hill, the Executive  
22 Director of Pennsylvania State Association of County  
23 Commissioners.

24 MR. HILL: Thank you, Mr. Chairman. And I am also  
25 presenting my testimony today on behalf of the Local

1 Government Conference, which includes our association, the  
2 Pennsylvania State Association of Township Supervisors, the  
3 Pennsylvania League of Cities, the Pennsylvania School Boards  
4 Association, the Pennsylvania State Association of Boroughs,  
5 the Pennsylvania Municipal Authorities Association, and the  
6 Pennsylvania State Association of Township Commissioners.

7 I am pleased to have the opportunity to appear  
8 before you today to give you our comments concerning the sunset  
9 review of the Pennsylvania State Ethics Commission.

10 Allow me to preface my remarks by thanking the  
11 Committee for the rational and reasoned approach which is being  
12 taken in these deliberations. When Act 170, the Ethics Law,  
13 passed in 1978, the members of the Local Government Conference  
14 were unanimously opposed; not because of the intent of the  
15 statute, but rather because of its vague and ambiguous  
16 language. We were dismayed that we had no real chance to  
17 comment at the time the bill was under consideration since the  
18 entire process, from amendment into another statute through  
19 signature by Governor Shapp, took barely one week. What  
20 dismayed us even more was the fact that when we attempted to  
21 point out the Act's ambiguities and inconsistencies, we were  
22 portrayed as "anti-ethics," or "having something to hide."  
23 This same brush was used to paint many members of the  
24 legislature; in fact when the House Local Government Committee  
25 held hearings on the bill in the fall of 1978 and spring of

1 1979, the Committee's members were treated to scathing  
2 editorials in newspapers across the state. The Philadelphia  
3 Inquirer even included photos of the committee members who were  
4 ostensibly "trying to undermine the Act." This law, like many  
5 others, had acquired a "motherhood and apple pie" status  
6 where, as in many other issues before the legislature, a vote  
7 against a part is a vote against the whole. Needless to say,  
8 the legislature quickly became disenchanted with any attempt  
9 to deal in a rational way with the deficiencies of the law,  
10 and we have not had a genuine opportunity to address the law's  
11 problems until today.

12 I do not begin with this historical discourse  
13 simply to compliment the Committee on its approach nor are  
14 these remarks critical of the original authors and sponsors  
15 of the measure. Rather, my recounting of the events  
16 surrounding passage of the Ethics law is to emphasize the  
17 reasons for which the Committee's deliberations today are so  
18 important: in the absence of clear statutory guidance, and  
19 with little ability for either legislators or interest groups  
20 to clarify the statute, interpretation of the entire Act has  
21 been left exclusively to the State Ethics Commission.

22 The question before the Committee is whether the  
23 State Ethics Commission has properly fulfilled its  
24 obligation to the statute and to the public interest. The  
25 Committee is also considering whether "the agency's statutory

1 objectives - current implementation, or any inconsistencies  
2 therein are in keeping with continued public confidence in  
3 government." In general, we believe that the commission has  
4 acted in a responsible fashion in implementation of the law.  
5 Moreover, my associates with the other local government groups  
6 and I would give generally high marks to the staff of the  
7 commission, who have in most regulatory matters taken special  
8 steps to at least inform us of, and in many cases involve us  
9 with, pending regulatory matters. Nonetheless, we do have  
10 some specific criticisms of the commission, relating both to  
11 its operation and to its interpretation of portions of the  
12 Act. I will present comments first on interpretation and then  
13 on operation.

14            Interpretation of the Ethics Act has been one of  
15 the more important responsibilities of the commission,  
16 particularly in view of the Act's vague and sometime ambiguous  
17 nature. One of the early issues, and one that is still to be  
18 finally settled, are the covered classes of individuals.  
19 Initial controversy centered on the Philadelphia School Board,  
20 on members of municipal authority boards, and on attorneys,  
21 both in their capacity as legal counsel to agencies and as  
22 outright members of agency governing bodies. While the  
23 commission's objective may have been to implement what they  
24 perceived to be legislative intent, interpretations of intent  
25 are normally reserved to instances where a statute is

1 ambiguous; by contrast the commission extended coverage to the  
2 boards of municipal authorities despite the unambiguous  
3 language of the Act. If authority members were in fact to be  
4 covered, a statutory remedy should have been sought.

5           Other matters of interpretation are perhaps less  
6 serious, but equally lacking in statutory basis. As examples  
7 the commission has ordered payment of restitution under  
8 Section 9(c) (65 P.S. 409(c)) to a municipality incurring the  
9 loss, despite the section's specific requirement that such  
10 payments be made to the state treasury; although the law  
11 requires candidate statements of financial interest to be  
12 filed with the commission (see Section 4(b), 65 P.S. 404(b)),  
13 the commission has by regulation required municipalities to  
14 receive and store these reports for local candidates; and  
15 finally, while the Act requires only employees to file  
16 financial interest statements annually (see Section 4, 65 P.S.  
17 404), the commission has extended the annual filing  
18 requirement, again by regulation, to elected officials as well.  
19 While the commission's actions in these three instances may  
20 yield a practical result which is more in line with what the  
21 legislature intended, we do not believe it to be within the  
22 purview of a regulatory agency to change specific statutory  
23 requirements through the regulatory process.

24           The commission's operation and particularly its  
25 adjudicatory role has caused us concern in terms of both

1 process and outcome. Each of our associations has received  
2 numerous complaints concerning process before the commission.  
3 To begin with, the Act and the commission protect the  
4 anonymity of a complaint; even if the commission finds that a  
5 complaint is unfounded, the person against whom the complaint  
6 is lodged cannot discover the name of the complainant without  
7 appealing the commission's decision to Common Pleas Court. As  
8 a result, many local officials have suffered needlessly at the  
9 hands of complaints brought to harass or brought as fishing  
10 expeditions. Second, individuals under investigation have  
11 little opportunity to present a defense, either in the  
12 investigative phase or when the commission reviews results of  
13 the investigation. Most of the commission's orders are developed  
14 and debated in camera, with the defendant excluded from the  
15 proceeding. Moreover, once an order is issued, the defendant  
16 or respondent, if you will, is prohibited from discussing the  
17 order for 15 days following its issuance, unless the defendant  
18 waives the right to challenge the order. In fact the typical  
19 phrasing of this confidentiality provision (there is a letter  
20 attached containing the language) leads some to believe they  
21 cannot even discuss the order with their own legal counsel.

22 We are also concerned with the lack of limits on  
23 the commission's adjudicatory role. The commission does not  
24 bind itself by precedent, even its own; for example, it  
25 initially ruled that authority board members were covered by



1 the Act and then reversed itself twice in subsequent decisions  
2 until the matter was finally resolved in the courts. This has  
3 resulted in a catch-22 for our members; they cannot rely on  
4 prior decisions to guide their conduct, but at the same time  
5 they are fearful that if they raise an issue the commission  
6 will rule against them despite earlier decisions which would  
7 otherwise indicate a favorable ruling. The commission also  
8 does not seem to rely on court precedent: the McAdoo case set  
9 a test for determining conflict of interest when a spousal  
10 relationship is involved, but the commission established a  
11 different test.

12           Perhaps our greatest concern, however, is the  
13 tendency of the commission to issue orders relating not only  
14 to responsibilities under the Ethics Law, but to perceptions  
15 of conflict of interest under other statutes as well. In one  
16 case the commission has rewritten a portion of the County Code  
17 dealing with reimbursement for the expenses of row officers  
18 attending conferences. In another more far-reaching case,  
19 the commission ignored the statutory authority in the insurance  
20 law and relied solely on the language of the municipal codes  
21 to rule that the traditional practice of providing certain  
22 insurance coverages to municipal elected officials was  
23 improper. The net result of that single decision has been  
24 hundreds of thousands dollars in restitution paid to the  
25 Commonwealth by a host of unpaid or nominally paid municipal

1 elected officials.

