

ANNUAL REPORT

of the

**NEW JERSEY ELECTION
LAW ENFORCEMENT
COMMISSION**



*To the Legislature
May 1, 1974*

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ANNUAL REPORT

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With the enactment of the New Jersey Campaign Contributions and Expenditures Reporting Act on April 24, 1973, New Jersey embarked on an intensive effort to monitor election financing. The Act is one of the most stringent of its kind in the United States and requires the reporting of all expenditures by candidates, committees and organizations involved in New Jersey elections and the reporting of all contributions with the source of contributions in excess of \$100.00 to be identified.

The Act established a system of civil penalties and provided criminal sanctions as well. Other important features of the Act include spending limits for candidates. It is noteworthy that all elections in New Jersey are covered with the exception of those for County Committeeman and Committeewoman.

In addition, the Act created an independent four-member Commission officially designated as the New Jersey Election Law Enforcement Commission with the responsibility for the enforcement of the Act. It is this independence, together with the authority to impose civil penalties for negligent violations of the Act, which set the New Jersey law apart from most others and has enabled the Commission to obtain substantial voluntary compliance with the Act. The original members of the Commission were appointed by Governor William T. Cahill, confirmed by the Senate and sworn into office on May 3, 1973. These members included former Congresswoman Florence P. Dwyer, former Administrative Judge of the New Jersey Appellate Division of the Superior Court, Sidney Goldmann, Judge Bartholomew Sheehan, and Chairman Frank P. Reiche.

The Act provided for the regulation of election financing through the submission of periodic reports. It also covered efforts to influence the content and passage of legislation in New Jersey at all governmental levels by requiring organizations designated as "Political Information Organizations" to file financial data with the Commission annually on March 1st.

Upon taking office, the Commission was immediately faced with the question of the potential application of the Act to the June, 1973 Primary. After reviewing the Act, the Commission determined that it did indeed apply to the Primary, but that only one report could be required, that report to be filed with the Commission on or before July 24, 1973, covering the period from April 24, 1973, the effective date of the Act, through July 23, 1973. The Commission was deluged with reports on or

about July 24, 1973 and gradually, with the addition of staff personnel, reviewed such reports to ascertain in general terms the extent of compliance with the Act.

Meanwhile, the Commission proceeded with the task of assembling a staff. In June of 1973, the Commission engaged Herbert Alexander of the Citizens Research Foundation as its consultant. Mr. Alexander is a nationally recognized expert in the field of election finance and has served as a consultant to several states and Congressional committees. In July, the Commission engaged Edward J. Farrell, a practicing attorney from Morristown, to serve as its counsel. Mr. Farrell was hired to work on a half-time basis with the Commission, but has spent more time than originally anticipated, largely as a result of litigation in which the Commission has become involved. Effective September 1, 1973, David F. Norcross, Esq., was appointed as Executive Director of the Commission. Mr. Norcross has been charged with the executive responsibility for supervising the Commission's activities and the day-to-day operation of its office at 28 West State Street, Trenton.

ELECTION FINANCE MONITORING IN 1973

The Act required a series of three reportings for each election, the first to be submitted twenty-five days before the election (Oct. 12, 1973), the second to be submitted seven days before the election (Oct. 30, 1973), and the third to be submitted fifteen days after the election (Nov. 21, 1973).

A total of 2,734 candidates and 3,741 committees filed with the Commission; this means that the Commission processed approximately 19,425 returns for that election. The number of committees filing represented more than twice the number of committees which filed with the Office of Federal Elections for the 1972 Presidential Election.

Within forty-eight hours of each filing date the returns of every gubernatorial and legislative candidate were individually reviewed by the Commission for mathematical accuracy and completeness. As a result of these "desk audits" more than one hundred discrepancy letters were issued by the Commission requiring additional information, correction of errors or explanation. Candidate cooperation and attention to these letters can only be described as excellent in virtually all cases. At this date, only two legislative candidates have reports outstanding and hearings on these cases have been scheduled.

