NEVADA LEGISLATIVE COUNSEL BUREAU
OFFICE OF RESEARCH BACKGROUND PAPER

1975 No. 2

CAMPAIGN FINANCE AND FINANCIAL DISCLOSURE

I

There can be little doubt that all the various practices, malpractices, indiscretions and outright illegalities that have come to be subsumed under the single word "Watergate" have been responsible for a heightened public awareness of the political process. With this awareness have come demands for the protection of the integrity of the process. In 1973, all state legislatures met. Sixteen enacted political reform legislation. In 1974, 31 state legislatures met and 21 enacted political reform legislation. In addition, the voters in Washington state in 1973 and California and Colorado in 1974 enacted stringent campaign finance and political ethics laws by the initiative process.

The Nevada legislature in 1973 enacted regulation of expenditures for legislative campaigns and registration of lobbyists. The question now is what else should be done in the areas of campaign finance and conflicts of interest. The extent to which campaign contributions and expenditures should be regulated and conflicts of interest controlled is a philosophic question. The purpose here is to set forth the options available in each case and, where appropriate, to show the effects of options.

II

Taking campaign finance first, there are several options and combinations that can be perceived in an ascending order of stringency as follows:

1. No controls on sources or amounts of contributions or on expenditures.

2. Limitations on just contributions or just expenditures on all elected offices or just some. (This is the situation in Nevada where expenditures of legislative candidates only are limited and must be reported.)

3. Reporting of all contributions and expenditures for all elective offices to the appropriate election official.

4. Reporting as in 3 above with dates before which spending and/or contributions cannot commence.

5. Reporting as in 3 above combined with dollar ceilings on expenditures for each office and for each election.

6. Reporting as in 3 above combined with a spending limit per capita based upon registered voters of your party for a primary and total registered voters for a general election.

7. In combination with 3, 4, 5 or 6, a limitation on the amount that can be contributed by any single individual or group for any one office, usually limiting cash contributions to $50 or $100.

Advocates of campaign finance reform divide over whether it is adequate to insure that the public knows who supports whom and in what amounts, or whether it is necessary to go beyond insuring that the information is available and set contribution ceilings in addition. It can be argued that if reporting is adequate, the burden of explanation for proportionately large contributions rests with the candidate and it is up to the people to determine the adequacy of the explanation. The counter argument would pose the situation of opposing candidates, both heavily supported by special interests. The people might know, but have no real choice. The only answer to this would be to set individual contribution ceilings.

Another aspect of campaign finance is controlling the sources of contributions. Connecticut limits contributions to "natural" persons which prevents contributions by corporations, unions or any other type of group or committee.

There are a number of refinements to be considered in conjunction with the listed options. It must be decided if such laws will apply to primaries, ballot propositions, constitutional amendments, recalls, referenda and initiatives as well as to general elections. Should "contributions" include anything of value as well as money? Should penalties include the possibility of denial of office to a winner if the law is broken?

III

Virtually any conflict of interest provision, to be effective, must include some form of financial disclosure for officeholders and officeseekers. Disclosure is a more complex field than campaign finance and certainly more controversial because of its potential for infringing on basic rights. There seem to be three questions on disclosure:

1. Who shall be subject to disclosure?

2. What types of things must be disclosed?

3. What amounts or values shall be subject to disclosure?

Again, using an ascending order of stringency, several possibilities arise:

1. No requirement for any disclosure by any official (the situation under current Nevada law).

2. Disclosure of primary source of income of elected officials only.

3. Same as 2 but including appointive officeholders and other employees in a position to make decisions that could materially affect others outside of government.

4. Disclosure of all sources of income over a certain figure, such as $1,000 per year for the official, the spouse and dependent children.

5. Same as 4 above but to include all real estate interests with a value above a certain figure, such as $2,500.

6. Same as 4 and 5 above but to include all assets producing a capital gain in 1 year of a certain amount, such as $5,000.

7. Under 4, 5 or 6, exact amounts can be required or simply disclosing if a source is over a threshold but not the actual amount of it.

The Interim Subcommittee on Counsel Bureau Organization and Legislative Procedures recommended that such a law apply to all state and local public officials in all branches of government.

Further, it recommended that all offices, directorships and salaried employment be reported, that all financial interests over $1,000 be reported and that all financial interests related to dealings with the state be reported.

The balancing between the public's right to know of potential conflicts of interest and a business or professional person's legitimate need to maintain a certain degree of privacy is difficult to achieve. The Committee on Legislative Ethics and Campaign Financing of the National Legislative Conference sets forth four basic considerations on disclosure laws. They should not require the amount of a public official's income to be disclosed. They should not require the specific amount or the specific name of financial interests to be disclosed. They should require the names of financial assets. They should require the names of clients whenever state business is involved.

The term "public officials" does not distinguish between elected or appointed. A number of appointed officials and even employees make decisions that could have a great effect on financial interests. At the local level, planning and zoning boards are examples of this. Regulatory and licensing boards and commissions have such powers at the state level. Governing bodies at the local level and the governor for the state executive branch could be made responsible for identifying which appointees and employees should have to comply with disclosure requirements.

IV.

Almost any option of any impact in campaign finance or disclosure raises the question of oversight, enforcement and decision as to what is or isn't a conflict of interest. Minimum reporting of campaign finances will require at least an increase in the secretary of state's staff and in his power to compel compliance and bring actions for noncompliance. Disclosure requirements raise other problems. In every state presently requiring disclosure, an independent committee or commission is established to oversee and enforce the law. In some states, they receive disclosure statements and render opinions on whether conflicts of interest exist. The feeling seems to be that if the reporting and disclosure process is to be credible, it must be in the hands of an independent body, usually composed of political elder statesmen and distinguished citizens. The only alternative is to place it in the hands of an existing office or department all of which are political or responsible to an elected official.

Suggested Reading
(Available in the Research Library)

Citizen's Research Foundation: "State Statutes Regulating Political Finance," Princeton, New Jersey, 1974.

Council of State Governments; "Guidelines for State Legislation on Government Ethics and Campaign Financing," Lexington, Kentucky, 1974.

Rhodes, Robert M.; "Enforcement of Legislative Ethics: Conflict Within the Conflict of Interest Laws" Harvard Journal on Legislation, Cambridge, Massachusetts, April 1973.

Rosenthal, Albert J; "Campaign Financing and the Constitution," Ibid, March 1972.

APG/jd