2           The overriding question, however, is whether the  
3 Act really vests the commission with an adjudicatory role.  
4 The commission has assumed the roles of investigator,  
5 prosecutor, judge, and jury, the latter two of which we believe  
6 are beyond the scope of the Act. The Act consistently refers  
7 to the role of the commission as one of providing "advice"  
8 and "opinions." Nowhere does it authorize the commission to  
9 issue "orders", or to levy fines and penalties. Instead, the  
10 proper role of the commission is to recommend prosecution, as  
11 noted in Section 7(9)(iii), Section 7(11), and inferred  
12 Section 8(a). Section 9 lists the penalties to be levied for  
13 violation of specific provisions of the Act: because it does  
14 not give specific authority to the commission to levy these  
15 penalties, it is our belief that the penalties should only be  
16 levied by a court of competent jurisdiction.

17           In view of the comments we have presented here  
18 today, we have a number of specific recommendations. First, we  
19 recommend a full review of the statute itself, with the  
20 objective of addressing its ambiguities and correcting its  
21 technical deficiencies. Much of what we have conveyed to the  
22 Committee today is less an indictment of the commission than  
23 it is of the commission's underlying statute.

24           Our second recommendation, and more to the point  
25 of the Committee's hearing today, is to clarify the

1 commission's role. We believe first that the commission's  
2 scope should be confined to interpretations of application of  
3 the Ethics Law, and not other statutes. We also believe that  
4 the commission's role should end with advice, investigations,  
5 and recommendations for prosecution. The commission should  
6 not be granted the quasi-judicial status it has assumed; to do  
7 so raises serious constitutional questions of due process.  
8 We can concede the utility of having the commission in place  
9 to respond to complaints and requests for advice, to initiate  
10 and conduct investigations, and to recommend and participate  
11 in prosecutions. However, we believe that due process is  
12 better served by allowing the respondent or defendant, an  
13 individual facing potential fines, imprisonment, and penalties,  
14 the protections of the formal court system.

15           To conclude we return to the largest question of  
16 whether the Act and the commission have fulfilled the intended  
17 mission. If the intended mission is to root out corruption  
18 and prosecute individuals who are unjustly gaining at public  
19 expense, we believe that the Act has accomplished little.  
20 Most major prosecutions since the passage of the Act rely on  
21 other statutes. Actions brought under the Ethics Law itself  
22 have tended to be cases arising from statutory disagreement  
23 such as the township insurance question, or cases where there  
24 are innocent violations or violations with no malicious  
25 intent.

1                   Similarly, the filing of statements of financial  
2 interest has yielded little true benefit. Setting aside the  
3 question of whether the filing adds one more item to the list  
4 of reasons that people have become less inclined to seek  
5 public office, we still find that the innocent comply while the  
6 guilty (as determined by prosecutions under separate statutes)  
7 do not.

8                   The time has come that we need to review the  
9 statutes as well as the commission's performance under the  
10 statute. Many of the statute's deficiencies, such as the  
11 proper collection point for financial interest filings, can be  
12 easily resolved. Others, such as the adjudicatory limits of  
13 the commission, will require more debate and consideration.

14                   At the same time, the statute, the commission, and  
15 the legislature need to recognize the extent of the volunteer  
16 nature of local government. Most members of both elected  
17 and appointed bodies are providing a valuable public service  
18 with little or no compensation other than the intrinsic  
19 satisfaction of service to the community. We have to  
20 recognize that in this context there will be unavoidable  
21 conflicts. For example, the commission prohibited three of  
22 five members of a board of township commissioners from voting  
23 on a company's zoning request because two of the commissioners  
24 were employees and one was a pensioner of the company. On  
25 its face this appears to be a conflict, but on further

1 examination none of the three were in a position in the  
2 company to have a pecuniary interest in the outcome. More  
3 importantly, because the company was the nearly exclusive  
4 employer in the township, there was little likelihood that  
5 there would be officials on the body who did not have some  
6 connection to the company. In another instance the commission  
7 prohibited two out of three members of a township board of  
8 supervisors from voting on a zoning matter relating to a church  
9 because the two members were members of the church. Again,  
10 there was no pecuniary interest. The practical effect,  
11 however, is that the decision was ultimately made by one  
12 person. The point we are making is that local government is  
13 the essence of representative participatory democracy. It  
14 would be impossible to find candidates for office who did not  
15 have some interest or another in many of the issues which come  
16 before the body. It is imperative that the Act and the  
17 commission strike an appropriate balance between the  
18 appearance of conflict and the ability of local officials to  
19 make the decisions for which they were elected.

20 We would appreciate the opportunity to work with  
21 the Committee, with Common Cause, and with other interest  
22 groups in a good faith effort to develop appropriate  
23 amendments to the Ethics Law. We believe that the law's hasty  
24 passage, and subsequent resistance to amendments, were  
25 indicative of a prejudicial assumption against the intent of

1 local government. In recent years, we have hopefully laid  
2 these assumptions to rest, particularly with our good faith  
3 efforts which culminated in the passage of a mutually  
4 agreeable open meetings law. We hope that the Committee will  
5 grant us the opportunity to be a participant in the  
6 development of amendatory language which responds to the  
7 concerns raised by the groups appearing before you at these  
8 hearings.

9 Thank you for your consideration of these comments.

10 I would like to also expand just briefly, I noted  
11 that we set aside the question of filing statements of  
12 financial interest. I think it is accurate to say that on  
13 behalf of the other local government groups and our group, we  
14 are not contesting the issue of filing statements of financial  
15 interest. That is something that our respective membership  
16 have become accustomed to in the years since passage. That is  
17 not to be the issue as far as we are concerned. I think that  
18 is something contrary to what other groups expected us to say  
19 or would expect us to say. I want the Committee to be very  
20 clear on that. I would be happy to answer any of your  
21 questions.

22 CHAIRMAN DEWESE- Thank you very much, Doug.  
23 I personally want to work with you as we keep looking at this  
24 this summer. Nick, Nick Moehlmann, any observations,  
25 questions?

1 REPRESENTATIVE MOEHLMANN: No.

2 CHAIRMAN DEWEESE: Bob.

3 BY REPRESENTATIVE REBER:

4 Q Just two quick observations. In your capacity here  
5 on behalf of the County Commissioners, Supervisor League of  
6 Cities, School Board Associations, Boroughs, Municipal Author-  
7 ity Associations, and in the first place, Township Commisssoners'  
8 Associations, have you ever received any kind of expressions  
9 from them of their concern that their solicitors, in essence,  
10 were usurping the powers of the governing bodies of those boards,  
11 that they were unable to manage their elected responsibilities?

12 A I am not in a position to answer for the other  
13 local government groups, but I know that county commissioners  
14 are inclined to view themselves as the ones governing the  
15 county. And if they find a solicitor who is impeding their  
16 ability to do that, they will find another solicitor.

17 Q Did you hear the remarks of the executive director  
18 from Wisconsin?

19 A Yes, I did.

20 Q I was intrigued that he said under Wisconsin law,  
21 the legislature has divinely delegated responsibility of  
22 governing, molding and crafting and I assume enforcing the  
23 local governmental Ethics Act vis-a-vis some ordinance and/or  
24 resolution of the local authorities or governing bodies. I  
25 was interested in what might be your comment on that?

1           ^       Well, actually, my comments on that are on the  
2 record from some time ago. We presented testimony to that  
3 effect in 1978 and 1979 before the House Local Government  
4 Committee.

5           CHAIRMAN DEVEESE: You were in high school back  
6 then, weren't you?

7           MR. HILL: Thank you, Mr. Chairman. No, I was in  
8 a previous life as a lobbyist for the Boroughs Association.  
9 '78 was my first year. I also presented similar testimony  
10 before the Local Government Commission when they held hearings,  
11 I believe, that was in '85. And, yes, we suggested  
12 specifically that there be an option that local government  
13 could set their own standards as long as they were within  
14 certain parameters established in the statute.