In some cases, the auditing of returns continues by the Election Finance Analyst who joined the Commission in March of 1974, coming from the Intelligence Section of the Internal Revenue Service. The entire expenditure and contribution figures of major gubernatorial candidates, as well as those of related committees, are presently being audited by the Commission staff and therefore are not included in this report.

Expenditures for all legislative races, *as reported by the candidates without audit or analysis* are set forth in the following tables:

**REPORTED EXPENDITURES FOR
STATE LEGISLATURE**

SENATE — \$ 916,190.46

ASSEMBLY — \$1,005,199.44

TOTAL OF ALL LEGISLATIVE RACES — \$1,921,389.90

SENATE:

DEM. — \$512,816.74

G.O.P. — 388,520.40

OTHER — 14,853.32

\$916,190.46

RACES INVOLVING INCUMBENTS

INCUMBENTS — \$294,125.31

CHALLENGERS — \$305,949.56

AVERAGE SUMS SPENT BY SENATE CANDIDATES - \$9,746.70

ASSEMBLY:

DEM. — \$ 489,504.46

G.O.P. — 510,920.00

OTHER — 4,774.98

\$1,005,199.44

RACES INVOLVING INCUMBENTS

INCUMBENTS — \$189,012.03

CHALLENGERS — \$152,269.23

AVERAGE SUM SPENT BY ASSEMBLY CANDIDATES - \$5,492.89

These figures may be incomplete by virtue of failure to include all expenditures by committees on behalf of candidates in summary totals, failure to include "in kind" contributions in summary totals; inclusions of "transfers" in summary totals and other reporting errors.

Enforcement activities in connection with the 1973 General Election are continuing. One hundred and twenty one late notices were issued on the following dates: October 12, seventeen (returns filed up to forty-eight hours after the deadline were deemed timely filed for the first reporting period in view of the newness of the law and disclosure requirements.); October 30, fifty-two and November 21, fifty-two. Thirty-one candidates were notified for failure to file in the October 12 reporting date, twenty-three on October 30 and thirty-five on November 21. Thirty-five reprimands have been issued in connection with late filings and filing failures and three fines have been levied against two candidates for negligent infractions of disclosure requirements or failure to appoint a campaign treasurer or depository. Two fines imposed upon one of the candidates are presently being enforced under the provisions of the Penalties Enforcement Law.

Unfortunately, there appears to have been less compliance at the local level than at the county and state levels. One thousand, one hundred and sixty-five potential violations by candidates at the municipal level are presently being screened by the Commission staff. All candidates involved have been notified by the Commission. Each of these cases will be screened to be certain that full compliance is effected and punishment imposed where appropriate. Early results of this screening indicate that in many instances "violations" simply reflect improper candidate filing procedures and that some type of disclosure had been accomplished by other means. Most often this was caused by candidates filing jointly with other candidates under committee designations. Under the filing system utilized, this caused the return to be filed as a committee rather than candidate return. In some instances, apparent failures were determined, after screening, to have resulted from misfiling. Fortunately, these represented only 0.04% of all filings handled by the Commission in the General Election.

The filing system utilized divides reports first into candidate-related returns and committee returns. Candidate returns are then further classified by election district for ease of retrieval. Committee reports are scanned for candidates who are being supported and filed as either Candidate and General Committees, or Area Committees. The front page of each committee report is reproduced and filed as a cross-reference sheet in the file of each candidate supported by the Committee. This latter step provides the researcher with easy access to the financial report of other organizations involved in a candidate's campaign effort.

Several matters, including contributions which might be illegal under statutes other than Chapter 83 of the Laws of 1973, were referred to the Attorney General for such action as he might deem appropriate.

In February of 1974, all Board of Education Elections were monitored by the Commission and returns made available for inspection. The overwhelming majority of these filings were affidavits stating that candidate expenditures did not exceed \$1,000.

HEARINGS

Under the hearing procedures of the Act, five hearings have been held before hearing officers appointed under the authority of section 6 (a) with fourteen hearings held before the full Commission. All hearings are, of course, public. Four complaints are presently assigned to hearing officers and awaiting hearing. A total of twenty complaints have been brought either by the Commission or by complainants. Complaints are brought either directly by candidates and citizens, or by the Commission as a result of information received in a variety of ways including review of returns.

