

1993 ANNUAL REPORT

The N.J. Election Law Enforcement Commission





State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

OWEN V. McNANY, III
CHAIRMAN

William H. Eldridge
Vice Chairman

David Linett
Commissioner

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DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

TABLE OF CONTENTS

	<i>PAGE NO.</i>
<i>THE COMMISSION</i>	1
<i>CHAIRMAN'S MESSAGE</i>	7
<i>COMMISSION STAFF AND TABLE OF ORGANIZATION</i>	12
<i>EXECUTIVE DIRECTOR'S REMARKS</i>	15
<i>TWENTIETH ANNIVERSARY ELEC OVERVIEW</i>	19
<i>LEGISLATIVE REVIEW</i>	21
<i>LEGAL SECTION</i>	25
<i>COMPLIANCE AND INFORMATION SECTION</i>	40
<i>REVIEW AND INVESTIGATION SECTION</i>	47
<i>GUBERNATORIAL PUBLIC FINANCING SECTION</i>	53
<i>COMPUTER SECTION</i>	66
<i>ADMINISTRATION SECTION</i>	69
<i>BUDGET OVERVIEW AND 1992 EVALUATION DATA</i>	73

DEDICATION

This report is dedicated to the memory of Edward J. Farrell, former Counsel to the Commission, colleague, and friend.

THE COMMISSION

Owen V. McNany, III, Chairman

Owen V. McNany, III, is serving his fourth term on the Commission. Chairman since 1990, he served as the Commission's Vice Chairman for two years.

Chairman McNany serves as the Director of Business Development for the Center of Orange - New Jersey Orthopaedic Hospital. At the hospital, he directs the for-profit subsidiary operations.

The Chairman served as State Director of the Institute of Financial Education of the U.S. League of Savings Associations as well as the former Chairman of the Board of Trustees of the Hospital Center at Orange. A member of the Maplewood Chamber of Commerce, Chairman McNany was honored as its "Man of the Year" in 1990.

Chairman McNany is former President and Director of the Crestwood Service Corporation and past President and Director of the Yorkwood Savings and Loan Association.

Married to the former Patricia Beury, Owen V. McNany, III, is the father of four children.

William H. Eldridge, Vice Chairman

William H. Eldridge, who is serving his first term on the Commission, is a professor of Business Law and Management at Kean College of New Jersey. Vice Chairman Eldridge is a graduate of Rutgers University, holding an M.B.A. from Rider College and a J.D. from Cornell Law School.

A Union County Freeholder from 1986-1988, the Vice Chairman served as Mayor of Berkeley Heights in 1982 and as the Deputy Mayor in 1981 and 1985. From 1984-1987 he was Executive Director of the New Jersey Commission on Capital Budgeting and Planning.

Vice Chairman Eldridge was Assistant Vice President of Citibank from 1976-1982 and Vice President of U.S. Trust Company from 1982-1984.

Vice Chairman Eldridge served on the faculty of the National Conference of State Legislators and has taught graduate and undergraduate courses in Management, Finance, Planning and Business Law at Fairleigh Dickerson University, Kean College, and Rutgers University.

The author of several articles on management, Vice Chairman Eldridge has counselled small businesses both as a private consultant and in affiliation with the Kean College Small Business Development Center.

Vice Chairman Eldridge has won a variety of awards from the U.S. Jaycees and other organizations for his work with physically and mentally challenged citizens. He also has a strong reputation for ethics within his community.

David Linett, Commissioner

David Linett, President of the Bridgewater law firm of Gindin and Linett, PC, has served two terms on the Commission.

Commissioner Linett, a former Prosecutor of Somerset County and Treasurer of the National District Attorneys Association, is the Treasurer of the New Jersey Supreme Court's Ethics Financial Committee. He is past Chair of the Supreme Court's District XIII Ethics Committee.

Commissioner Linett was named "Citizen of the Year" in 1989 by the Somerset County Chamber of Commerce. He served three terms as Chair of the Board of Trustees of Alternatives, Inc. (formerly AAMH), and two terms as a Director of the Somerset Chamber of Commerce. He is a past president of the Somerville Rotary Club who served as District Governor of Rotary International in 1991-92. Twice elected to the Democratic State Committee from Somerset County, Commissioner Linett is a graduate of Yale University and Harvard Law School.

Married to the former Penny Amato, the Commissioner is the father of three children.

Frederick M. Herrmann, Ph.D., Executive Director

Frederick M. Herrmann has been the Executive Director of ELEC for the past decade. Last year, he was the recipient of the prestigious Annual Award of the Council on Governmental Ethics Laws (COGEL) for his continued efforts to promote the highest level of ethical conduct among governmental officials and candidates for public office in the international arena.

Executive Director Herrmann has an A.B from the University of Pennsylvania and earned a doctorate in American Political History from Rutgers University. He is the author of many publications in history and government and is a frequent speaker at various forums inside and outside of New Jersey. The executive director has been a guest on numerous television and radio programs too. Currently, he is co-authoring an article entitled "Financing State and Local Elections: Recent Developments" for the next edition of The Book of the States and is serving as the book review editor of The Guardian, a COGEL publication.

Once a teacher at Rutgers University and Kean College, Dr. Herrmann has also served on the Council of State Governments' (CSG) Organizational and Planning Committee and has been the President of COGEL as well as a member of its Steering Committee. He was instrumental in building the Northeastern Regional Conference on Lobbying (NORCOL) and is now in his second, non-consecutive term as the Chairperson of that organization.

IN MEMORIAM

Edward J. Farrell, Counsel

Edward J. Farrell had been Counsel to the Commission since its inception in 1973. He was a partner in the Morristown law firm of Schenck, Price, Smith and King.

Counsel Farrell earned a national reputation as an expert in campaign financing and lobbying law, having served the Commission for twenty years.

A noted New Jersey attorney, Counsel Farrell was lauded for his patience and loyalty, and his "great intellectual capacity." The only Counsel in the Commission's twenty-year history, he was a member of the American, New Jersey, and Morris County Bar Associations. In 1981 and 1982, he served as President of the Morris County Bar Association and as Chairman of its ethics committee from 1972 to 1974.

Counsel Farrell, an avid sailor and member of the Keyport Yacht Club, served as a combat information center watch officer in Korea from 1953 to 1957 aboard the USS Lake Champlain aircraft carrier.

A graduate of St. Joseph's University in Philadelphia in 1952, he was a 1961 graduate of Columbia University Law School in 1961, where he was named a Harlan Fiske Stone Scholar.

Counsel Farrell, who is survived by his wife, Joan and four children, made immeasurable contributions to the Commission through the years and will always be remembered for his humanity, compassion and deep interest in the cause of ethical government. He will be greatly missed.

CHAIRMAN'S MESSAGE

By Owen V. McNany, III

The single most significant event for the Commission in 1993 was the enactment of the campaign finance reform law, which became effective in early April.

Perhaps the hallmark of this reform legislation is the complex scheme of contribution limits contained in it. There is a \$1,500 per election limit on individual, corporate and union contributions per candidate and a \$5,000 per election limit on PAC contributions per candidate. Further, there is a \$25,000 annual limit on contributions to State and county party committees and legislative leadership committees, but no limit on what those entities can give to candidates, except in certain circumstances with regard to county party committees. National party committees, under the new law, are subject to a \$50,000 per year limit on giving to State party committees, but there is no limit on what individuals, corporations and unions can contribute to PACs. These PACs can only contribute \$5,000 per year to other PACs and there is a \$5,000 limit per election on what candidate committees can give to other candidate committees not of the same office or subdivision.

Another feature of the law is that candidates are limited to one candidate committee and/or joint candidates committee. Also, filing entities must now disclose the occupation and employer of all individual contributors of more than \$200 per election.

A PAC registration requirement is contained in the bill as well, along with guidelines for the usage of campaign funds. Finally, in addition to separating political parties from the continuing political committee category, the law also establishes a new category entitled "Legislative Leadership Committees."

In a word, the new law, encompassing comprehensive reform of the campaign finance statute, not only holds the potential for major changes in the State's electoral process, but also presents the Commission with a significant administrative challenge.

Needless to say, the Commission, in 1993, was faced with the daunting task of implementing a law which not only overhauled the campaign finance system, but did so effective immediately. True to its tradition of excellence, the Commission proved equal to the test. Though still in the process of completing this mission, the Commission made great strides in 1993 toward the goal of full application of the new law.

Quickly, the staff underwent the process of familiarizing itself with the provisions of the new law and speedily produced a fact sheet, equipped with a handy chart of the contribution limitations, for candidates and treasurers.

In rapid succession, the staff produced new candidate forms; began the painstaking process of developing new regulations; assisted candidates, treasurers, and other filing entities with compliance questions; organized

informational seminars; and initiated the process of modifying its computer software.

Though handicapped by continuing budgetary difficulties and staff shortages, the Commission, nevertheless, dealt with the critical challenge of implementing the new law in a truly admirable fashion. Perhaps it can be said of the Commission: "This was its finest hour."

Besides undertaking the rigorous task of implementing the new law, the Commission refined its administration of the new "Legislative Activities Disclosure Act," which recently became effective in January, 1992. In addition to producing lobbyist quarterly activity reports, the Commission regulated 572 legislative agents and handled 3,271 lobbyist reports last year. It also undertook a major project in terms of terminating over 150 legislative agents whose registrations were defunct.

Research efforts kept a pace in 1993. Much work was completed on the Commission's ninth white paper entitled Legislative Candidates: How They Spend Their Money which was published early in the new year. Moreover, the 1993 Gubernatorial Cost Index Report, calculated the various thresholds and limits utilized in the 1993 gubernatorial primary and general elections. Computer printouts containing contributors to legislative candidates in 1991 were made available in alphabetical listings and printouts containing legislative financial information for the 1994 elections were provided.