15           REPRESENTATIVE PEBFF: Thank you. That is all.

16           CHAIRMAN DEVEESE: Any questions from counsel?

17 BY MR. EDMISTON:

18           Q       I have one. It is rather a general question. The  
19 Committee took some time at an earlier meeting to develop a  
20 conditional criteria for its sunset review process as to this  
21 particular commission, and I am wondering what kind of  
22 attention the entities that you represent have been able to  
23 accord that conditional criteria? Whether or not you are  
24 prepared to identify some of your recommendations as they might  
25 relate to that, that criteria or, for that matter, some, any



1 one of the first seven specific statutory criteria? Can you  
2 talk on that a little bit?

3 A I am assuming you are referring to the current  
4 limitation, inconsistencies, keeping the public confidence  
5 in government?

6 O Right.

7 A I think we touched on a number of those issues.  
8 Inconsistencies, again, the question of rulings based on  
9 precedent causes some concern whether our membership approaches  
10 the commission for a particular advice or an opinion. I think  
11 there are some inconsistencies between, well, some vagueness in  
12 the Act that leaves the commission to take interpretations that  
13 we believe are inconsistent with the Act and particularly  
14 insofar as levying penalties requiring restitution and so on.

15 From the time that the Act first passed, it was our  
16 interpretation that first the commission's responsibility was  
17 to interpret the Ethics Law and in fact for the first several  
18 years that the law was in effect, I think our opinion  
19 prevailed and they generally deferred questions of  
20 interpretation of municipal codes to municipal solicitors and  
21 to other bodies.

22 I think that there is the larger due process matter  
23 because in the commission acting in the role of investigator,  
24 prosecutor, judge and jury, there is a certain prejudice that  
25 is attendant to that procedure and we think that the commission's

1 role should end with a recommendation for a prosecution. I  
2 think the same ends would still be served if there is an  
3 individual whose conduct is improper that would be rooted out.  
4 But I think that individual would be hurt in a less  
5 prejudicial setting.

6 BY CHAIRMAN DEWEESSE:

7 Q I just have one question and then I have another  
8 commitment. I am going to turn the final four or five  
9 minutes over to Representative McHale to somehow end the  
10 meeting. The bottom line, if you were sitting up here, the  
11 most important, most emphatic change you would make providing  
12 it is the will of the Committee and the General Assembly to  
13 maintain the Ethics Commission, what would be the one thing  
14 that you would change first?

15 A I would think it would be the adjudicatory process.

16 CHAIRMAN DEWEESSE: I have no further questions.  
17 Again, thank you very much. I do want to work with you  
18 personally and other people in your organization as we try to  
19 make some modest changes between now and September. I  
20 appreciate that. I'll turn the meeting over to Paul McHale  
21 from Lehigh County.

22 BY ACTING CHAIRMAN MCHALE:

23 Q You indicated during your testimony that the  
24 legislature, I believe, should be sensitive to the fact that  
25 most of the citizens who step forward to fill public office

1 and to serve as members of your association do so as  
2 volunteers, is that correct?

3 A Generally. County commissioners are the obvious  
4 exception.

5 Q Even for county commissioners, unless we're talking  
6 about a full-time position, we are talking about nominal  
7 payment at best?

8 A Well, arguably, county commissioners are very  
9 nearly full-time positions even down in the eighth class  
10 counties and the minimum compensation at that level is  
11 something over 18,000. So, I think it is more than nominal.

12 Q The statement I made really reflected my home  
13 county, Lehigh County, which has home rule where we have a  
14 board of part-time commissioners who get paid, I think, \$2500  
15 a year. In fact, in many cases, are virtually full time.

16 A That is true for that county and four to five  
17 other home rule counties. You are correct.

18 Q I think it is accurate to say that in the case of  
19 most borough councilmen, township commissioners, we are  
20 talking about either no payment or nominal payment for their  
21 services. These are truly citizens who have concerns about  
22 the community, who step forward not for the money but for the  
23 opportunity to be of public service?

24 A That is correct.

25 Q Are you aware of many volunteer solicitors around

1 the state?

2 A No.

3 Q These are paid professionals, competent in their  
4 field who are compensated for their services, is that correct?

5 A That is correct.

6 Q Now, in one community in my district, I have seven  
7 municipalities in my legislative seat, we have a full-time  
8 executive in that particular municipality who is paid full time  
9 for his services. It is my understanding the solicitor in  
10 that community, who is a part-time solicitor, a very fine  
11 lawyer, last year earned three times the salary of the full-time  
12 township executive. The concern that I voiced earlier was  
13 that although these are theoretically independent contractors  
14 working part time for the municipalities, when you have an  
15 individual who performs professional services for 40, 50 or  
16 \$60,000 a year or in the case of one part-time solicitor who  
17 earned almost a quarter of a million dollars one year in that  
18 capacity, it seems to me there is a strong public interest in  
19 knowing whether or not that professional has a potential  
20 conflict of interest arising out of his remaining in private  
21 practice. Do you think that is an accurate statement?

22 A Yes. And I think, again, speaking just from a  
23 county perspective, that is something, the areas of potential  
24 conflict are generally issues which are of knowledge to the  
25 county commissioners. I don't know if that's the case at the

1 borough and township level.

2           Q     And that is my concern. If indeed the solicitor  
3 is not actively representing a private client before the  
4 municipal entity, he probably does not have an obligation to  
5 reveal that representation. My concern is that those township  
6 commissioners and borough councilmen may never become aware  
7 of the potential conflict of interest unless that private  
8 representation turns into a formal representation before the  
9 municipality. Again, the statement I'm making arises out of a  
10 very specific instances of which I am aware in our part of the  
11 state. So, I would echo the concerns voiced by the gentleman  
12 from Wisconsin. We have to find a way, either by  
13 reinterpreting the separation of powers articulated by the  
14 Supreme Court or by constitutional amendment, to guarantee  
15 that when an attorney represents a municipality does so without  
16 a conflicting interest evolving out of his private law practice.

17                     In closing I would stress, this is in no way a  
18 criticism of the ethics of the Bar. The vast majority of  
19 solicitors are very, very reputable men and women. The fact  
20 remains, however, the public needs an open guarantee that the  
21 representation before the municipality does not influence  
22 financial considerations of private practice. Because I am  
23 aware of cases where I am afraid there may have been a conflict  
24 of interest and not revealed to the public until subsequent  
25 criminal investigations were instituted.

1 I don't know if you have any comments on that.  
2 That is the end of my speech. But I think that remains a very  
3 real problem that we have to address under Pennsylvania law.

4 A I don't have any additional comments.

5 ACTING CHAIRMAN MCHALE: Do any of the other  
6 members who are no longer here --

7 (Laughter.)

8 ACTING CHAIRMAN MCHALE: That concludes our  
9 hearing today, ladies and gentlemen. We thank you very much  
10 for appearing today. We, the members of this Committee, feel  
11 this is an important job. We appreciate your contributions.  
12 Thank you.

13 (Whereupon at 1:00 p.m. the hearing was  
14 adjourned.)

15 (Letter dated May 6, 1987 from Charles Bacas,  
16 Secretary for Policy and Planning was as follows:)

17 "May 6, 1987

18 "Honorable H. William DeWeese

19 Chairman, House Judiciary Committee

20 Room 206, South Office Building

21 Harrisburg, Pennsylvania 17120

22 "Dear Representative DeWeese:

23 "The purpose of this letter is to express the  
24 Administration's support for continuance of the State Ethics  
25 Commission.

1 "Please also accent this letter as my response to  
2 your invitation to testify on behalf of the Administration at  
3 the Committee's public hearing on May 7th.

4 "In keeping with the criteria you have set forth  
5 for evaluating the Ethics Commission, we do find that there is  
6 (1) a demonstrated need for the agency and (2) that its  
7 continuance is in the public's interest. We also find that  
8 the agency, given the broad population of state and local  
9 officials who come under its jurisdiction, is (3) generally  
10 achieving the objectives of the law.