ADVISORY OPINIONS

Section 6 (f) of Chapter 83 requires that the Commission issue written advisory opinions when requested to do so. In 1973, there were seventy such requests and an additional thirty-five to date in 1974. Commission procedures require that questions of first impression be reviewed by the full Commission on submission by Counsel prior to the issuance of an opinion.

COMMISSION

Since inception, the Commission has held twenty-one formal meetings, often all day in duration, with numerous other sessions involving Commission members on an ad hoc basis. At one crucial point near election, the Commission met once each week.

The Commission recognizes an obligation to increase public awareness of campaign finances and to educate candidates and potential candidates, as well as individuals involved with political committees, in the objectives and requirements of the Act. Toward this end, numerous public appearances have been and will continue to be made by Commission officials whenever the opportunity arises.

Because public disclosure is the primary purpose of the Act, the Commission early recognized that materials submitted to it must be made available to the public and press as expeditiously as possible. Accordingly, all returns are available for examination at its offices in Trenton. Copies of all returns are available on request and will be reproduced for a nominal charge to cover costs.

COMPUTERIZATION

In order to produce the report required by Section 6 (b) (5) of the Act, it is essential to computerize the voluminous information presently on file in the Commission offices. It is the Commission's plan to develop a system not only with the capacity to produce the recapitulations required by the Act, but which will also assist in rapid pre-election enforcement of the disclosure requirements. While no such system exists anywhere at this time, the program currently under development by the Commission and the New Jersey Department of the Treasury is being designed to accomplish both goals. Since no other functioning campaign monitoring unit has similar responsibilities or authority for enforcement, program development is difficult and time-consuming.

In the interest of remaining abreast of all developments in the monitoring of political finances, the Commission has established and maintains close contact with the Office of Federal Elections, the Clerk of the U.S. House of Representatives, the Secretary of the U.S. Senate and others. These sources are lending informal assistance in the development of a technically proficient system for computerized monitoring of expenditures and contributions. In the meantime, manual monitoring will continue with the necessary sacrifices in time being made to assure that disclosure is complete and that files are rapidly available to all who request information.

The reports required by section 6 (b) (5) should be available during the Fall of 1974 assuming the computer program is in place by June of this year. In view of the novelty and complexity of the problem these target dates are admittedly ambitious. The prime reason for close liaison with existing agencies is to ensure that errors made by other systems are not duplicated.

REGULATIONS

Regulations have been drafted by Counsel to the Commission and will be published in the New Jersey Record in the near future. All interested parties will be given the opportunity to comment on draft regulations prior to promulgation. It was decided not to issue regulations immediately because there was an insufficient factual basis, absent practical experience, with which to do so. It was nevertheless recognized that candidates and party officials needed immediate guidance in order to ensure substantial compliance with the new disclosure requirements and expenditure limitations imposed for the 1973 Primary and General Elections. To provide such guidance, the Commission published instructions and utilized advisory opinions as provided by the Act. As continuing

experience revealed new problems and provided new answers, the forms and instructions were modified by staff.

PROBLEM AREAS

Several problems have arisen during the Commission's first months of operation. Perhaps most serious are problems which involve committee spending and the allocation of that spending to candidates benefited thereby. Much of the auditing effort by the Commission to date has involved requiring committees to allocate their expenditures to the individual candidates supported. Some candidates have been totally unaware of this spending and therefore powerless to control it. There are several means of addressing this problem: to require committees to seek candidate authorization prior to spending; to require committees to notify candidates when they spend for the candidate; and to limit spending by independent committees to some pre-established dollar limit. The first alternative raises First Amendment questions; the third, which is included in legislation recently passed by the U.S. Senate, also raises constitutional questions, but is certainly worthy of consideration. The second solution, i.e. requiring notification by committees, is the suggestion endorsed by the Commission in its suggested amendments to the N.J. Legislature (see Appendix A). It is the Commission's opinion that a candidate cannot be legally charged with expenditures he or she did not authorize or did not know about. Clearly knowledge is a factual question which can be determined by a Hearing Officer, the Commission or a court. The requirement of notification tends to diminish the problem of knowledge and leaves authorization as the important question. Covert authorization by candidates is a factual question which can be dealt with on a case-by-case basis by the Commission. This must not be construed to relieve a candidate of the burden of proving to the Commission that he or she has made every reasonable effort to ascertain and control expenditures from which he or she benefited.