Compliance activity in 1993 remained strong. Though interest in campaign finance issues during the gubernatorial and legislative elections was extremely high, exacerbating the strain on the compliance staff brought about by staff reductions, the Commission nevertheless met the increasing demand for public information and assistance head-on. While processing 25,006 reports, it responded to 14,867 requests for information, including the photocopying of 238,916 pages of disclosure reports. It also conducted compliance seminars and prepared analytical press releases.

Despite continued staff shortages, the Review and Investigation Section still completed 17 investigations and issued 206 complaints. A total of \$35,452 in fines was collected in 1993 as well.

Staff reductions did not deter the Legal Section from performing its duties either. The Commission issued 11 advisory opinions and numerous regulatory proposals, in particular as related to the new law, and undertook many legal actions before the Office of Administrative Law.

An important achievement of the Commission in 1993 was the administration of the gubernatorial primary and general public financing program. A total of four candidates participated in the primary election program, in which \$5.6 million was distributed, and two candidates in the general program, in which \$7.8 million was distributed. In all, \$13.4 million was disbursed to participating candidates. Besides certifying public funds, the Commission responded to numerous policy questions regarding the

gubernatorial program and decided several cases vis-a-vis complaints in the context of the gubernatorial general election.

Finally, the Commission's veteran Executive Director, Frederick M. Herrmann, continued to show why he is one of a select group of esteemed leaders in the field of ethics throughout the United States and Canada. The 1993 COGEL Award winner, he was a sought after panelist and speaker at many ethics forums held during the year. Moreover, his writings in the field of ethics have been recognized by the experts as valuable source material.

On behalf of the Commission, I am delighted to present this report to the Legislature. The Commission is proud of its achievements in 1993 and poised to continue the tradition of excellence in 1994.

COMMISSION STAFF

EXECUTIVE

Frederick M. Herrmann, Ph.D.	Executive Director
Jeffrey M. Brindle, M.A.	Deputy Director
Gregory E. Nagy, Esq.	Legal Director

ADMINISTRATION

Barbra A. Fasanella	Director
Donna D. Margetts *	Personnel Officer/Lobbying Auditor
Elaine J. Salit	Fiscal Officer
Debra A. Kostival	Senior Receptionist
Irene Comiso	Associate Receptionist

COMPLIANCE AND INFORMATION

Evelyn Ford, Esq.	Director
Virginia Wilkes Tesser	Associate Director
Carolyn Neiman	Senior Compliance Officer
Kimberly Key	Associate Compliance Officer
Andrew Mersel	Assistant Compliance Officer
Barbara Counts	Secretarial Associate
Monica T. Triplin	Clerk
Barbara Wallace	Clerk
Elizabeth A. Michael	Messenger

COMPUTER

Anthony R. Chianese	Systems Administrator
Shirley R. Bryant	Associate Systems Administrator
Brenda A. Brickhouse	Senior Data Entry Operator
Nelly R. Rosario	Associate Data Entry Operator

LEGAL

Nedda Gold Massar, Esq. **	Associate Legal Director
Lisa Fagan, Esq.	Assistant Legal Director
Ruth Ford	Secretarial Associate

REVIEW AND INVESTIGATION

Shreve E. Marshall, Jr.	Associate Director
Brett Mead ***	Associate Report Examiner

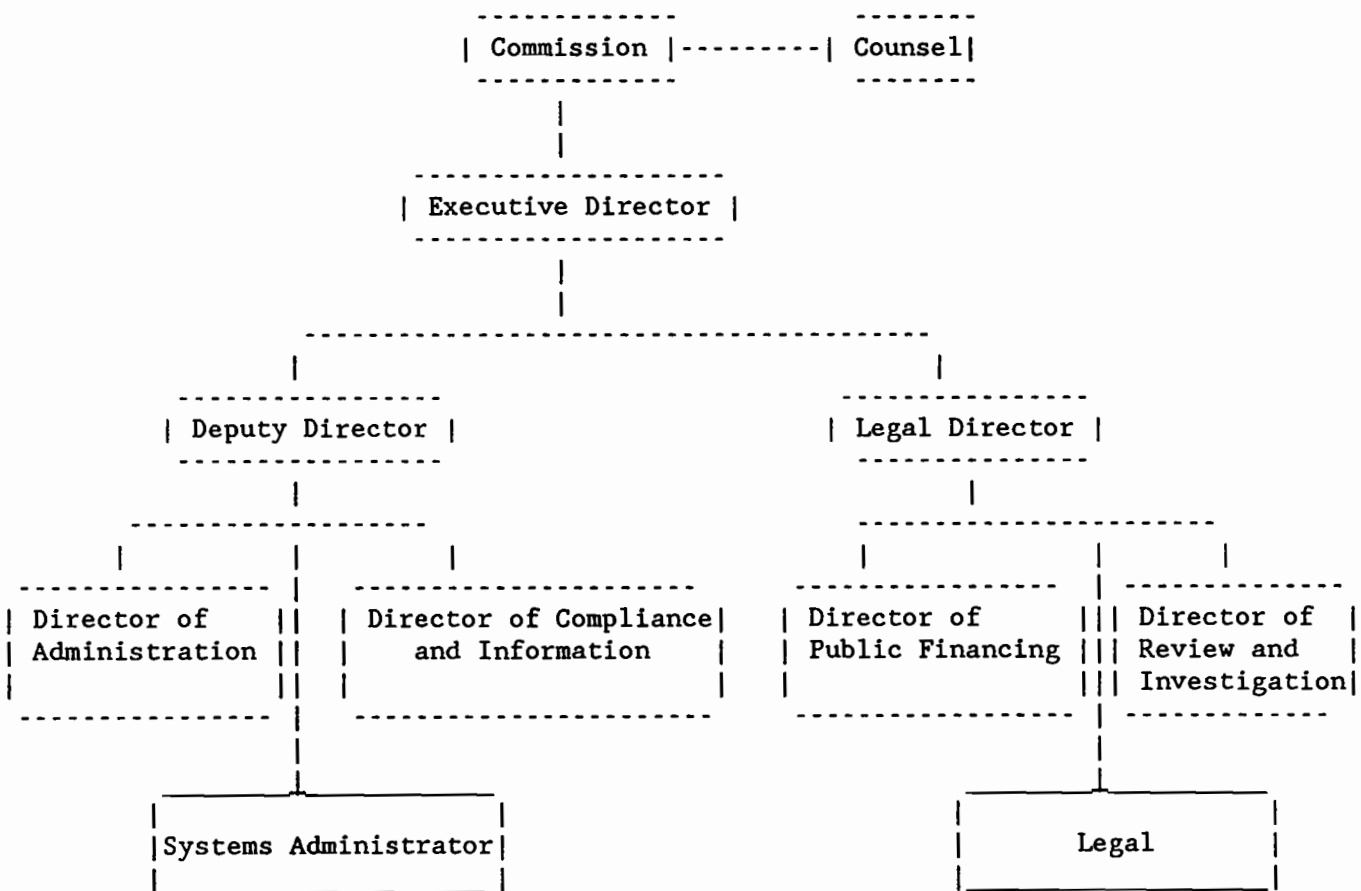
GUBERNATORIAL PUBLIC FINANCING

Nedda Gold Massar, Esq. **	Director
Brett Mead ***	Assistant Director **
Jeffrey Schneider	Computer Assistant
Christopher Gear	Analyst
Steven Kimmelman	Analyst
Josephine A. Hall	Senior Secretary
Bernette Pettit	Data Entry Operator

- * Donna Margetts is currently performing a dual function due to the shortage of staff.
- ** Nedda Gold Massar is currently performing a dual function, due to the shortage of staff. In addition, Josephine Hall and Ruth Ford are providing much needed secretarial assistance in the Review and Investigation Section as well as in the Public Financing and Legal Sections.
- *** Brett Mead served as Assistant Director to the Public Financing Program through October. He was then transferred to become an Associate Report Examiner for the Commission.

New Jersey Election Law Enforcement Commission

Table of Organization



Executive Director's Remarks

The year 1993 marked the Twentieth Anniversary of the founding of the New Jersey Election Law Enforcement Commission (ELEC). Over the years, ELEC has developed a reputation for being one of the best governmental ethics agencies in the nation. Additionally, during the past few years, the statutes that ELEC administers and enforces have been significantly strengthened. Amendments to the Lobbying Law in 1991 extended the act to cover executive branch lobbying and removed the notorious "expressly loophole," which only required the reporting of benefit passing done concurrently with a conversation about particular legislation. The 1993 amendments to the Campaign Act made major statutory changes including such reforms as: contribution limits, the disclosure of contributor occupations and employers, PAC registration, last-minute expenditure reporting by PACs and political committees, and campaign fund usage guidelines. Yet, with all of these accomplishments, a major problem still remains unsolved in New Jersey as in the rest of the country - the chronic inability of regulatory officials involved with political money to perform their missions of disclosure and enforcement in an acceptable manner.

It should therefore be heartening that there is the beginning of a national consciousness that the governmental bodies charged with oversight of campaign finance laws must be strengthened. Two recent studies, one by the Center for Responsive Politics and the other by the Council of State Governments (CSG), make the points that "an independent and effective campaign finance regulatory agency [in each state is central] to the integrity of the

campaign finance laws and public confidence in the electoral process" and that "reporting and disclosure is meaningless unless designated state agencies can do their jobs and prosecute campaign finance violators." Both studies agree that the governmental bodies with responsibilities over campaign finance must be empowered to do their work. They have to be given appropriate autonomy, funding, and enforcement authority. A major conclusion of the center study is that the current situation in which most such bodies have to deal with "insufficient budgets, limited enforcement authority, and partisan political pressures" must be changed.