11 "For the record, please note that Governor Casey,  
12 relative to the question of disclosure of executive branch  
13 officials, has affirmed the Governor's Code of Conduct,  
14 Executive Order 1980-81, which sets forth standards of  
15 disclosure that are more detailed than the Ethics Law with  
16 respect to real property interest, and the nature of non-paid  
17 memberships on boards of directors of business entities or not  
18 for profit entities. In addition, the Code of Conduct  
19 requires a listing of all gifts in excess of \$100 as opposed  
20 to the \$200 value required by the Ethics Law.

21 "We hope the above comments in support of the  
22 Ethics Law will prove useful to the Committee as it goes  
23 forward with its work. A representative of my staff, from  
24 the Office of Policy Development, will be monitoring your May  
25 7th hearing. If questions arise during the hearing, or at a

1 later time in which the services of my office might prove  
2 useful, do not hesitate to contact me.

3 "Sincerely,  
4 "Charles Bacas  
5 "Secretary for Policy and Planning"

6 (Prepared testimony of Stephan W. Stover,  
7 Administrative Director of the Supreme Court of Ohio and  
8 Chairman of the Council on Governmental Ethics Laws, was as  
9 follows:)

10 "April 16, 1987

11 "The Honorable W. William DeWeese  
12 Chairman

13 House Judiciary Committee

14 House of Representatives

15 State Capitol

16 Harrisburg, Pennsylvania 17120-0028

17 (Public Sector Ethics presented before: League  
18 of Women Voters Conference "Ethics Laws and Pennsylvania  
19 Government" Tuesday, April 7, 1987 -- 12:00 Noon, Holiday Inn,  
20 Harrisburg, Pennsylvania)

21 "I. Introduction

22 "Thank you for inviting me to participate in the  
23 League of Women Voters Conference.

24 "Over the years, I have searched in vain for a  
25 great 'ethics joke' to begin remarks. Alas, I am forced to



1 rely on the immortal words of Senator Snort, who, standing on  
2 the capitol steps, said "Thank goodness the elections are over  
3 and we can put ethics behind us for another term"

4 "I am glad to have the opportunity to discuss  
5 "Public Sector Ethics" with you. Each year, I have the  
6 opportunity to work with dozens of states on ethics matters, on  
7 behalf of the Council on Governmental Ethics Laws, the national  
8 organization of federal, state and local agencies responsible  
9 for ethics, campaign finance and reporting, election laws,  
10 and lobbying, which operates under the auspices of the Council  
11 of State Governments. Last spring, I was in Oklahoma to spend  
12 a day with a special Governor's Commission on Ethics in  
13 government, and I am pleased to report that the resulting  
14 legislation has been enacted. In May, I assisted with New  
15 York's efforts to enact legislation to bring that state in to  
16 the modern era of ethics in government. Last summer, I spoke  
17 to the National Association of Lieutenant Governors. Last  
18 fall, I worked with the state of West Virginia and this spring,  
19 Pennsylvania and Rhode Island, plus New York City and Chicago.

20 "Today, I appreciate the opportunity to give you a  
21 view from the trenches and some thoughts on the role that you  
22 can play in securing strong, meaningful ethics law reform.  
23 I call it "Why Good People Make Bad Ethics Laws."

24 "The Ohio Ethics Commission

25 "In 1975, the Commission placed major emphasis on

1 interpreting the law, issuing 37 advisory opinions, which  
2 established a substantial foundation for future interpretation  
3 of the Ethics Law by the Commission. In 1975, the Commission  
4 received nearly 7000 financial disclosure statements,  
5 continued to refine the administration and enforcement of the  
6 financial disclosure requirements of the law, and took action  
7 on numerous financial disclosure complaints.

8 "Then, in 1976, the Commission turned its attention  
9 to its statutory responsibility to recommend legislation and  
10 promulgate rules. Amended House Bill 1055, the first major  
11 revision of the Ethics Law, was proposed by the Commission to  
12 clarify and strengthen the law, and to correct problems  
13 revealed during the first two years of implementation of the  
14 law. Late in 1976, the Commission adopted a rule requiring the  
15 members of sovereign power state boards and commissions,  
16 including regulatory and licensing boards and college and  
17 university boards of trustees, to file financial disclosure  
18 statements: the rule was controversial.

19 "In 1977, a bill was introduced to require state  
20 officials and employees in the upper pay ranges to file  
21 financial disclosure statements. However, the bill was amended  
22 in committee to exempt members of uncompensated sovereign  
23 power state boards and commissions from the financial  
24 disclosure requirement. The Commission vigorously opposed this  
25 bill, and was successful in retaining the requirement that

1 members of sovereign power state boards and commissions file  
2 financial disclosure statements, although these forms must be  
3 held confidential. This controversial bill became effective  
4 in 1978, without the Governor's signature. Also in 1977, the  
5 Commission created the position of Commission Counsel to  
6 supervise the staff investigators and prosecute conflict of  
7 interest and financial disclosure cases before the Commission.  
8 Thus, the Commission began to take a more aggressive posture in  
9 prosecuting conflict of interest violations.

10 "In 1978, the Commission's enforcement procedures  
11 matured, with a 100 percent compliance rate on financial  
12 disclosure, and two significant conflict of interest cases  
13 referred to prosecutors; these cases generated subsequent  
14 appeals raising unsuccessful challenges to the Ethics Law.

15 "In 1979, the Commission introduced a second major  
16 package of legislation amending the Ethics Law. This Act  
17 clarified and strengthened the "revolving door" prohibition of  
18 the law, which we will discuss in greater detail later,  
19 amended the prohibitions against misuse of confidential  
20 information and participation in rate-making proceedings, and  
21 revised certain Commission enforcement procedures. In a  
22 related matter, the "revolving door" provision of the Ethics  
23 Law was upheld on appeal of a conviction.

24 "From 1980 through 1982, the Commission underwent  
25 a period of transition, with changes in staff and severe budget

1 cuts due to a state financial crisis. This resulted in  
2 reduced activity, particularly in enforcement and public  
3 education and information.

4 "Since 1983, the tenth year of the Commission's  
5 history, and continuing to the present, the Commission appears  
6 to have regained its strength and reached full maturity. In the  
7 enforcement area, the Commission has seen a substantial increase  
8 in activity, including the most conflict of interest  
9 investigations and complaints in its history. In 1983, the  
10 Commission received and administered nearly 9000 financial  
11 disclosure statements, the most ever.

12 "In 1984, the Commission had a full staff of 11  
13 authorized positions for the first time in three years. Also  
14 in 1984, the Commission developed and sent to the General  
15 Assembly the first major revision of the "conflict of interest"  
16 prohibition of the Ethics Law, which would prohibit a public  
17 official or employee from: (1) using his position to secure  
18 anything of value for himself or for any other person for the  
19 use or benefit of the official; (2) soliciting or receiving  
20 anything of value, particularly if the source is interested in  
21 matters before, doing or seeking to do business with, or  
22 regulated by the governmental entity with which the official  
23 serves; and (3) receiving or converting anything of value from  
24 a political campaign fund, political party, political action  
25 committee, or similar source, for his personal use. The bill

1 is currently in hearings in the Ohio House.

2           'There has been a continuing increase in the number  
3 of requests for advice. The Commission issued 14 formal  
4 advisory opinions in 1984, the most since 1976; the Commission  
5 staff rendered nearly 200 staff opinions, and responded to more  
6 than 2000 requests for information or advice. In 1985, the  
7 Commission adopted a new rule to clarify and expand the financial  
8 disclosure requirement for members of sovereign power state  
9 boards and commissions, increasing the number of boards to 130.

10           "II. The Ohio Ethics Law

11           "Under the Ohio Ethics Law, the administration and  
12 enforcement of the law are entrusted to four separate agencies,  
13 each having a distinct jurisdiction. The House and Senate  
14 Legislative Ethics Committees are concerned with candidates  
15 for and members and employees of the General Assembly; the  
16 Supreme Court Board of Commissioners on Grievances and  
17 Discipline covers judicial officers and employees, and  
18 candidates for judicial office; and the Ohio Ethics Commission  
19 has jurisdiction over all other public officials, employees,  
20 and candidates for public office, more than half a million  
21 public servants.