While the Commission endorses the concept of expenditure limitations, it is obvious that the limit impinges unequally at various levels of government. It seems to have been adequate for gubernatorial candidates; at least no serious protest was brought to the attention of the Commission. It was, in the vast majority of cases, generous for legislative candidates and countywide candidates. At the municipal level, however, it may constitute a serious hardship on candidates, many of whom are relatively unknown persons challenging established incumbents. In a municipality with 10,000 registered voters on the average, 8,250 voters would have voted in 1972, which means an expenditure limit of \$4,125.00. In a race to overturn long-time incumbents, one or two fund

raisers and rallies could exhaust the candidates' funds available under the expenditure limit. It will limit mayoral candidates in Newark to slightly less than \$50,000.00 to finance a city-wide campaign. Tying the limit to voters who *voted* in the most recent presidential election also has adverse implications in large cities where both registration and turnout is relatively low. It can be argued that this spending limit financially inhibits parties and candidates from achieving greater registration and voter turnout.

Candidates who elect to run joint campaigns may also gain a financial advantage over single candidates with respect to the expenditure limit. It is obvious, for instance, that in the example above, two candidates jointly spending \$8,250.00 (\$4,125.00 for each candidate) can wage a more cost-effective campaign than can the single candidate who can spend only \$4,125.00.

BUDGET AND PERSONNEL

The Commission will have expended virtually all of its \$150,000.00 appropriation by the conclusion of FY 1974. Throughout the summer of 1973, the Commission recruited and assembled staff in order to be prepared for the large volume of reports generated by the November General Election. At this time, the Commission has a staff consisting of the Executive Director, an Election Finance Analyst, a Secretary to the Executive Director, a Filing Systems Chief and a Receptionist. From time to time the Commission has utilized the services of part-time employees in order to make filings available as rapidly as possible to the press and public. On all occasions reports have been available within forty-eight hours. In one instance, immediately before the General Election, by working around the clock, the reports were available for inspection within thirty-six hours of the filing deadline.

ENFORCEMENT

Thorough enforcement is necessary to encourage and assure compliance with the law. The appropriation recommended by the Governor is \$253,000.00 for 1974-1975, and this is satisfactory to the Commission. Obviously, more money could be used without waste; the extensiveness of audits, the number of audits accomplished, and the speed of compiling reports, are all factors which are dependent upon the size of staff and, therefore, upon the amount of money appropriated to the Commission. In the early stages, however, the Commission has chosen to adopt a conservative approach, both to staffing and general expenditures. The purpose of this cautious approach is to spend less rather than more money, while identifying those areas and those ways in which the

funds might most effectively be spent.

PUBLIC FINANCE

The addition of public financing, at any level, will, of course, increase staffing needs and, therefore, costs. It has been estimated that A1246, Public Financing of Gubernatorial Candidates, could be expected to require, including the matching fund, an additional \$2,700,000 in the Commission's overall budget.

POLITICAL INFORMATION ORGANIZATIONS AND LITIGATION

Little has been said in this report on the subject of political information organizations which are the subject of pending litigation in both the United States District Court and the Superior Court of New Jersey, Chancery Division. The suit in the Superior Court is a class action brought by the New Jersey Chamber of Commerce and others and has resulted in the issuance of an Injunctive Order which prevents the Commission from enforcing the March 1 filing deadline for political information organizations, although political party committees and political committees were specifically excluded from the scope of the order and have filed as required by Law.