Not all of the governmental entities that regulate campaign financing have sufficient autonomy. According to the CSG study, "reformers prefer the independent agency model" over the use of a department headed by a partisan official. However, among the bodies and officials that administer and enforce state campaign finance laws only 31 are regulatory commissions while 23 are Secretaries of State, one is an Attorney General, and one is a Lieutenant Governor. The funding picture is no better. Of the 34 state and local regulatory entities reviewed in the most recent Blue Book published by the Council on Governmental Ethics Laws (COGEL), about one-half had their budgets reduced in the half-decade from 1987 to 1992. The staffing of such bodies is also inadequate with the majority of them having fewer than 10 full-time persons. Finally, according to the figures produced by the Center in its study, enforcement of campaign finance laws is still a major problem. Of the 33 state and local regulatory agencies reviewed: three are not authorized to investigate, nine cannot conduct hearings, 12 do not have the power to impose fines, 18 are not able to charge penalties for late reports, ten cannot

conduct random audits, and six are not even authorized to render advisory opinions.

In New Jersey, ELEC shares somewhat in the national problem of anemic ethics agencies. The Commission's strongest area would appear to be its enforcement powers. By statute, ELEC has the basic tools it needs to prevent violations of the law even though one of the new amendments to the Campaign Act created a criminal standard for civil prosecution of contribution limit infractions. As for autonomy, the Commission is an independent, bipartisan agency that has a long record of acting in a nonpartisan way. Nevertheless, ELEC has repeatedly requested a lengthening of its commissioners' three-year terms and is the only ethics agency in the nation whose chairperson serves as the head of the commission at the pleasure of the Governor.

It is the budgetary area, however, that is ELEC's biggest concern. Although the Commission's workload has grown dramatically due to the increased spending by the entities that it regulates and the vast new responsibilities imposed by the changes to the Campaign and Lobbying Laws, ELEC's budget has actually decreased over the past half-decade by a greater percentage than any other campaign finance regulatory agency in the United States. According to a recent Star Ledger story by Joe Donohue, the Commission "once regarded as a national model, is losing its lead because of chronic underfunding, a burgeoning workload and an obsolete computer system." The answer to these problems in very difficult economic times for all of State government may rest in a filing fee bill that provides for PAC and political party fees based on the amounts raised and spent and for candidate fees based on the office

sought. Such fees would be used as a supplement to ELEC's annual appropriation at no additional taxpayer expense.

Ethics as an issue in a democratic society must be a matter of paramount concern. Will government be able to solve the many problems facing society if its officials are not secure from the appearance of undue influence affecting their actions? The ability of Garden State political leaders to reach disinterested solutions in the public interest is closely related to the future of the New Jersey Election Law Enforcement Commission. Our State agency that regulates campaign financing and lobbying should once again be allowed to become a national model of excellence in the field of governmental ethics.

*Twentieth Anniversary
ELEC Overview*

Election Law Enforcement Commission Commissioners

1973

Frank P. Reiche, Chairman
Judge Sidney Goldmann, Vice Chairman
Judge Bartholomew Sheehan, Commissioner
Florence P. Dwyer, Commissioner

1974-1979

Frank P. Reiche, Chairman
Judge Sidney Goldmann, Vice Chairman
Josephine Margetts, Commissioner
Archibald S. Alexander, Commissioner

1980-1981

Judge Sidney Goldmann, Chairman
Josephine Margetts, Vice Chairman
Andrew C. Axtell, Commissioner
M. Robert DeCotiis, Commissioner

1982-1983

Andrew C. Axtell, Chairman
M. Robert DeCotiis, Vice Chairman
Justice Haydn Proctor, Commissioner
Alexander P. Waugh, Jr., Commissioner

1984-1986

Andrew C. Axtell, Chairman
Alexander P. Waugh, Jr., Vice Chairman
Justice Haydn Proctor, Commissioner
Owen V. McNany, III, Commissioner

1987-1988

Judge Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
Andrew C. Axtell, Commissioner
David Linett, Commissioner

1989-1990

Judge Stanley G. Bedford, Chairman
Owen V. McNany, III, Vice Chairman
David Linett, Commissioner
S. Elliott Mayo, Commissioner

1991-1992

Owen V. McNany, III, Chairman
Judge Stanley G. Bedford, Commissioner
David Linett, Commissioner

1993-1994

Owen V. McNany, III, Chairman
William H. Eldridge, Vice Chairman
David Linett, Commissioner

Election Law Enforcement Commission Executive Directors

1973-1975 David F. Norcross
1976-1981 Lewis Thurston, III
1981-1984 Scott A. Weiner
1984-present Frederick M. Herrmann

Election Law Enforcement Commission Counsel

1973-1994 Edward J. Farrell

Statutory History of ELEC

- Commission created by P.L. 1973, c.83 (N.J.S.A. 19:44A-1 et seq.) - "The New Jersey Campaign Contributions and Expenditures Reporting Act" - effective date: April 24, 1973
- Gubernatorial Public Financing Program started by P.L. 1974, c.26 (N.J.S.A. 19:44A-27 et seq.) - effective date: May 6, 1974
- Personal Financial Disclosure Program started by P.L. 1981, c.129 (N.J.S.A. 19:44B-1 et seq.) - effective date: May 1, 1981
- Lobbying Program started by P.L. 1981, c.150 (N.J.S.A. 52:13C-18 et seq.) - effective date: May 22, 1981
- Continuing Political Committee (PACs) Quarterly Reporting started by P.L. 1983, c.579 (amendment to N.J.S.A. 19:44A-1 et seq.) - effective date: January 17, 1984
- Lobbying Reform - established by P.L. 1991, c.243 (amendments to N.J.S.A. 52:13C-18 et seq.) - effective date: January 1, 1992
- Campaign Finance Reform - established by P.L. 1993, c.65 (amendments to N.J.S.A. 19:44A-1 et seq.) - effective date: April 7, 1993

LEGISLATIVE REVIEW

The most comprehensive amendments in the 20-year history of the Campaign Contributions and Expenditures Reporting Act were passed during 1993 by the 205th Legislature. On March 8, 1993, Governor Florio signed those amendments into law as Chapter 65 of the Laws of 1993, which became effective on April 7, 1993. These amendments made significant changes in many of the existing provisions of the Reporting Act, as well as adding new, far-reaching requirements. Among the changes are the following:

- Campaign contributions by individuals, corporations, associations, candidates, political committees, or continuing political committees to candidates, political committees, continuing political committees, or political party committees become subject to per election or per calendar year limits. This system of contribution limits affects all reporting entities, and is one of the most difficult requirements that the Commission has been called upon to administer since its inception in 1973.

- Candidates and officeholders must file reports of campaign funds on a more on-going basis. Therefore, in addition to election-cycle reporting (that is, 29-day and 11-day preelection reports and 20-day postelection reports), quarterly reporting must be undertaken if funds or outstanding obligations remain from the concluded election, or whenever fundraising is undertaken.

- All campaign funds received by a candidate, officeholder, candidate committee, joint candidates committee or legislative leadership committee must be used for only those purposes permitted in the statute.
- All continuing political committees (commonly referred to as PACs), political committees and legislative leadership committees, must file extensive registration statements disclosing the identity of persons or interests that exercise control over them, and must consistently use the same name in all solicitations for funds and in all media advertising.
- Political committees, or continuing political committees, established or controlled by a candidate, must be dissolved by April 8, 1994, and the funds in them must be transferred to the candidate's candidate committee, or joint candidates committee. A candidate can maintain only a candidate committee and joint candidates committee, but no other campaign finance vehicle.
- Each major political party leader in both the Senate and Assembly may establish a legislative leadership committee, and use the funds collected to support candidates.
- Any expenditure over \$500 to support or defeat a candidate, or aid or promote the passage or defeat of a public question, made by a political committee or continuing political committee during a period

of time immediately prior to an election must be disclosed within 48-hours of the expenditure.

These changes and new requirements, particularly the system of various contribution limits, will significantly alter the raising and reporting of campaign funds starting in 1994. Legislative efforts to adjust or refine these new provisions may be anticipated as more experience with them is acquired.

Also passed and enacted during the 205th Legislature was legislation requiring that "street money" payments, that is funds typically paid by candidates or political parties to workers on election day, must be made by check rather than in currency. This bill was signed into law as Chapter 370 of the Laws of 1993 on January 7, 1994, and became effective immediately.

During the 205th Legislature, a total of 94 bills affecting the Commission were introduced; 78 of them either amending the Campaign Reporting Act or affecting related campaign finance activity, nine affecting gubernatorial or legislative public financing, six affecting lobbying reporting, and one affecting personal financial disclosure reporting by candidates.

As the 206th Legislature convenes early in 1994, the Commission can anticipate that campaign finance, lobbying disclosure and personal finance disclosure of candidates will continue to be topics that attract considerable legislative attention. The Commission reviews all bills affecting its

jurisdiction or operation, and frequently presents testimony to the various legislative committees considering such legislation. Also, the Legal Section when requested, works with the staff of the Office of Legislative Services to assist in drafting complex finance disclosure or regulation legislation.

The Commission anticipates that a filing fee program may be enacted in 1994 to cover the costs of administering the amendments to the Campaign Reporting Act. As noted above, the enactment of the extensive 1993 amendments has created many substantial and new requirements which cannot be effectively implemented unless ELEC has adequate and stable funding sources. Appropriate funding to implement campaign finance and lobbying disclosure laws has been identified by a number of legislators as a top priority for 1994.