22           "The Ohio Ethics Commission is a bipartisan,  
23 nonpartisan board consisting of six members - three Democrats  
24 and three Republicans, who are appointed by the Governor and  
25 confirmed by the Senate; they serve six-year terms and are

1 uncompensated.

2           "The Commission staff of 11 is structured as  
3 follows: Executive Director (administration, budget,  
4 legislation); Assistant Executive Director (advice), Commission  
5 Counsel (enforcement); Administrative Assistant (personnel and  
6 fiscal); two Financial Disclosure Coordinators (one for city  
7 and county officials; the other for state officials and  
8 employees, and enforcement); two Legal Aide/Investigators;  
9 Public Information Officer; Word Processing Operator; and  
10 Receptionist/Typist. Staff members are required to have  
11 political acuity, but are not permitted to engage in political  
12 activity. The Commission budget for FY 1984-85 was about  
13 \$350,000 per year, and for FY 1986-87, slightly less than  
14 \$400,000 per year.

15           "The application of the Ethics Law, Chapter 102. of  
16 the Revised Code, and its sister statute, Section 2921.42 of  
17 the Revised Code, may be divided into three major areas:  
18 (1) financial disclosure; (2) administration and enforcement  
19 of the Ethics Law; and (3) conflict of interest, influence  
20 peddling, and other substantive prohibitions.

21           "Financial Disclosure

22           "All elected officials and candidates for elective  
23 office, except village, township, or school board office, and  
24 certain appointed state officials, are required to file  
25 financial disclosure statements each year.

1           "The administration and enforcement of the financial  
2 disclosure requirement is the most visible of the Commission's  
3 activities. The requirement is consistent with the thread of  
4 deterrence that underlies the Ethics Law - by requiring the  
5 official to examine his interests, and making the form  
6 available for review by public and press. There is no evidence  
7 that this requirement has discouraged citizens from public  
8 service.

9           "The statement requires only identification of  
10 sources, not amounts, of income, investments, real estate  
11 holdings, gifts, debtors and creditors, and other financial  
12 interests. It is filed by April 15 of each year, similar to  
13 another "disclosure statement" with which we're all familiar.  
14 (A sample form is available today.)

#### 15           Commission Enforcement Procedures

16           "The Commission responds to citizen complaints and  
17 initiates investigations into alleged conflicts of interest  
18 involving public officials and employees. All matters  
19 concerning investigations are confidential. The Commission  
20 operates under stringent enforcement procedures designed to  
21 protect the rights and reputations of officials and employees  
22 accused of violations of the Ethics Law.

23           "The Commission conducts hearings on complaints  
24 after making a threshold determination that a complaint is not  
25 frivolous and that there is reasonable cause to believe that

1 the facts alleged constitute a violation. The complaint  
2 hearing provides an opportunity for the public official or  
3 employee charged with a violation to present his or her defense.

4 "If the Commission finds, based on a preponderance  
5 of the evidence, that a public official has violated the Ethics  
6 Law, the case is turned over to the appropriate prosecuting  
7 authority (similar to grand jury).

8 "Advisory Opinions

9 "The Commission issues formal and informal advisory  
10 opinions in response to prospective or hypothetical questions  
11 relating to ethics, conflicts of interest, and financial  
12 disclosure under the Ethics Law and the Criminal Code provision  
13 dealing with interests in a public contract. To date, the  
14 Commission has issued more than 135 formal advisory opinions.  
15 They have the effect of law to the extent that they insulate  
16 the person requesting the opinion, and others similarly  
17 situated, from prosecution and removal from office, provided he  
18 complies with the advice.

19 "Legislation

20 "The Commission is required by law to recommend  
21 legislation, and we must also oppose certain bills. Currently,  
22 there are more than a dozen ethics bills before the Ohio  
23 General Assembly, including: (1) the Commission's conflict of  
24 interest bill: (2) several bills on conversion of campaign  
25 funds to personal use: (3) a bill requiring mandatory



1 briefings by the Ethics Commission for all state officials;  
2 and (4) several others that are political.

3 "Public Education

4 "The Ethics Law also provides for a "continuing  
5 program of public education" to inform private citizens and  
6 public servants alike of the provisions of law. We publish two  
7 pamphlets ("Ethics Is Everybody's Business" and a new financial  
8 disclosure brochure), a quarterly newsletter, law reprints, and  
9 other reports for distribution. I have some copies today, and  
10 will be happy to send you more. In 1981-82, Commission staff  
11 visited all 88 counties in Ohio, we are now undertaking a  
12 program of city visitations, with emphasis on new city  
13 administrations. The Commission staff averages two or more  
14 speeches a month. We are now engaged in a major project to  
15 inform all state officials and employees of the requirements of  
16 the law.

17 "Prohibitions of the Ohio Ethics Law

18 "Of the dozen substantive prohibitions in the  
19 Ethics Law and related statutes, there are four key provisions:  
20 (1) the "revolving door" prohibition; (2) the "conflict of  
21 interest" prohibition; (3) the "influence peddling  
22 prohibition; and (4) the prohibition against improper  
23 interest in public contracts.

24 "Section 102.03(A) - "Revolving Door"

25 "Division (A) of Section 102.03 of the Revised Code

1 is the "revolving door" provision of the Ohio Ethics Law,  
2 amended in 1980, which prohibits a present or former public  
3 official or employee from representing a private client, before  
4 his own agency or any other governmental agency, on any matter  
5 in which he personally participated while in public office.

6 "The basic theory underlying this "revolving door"  
7 prohibition is that present and former public officials should  
8 not take unfair advantage of their government service by using  
9 "insider knowledge" or the "old-boy network," to unfairly  
10 influence government decisions, either against competitors or  
11 to compromise the system itself. It does not prohibit  
12 marketing general expertise, and exempts new matters or matters  
13 in which the former employee did not participate, legislative  
14 matters, and ministerial tasks.

15 "Recently, the Commission concluded that the  
16 "revolving door" prohibition applies to transfers between  
17 governmental agencies, such as the Auditor's office: (other  
18 examples: lawyer (case strategy) and Nipps). Related  
19 provisions prohibit: (1) tailoring official conduct to  
20 enhance future private employment (P.C. 102.03 (D)): and (2)  
21 misuse of confidential information (P.C. 102.03 (B)).

22 "Section 102.03(D) - "Conflict of Interest"

23 "Division (D) of Section 102.03 of the Revised Code  
24 is the basic "conflict of interest" provision of the Ohio  
25 Ethics Law, which prohibits a public official or employee from

1 using his official position for personal gain or benefit. For  
2 example, a 1979 advisory opinion prohibited a member of a  
3 township zoning commission from voting on a zoning change or  
4 variance in which he had a commission interest as a real estate  
5 agent. In another, a city council member was prohibited from  
6 voting on downtown revitalization that affected his property.  
7 In each case, the official's personal interest might have  
8 impaired his independence of judgment, and his vote, as a public  
9 official. By voting to approve the change, he would be using  
10 his public position to enhance his private, pecuniary interest.  
11 (Another example: coercion - cosmetology). Recent Commission  
12 opinions have disapproved of the acceptance of honoraria,  
13 consulting fees, seminar registration fees, and travel expenses  
14 from parties that are interested in, regulated by, or doing or  
15 seeking to do business with the official or employee's agency.  
16 It is not the amount of the gift, but the source that is the  
17 focus here: (examples Violations of this provision depend  
18 very much on the facts and circumstances of the particular case.  
19 The Commission's conflict of interest bill would codify this  
20 series of opinions.

21 "Section 102.04(A)&(C) - "Influence Peddling"

22 "The "influence peddling" provisions prohibit a  
23 public official or employee from receiving compensation for  
24 services rendered in any matter which is before any agency of  
25 the governmental entity with which he serves.