Prior to the institution of suit by The American Civil Liberties Union in the United States District Court and the Chamber of Commerce in the Superior Court of New Jersey, the Commission had extended the filing deadline to March 15, 1974. Accordingly, while some political information organizations have voluntarily filed, the overwhelming majority of annual reports on file are from political party committees and political committees. At the time of this writing, Common Cause has joined the Commission in the Superior Court action and the suit in the United States District Court remains in abeyance until further disposition of the State suit by the Courts of New Jersey. Final hearing in the Superior Court of New Jersey, Chancery Division, was originally scheduled for April 29, 1974, but has been rescheduled.

Both suits attacked the constitutionality of the New Jersey statute as applied to political information organizations primarily on the basis of an alleged improper infringement on Article I of the United States Constitution; specifically, the guarantee of free speech. In both suits the Attorney General of New Jersey has entered an appearance in defense of the constitutionality of the State statute, and a vigorous defense of the constitutionality of the statute and the authority of the Commission to operate under that statute is being offered by the Commission through its own Counsel.

APPENDIX A

SUBJECTS FOR AMENDMENTS TO CHAPTER 83 of the LAWS of 1973

1. The Commission considered the possibility of removing School Boards from the purview of the Act, but decided to wait until it could examine the experience of the first School Board filing.
2. The Commission considered limiting the application of the Act to municipalities with less than a given population, but determined that size alone was not a relevant criterion for determination of the need for financial disclosure.
3. Section 3 (f) — The language, “If any candidate is a holder of public office to whom there is attached or assigned . . . any aide or aides . . . for election campaign purposes”, should be included in Section 20 of the Act since it is not only a definitional matter but a substantive rule of law. Section 20, therefore, should probably be changed to “Prohibited acts”, rather than “Prohibited contributions and solicitations”.
4. Section 3 (h) — The definition of political information includes the phrase, “or which contains facts on any such candidate . . .”. This is a rather broad definition which the Commission has limited by virtue of certain opinions issued and will limit by regulation. This broad language could dissuade organizations from distributing non-partisan, biographical information on candidates. The Commission favors amending section 3 (h) to exempt such non-partisan information from the definition of political information.
5. The Commission recommends a new section covering cash contributions which would limit cash contributions to \$100 or less in the aggregate.
6. Section 6 (c) places responsibility for dissemination of Commission material in the office of the “public official charged with the responsibility of receiving and accepting . . . petitions . . .”. It is the Commission’s strong suggestion that County Clerks be substituted for the municipal clerks in this regard. Further, the Commission recommends that County Clerks be required to certify to the Commission within a certain number of days after presidential general elections, the number of voters voting in each district, and that each year the County Clerks be required to certify to the Commission those municipalities within the County that will be holding elections, the date of each such election, and as soon as possible, the names of candidates who have filed petitions. It is further suggested that the County Superintendent of Schools be required to certify to the

Commission each year those school districts within the county that will be holding elections, the date of each such election, and as soon as possible, the names of candidates who have filed petitions.

7. Section 6 (f) should be amended to make it clear that the protection offered when the Commission does not respond to an opinion request within 10 days continues only until such time as the opinion is rendered and protects the person seeking the opinion only with respect to activities taking place during that period.

8. Section 7 — The Commission recommends that expenditure limits be retained, but that the Legislature consider the advisability of tying expenditure limits to voting age population, rather than to the number of voters who voted in the last preceding general election in a presidential year. (This is consistent with Federal legislation.)

It is further recommended that the Legislature consider a minimum (such as \$2,500) amount of money which may be spent by a candidate in any district regardless of the voting age population in that district.

The Commission further acknowledges the existence of problems created for municipal candidates by the inclusion of fund-raising affairs as part of the expenditures to which the Section 7 limitation is applied. To a certain extent, this problem will be resolved by amending the Act as suggested above. Still remaining, however, is the problem that candidates running jointly and spending money from a common account, probably have a financial advantage over a candidate who is running alone.

The Commission further recommends that the Legislature consider favorably the application of spending limits to public questions.

9. Section 8 — Paragraph 2 does not include “continuing political committees”, and it probably should.

Section 8, paragraph 3, proviso (3) should be deleted.

Section 8, paragraph 5, should be amended so as to provide that any committee expending in excess of \$250 be required to file, whether or not the candidates supported by it are required to file pursuant to Section 16.