Also, the restructuring of the Commission to provide longer terms for Commission members has been identified as another important objective. The restructuring will promote continuity of the Commission's membership from one election cycle to the next, and enhance its autonomy.

Notwithstanding the fact that 1993 was the most significant legislative year since the original enactment of the Campaign Reporting Act in 1973, the Commission anticipates that 1994 will also prove to be an important legislative year.

LEGAL SECTION

The enactment early in 1993 of comprehensive amendments to the Campaign Reporting Act (hereafter, the 1993 amendments) together with the occurrence of the 1993 gubernatorial and legislative primary and general elections resulted in one of the busiest years for the Legal Section in its history. The Section undertook the following tasks generated by those events:

- Interpreted and assisted in implementing new requirements and provisions of the 1993 amendments, including the limitations on campaign contributions and regulated uses of campaign funds;
- Promulgated comprehensive new rules concerning establishment of and reporting by candidates and other reporting entities; and,
- Assisted the Commission in its adjudication of the unprecedented volume of expenditure limit cases involving the publicly-financed gubernatorial candidates prior to the 1993 general election.

In addition, the Legal Section is responsible for a number of on-going activities, including:

- Issuance and prosecution of civil complaints concerning violations of campaign reporting, personal financial disclosure reporting and lobbying disclosure reporting statutes;

- Preparation of Advisory Opinions requested by candidates, treasurers, or other potential filing entities; and,
- Assistance in the review and drafting of new legislation (see Legislation Section).

Again in 1993, the level of enforcement activity was dictated by existing staffing levels. The Section consists of a Director, who is also responsible for supervising the Review and Investigation Section; a Deputy Legal Director, who also serves as the Director of the Public Financing Section; an Assistant Legal Director, and a secretary.

New Statutory Requirements

The 1993 amendments to the Campaign Reporting Act changed the way that campaign finances are reported, and added entirely new requirements. These sweeping changes became effective on April 7, 1993, a date within two months of the 1993 primary election. Therefore, it was incumbent upon the Legal Section working with other sections in the office to provide as much information as possible to reporting entities and the general public in an extremely accelerated timeframe.

A chart illustrating the various contribution limits as they applied to the several different categories of contributors and filing entities was prepared as a reference guide. Also, the section participated in developing a

narrative fact sheet that described other important changes, and staff made presentations at seminars for the public. Because the legislation was the product of several legislative committee hearings and underwent numerous amendments and six reprints in its evolution, an extensive legislative history file was prepared to help with statutory interpretation.

Most importantly, the Commission promulgated new rules to implement some of the more fundamental changes in the 1993 amendments, such as requirements for committee's being established and reporting. In June, the Commission formally proposed replacement of subchapters one through eight of its existing regulations. The new subchapters covered such topics as the establishment of the various committees; the appointment of campaign officers and depositories; receipt and use of funds; recordkeeping; and reporting by candidate committees, joint candidates committees, and political committees. These regulations were the subject of a public hearing, and were approved by the Commission in September. They became effective on October 18, 1993, a date two weeks prior to the 1993 general election.

The Legal Section anticipates that rulemaking activity to implement other provisions of the amendments will continue in 1994 to cover such topics as contribution limits, and PAC reporting and registration. In addition to the rulemaking activity, the Legal Section will be participating in ongoing, office-wide efforts to develop new forms and instructions. Also, the Section will continue to participate in seminars and other outreach programs to assist

in the process of informing reporting entities, the media, and the public of the nature of many of these changes.

Gubernatorial Litigation

The 1993 gubernatorial general election generated an unprecedented number of cases in which allegations were made concerning application of the \$5.9 million spending limit imposed by public financing law. The Commission and the candidates agreed that these allegations had to be adjudicated on an emergent basis so that determinations could be made prior to the date of the general election. These cases must be decided quickly so that each candidate knows precisely what expenditures will be counted towards the candidate's spending limit.

A total of nine such cases were brought by the gubernatorial candidates. Of these, six resulted in hearings before the Office of Administrative Law, and the Commission conducted special meetings so that it could reach its final decisions in a compressed time period from October 25 through October 29, 1993. The last three cases were withdrawn when it became evident that they could not be decided prior to the November 2, 1993 general election.

Three of these cases concerned allegations that the then-incumbent Governor, who was a candidate for re-election, should be charged with the cost of various communications that had been made by members of the Executive

Branch. In one of these cases, the Commission concurred with the Administrative Law Judge that the then-incumbent Governor's campaign should be responsible for the expense of producing and circulating to members of the public a letter from the then-Director of Office of Minority Affairs, who worked in the Office of the Governor. This letter concerned congressional funding of an American-sponsored broadcast service directed toward Cuba, an issue of particular interest to the Cuban-American community. In two other cases, the Commission agreed with the Administrative Law Judge that costs associated with a letter by the then-Insurance Commissioner, or costs for a public service announcement in which the incumbent appeared, not be charged against the Governor's expenditure limit.

In another case, the Commission agreed with the Office of Administrative Law that expenses related to a visit by the United States Attorney General to New Jersey should not be charged to the campaign of the then-incumbent Governor. Also, in a case brought by an independent candidate, the Commission agreed with the Office of Administrative Law that certain highway signs bearing the name of the then-Governor should not be charged against his re-election campaign.

Finally, in the most lengthy case, the Commission reviewed allegations that the then-incumbent Governor's general election campaign had made expenditures prior to the date of the primary election, failed to adequately disclose expenditures, and had co-mingled funds with a State political party committee. The Commission agreed with the Initial Decision of

the Office of Administrative Law which found that general election expenditures had been made prior to the primary election date, but dismissed the other allegations, and the Commission imposed a monetary penalty.

For the first time in its history, the Commission issued Orders to Show Cause as a means of expediting the scheduling of the hearings in those gubernatorial cases where the complaints had been filed as late as mid-October. The issuance of an Order to Show Cause limited the time for the responding candidate to file an answer, and established expedited hearing dates that would leave enough time for the hearing process to be concluded prior to the date of the general election.

In addition to the litigation conducted before the Office of Administrative Law, the 1993 gubernatorial program generated litigation in both federal and State courts in which the Commission was named as a party defendant, and was represented by its counsel, Edward J. Farrell, Esq.

The then-incumbent Governor's campaign sought an injunction to restrain the Commission from conducting the OAL hearings into the allegations concerning alleged political communications that might be chargeable to the then-Governor's expenditure limit. On September 29, a complaint was filed in which it was alleged that the "political communication" regulations of the Commission were unconstitutional infringements on a Governor's free speech. The federal district court for New Jersey refused to grant the temporary restraints that had been sought, and the case was subsequently withdrawn. As

a result, the hearings before the Office of Administrative Law were permitted to proceed.

Also generating litigation was the gubernatorial ballot statement program. That program permits all candidates for Governor to submit a 500-word statement which must be reproduced and circulated by the county clerks in the sample ballots that are sent to the electorate. Under the statute, the State is directed to reimburse the counties for expenses they incur. In early September, several county clerks brought suit seeking to freeze all funds of the Commission in order to hold them for the clerks' estimated costs for printing and mailing of the gubernatorial ballot statements. Alternatively, the suit requested that the court permit publication of the statements in newspapers. The Superior Court denied the application for emergency relief, and deferred the issue of compensation to the county clerks for a later date. As a result, the gubernatorial statements were printed and included in the sample ballots.

One of the independent gubernatorial candidates brought suit against the Commission seeking an order that would have included his statement among those that were included in the ballots. The Commission successfully argued that the candidate's failure to observe the Commission deadline for the submission of these statements precluded its inclusion in the sample ballot.

Finally, one of the advisory opinions the Commission issued was appealed to the Appellate Division of the Superior Court. The opinion held

that pre-primary election expenditures made by a political party committee which criticized the then-incumbent Governor should not be charged against the expenditure limit of that party's general election gubernatorial candidate, see A.O. 04-1993 discussed below. The New Jersey Democratic State Committee appealed the opinion to the Appellate Division of the Superior Court, but withdrew the appeal in early September.

Civil Complaints

The Commission issued a total of 206 complaints during 1993, a figure that is comparable to the 188 complaints issued in 1992 and the 218 complaints issued in 1991. Of these complaints, 192 concerned candidates who failed to file any campaign report with the Commission. However, other significant complaints were generated as a result of investigative activity (see Review and Investigation Section).

The Legal Section generated revenues of \$35,452 from the collection of fines and surcharges imposed as a result of civil complaints in 1993. This figure is an increase from the \$31,733 revenue figure for 1992. While the revenue numbers are significant, the overall goal of the Section is to bring candidates and other reporting entities with reporting deficiencies into compliance.

Persons or committees receiving complaints may request a hearing at the Office of Administrative Law (OAL). During 1993, legal staff members were involved in twenty-four (24) cases at the OAL. Each of these cases settled at, or prior to, the hearing and resulted in significant achievements. For example, one case involved issues about the reporting and use of multiple campaign depositories. Staff efforts throughout the hearing process resulted in the filing of all required campaign reports and campaign report information.

Another notable case submitted to the OAL for hearing that was settled prior to the hearing date concerned a twenty-nine count complaint that was issued following a lengthy investigation. This complaint contained twenty-one counts for late filing of campaign reports, a count for failure to file disbursement information, six counts for failure to file and late filing of notices advising the Commission of additional campaign depositories, and a final count for improper reporting of credit card transactions totaling \$9,844.59. The complaint resulted in the filing of all previously unfiled campaign reports and campaign report information. This case generated total penalties of \$5,425.00.