1 "however, there is an exemption, added to the law  
2 in 1976, for nonelected officials and employees, if: (1) the  
3 agency with which the official or employee seeks to do  
4 business with is not the entity with which he serves; and (2)  
5 he files an affidavit with the agency with which he serves, the  
6 agency with which he seeks to do business, and the Ethics  
7 Commission, making the transaction a matter of public record.

8 An example of this kind of activity could be two state  
9 employees, a tax department employee and health department  
10 employee who run private tax services in their spare time.

11 The tax department employee may find himself in the position of  
12 receiving compensation from a client for preparing a state tax  
13 return, which would be in violation of this provision. However,  
14 the health department employee would be permitted to prepare tax  
15 returns, provided he makes the arrangement a matter of public  
16 record by filing the exemption form with both departments and  
17 the Ethics Commission.

18 "Section 2921.42 - Improper Interest In A Public  
19 Contract

20 "Section 2921.42 of the Revised Code, part of the  
21 Criminal Code, prohibits any public official or employee from  
22 having an improper interest in a public contract.

23 'This Section consists of five prohibitions, an  
24 exception, and an exemption. We will focus on just two of  
25 these prohibitions. Division (A)(1) prohibits any public

1 official from knowingly authorizing, voting, or otherwise using  
2 the authority or influence of his office to secure the approval  
3 of a public contract in which he, a family member, or any  
4 business associate has an interest. This prohibition is a  
5 felony, and prohibits active attempts to influence the  
6 authorization of public contracts. Division (A)(4) of Section  
7 2921.42 of the Revised Code, a misdemeanor, prohibits any  
8 public official from knowingly having any interest in the  
9 profits or benefits of a public contract entered into by or for  
10 the use of the governmental entity with which he is connected.  
11 This is the general, "catch-all" prohibition.

12            "It is important to note that this latter  
13 prohibition applies whether or not the public official takes  
14 some affirmative action to have the contract approved. It  
15 applies if the official is "interested" in the contract and the  
16 contract is approved, regardless of his conduct.

17            "The exception applies to persons with a minor,  
18 nonparticipatory ownership interest in a corporation. The  
19 exemption applies if each of four specific criteria are met:  
20 (1) the subject of the contract is necessary supplies or  
21 services. (2) the supplies or services are unobtainable  
22 elsewhere for the same or lower cost, or are furnished as part  
23 of a continuing course of dealing established prior to the  
24 public official's involvement with the governmental entity;  
25 (3) the treatment accorded the governmental entity is either

1 preferential to or the same as that accorded other clients in  
2 similar transactions; and (4) the entire transaction is  
3 conducted at arm's length, with full knowledge by the  
4 governmental entity of the interest of the public official, and  
5 the public official takes no part in the deliberations or  
6 decisions with respect to the contract. Examples: gravel --  
7 continuing course of dealing; unobtainable elsewhere must be  
8 demonstrated by an objective standard.

9 "In general, the Ohio Ethics Law prohibits: (1)  
10 the "revolving door;" (2) misuse of confidential information;  
11 (3) participation in a license or rate-making proceeding in  
12 which the official is interested; (4) general "conflicts of  
13 interest" or misuse of position for personal gain or benefit;  
14 (5) "influence peddling;" and (6) improper interest in a  
15 public contract.

### 16 "III. Policy Issues and Themes

17 "The Ohio Ethics Law is a narrow, but complex,  
18 statute that establishes a code of conduct for public officials  
19 and employees in Ohio. It is not a comprehensive statute - it  
20 does not cover every type of unethical conduct, or even every  
21 conflict of interest (nepotism). It does provide a standard of  
22 conduct and gives the Commission authority to advise public  
23 officials, specifically and generally, on the Ethics Law and  
24 related questions dealing with ethics, conflicts of interest,  
25 and financial disclosure. Similarly, we advise public officials

1 on the appearance of impropriety.

2 "It is important to emphasize that the concepts of  
3 prevention and deterrence flow through the law, which may be  
4 seen in the administration and enforcement of the law by the  
5 Commission, from its statutory authority to render advisory  
6 opinions that have the effect of law and carry grants of  
7 immunity, to the emphasis that the Commission places on seeking  
8 compliance rather than prosecution. Advice is readily  
9 available to forestall violations before they occur. On the  
10 other hand, the Commission has the authority, and the duty, to  
11 vigorously enforce the law.

12 "IV. Recommendations

13 "If I were to enact an ethics law, I would begin by  
14 studying the ethics laws of various states (Ohio, Washington,  
15 Massachusetts (strict) and Wisconsin). I would also take a  
16 look at the Blue Book published by the Council on Governmental  
17 Ethics Laws (and attend their conference) to determine the range  
18 of choices of structure, organization, and prohibitions. For  
19 several objective reasons, I would start with the Ohio Ethics  
20 Law: Ohio's law was used as one of the models for a Model  
21 Ethics Law prepared by the National Municipal League in the  
22 mid-1970's, and used as an example for some of the more recent  
23 ethics laws, including Massachusetts.

24 "The ethics commission should be an independent,  
25 bipartisan, and nonpolitical body, but should not have

1 jurisdiction over the Supreme Court or legislators. This  
2 "multiple ethics agency" system may seem awkward at first, but  
3 it saves many problems with respect to budget and even the very  
4 existence of the Commission (see Mississippi and Alabama). The  
5 states with the weakest ethics laws and the weakest ethics  
6 commissions are those states in which the ethics commission has  
7 jurisdiction over legislators.

8 "In the area of financial disclosure, which I believe  
9 Ohio does well, I would place the greatest emphasis on disclosure  
10 of sources rather than amounts of income. I would raise the  
11 threshold limits of the Ohio law to a uniform \$1000, and I  
12 would also add a requirement that government contracts be  
13 disclosed.

14 "In the area of conflict of interest, I would do  
15 largely what we are doing in House Bill 300 in Ohio: (1)  
16 prohibit active use of position to secure anything of value;  
17 (2) prohibit receipt of anything of value received under  
18 circumstances that create a conflict of interest particularly  
19 if the source is a party that is interested in, regulated by,  
20 or doing or seeking to do business with the governmental agency;  
21 and (3) prohibit conversion of campaign funds to personal use.  
22 Beyond this, I would authorize the Ethics Commission to enforce  
23 the prohibition against improper interests in a public contract.  
24 You may also wish to broaden the prohibition to cover the donor  
25 of the gift.



1 "I would be sure that the Ethics Agency has  
2 sufficient enforcement tools, including sufficient staff and  
3 budget to conduct meaningful investigations and hearings, to  
4 have subpoena power, and to issue criminal sanctions. In  
5 addition, it may be appropriate to consider a statewide  
6 prosecutor to take these cases to court: over the first ten  
7 years the Commission had excellent cooperation from prosecutors,  
8 but in the last 18 months we have seen some reluctance,  
9 particularly where the cases were very political. I would also  
10 authorize the commission to levy civil penalties, such as fines  
11 for financial disclosure and reprimands, as additional  
12 enforcement tools short of criminal prosecution.

13 "Conclusion

14 "You have a great challenge before you. Ethics  
15 legislation may be the most difficult type of legislation to  
16 draft, and to secure enactment, but the result is important -- a  
17 standard of conduct for public officials, and greater public  
18 confidence in government."

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I hereby certify that the proceedings and evidence taken by me in the within matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

*Dorothy M. Malone*  
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Dorothy M. Malone  
Registered Professional Reporter  
135 South Landis Street  
Hummelstown, Pennsylvania 17036

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APPENDIX  
DR. PANCOAST'S TESTIMONY

STATE ETHICS COMMISSION'S  
RECOMMENDED AMENDMENTS  
TO ACT 170, 1978,  
65 P.S. §401 et. seq.

