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REPORT
ON
THE OREGON GOVERNMENT
ETHICS COMMISSION

The Committee: Richard P. Hutchison, Joy Kary, Katherine H. O'Neil, Robert L. Weil,
L. Ramsay Weil, Morton A. Winkel, and Paul S. Wilson, Chairman.

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arouse in them a realization of the obligation of citizenship."
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REPORT ON
THE OREGON GOVERNMENT ETHICS COMMISSION

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

A. The Charge

In June of 1981, you approved the formation of a Study Committee with the following charge:

"A Committee should undertake a short-range study of the Oregon Ethics Commission with the following focus:

"a. Review the reasons for establishing the Ethics Commission;
"b. Review the Commission's statutory duties and responsibilities and evaluate whether there is an overlap of the Commission's statutory powers with those of other state agencies (e.g., Attorney General's office, Secretary of State's office, etc.);
"c. Determine if the statutory provisions implement the original intent in establishing the Ethics Commission;
"d. Discuss and evaluate the current effectiveness of the Commission;
"e. Based on the above, evaluate whether change in the Commission's operating efficiency, funding level, jurisdiction, statutory responsibilities, or its existence is necessary, and if so, make appropriate recommendations."

B. Method of Study

Your Committee studied the Oregon Government Ethics Commission (the Commission) from August 1981 through July 1982. We reviewed the legislative history of Oregon's ethics laws, the Commission's performance, the law and practice of State agencies with related authority, and proposals for change. (Sources are listed in Appendix A: Bibliography,) We were unable to measure the effectiveness of the Commission quantitatively, in large part because there are not simple criteria for judging its performance. We could not discern, for example, a "7.5 percent improvement" in the ethical conduct of public officials. We believe that subjective perceptions of agency performance are both vital and valid.

As a result, we relied largely on the views of many Oregonians with special knowledge or experience related to the Commission. We elicited their opinions and reactions through structured interviews. The input we received from these witnesses is important in itself, and salient portions are reported in the discussion of each topic in this report. Witnesses included current and past Commission members, the Commission's Executive Director, legislators, lobbyists, members of the press, scholars, members of the executive branch, persons investigated by the Commission, and local officials. We tried to achieve an overall balance in several respects -- relationship to the Commission, party affiliation, political philosophy -- as well as to reach those who have advanced specific proposals for change. Our purpose was to identify strengths, weaknesses, and remedies on which there was at least some consensus. Appendix B lists those interviewed.
Our approach in evaluating the information presented by witnesses and in developing conclusions about the questions in the charge was first to establish a basic understanding of the existing system of ethics regulation and then to draw general conclusions about the need for and function of the state ethics laws. We then evaluated the effectiveness of Oregon's ethics laws in meeting these needs. Finally, we identified and discussed means of improving the system.

During the study, we produced research monographs on topics including related laws, systems in other states, legislative history and existing proposals for change. These are cited in footnotes in this report and are on file at the City Club office.

Interest in the Commission was high during the study. Similar reviews were being undertaken at about the same time by Oregon Common Cause and a Task Force of the legislature's Joint Interim Judiciary Committee. The recommendations of the legislative Task Force crystallized in August and September of 1982 and are not addressed in this report.

C. Scope of Study

We did not define ethics or ethical conduct in a philosophical sense. We studied what a state and its citizens can do to encourage public officials to conform their behavior to statutorily prescribed norms.

The citizens of Oregon attempt to shape the conduct of their public officials in many ways. However, we limited our study to the functions of the Commission. To understand these functions, we considered related programs, including the role of the state Attorney General in investigating official misconduct, regulation of campaign finance under the Secretary of State, and relevant criminal sanctions.

II. BACKGROUND

A. The Present System

The Commission is an independent state agency. It has primary, but not exclusive, responsibility for regulating the behavior of Oregon's public officials and lobbyists.

The Commission is charged with:

1. Overseeing compliance with a statutory Code of Ethics for Public Officials and a list of prohibited conduct for lobbyists;

2. Administering several mechanisms for disclosing potential or actual conflicts of interest, including:
   a. statutory requirements that public officials state publicly when they have conflicts of interest, and in some limited cases disqualify themselves from acting,
   b. a system of reporting financial interests by state officials and some local officials through annual Statements of Economic Interest (SEIs), and

1 The Task Force report was submitted to and adopted by the Interim Committee on November 5, 1982. The specific Task Force recommendations differ from those in this report, but there is remarkable concurrence in the results of the two independent studies.
c. a system of registration and expense reporting by legislative lobbyists; and

3. Receiving, investigating and adjudicating complaints of official and lobbyist impropriety in either engaging in prohibited conduct, or failing to provide information to the public appropriately.