10. Section 9, paragraph 1, first sentence, should be amended by inserting after candidacy, “or before any contribution is received, or money expended on the candidate’s behalf by any other person, candidate, committee or organization”.

Section 9 should be amended to provide for candidates who will handle no funds whatsoever but will turn over all funds to a committee or organization which will assume the financial burden of the candidacy. Such candidates should be relieved from the obligation to

designate a campaign depository and in lieu thereof should be permitted to inform the Commission as to the name, address and campaign treasurer of the entity which is to handle finances.

11. Section 11, last paragraph, should be amended to make clear that the period during which political party committees may not expend funds is from the closing date of primary petitions through primary election day.
12. Section 12 appears to prohibit cash expenditures. It is the Commission's suggestion that cash transactions in excess of \$25 per transaction be *specifically* prohibited.
13. The language in Section 12, "transfer any such funds to the duly designated campaign treasurer . . . in the same manner as deposited funds," should be deleted.
14. Section 16, line 5, after "out", insert "and liability incurred".
Section 16 should be amended so that the report to be submitted covers a period up to two days before the due date of each report, in order to provide candidates with a close-out period.

Reporting dates should be amended so as to provide that the second report be due 8 days (rather than 7 days) preceeding the election and the final report be due 20 days (rather than 15 days) following the election.

Provision should be made for reporting to the Commission *after the last report prior to election is filed and through election day*, all contributions in excess of \$1,000 within 48 hours of receipt of such contributions. The notification should be in writing. A possible alternative would be to limit amount of contributions between the last reporting date and election day.

Section 16, paragraph 2, the 60-day report should be eliminated and, substituted therefor, a report every 90 days.

Section 16, paragraph 3 should be amended to provide that all reports *and* affidavits for all candidates be filed with the County Clerk, either of the district in which the candidate is running or in the case of Senate or Assembly candidates running in multi-county districts in the county in which the candidate resides. Political information organizations should be included within the requirement for the filing of forms in the county where the organization's main office is located.

Section 16, paragraph 5, provisio (3), on page 17, should be deleted, or clarified to make it clear that candidates must report such data relative to their own fund.

15. In Sections 17 and 18, all reference to the 15th day should be amended to provide for the 20th day.

16. The Commission is aware of numerous cases where banks allegedly refused to accept accounts from candidates and committees, and legislation may be necessary to require banks to accept such accounts.
17. Section 20 should be amended (in addition to the earlier mentioned provision — see paragraph 5, this report) to prohibit cash contributions in excess of \$100 and cash transactions in excess of \$25 per transaction.
18. In connection with Section 21, the Commission encourages the Legislature to consider the advisability of including, within the penalty provisions, a provision which would prohibit, in appropriate cases, candidates from running for a period of time after being found guilty of a violation of the Act.
19. Many questions have arisen with respect to the legal utilization of excess campaign funds. The Commission recommends that the Act be amended to provide specific purposes for which excess campaign funds may be utilized. The recommended uses include at least (a) donation to any other political committee, (b) return to donors on a pro-rata basis, and (c) retention for future campaigns.
20. The Commission recommends that with respect to corporate and labor contributions the Legislature consider prohibition, or limitation of such contributions.
21. The Commission recommends that the Public Broadcasting Network be utilized to the fullest extent possible for the dissemination of information on candidates.
22. All Committees making expenditures on behalf of or in support of any candidate or candidates must be required to disclose, in their reports, the sums spent on each such candidate and must be required to notify the candidate or candidates in writing within seven days of such expenditure.
23. All filings with the Commission must be in duplicate to facilitate computerization.
24. Anonymous contributions should be sent to the Commission to be forwarded to the State Treasurer.
25. Section 8 requires “certain committees and organizations” to report the name and address of payees together with the purpose of each such expenditure. Section 16 does not specifically impose such a requirement on “treasurers of candidates, of certain committees or of certain organizations”. Since this information is absolutely essential to disclosure and for meaningful audit of campaign funds, Section 16 should be amended to require the disclosure of payee name, etc.
26. Certain technical, language changes should be accomplished and will be subsequently submitted by the Commission.