Another case initially submitted to the OAL for hearing concerned the filing of preelection 48-hour notices with the Commission. The Respondents asserted that mailing the notices within the 48-hour period should be considered sufficient, regardless of whether or not the Commission received the reports within 48 hours. The case settled prior to the date of the

hearing, with the parties agreeing that the notices must be received by the Commission within the specified 48-hour period. More hearings are anticipated in 1994 as civil complaints are issued reflecting the broad revisions in the Reporting Act.

Advisory Opinions

Any candidate, treasurer or filing entity possibly coming under the requirements of the Reporting Act may request an Advisory Opinion from the Commission. During 1993, the Commission received 13 requests for advisory opinions, and responded to 11, with the other two responses being given early in 1994. Because of the many issues generated by the enactment of the 1993 amendments, the Commission was compelled to decline from giving advisory opinions concerning changes made by that new law. Instead, such inquiries were referred for consideration during the rulemaking process.

As might be anticipated, the public financing provisions of the gubernatorial elections generated several inquiries. These were as follows:

- The Republican State Committee was advised that it could make expenditures prior to the 1993 primary election for certain media communications without being compelled to count those costs against the expenditure limit of any candidate in its gubernatorial primary election. The communications contained references to the then-incumbent Governor, who was a candidate in

the gubernatorial primary election of the opposing political party. Nevertheless, the Commission ruled that as long as the expenditures were made independently of any of the Republican party gubernatorial primary election candidate, the expenditures would not be attributed to any Republican primary election candidate (A.O. 02-1993).

- In a related opinion, the Commission ruled that expenditures made by the Republican State Committee independently of any of its primary election gubernatorial candidates did not have to be attributed to the expenditure limit of that party's gubernatorial candidate in the general election (A.O. 04-1993). This opinion was appealed by the Democratic State Committee to the Appellate Division of the Superior Court, but the appeal was subsequently withdrawn.
- The Republican State Committee was advised that direct mail it circulated to generate support for legislative candidates in the general election which contained references to the opposing political party gubernatorial candidate would have to be counted against the expenditure limit of the Republican party gubernatorial candidate in the general election (A.O. 07-1993).
- In a post-general election setting, the Commission decided that a publicly-financed gubernatorial candidate could continue to raise

contributions to pay for expenses related to unanticipated postelection litigation, however those contributions must continue to be raised in conformity with the gubernatorial contribution limits and would not be counted against that candidate's expenditure limit (A.O. 11-1993).

In other requests, the Commission ruled as follows:

- A State political party committee must file quarterly reports for all the bank accounts it maintains, and cannot segregate special accounts for a specific election and report on an election-cycle basis for those accounts (A.O. 08-1993).
- An inaugural committee can accept a loan above the \$500 contribution limit from a State political party, and it can turn over its proceeds, if any, to that State political party at the termination of its activities (A.O. 10-1993).
- A bona fide newspaper does not make a reportable contribution to a candidate by publishing signed articles written by that candidate as long as the candidate does not have any ownership or other control over the newspaper's editorial independence (A.O. 06-1993).

- Fundraising activity undertaken for the purpose of obtaining an endorsement from a county political party convention on behalf of a primary election candidacy for State Assembly are subject to the reporting requirements of the Act (A.O. 03-1993).

- Under the provisions of the Act prior to the 1993 amendments, an elected officeholder is not required to report donations made for the purpose of a testimonial dinner for that officeholder, nor do persons giving gifts have to be identified as contributors. However, the Commission noted that local government elected officials are required to file reports under the Local Government Ethics Law disclosing the source of any gift received with the value of over \$400. This opinion is not applicable to events conducted on or after the April 7, 1993 effective date of the 1993 amendments (A.O. 01-1993).

- An inquiry concerning the applicability of the prohibition against a federally chartered bank from making campaign contributions was referred to the Attorney General because the Commission does not have jurisdiction over the applicable statute. The Attorney General ruled that there was no restriction on a corporation holding a federal bank charter from contributing to a committee that was advocating the passage or defeat of a public question because the prohibition was

applicable only to contributions to a candidate, or political party (A.O. 09-1993).

- The Commission declined to give an advisory opinion to a candidate who had already undertaken the very financial activity that was the subject of the inquiry. The Commission noted that an advisory opinion is intended to have prospective application only, and it extends immunity to a candidate who acts in the future in accordance with the opinion. However, the statutory authority of the Commission to issue advisory opinions does not provide the Commission the authority to grant immunity retroactively, or for financial transactions that have already occurred (A.O. 05-1993).

- Late in 1993 the Commission was asked whether funds raised by a local elected officeholder for the purpose of conducting a swearing-in celebration were subject to the reporting and contribution limits of the Reporting Act. The Commission responded early in 1994 that such activity was subject to the reporting and contribution limit requirements contained in the 1993 amendments (A.O. 12-1993).

- Also, late in 1993, the Commission was asked whether a State political party committee could pay certain political party expenses of a Governor without attributing those expenses to any

future gubernatorial candidacy. Early in 1994 the Commission responded that if the purpose of the expenditures had no bearing to any "testing the waters" activity, or to any gubernatorial candidacy, State committee expenditures for party-related activity of the Governor would not be attributed to a possible future gubernatorial candidacy (A.O. 13-1993).

Compliance And Information Section

The Compliance and Information Section experienced a dramatic increase in its workload during the 1993 calendar year. The passage of sweeping campaign financial disclosure reforms in early 1993 created a wave of candidate demand for information concerning filing requirements under the new law. In addition, the press and public intensified its interest in the enhanced disclosure available under the new law.

Despite existing budget cuts and staff shortages, the Compliance and Information Section did an outstanding job in meeting its objectives by adhering to its priorities and implementing cost-effective management initiatives.

Compliance

On April 7, 1993, The Campaign Contributions and Expenditures Reporting Act was significantly amended. The effect of these amendments required that staff expeditiously create new filing materials for use by candidates and treasurers. Nineteen Ninety-Three was a year in which the Governor's seat as well as both houses of the Legislature were up for reelection. The Statewide and legislative races were given the highest priority in terms of compliance efforts. In addition, there were numerous county and local races throughout the State. Over 25,000 reports were processed during 1993, a 28 percent rise over 1992. The trend of candidates

and committees to file lengthier reports also continued, due to candidates increased spending as well as to the requirement of the new law that occupation and employer information be provided for certain contributors.

The challenge of promoting compliance with the new financial disclosure law was met with enthusiasm by the Compliance and Information staff. Staff created a fact sheet, a concise summary of the major points of the new law, and distributed it just prior to the primary election to candidates, treasurers, the press, and the public. The fact sheet was again revised and distributed just prior to the general election. Furthermore, the Compliance and Information staff conducted ten seminars to introduce and review the requirements of the new law. Two large seminars were held in Trenton prior to each of the primary and general elections. Also, staff traveled to Essex, Monmouth, Morris, Bergen, and Middlesex counties to conduct informational seminars. Also, the Compliance and Information Section sent two staff members to staff a consulting table at the League of Municipalities Convention in Atlantic City.

For the first time, the Compliance and Information Section arranged to have its major seminars videotaped. The tapes were available free of charge to any candidate or treasurer who was unable to attend the seminar, or for any attendee who wished to review the information. It is hoped that the 1993 videotape program will be the beginning of a new, high-tech endeavor to relay information to the filing community.

The sweeping changes in the new law necessitated the complete revision of all instructional materials, manuals and filing forms. Accordingly, the Compliance and Information staff revised the Forms A-1, A-2, A-3, C-1, C-3, and the Form R-1 to conform with the filing requirements of the new law. In addition, the Forms ORG-1, ORG-3, E-1, and E-3 were new creations. The Compliance Manual for Campaign Reporting was substantially revised and released in time for the general 1993 election.

These intensive efforts returned impressive compliance rates for the major elections. The compliance rate for the Statewide and legislative races remained high - by election day, 96 percent of the primary election candidates and 93 percent of the general election candidates had filed.

Since the new law also changed the filing requirements of continuing political committees (PACs), attempts were made to assist PAC treasurers with their filing requirements in 1993.

Reminder materials were revised for the third and fourth quarters of 1993, providing each treasurer with a fact sheet and clear guidance concerning filing under the new law. Since the new law banned candidate-controlled PACs, the Compliance and Information Section experienced an upsurge in requests to finalize PACs. Staff worked diligently to process these requests and to assist the treasurers with this process.

Despite the large number of PACs finalizing their filing status in 1993, the number of PACs and political party committees on file with ELEC still rose from 1,534 to 1,554. This statistic emphasizes the proliferation in PACs is continuing in New Jersey.

Compliance efforts, overall, continued to be of the highest priority during 1993. Reminder letters and materials were sent to every candidate running for public office in New Jersey. Non-filer and delinquent letters were sent promptly after each filing date. Overall compliance rates at the local level remained at the same high levels as in 1992.

In the area of reporting by lobbyists and legislative agents, the implementation of the sweeping new changes, enacted into law and effective in 1992, continued in 1993. In February of 1993, the new annual reports of lobbyists organizations and legislative agents were filed. These reports provided a profile of the costs of lobbying in New Jersey and were the subject of numerous newspaper articles and other media attention.

To further enhance compliance with the new law, a first time ever administrative termination program was put in place in 1993. This cost-effective initiative resulted in the termination of all legislative agents who failed to pay the annual registration fee. Numerous agents began to respond to the filing and fee requirements as the termination process proceeded. This program was so successful it will be a regularly calendared event for future years.

An additional cost-effective initiative during 1993 was the mailing consolidation for legislative agents. Instead of sending agents reminder packets four times per year to remind them of their quarterly filing obligations, one packet was sent with materials for the entire year. Again, this cost-cutting initiative was successful and will be continued in future years.