Oregon has a great number of laws and rules on matters which could be considered "ethical." Important laws not administered by the Commission include:

- A system of campaign finance disclosure, administered by the Secretary of State;
- Public meeting and public records statutes, enforced by civil suits brought by citizens;
- Public contracting laws, administered by several state agencies and each local jurisdiction; and
- Criminal laws, administered by the Attorney General and local prosecutors.

The behavior of public officials and lobbyists is also shaped by public and peer pressure to conform to various norms. Some of these pressures are institutionalized in voluntary organizations such as the Capitol Club, an association of lobbyists with its own disciplinary process. Public pressure is also focused through citizen "watchdog" groups such as Common Cause.

B. Oregon's Part-time Public Officials

The laws administered by the Commission apply to several thousand public officials, many of whom serve part-time, frequently with little or no compensation.

Although public officials are most commonly thought of as state legislators or agency directors, many people subject to state ethics laws serve in local governments and on various state boards and commissions. Citizens seek to attract the most qualified of their number to serve in public office on a part-time basis, but ask them to leave their personal and business interests behind when they are making public decisions. These citizen-officials are required to distinguish between their private and public roles. Since many officials serve part-time, the rapid changing-of-hats can be demanding. This is particularly so because officials are often selected due to their prior experience or interest in the subject matter of their office. Many officials thus have inherent role conflicts, such as the realtor who serves as a planning commissioner and the educator who serves in the legislature.

C. Post-Watergate Catharsis: Legislative Origins of the Commission

Although there have been limited attempts at ethics legislation since the 1950s, the events surrounding Watergate at the national level in the early 1970s raised questions about the ethical standards of public offi-

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2 Many of these are enumerated in the Committee research monograph on "Other Laws, Agencies and Programs Regulating Ethics."

3 The Committee's research monograph on "Origins and Legislative History of the Commission" contains a more detailed summary.
Common Cause developed model legislation including provisions for an independent ethics commission, disclosure of economic interests by public officials, campaign finance reporting, lobby registration and expense reporting, a code of ethics for public officials, and declaration of conflicts of interest. At about the same time, laws designed to open the political process to public scrutiny, including open-meetings laws and freedom of information acts, were passed by many states. Oregon's Public Records and Public Meetings laws were enacted in 1973.

The 1973 session of the Oregon legislature passed a conflict of interest bill which was vetoed by then-Governor Tom McCall as unconstitutionally vague and haphazard in its application. The Governor appointed a citizen task force to draft a new bill for submission to the 1974 special session of the legislature. The task force held public hearings beginning in August, 1973, and submitted a bill to the Governor in late November, 1973.

The transcript of the testimony at these hearings reflects the conflicts previously discussed. Openness was to be preserved but not at the expense of making public service so onerous that citizen participation would be discouraged. Typical of the comments of witnesses at these hearings was that of then-Secretary of State Clay Myers expressing his support for state ethics legislation:

"At stake is a basic principle of citizens' confidence in government. To allay the fear of citizens, it is important not only that there be propriety, but also the appearance of propriety."

National events at the time had tarnished the widely-held image of the selfless public official. Task Force Chairman Paul Bragdon offered the following comment in transmitting the committee's bill to the Governor:

"In carrying out this assignment, the Committee could not help but note the dismaying general suspicion of government and governmental officials abroad in the land today as evidenced by opinion surveys and everyday conversations."

There was no particular scandal in Oregon at the time the law was passed. The rising level of suspicion and outrage on the national level appears, therefore, to have been the impetus for more specific ethics legislation. Witnesses stated that Common Cause's nationwide effort to encourage revamping of ethics legislation was also a major factor.

With other states acting and Oregon citizens concerned, the legislature passed a package of ethics laws in 1974. The legislation was referred to the voters.

The citizens overwhelmingly approved the Oregon ethics legislation on November 5, 1974 by a vote of 489,002 to 177,946. A total of 90 local jurisdictions chose in the referendum to exempt their officials from the provisions of the law requiring the filing of Statements of Economic Interest, although these officials are subject to all other ethics law requirements.

The Commission was formed and began its operations in 1975.
III. DISCUSSION AND CONCLUSIONS

A. Anatomy of Oregon's Ethics Laws

1. The Regulatory System: A Mix of Prohibitions and Disclosure Requirements

The present statutory system combines two ways of shaping behavior: prohibition, in a Code of Ethics for public officials and a statutory list of prohibited behavior for lobbyists, and disclosure requirements, in conflict-of-interest requirements, Statements of Economic Interest (SEIs), and lobbyist registration and reporting. They are administered differently and have different sanctions for transgression.

By prohibiting certain behavior, the public describes how officials ought not to act. The Commission, in adjudicating complaints of prohibited conduct, investigates the behavior itself, and judges whether it meets set standards. If a prohibition has been violated, the Commission can impose financial penalties and other sanctions.