INTRODUCTION

On March 11, 1987, the members of the State Ethics Commission agreed to propose to the General Assembly of Pennsylvania the implementation of certain amendments to the Conflicts of Interests/Public Officials Act, Act 170, of 1978, 65 P.S. §401 et. seq. These proposed changes to the law, which are being presented as part of the Sunset review of the Commission are based upon an examination of the nine (9) year operational history of the agency. The members of the Commission believe that the proposals and concepts set forth below are not only justified as a matter of practical experience but are necessary in order to insure that the effective administration and intent of the law are fulfilled.

I. SECTION 2 - DEFINITIONS

A. Recommendation: That the definition of public official be amended so as to eliminate therefrom the last sentence. (See underlined section of definition below). This change would bring the Ethics Act in accord with the prevailing judicial precedent.

Background: The State Ethics Act contains the following definition of public official:

Section 2. Definitions.

"Public official." Any elected or appointed 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.

"Public official" shall not include any appointed official who receives no compensation other than reimbursement for actual expenses. 65 P.S. 402.

In 1982, the Supreme Court of Pennsylvania ruled, as unconstitutional, the last sentence of the above definition. See Snider V. Thornburgh, 469 Pa. 159, 436 A.2d 593, (1981). The remedy reached by the Supreme Court upon ruling that the above phrase was unconstitutional was to excise the unconstitutional language from the definition of public official as set forth in the State Ethics Act. The unconstitutional phrase has remained in the body of the State Ethics Act even though it has been declared invalid. This is so because the Act, to date, has not been amended. The State Ethics Commission has recently promulgated rules and regulations implementing this provision, however, much confusion is still occurring because the statute has not been amended. (See, 16 Pa. Bulletin P. 4653). The Legislative Budget and Finance Committee Report recommended legislative correction of this matter.

B. Recommendation: The definition of immediate family should be amended as follows:

A parent, spouse, child, brother, sister or like relative-in-law.

Background: The definition of immediate family as currently contained in the Act provides as follows:

#### Section 2. Definitions.

"Immediate family." A spouse residing in the person's household and minor dependent children. 65 P.S. 402.

As a result of this particular definition, the State Ethics Commission has been obligated to issue a number of orders and opinions that have permitted public officials to take direct action as governmental officials in relation to members of their family such as adult children, brothers, sisters, and other closely related individuals. See, Phillips, 451; Todaro, 434; Panza, 492. Clearly, it is very unlikely that a public official would award a contract from his governmental body to his minor dependent child. It is more likely that such a contract would be awarded to his adult child or another adult relative who has submitted a bid. This type of activity seems to be in direct conflict with the intent and purpose of the law as set forth in the Preamble of the State Ethics Act.

Additionally, more recent legislative enactments have provided expanded definitions of this term. Specifically the Convention Center Authority Act, Act 1987-70 provides:

"Immediate family." A parent, spouse, child, brother, sister or like relative-in-law.

Adoption of this definition as part of the Ethics Act would thus be consistent with the currently existing law.

## II. SECTION 3 - RESTRICTED ACTIVITIES

A. Recommendation: Section 403(c) of the State Ethics Act should be amended to provide as follows:

(c) No public official or public employee or a member of his immediate family or any business in which the person or a member of the person's immediate family is a director, officer, owner or holder of stock exceeding 5% of the equity at fair market value of the business shall enter into any contract valued at \$500 or more with [a] the official's or employee's governmental body unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. Any contract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of making of the contract. The foregoing requirements constitute a procedure to be employed where contracting is otherwise authorized by law.

Background: The State Ethics Commission has traditionally applied Section 3(c) to require that it is applicable only when a public official attempts to contract with his own governmental body. A strict reading of Section 3(c) of the Ethics Act, however, as outlined above, clearly indicates that it can be applied in a broader fashion, thereby prohibiting a public official from contracting with any governmental body. This broad prohibition would seem to be unduly burdensome and as a result, it is recommended that section 403(c) of the State Ethics Act be amended in accordance with the way it has been interpreted by the State Ethics Commission. See Bryan, 80-014; Lynch, 79-047.

Additionally, Section 3(c) should contain a clarification indicating that this particular provision of the State Ethics Act is not in and of itself a broad based authority for public officials to have interests in contracts with governmental bodies. For example, a number of municipal codes and other governmental agency enabling statutes provide specifically that their members and employees may not have a direct interest in any contract that is let by that agency or that they may not have interest in excess of a certain dollar amount. This particular provision of the State Ethics Act, it has been argued, supersedes all of the previously existing prohibitions relating to this issue and is a general authorization for all public officials to contract with their own governmental body. The traditional interpretation of this provision by the Ethics Commission, however, has been that it is not an authorization for individuals to contract with their governmental bodies, but is rather a procedure to be employed where such contracting is otherwise authorized by law.

III. SECTION 4 - STATEMENTS OF FINANCIAL INTEREST REQUIRED TO BE FILED.

A. Recommendation: Section 404(a) of the State Ethics Act should be amended to provide as follows:

(a) Each public employee [employed by] and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency or bureau in which he is employed no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee and public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. 65 P.S. 404(a).

Background: Section 404(a) of the State Ethics Act provides for the filing of Statements of Financial Interests on an annual basis. While Section 404(a) the State Ethics Act has an affirmative requirement that all public employees file by May 1 of each year, strikingly omitted from the State Ethics Act is a similar requirement for public officials. As a result, it has been argued that the filing requirement on an annual basis only applies to public employees, thereby exempting public officials from filing on a yearly basis. At least one court case has been dismissed on this specific basis. See Commonwealth v. Crooks. In at least one other case, Kremer v. State Ethics Commission, 56 Pa. C. 160, 424 A.2d 968, (1981), the Commonwealth Court of Pennsylvania has held that the filing requirement is equally applicable to public employees and public officials. As long as this particular provision, however, is not expressly stated in the Ethics Act it is always subject to further modification by future judicial decisions.

B. Recommendation: Section 404(d) of the State Ethics Act should provide for a specific per diem penalty or other appropriate sanction for the late filing of a statement of financial interests. The State Ethics Commission should be specifically authorized to levy and enforce said sanctions.

Background: Section 404(d) of the Act provides as follows:

Section 4. Statement of financial interests required to be filed.

(d) No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests with the commission as required by this act. 65 P.S. 404(d).

Other than set forth above, there is no provision in the law for late filing. Additionally, while the above provision may be considered a penalty such would appear to be applicable only to public officials and not public employees. Late filing has historically been a problem area and as such the act should be amended in relation thereto.

C. Recommendation: Section 404(b) and (e) of the State Ethics Act should be amended to provide as follows:

(b) Each candidate for public office shall file a statement of financial interests for the preceding calendar year [with the commission prior to filing a petition to appear on the ballot for election as a public official. A petition to appear on the ballot shall not be accepted by an election official unless the petition includes an affidavit that the candidate has filed the required statement of financial interests with the commission.] as provided for in sub-section 404(e).

(e)(1) Any candidate for State-wide public office shall file a statement of financial interests with the Commission on or before the last day for filing a petition to appear on the ballot for election. A copy of said statement of financial interests shall also be appended to such petition.

(2) Any candidate for County-wide or local office shall file a statement of financial interests with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of said statement of financial interests shall also be appended to such petition.

(3) No petition to appear on the ballot for election shall be accepted by the respective state or local election officials unless said petition has appended thereto a statement of financial interests as set forth above. Failure to file said statement in accordance with the provisions of the Act shall in addition to any other penalties provided, be a fatal defect to the nomination petition.

Background: Sections 404(b), (e) of the State Ethics Act requires a filing of a Statement of Financial Interests by candidates for public office with the Commission prior to filing a petition to appear on the ballot for election as a public official. Pursuant to 404(e), candidates are also required to file Statements of Financial Interests at the local level. During the course of a municipal election, as many as 26,000 Financial Interests Statements have been filed with the State Ethics Commission. The monitoring of such statements and the enforcing of the filing requirement, has proven to be an extremely burdensome and expensive task. In addition, court decisions have tended to restrict the Ethics Commission ability to enforce the filing

deadline. See State Ethics Commission v. Baldwin, 497 Pa. 609, 443 A.2d 1141, and State Ethics Commission v. Landauer, \_\_\_ Pa. Commw. \_\_\_; 496 A.2d 862 (1985). Generally the filing requirement for candidates should be amended in the State Ethics Act so as to insure a better administrative enforcement mechanism and for more appropriate remedies and penalties for failure to file as required.