Information

The gubernatorial and legislative races in 1993, along with the changes in the law, heightened interest in the reports filed with ELEC. Requests to receive photocopies continued to rise. The actual number of photocopies produced rose 32 percent in 1993, going from 180,000 in 1992 to 238,000 in 1993. Requests for information were limited only during the primary election since the Compliance and Information Section was able to re-hire one clerk during the pre-general election period. The Compliance and Information Section was able to process 39 percent more requests from the public in 1993, or 2,248 requests.

The overall high performance in disseminating information was not only a result of having additional staff, but also a result of continuing the Sections' well-proven management initiatives. Massive photocopying was contracted out to other State agencies, relieving the burden on staff. "Flex" time was utilized throughout the entire year to assure that a maximum number of staff worked during critical time periods. Having certain staff work hours

before ELEC opens and after ELEC closes allows the photocopy machines to run for longer hours at no overtime costs to the State. In addition, since most reports which are filed with ELEC arrive late in the day, maintaining high staffing levels in the evening enabled ELEC to meet its workload as the work arrived.

Providing information to the press and public remained a high priority of the Compliance and Information Section. Each time the pre- and post- legislative, primary, and general election reports were displayed at ELEC, a computerized printout accompanied the reports, showing a district by district fundraising and spending summary. A grand total of all fundraising and spending by legislative candidates was provided for each report period.

While ELEC hopes to resume its analytical press release program at some point in the future, the computerized data provides the "bottom line" picture so critical to understanding trends in campaign fundraising and spending.

In addition, a Quarterly Report Summary was published four times during 1993 pursuant to the mandates of the "Legislative Activities Disclosure Act." The summary included the names of all registered agents in New Jersey, their registration numbers, their business addresses, and whom they represent. New and terminated agents were listed separately within the summary, along with information concerning whether a given legislative agent filed his or her quarterly report.

ELEC instituted a College Internship Program during 1993 to assist the Compliance and Information Section's staff. Two interns from area colleges worked at ELEC during the spring, 1993 semester, providing enormous help to staff in its effort to promote informational analyses. ELEC hopes to continue its Internship Program to supplement its staff and train possible future governmental employees.

The Compliance and Information Section, in sum, had a challenging, yet successful year in 1993. With the sweeping changes to the law becoming effective in mid-year, the Section had to re-invent all of its manuals, forms, and materials, so that candidates and treasurers had timely guidance. By prioritizing elections and phasing in compliance materials, the Section achieved its goal of maintaining high levels of candidate compliance with the law and surpassing prior years' performance when providing public information.

REVIEW AND INVESTIGATION SECTION

In 1993, the Review and Investigation Section operated under severe staffing restrictions because the Section Director and three of the four report review and investigation positions were vacant. Nevertheless, the sole professional in the Section, who works under the supervision of the Legal Director, made significant strides in a busy year which included both gubernatorial and legislative elections.

Investigations

All requests for investigations received from candidates, treasurers, or the public are evaluated by staff and presented to the Commission, which determines which investigations will be undertaken. The Commission makes its determination on its assessment of the severity of the alleged violation of the Reporting Act, the extent of the investigative workload, and the public interest in the matter.

During 1993, the Commission received 121 requests for investigations, but only 66 made allegations that came within the Commission's statutory authority. Of these, the Commission voted to open 29, regrettably necessitating the denial of 37 requests. During the year, staff completed 17 investigations, resulting in a surplus of 12 investigations being added to the workload. However, it is not unusual that more investigations are opened than closed in a legislative election year. Further, one of the three vacant

report review positions was filled in December so that it is anticipated that more investigations will be completed in 1994.

One of the more noteworthy investigations begun in 1993 was that of the statement made by the campaign manager for the Republican gubernatorial candidate concerning the possible misuse of campaign funds on election day. The Commission determined at its meeting of November 12, 1993, to issue the following public statement: "The Commission, by resolution in executive session, has determined to look into the utilization of public funds and the use of 'street money' in the recent campaigns." This investigation was concluded early in 1994 after receipt of the fourth quarter 1993 reports from political party committees and continuing political committees which is due January 18, 1994.

Other investigations undertaken by the Section included a review of legislative candidates and committees in past elections who may have failed to file 60-day postelection campaign reports, or may have failed to file a final report. Of these investigations, three matters resulted in the filing of a total of 41 60-day postelection reports accounting for some \$567,000 in campaign disbursements that may not have otherwise been disclosed. Another investigation of this nature was the investigation of a State political party committee which resulted in the disclosure of an additional campaign depository and the disposition of \$77,579.01.

Also, an investigation of a political committee resulted in the issuance of a subpoena to compel the uncooperative treasurer to appear at the Commission offices with the financial records and other supporting documents needed to complete the investigation. As a result of this investigation, a civil complaint was issued for the late filing of Form D-2, Political Committee - Designation of Campaign Treasurer and Depository, the late filing of postelection campaign report information, and failing to maintain written records of contributions of \$100 or less.

The Commission also undertook an investigation of a major municipal candidate for failing to file a final report in a special election. This investigation resulted in the issuance of a five-count complaint against the candidate and treasurer for the late filing of campaign report information and non-filing of a final report. In this instance, the Commission assessed the maximum penalty allowed by law upon the respondents for the non-filing of a campaign report.

The Commission also oversees the Legislative Activities Disclosure Act, which requires lobbyists to register and file disclosure reports. An investigation was undertaken to ascertain whether an individual may have had a filing obligation as a lobbyist or legislative agent. The respondent's time records and communications were reviewed to determine whether more than 20 hours in the calendar year was spent by the respondent to prepare and/or testify before the Legislature. The Commission determined that the respondent

did not exceed 20 hours, and therefore had no filing obligation with the Commission.

In all, the Commission closed 17 investigations in 1993, which resulted in a total of 10 civil complaints being issued.

Subpoenas

Also, the Review and Investigation Section is responsible for the issuance of subpoenas. The Commission authorized the issuance of five subpoenas in 1993 upon those Respondents that failed to produce the financial records that were necessary to complete the investigation. As a result of these subpoenas, the financial records were provided to staff.

Other Enforcement Activity

The Review and Investigation Section is also responsible for generating complaint recommendations for those candidates or filing entities that did not file campaign or personal financial disclosure reports with the Commission. In order for the Commission to identify these entities, staff must undertake a review of its files of campaign reports, and compare those files against the computer-generated checklist which identifies those entities that have not filed with the Commission as of a specific date. The complaint recommendation process is conducted with painstaking thoroughness so that complaints are recommended only in cases where both the report files and the

checklist agree no report was filed. In 1993, 154 complaint recommendations were transmitted to the Legal Section for prosecution for the 1993 municipal election, 1993 personal financial disclosure forms, and the 1993 primary election.

Another important responsibility of the section staff is to testify as a witness on behalf of the Commission at hearings before the Office of Administrative Law. In order for the investigator to do so, the investigator must prepare a chronology of the filing events that constitute the alleged violation. This chronology identifies documents such as: bank statements, deposit slips, cancelled checks, and other financial records that may result in a request for discovery by the Legal Section for additional information prior to the date of the hearing. In 1993, 12 such chronologies were prepared by the investigator in anticipation of hearings.

Resident address checks are also completed by the Review and Investigation Section to determine the current and correct address for a Respondent whenever a county sheriff advises ELEC that personal service could not be accomplished at the address provided in election records. The investigator completed 13 address checks to obtain more recent information on the location of respondents.

The Review and Investigation Section is also responsible for maintaining a fine collection program in cases where penalties remain unpaid for 90 days after issuance of Final Decisions. During 1993, 71 fine

collection letters were issued, resulting in the collection of \$800.00 in unpaid fines. One press release was issued to identify the names of the respondents who did not make payments in response to the fine collection letters.

GUBERNATORIAL PUBLIC FINANCING SECTION

Operation of the Program

In 1993, the Commission conducted New Jersey's fifth consecutive gubernatorial election public funding program. In the 20-year history of the program, the 1993 primary and general elections were the second largest in terms of matching fund transactions reviewed and certified by the Commission. In the primary elections, four gubernatorial candidates qualified for the program and received \$5.6 million in matching funds, while in the general election two candidates qualified and received \$7.8 million. Notwithstanding the large volume of information and data that had to be processed, and the strict time pressures imposed by the imminence of election funding deadlines, the Commission believes the management of the program progressed smoothly and served both the campaigns and the public.

In the 1993 primary election, four candidates qualified for public matching funds by raising and spending \$177,000 in campaign contributions. Three of them, then Governor Jim Florio, former Attorney General Cary Edwards, and former Somerset County Freeholder and Board of Public Utilities Chairperson Christine Todd Whitman, ultimately raised enough contributions so that they received the maximum of \$1.6 million in public matching funds. Former State Senator Jim Wallwork received \$837,211.24 in matching funds. Therefore, total public funds of \$5,632,211.24 were certified by the

Commission for the 1993 primary election, matching on a two-to-one basis \$2.8 million in private contributions raised by the candidates.

The maximum in public funds for the 1993 general election was \$3.9 million per candidate. Both major political party candidates, Jim Florio and Christine Todd Whitman, qualified for receipt of the maximum by establishing that each had met the \$177,000 threshold and by agreeing to debate twice. Public funds in the amount of \$7.8 million were therefore distributed for the 1993 general election, bringing the total in 1993 gubernatorial public funds certified by the Commission for both elections to \$13.4 million.

The foremost task of the public financing staff during the 1993 primary and general elections was to determine that candidates were qualified to receive public funds and that only eligible contributions submitted for match by the candidates were certified for match with public money.