Disclosure requirements allow the public to make judgments about the motivation for decisions by their officials. Disclosure requirements lead to judging at two levels. First, if an official has failed to make a required disclosure in a timely or appropriate fashion, the Commission can impose sanctions. Second, following proper disclosure, the electorate has the opportunity to judge the effect of information disclosed.

Several witnesses reported that the present mixture of techniques is a product of the cutting and pasting of ideas in the prolonged political process that shaped the measure referred to the voters.

Committee witnesses did not find any inherent flaw in using a mixture of prohibition and disclosure. Rather, reforms were suggested. Some lobbyists, for example, suggested that the present registration and reporting system was ineffectual in securing disclosure of expenditures, but they did not propose eliminating it. The one witness who suggested that the Commission might have outlived its usefulness nevertheless felt that some civil adjudicatory system is appropriate. The changes that have been formally proposed seek to correct anomalies and clarify ambiguities in the current laws rather than to shift the type of regulation in any fundamental way; these proposed changes are discussed topically below.

Several witnesses did suggest that the present system carries an implicit mistrust of public officials and lobbyists, and wished for both a more affirmative tone in the law and more guidance for officials to decide what is appropriate.

Conclusions

The combination of prohibiting certain behaviors and requiring disclosure is reasonable, but we believe there is a need to tell public officials more clearly how the public expects them to behave. Expansion of the educational role of the Ethics Commission and its staff is further discussed in Section E., Education, below.

2. Agency Structure

The Commission is composed of seven appointed members. The Governor
appoints three members. Each party in each house of the Legislative Assembly appoints one member apiece. Members of the Commission serve single four-year terms and are not paid, although they are reimbursed for out-of-pocket expenses. A Commission member may not hold any other public office subject to Commission jurisdiction. The Commission's chief administrator is the Executive Director, who serves at its pleasure. In addition, the Commission has two full-time clerical staff. The Commission does not have staff investigators; it contracts for investigation or uses student interns.

Witnesses told us that the intent of the current appointment process is to prevent accusations of political motivation or favoritism in Commission actions by clearly creating a bipartisan membership appointed by both the executive and legislative branches of government. Some witnesses commented that the current appointment process results in Commission members not being accountable to the electorate.

Witnesses testified that the current appointment process results in the appointment of politically active individuals who are likely to know persons who will be investigated by the Commission. Many campaign workers and defeated legislators have served on the Commission. One person investigated by the Commission was faced by a prior political opponent then sitting on the Commission. Witnesses, including members of the press and persons investigated by the Commission, stated that Commission actions have been colored by longstanding relationships between persons under Commission investigation and Commission members. Several witnesses testified that it is understood by members appointed by the party caucuses that enthusiastic investigations of legislators are not desirable. We were told that very recent appointments to the Commission included individuals less active in politics, apparently a reaction of legislative leaders to criticism of prior appointments.

Witnesses seemed content with the number of commission members and the length of their term. Generally, witnesses were satisfied with administration by an Executive Director, although several suggested that someone on the staff, not necessarily the Executive Director, should have legal training.

We were told that most of the current staff activity now centers on processing paperwork, enforcing compliance with the mechanics of reporting, and answering questions about the requirements of the ethics laws.

Conclusions

The current appointment process has led to Commission membership dominated by persons active in the political process. Recent appointments show some broadening. The essentially political appointment process has led to a belief that the Commission operates along political lines. This belief weakens the credibility of the Commission and of the ethics laws.

We believe the current appointment process tends to result in selection of members who are suspect because of political ties, precisely the taint sought to be avoided in the present law. To strengthen the credibility of the Commission and of the ethics laws, we conclude that the Commission should include citizens drawn from many vocations and avocations.

Commission members should be appointed by the Governor in order to avoid the current politicization and make a single official, directly ac-
countable to a statewide electorate, responsible for the quality of the Commission. These appointments should be confirmed by the Senate to insure that Commission members have extraordinary credibility.

3. Jurisdiction

The Commission regulates public officials and lobbyists.

A "public official" is defined to include members of the legislative, executive and judicial branches of state and local government - paid and unpaid.4

All public officials must abide by a Code of Ethics (see Appendix C). Certain sections of that code also apply to candidates for public office.

In addition, most elected and appointed officials of state and local government must file a "verified statement of economic interest" (SEI) annually with the Commission (see Appendix D). Those officials in jurisdictions which chose not to impose this obligation on their officials at the time the Act was adopted are not required to file.5

Many more people are governed by the Code of Ethics than are required to file SEIs. All state and local government employees and agents are bound by the Code. Only persons specifically listed in the statute must file SEIs.