#### IV. SECTION 5 - STATEMENTS OF FINANCIAL INTERESTS

A. Recommendation: Section 405(b) of the State Ethics Act should be amended to provide as follows:

##### Section 5. Statement of financial interests.

(b) The statement shall include the following information for the prior calendar year with regard to the person required to file the statement: [and the members of his immediate family:]

Background: Section 405 of the State Ethics Act provides for the specific information to be included on the Statement of Financial Interests. Section 405(b) of this particular provision provides that the statement shall include information regarding the filer and members of his immediate family. The Supreme Court of Pennsylvania has ruled that the filing requirement as applied to spouses of public officials and minor dependent children, is unconstitutional in so far as it violated the Pennsylvania Constitutional right to privacy. As a result, these provisions of Section 405(a) are no longer legally applicable. See Denoncourt v. State Ethics Commission, 504 Pa. 191, 470 A.2d 945, (1983). In light of the fact that this decision was rendered on constitutional grounds there would appear to be no way absent a constitutional amendment to address this issue. The Legislative Budget and Finance Committee audit report also recommended this amendment.

B. Recommendation: Sections 405 (5); 405(6) of the Act should be amended to provide as follows:

(5) The name and address of any [person who is the] direct or indirect source of income totalling in the aggregate of \$500 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics.

(6) The name and address of any [person from whom] source of a gift or gifts valued in the aggregate at \$200 or more were received, and the value and the circumstances of each gift. However, this provision shall not be applicable to gifts received from the individual's spouse, parents, parents by marriage, siblings, children or grandchildren.



Background: Sections 405 (5); (6) of the State Ethics Act provides as follows:

Section 5. Statement of financial interests.

(5) The name and address of any person who is the direct or indirect source of income totalling in the aggregate of \$500 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics.

(6) The name and address of any person from whom a gift or gifts valued in the aggregate at \$200 or more were received, and the value and the circumstances of each gift. However, this provision shall not be applicable to gifts received from the individual's spouse, parents, parents by marriage, siblings, children or grandchildren.

As can be observed from above, public officials and employees must report on their Statements of Financial Interests any person who is the direct or indirect source of income totalling in the aggregate of \$500 or more or any person from whom a gift is received. The definitional section of the State Ethics Act provides the definition of person as:

Section 2. Definitions.

"Person." A business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons. 65 P.S. 402.

A question has recently been raised, based upon the foregoing, regarding whether a person has to list, on a Statement of Financial Interests, income and gifts received from a governmental body. As can be clearly observed, the term person, as delineated above, does not make reference or include any governmental entity. The definitional sections of the State Ethics Act provides for governmental body as a separate definition. As such, individuals would apparently not have to report income received from governmental bodies. This, of course, would defeat the entire purpose of the State Ethics Act. One of the primary elements of the filing requirement is to determine whether public officials have received income other than the compensation that is provided for by law. The Financial Interests Statement was an attempt to determine if individuals had received income from other governmental bodies or from their own governmental body on other matters.

V. SECTION 7 - DUTIES OF THE COMMISSION

A. Recommendation: The State Ethics Act should be amended to include the following provision as part of the duties of the Commission:

7(9)(v) To issue orders relating to investigations initiated pursuant to section 8, outlining the alleged violation of the Act, findings of fact and conclusions of law. Said orders may include recommendations to law enforcement officials as provided in section 7(11). Any order finding that a public official has obtained a financial gain in violation of the Act may require the restitution of that gain with interest to the appropriate governmental body. The State Ethics Commission or the Office of Attorney General shall have jurisdiction to apply to the Commonwealth Court of Pennsylvania seeking enforcement of an order requiring such restitution. The restitution requirement as set forth above shall be in addition to any other penalties provided for in this act.

Background: The prohibition upon the receipt of an unwarranted financial gain by a public official/employee is the focal point of the Ethics Act. A governmental body that has suffered a loss as a result should be entitled to restitution. Additionally, a public official/employee should not be permitted to retain public funds received in violation of the law. Long standing judicial precedent supports this concept. Allegheny County v. Grier, 179 Pa. 639, 36 A.2d 353, (1897); Kestler Appeal, 66 Pa. Commw. Ct. 1, 444 A.2d 761, (1982); McCutcheon v. State Ethics Commission, 77 Pa. Commw. Ct. 529, 466 A.2d 283, (1983). The Act, however, while obviously intending to codify this principle fails to provide clear language so stating. Also, this provision in many cases would offer a public official/employee the opportunity to avoid the more severe criminal penalties of the Act where appropriate.

B. Recommendation: Section 7(9)(iii) of the Act should be amended to provide as follows:

(iii) Initiate an inquiry where an opinion has not been requested but where there is a reasonable belief that a conflict may exist. Such inquiry shall be conducted in privacy with full respect to the confidentiality of all the parties involved in the alleged conflict. If the commission finds that there is a conflict, the information shall be provided for criminal proceedings unless the alleged offender removes himself from the conflict without receiving financial gain.

Background: In relation to Section 407 (9)(iii), that provision of the Act provides as follows:

## Section 7. Duties of the commission.

(iii) Initiate an inquiry where an opinion has not been requested but where there is a reasonable belief that a conflict may exist. Such inquiry shall be conducted in privacy with full respect to the confidentiality of all the parties involved in the alleged conflict. If the commission finds that there is a conflict, the information shall be provided for criminal proceedings unless the alleged offender removes himself from the conflict with receiving financial gain. 65 P.S. 407(iii).

It appears as though when originally enacted the word out was omitted from the last line of that definition. As it now reads the provision of law provides that unless the alleged offender removes himself from the conflict with receiving financial gain. It is believed that the General Assembly intended that word to be without and that the phrase should read "unless the alleged offender removes himself from the conflict without receiving financial gain".

## VI. AMENDMENT TO CONFIDENTIAL ACCESS STATUTE

A. Recommendation: The Statute allowing certain agencies to petition the Commonwealth Court of Pennsylvania in order to obtain access to confidential information be amended so as to accord the State Ethics Commission authority to employ this procedure. See, 42 Pa. C.S.A. §8721. Specific language will not be set forth herein, however, the Commission will provide a recommended amendment at the appropriate time.

Background: The State Ethics Commission, in addition to being an administrative agency, performs an investigative function. In this respect the Commission has been given broad-braced investigative powers including the power to issue subpoenas and gather evidence. During the course of many Commission investigations, the Commission is called upon to obtain various documents and information from other governmental bodies. There are occasions when such information is withheld from the Commission on the basis that it is statutorily confidential or otherwise protected. The Commission, for example, has the requirement of monitoring Statements of Financial Interests and investigating alleged violations in relation to Statements of Financial Interests. It would be extremely beneficial to the Commission to have access, for example, to corporate tax returns in order to determine if individuals have received income in excess of \$500 from corporations in which they have listed a financial interests. Corporate tax returns, however, are confidentially protected by statute. Similarly, the Commission has on occasion been required to obtain information contained in personnel files regarding the conduct of public employees insofar as it may have violated the State Ethics Act. Once again, this type of information has been withheld from the Commission as confidential. One remedy to the above situation would be to issue subpoenas for said information. The subpoena, however, does not negate the confidentiality of said material which may still be used as a valid

defense to the dissemination thereof. It would appear, however, that another remedy is available to the State Ethics Commission but would require legislative amendments to the Pennsylvania Judiciary Code. Specifically, 42 Pa. C.S.A. Section 8721, (the Confidential Access Statute), allows certain investigative agencies access to information which is held by another governmental agency and which is confidential in nature. This statute provides for a complete procedure and further provides for the continued confidentiality of certain information.