To establish a candidate's qualification to receive public funds, the staff reviewed documents submitted by each campaign to be certain that contributions of at least \$177,000, none in excess of the \$1,800 contribution limit, had been raised and had been spent or irrevocably committed in support of the candidacy. Only after those two statutory tests were met and a signed agreement to debate was received was a 1993 candidate qualified to participate in the public financing program.

Candidates who have qualified to participate in the public financing program are then required to file applications or submissions for public matching funds with the Commission on certain dates. Each submission contains lists of contributions, copies of contribution checks and other documents, and schedules listing refunded contributions. Public funds are certified by the Commission to candidates only after the public financing staff inspects written data and utilizes computer reviews of all contributions received by a candidate for compliance with the statute and regulations.

Before a contribution in a submission is recommended to the Commission for match with public funds, it is examined by at least two members of the public financing staff for compliance with several statutory requirements. Each contribution must be accompanied by a copy of the contribution check or other written instrument. The full name of a contributor; his or her address, occupation and employer; and the amount and date of the check must be provided. The aggregate contributions from a single contributor over the course of the candidacy may not exceed \$1,800. The signature of an individual contributor must be supplied. Deposit slips for all contributions are examined. Also, each corporate contribution must be examined for evidence of any other contribution from an affiliated corporation. The purpose is to insure that no single corporate enterprise contributed more than the \$1,800 limit.

Once staff inspection of contributions is complete, contributor data is entered into the computer database. The computerized information is then

sorted by various categories and again examined by staff for possible excessive contributions or other violations. Only with data entry of all contributor information into the database and analysis using the Commission's specialized software can the thousands of contributor transactions occurring during a campaign be monitored so that excessive contributions can be identified.

After these steps are concluded, staff determines the amount of matching funds for all eligible contributions and recommends an amount of public funds to the Commission for certification to the campaign. If a contribution is found to be ineligible for match, the campaign is advised and may correct the error at a later date and resubmit the contribution for match. The examination process for a submission must be completed by staff in a two-week timeframe in order to meet the on-going obligations of the campaigns.

If a campaign has made any expenditures of public funds in the time period between its public matching fund submissions, the next submission filed must contain documentation to establish that the public monies have been spent in compliance with the strict statutory list of permissible uses of public funds. If public funds are inappropriately spent, the Commission can refuse to certify additional funds to a campaign until all objections have been resolved.

Between March and November, staff handled 17 separate primary election candidate submissions for matching funds and also examined the

separate campaign reports filed by each of the candidates participating in the program. Approximately 10,000 contribution transactions, representing total receipts of \$9.8 million, and over 3,000 disbursements, were reviewed. Primary election submissions were reviewed and certified at 15 separate Commission meetings.

For the 1993 general election, Candidates Florio and Whitman filed six submissions between July and September. Receipts reviewed by staff on the submissions and campaign reports totaled over 13,000 transactions and \$13 million and expenditures reviewed to date represented almost 2,000 transactions. Submissions for general election funds were certified at five Commission meetings to the two campaigns.

Because each receipt and expenditure transaction of a candidate participating in public financing is reviewed, coded, and entered into the Commission's computer database by the public financing staff, complete information concerning the financial activity of publicly-financed primary and general election candidates is made available to the public during the election cycle in an inexpensive computer format. Staff responded to over 1,800 telephone inquiries dealing specifically with questions about the gubernatorial elections, and completed 323 requests from the public for information which included 56,000 pages of data.

The 1993 gubernatorial elections were the first to operate with the contribution and expenditure limits, the public fund caps, and the

qualification threshold adjusted by the Commission for inflation. Pursuant to statutory authority in the 1989 amendments to the public financing provisions of the Campaign Reporting Act, the Commission analyzed the changes in costs relevant to campaigns in New Jersey and published its results in the 1993 Gubernatorial Cost Index Report (December, 1992). The report concluded that campaign costs had risen by 17.91 percent in the four years since the 1989 gubernatorial election. The various limits and thresholds applicable to publicly-financed gubernatorial campaigns were therefore adjusted to account for the change.

As a result of this adjustment process, prospective gubernatorial candidates were able to plan for their campaigns with knowledge of the limits and qualification threshold which form the structure of the public financing program.

The 1993 public financing program tasks were performed by a staff comprised of a director, an assistant director, a computer assistant, a secretary, three analysts, and three data entry operators. All staff members but the director and secretary are temporary staff, hired and trained in early 1993. The temporary positions end in June, 1994. The Commission believes that the use of temporary staff to manage the volume of work of the public financing program is cost-effective. The positions of director and secretary are part of the Commission's permanent complement of staff, and provide continuity for planning and operation of the program.

Debates

The public financing law requires that each publicly-financed candidate must participate in two debates in the primary election among candidates of the same party, and in two debates in the general election. The Commission sought applications from organizations interested in sponsoring the primary and general election debates.

No primary election debates are required by the statute when only one candidate of a party qualifies for receipt of public matching funds. Therefore, no debates were held for Democratic gubernatorial candidates because only then Governor Jim Florio qualified to receive primary election public funds.

At its April, 1993 meeting, the Commission selected the New Jersey State Chamber of Commerce and New Jersey Network to co-sponsor one of the primary election debates for Republican candidates. The New Jersey Association of Women Business Owners sponsored the second primary election debate. Both debates were held during May.

The two mandated general election debates between Candidates Florio and Whitman were conducted during October. In July, 1993, the Commission reviewed debate sponsor applications and selected the League of Women Voters New Jersey Education Fund to sponsor one general election debate. The New

Jersey State Chamber of Commerce, New Jersey Network, WCAU-TV (Philadelphia), and WCBS-TV (New York) co-sponsored the other 1993 general election debate.

Impact of the 1993 Amendments

For the first time, changes in the law required that the occupation and employer of an individual contributor whose aggregate contributions exceeded \$200 must be reported. This requirement generated considerable concern among the gubernatorial campaigns.

Because of the short time available for implementation of this new requirement in the primary election, publicly-financed gubernatorial primary election candidates were advised to insert the occupation and employer information on their primary election campaign reports or to include the information on an attachment to the campaign reports. The candidates were not required to disclose the information on primary election public fund submissions. However, for the general election, the Commission proposed a regulation requiring this information on public fund submissions, thereby making reporting of occupation and employer identification of contributors a condition on which public funds were awarded.

At a public hearing concerning the proposed regulation on June 18, 1993, representatives of the Florio and Whitman campaigns expressed their belief that campaigns had not yet had adequate time to educate their staffs and the public concerning the new occupation and employer reporting

requirements. Therefore, the requirement to disclose public matching fund submissions, which are filed earlier than campaign reports, would be burdensome and might affect the early flow of public funds to campaigns. The Commission responded to these concerns by amending its proposed regulation to clarify that the absence on public matching fund documents of information concerning the occupation and employer of individuals whose aggregate contributions exceed \$200 would not automatically delay certification of public funds to a gubernatorial campaign. The additional text therefore reduced the impact of the proposed amendments on the flow of funds to publicly-financed gubernatorial campaigns in the 1993 general election. The regulation became effective on July 19, 1993.

For each of the six 1993 general election public matching fund submissions, the public financing staff calculated a compliance rate for reporting of occupation and employer information. The rate was then considered by the Commission in its determination of certification of public funds. The campaigns demonstrated an average occupation and employer reporting compliance rate of 86.2 percent, a percentage that compared very favorably with the compliance rates for federal candidates reporting under similar federal requirements.

Ballot Statement Program

During each gubernatorial general election, the public financing law requires that the 21 county clerks be provided with the texts of statements prepared by the gubernatorial candidates for inclusion on the general election sample ballots. The number of gubernatorial candidates appearing on the ballot in the 1993 general election was 19. This number was a record when compared to the 14 candidates on the ballot in 1977, 11 in 1981, 7 in 1985, and 6 in 1989, the years in which the Commission processed the ballot statement texts. Statements not to exceed 500 words were timely received from 18 of the 19 gubernatorial general election candidates in 1993. Each statement was professionally translated into Spanish and a camera-ready copy of the English and Spanish texts and was delivered to the 21 county clerks.

The Commission is required by N.J.S.A. 19:44A-37 to reimburse the county clerks for their costs associated with printing and mailing of the gubernatorial ballot statements as part of the sample ballots. The adequacy of the funding available in the Commission budget (approximately \$165,000) to reimburse the counties for costs associated with printing and mailing the 18 gubernatorial statements became the subject of emergent litigation (see Legal Section, p. 22). Nevertheless, the statements were ultimately included in the sample ballots mailed to all voters.

Computerization

With the acquisition during 1993 of more powerful personal computers and new software, the public financing staff was able to create and modify forms for gubernatorial candidates' submissions and campaign reports. The public fund claim forms used by candidates to apply for matching funds (Form P-1 with five schedules) were modified by staff for both the primary and general elections. The campaign report for publicly-financed candidates (Form G-1, with 12 schedules) was completely redesigned for the primary and general elections.

Also, in response to the changes to the Campaign Reporting Act which became effective in April, 1993, the public financing staff, working with the rest of Commission staff, was responsible for the design or revision on the personal computer of forms required by the Commission for use by all candidates. Existing campaign report and continuing political committee forms went through extensive changes. New forms were created to accommodate new provisions of the law. This process saved both money and time by permitting forms to be designed in-house, avoiding the cost and time normally required in having forms designed by an outside printer.

Immediately after enactment of the 1993 Campaign Reporting Act amendments, the public financing staff reviewed the Commission's gubernatorial computer software module to suggest changes required for computerization of occupation and employer data. Approval of funds for modification of the

Commission's public financing software was obtained in late 1993, and design and testing of software changes are under way. The public financing staff has also begun to develop a coding system for contributors' occupations. Staff expects to begin computerization of occupation and employer information for the 1993 publicly-financed campaigns during early 1994.

Future Activity

Preparations were made for public hearings to be conducted on February 15 and March 16, 1994 concerning the 1993 gubernatorial public financing program. The Commission solicited the oral testimony and written comments of all interested individuals to assist in evaluation and improvement of the program for the future.

The public financing staff is also responsible for review of the reports to be filed beginning in March by the 1994 Whitman Inaugural Committee. The reports filed for the inaugural event are monitored for compliance with the \$500 inaugural contribution limit using the same review process applied to contributions to the gubernatorial campaigns. Inaugural contributor and expenditure data will be made available to the public during 1994 in computerized format.

The Commission expects to receive bids and to select a firm to conduct independent audits of the 1993 gubernatorial primary and general election campaigns during the spring of 1994. The Commission has utilized

such audits in the past to provide further review and assurance to the public that 1993 campaign funds were properly spent.

The focus of the public financing staff will therefore shift for 1994 to thorough evaluation of the 1993 gubernatorial public financing program, and planning for the 1997 program. The Commission will examine not only the financial activity of the publicly-financed campaigns but also carefully scrutinize its own procedures and operations. This review will permit the Commission to improve continually the service it offers to the public in New Jersey.

COMPUTER SECTION

The Computer Section is a fundamental part of the management effort at the Commission. It involves two functional areas, data entry and computer/systems operation.

Data Entry

During 1993, the Data Entry staff keyed lobbyist activity data for the quarterly reporting system. It also keyed lobbyist annual financial data from 1992. Summary information on receipts and expenditures for candidates ranging from local elections through State elections was keyed, along with summary financial information on political parties, political committees, and special interest PACs.

In addition to these accomplishments, the Data Entry staff assisted the Gubernatorial Public Financing program with data entry tasks relative to primary and general election submissions. Moreover, the staff undertook a special project for the Deputy Director, keying general election 1987 and 1991 expenditures information into the Lotus program.

Because of staff shortages, the Data Entry staff assisted other sections with telephone coverage, mailings, typing and preparation of compliance request information. Further, late in the year, the data staff assumed responsibility for processing information requests from the public.

Systems Operations

The systems/operations area has responsibility for maintaining the system software for the Prime Information 4050 operating system and the personal computers used by the secretarial staff. It also is charged with the responsibility for upgrading the various systems and enhancing the capacity of the computer to do its job. In 1993, this process was aided in the following ways:

- a users manual for 24 Lobbyist/Agents programs was written and documented;
- personal computer problems were trouble-shooted for ELEC staff;
- a personal computer program for legislative expenditures was designed;
- a Tallgrass TG tape back-up was installed for systems' administrative software;
- several public request programs were written;
- modifications to the Prime software were created to accommodate public finance procedures for the P93 and G93 submissions;
- new compliance forms were added to the Prime software;

- five new DEC personal computers and back-up tape systems were installed;
- special reports were programmed through the Prime Information System, which contained detailed contributor information and summary information in various output format; and,
- tapes and diskettes were produced for the public during the primary and general 1993 elections.

Again, in 1993, the systems operations area made a huge contribution to the Commission's research efforts. In addition to the production of statistical information pertinent to campaigns and elections the section assisted with providing information for use in White Paper Number Nine: Legislative Candidates: How They Spend Their Money.

The responsibility of the Computer Section is to provide support to the users of the system and to provide the public with timely data. During 1993, the Computer Section met this important challenge in outstanding fashion.

ADMINISTRATION SECTION

During 1993, the Administration Section effectively met the increased fiscal and personnel demands of the Commission. An essential part of the agency, Administration provides all management services for the Commission.

Since ELEC is "in but not of" the Department of Law and Public Safety, the Department has no administrative responsibility or control over the Commission.

1. Managing the Budget

In April, 1993, the Legislature passed sweeping campaign finance reform which impacted every section of the Commission. Due to the timing of the law, staff had to quickly prepare a Fact Sheet to educate candidates and the public and revise and prepare forms necessary to comply with the new law. The Commission, at this time, was not appropriated additional funds to accomplish this overwhelming task. However, the Commission, utilizing its available resources, did manage to inform candidates through mailings and through telephone requests for assistance. The Commission, with the combined efforts of the Compliance, Public Financing, Legal and Review and Investigation staff, prepared new forms in-house, thus eliminating the need for outside assistance which in turn kept costs at a manageable level.

In the Appropriation Act for FY 1994, the Commission did receive an additional \$300,000.00. This money has, so far, been utilized to hire four new staff (1 clerk, 1 secretary who has subsequently left the Commission, 1 Report Examiner, and 1 Compliance Officer) and used to pay overtime to staff during the busy general election cycle. The Commission intended to hire three additional staff (1 Report Examiner, 2 Administrative Clerks), however, the hiring freeze of November, 1993, halted that progress. The Commission was also in the process of purchasing additional equipment including a monitor and VCR, an overhead projector, and new telephones for the receptionists. However, these too were blocked due to the equipment freeze.

In 1993, the Compliance Section of the Commission held several information seminars for the public in Trenton. The Commission had the State's Human Resource Development Institute videotape one of these seminars. The Commission intended to use this as a compliance tool, whereby the public could view it in the Commission's public room or borrow it as necessary, thus the need for a monitor and VCR.

The Commission also intended to increase its outreach by planning information seminars throughout the State as it has done in the past. An overhead projector would have been a great help in presenting information to a large audience. ELEC also intended scheduling several evening training seminars in various locations in the State, broadening ELEC's outreach to the public. The Commission also planned to purchase new telephones for its receptionists. The telephones currently in use are at least 10 years old and

are constantly malfunctioning. The Commission did acquire the State's GOVMAIL system this year as a way to reduce some of the telephone traffic which comes through the two receptionists. However, the volume of telephone calls is never-ending. New telephone consoles would allow for easier transferring of calls thus increasing the speed by which calls are answered. ELEC receptionists respond to over 100 calls a day, 80 percent of which are calls from the public for filing assistance.

The Commission anticipates being able to spend all of the additional \$300,000.00 it was appropriated this year when it becomes available.

Other Activities

The Administrative staff of the Commission faced new challenges in FY 1994. The new New Jersey Comprehensive Fiscal Systems (NCFS) system, which replaced the old New Jersey Fiscal Information System (NJFIS), was implemented. With only two staff members in this area (the Director and Fiscal Officer), this change involved many hours of training and revising of procedures. Learning the new system is a difficult task which has hampered the processing of bills and other fiscal documents. However, the Administration Section has been able to respond well to the change and continues to learn what is required.

The Administrative staff (the Director and Personnel Officer) processed over 3,000 legislative agent reports in FY 1993. This included

quarterly reports, Notice of Representation, Notices of Termination, and client and address changes, additions, and deletions. In addition, over 500 badges were prepared and sent to legislative agents. This additional task, assumed by the Commission in 1992, takes up at least 30 percent of staff time. ELEC's receptionists are also required to maintain a separate ledger to record the annual legislative agent fees which are collected by the Commission. This task, which usually reaches its height in July and August, takes a tremendous amount of staff time. The Commission, which is allowed to keep the revenue from these fees, needs additional clerks to help with this task. Eventually, ELEC expects to be able to hire two additional clerks to assist not only with this bookkeeping function but also with responding to public requests for information more efficiently.

Looking Forward

The Commission's operating budget for FY 1995 is anticipated to be \$1,225,000.00. This falls short of the Commission's historic high of \$1,255,000.00 in FY 1989. In 1994, the Commission is planning to work with the Office of Telecommunications Services (OTIS) in preparing a report on its computer and other office automation needs. The Commission may request a supplemental appropriation sometime in FY 1995 based on these recommendations.

1993 and 1994 BUDGET OVERVIEW

In FY 1994, the Commission was appropriated an additional \$300,000 which was placed in the salary account. In FY 1995, the Commission anticipates an appropriation of \$1,225,000 based on our Direct State Services target from OMB.

COMPARISON OF FISCAL YEARS 1993 AND 1994 APPROPRIATIONS

	<u>FY 1993</u> <u>Appropriation</u>	<u>FY 1994</u> <u>Appropriation</u>
Personnel	\$ 805,000	\$1,068,000
Printing & Supplies	21,000	21,000
Travel	0	0
Telephone	17,000	17,000
Postage	19,000	19,000
Data Processing	34,000	34,000
Professional Services	33,000	33,000
Other Services	0	0
OTIS	5,000	5,000
Maintenance/Equipment	1,000	1,000
Central Motor Pool	0	0
Furniture/Equipment	0	0
Commissioner Per Diem	<u>15,000</u>	<u>15,000</u>
Total Operational	\$ 950,000 *	\$1,213,000 **
Public Financing Administration	\$ 430,000	565,000
Gubernatorial Public Financing	\$12,500,000	\$7,800,000

* In FY 1993, \$55,000 was taken from the ELEC budget due to an Interdepartmental Assessment. This amount was removed from the salary account.

** At this time, ELEC is unaware of its full share of the interdepartmental assessment it will be charged for FY 1994. The share for attrition has been calculated by OMB as \$21,000. Thus, ELEC's actual budget for FY 1994, at this time, is \$1,192,000.

1993 Evaluation Data

Disclosure Reports (Total)	25,031
Campaign & Quarterly	21,441
Lobbyist	3,296
Personal Finance	294
Photocopies	238,916
Investigations	17
Civil Prosecutions	206
Public Assistance Requests	14,867
Fine Collection	\$ 35,452
Lobbying Annual Fees	\$124,100