The Commission also regulates both paid and unpaid lobbyists. The definition of lobbyist is broad. A lobbyist is an individual who engages in lobbying, i.e., "influencing, or attempting to influence legislative action." Included are lobbyists who are public officials. The statute does not apply to citizens who testify at public hearings or spend only a few hours lobbying.

Lobbyists are required to register with the Commission and to file monthly expense reports. Their employers must file annual expense reports. The Commission enforces the filing requirements and a code of behavior prescribed for lobbyists.

The dominant view among witnesses who appeared before us was that it is desirable to have a single independent body to administer ethics laws. Witnesses cited the importance of having a single place and process to register citizen complaints. One of the principal functions of the ethics laws, we were told, is to give citizens confidence in their officials and government, and a ready avenue for redress of impropriety.

During this study, simultaneous investigations of then-Senator Richard Groener by the Commission and the Attorney General raised a concern that there is an overlap of functions between the two agencies. Witnesses testified that the ethics investigation was hampered by the Commission's ina-

4 A public official is: "*** any person who is serving in a governmental capacity for the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services." ORS 244.020(a).

5 Officials in both the City of Portland and Multnomah County are required to file.
bility to use information gained during the Attorney General's confidential criminal investigation, and that the criminal investigation was frustrated by the open nature of the ethics investigation. Witnesses also indicated that an overlap of this sort is not frequent.

Other witnesses stated that efficiency required the reallocation of the functions of the Commission to other state agencies. One proposal would place the investigative functions of the Commission in the office of the Attorney General and the record-keeping functions in the office of the Secretary of State.

Two advantages were cited for giving the Attorney General authority to conduct all investigations of alleged ethics violations. First, the Attorney General has a staff experienced in investigation. Second, the legislature is more likely to fund investigations by the Attorney General than by the Commission. The present Attorney General stated that the function is an appropriate one for the Attorney General's office.

Two reasons were cited for transferring record-keeping functions to the Secretary of State. First, the Secretary of State has better access to a computer. Second, the process is similar to campaign finance record-keeping, currently under that office's jurisdiction. The Secretary of State's office took no position on the proposal during the last legislative session or before your Committee.

Several witnesses reminded us that Oregon's voters established the Commission as an independent, non-partisan agency. They suggested that transfer of any function to an elected state official would impair the independence of the Commission.

Conclusions

We found no major duplication of effort among the offices of the Attorney General, the Secretary of State and the Commission. We conclude that a single non-partisan agency with responsibility for record-keeping and an accessible complaint mechanism is essential to administer the ethics laws properly. The Commission should maintain an autonomous role in investigating and prosecuting complaints within its statutory responsibility. We believe that computerization of records should be analyzed as a separate operational question by the responsible agencies.

B. Prohibitions; Public Officials (The Code of Ethics) and Lobbyists

The current law contains two prohibitive sections.

The Code of Ethics, for all public officials, prohibits:

1. use of public office for private gain, whether financial or future employment, directly or through the use of confidential information or position; and

6 This concept was mentioned by several witnesses, but is most clearly embodied in SB 389 of the 1981 legislative session, a bill sponsored by Senator L.B. Day which was the product of an ad hoc group of active citizens and officials who studied the Commission. The bill was not passed.
2. solicitation, offer, or receipt of gifts worth more than $100 in the aggregate over a period of a year between an official or candidate and any source with any interest affected by the office.

The Code of Ethics is reprinted as Appendix C.

Lobbyists may not engage in the following "prohibited conduct":

1. instigating proposed legislation in order to lobby against it;
2. lying to an official, orally or in print;
3. charging lobbying fees contingent upon success;
4. soliciting, offering, tendering, or receiving campaign contributions during the legislative session, or promising support or threatening financial opposition at a future election.

Additionally, legislative and executive officials may lobby for the state, but may not engage in other paid lobbying.

We were told that most officials and lobbyists are aware of the Code and its provisions. Legislators, local officials, and employees of state and local government do call the Commission for opinions on whether particular courses of action are within the Code.

Those who testified about the lobbying process told us that the primary constraint on lobbyists' behavior is an informal sense of what is and is not done. This is enforced by informal but powerful peer pressure, as opposed to fear of Commission sanction. The Capitol Club complaint process was cited as also playing a role in setting and enforcing standards of behavior for lobbyists.

Some witnesses pointed out that the prohibitions of the ethics laws do not remove all financial pressures from the political arena because the financing of campaigns is a major facet of political life. Favors can be granted in the present with the anticipation of campaign contributions in the future.

It is difficult to measure the extent to which prohibitions have changed behavior, but many people believed that the laws have a positive impact in that they assist those who are attempting to act ethically by visibly supporting their position. In addition, the Code removes the pressures and temptations which might exist in the absence of legislative standards.

Witnesses said the prohibitions should be maintained. However, we heard a number of complaints regarding the vagueness of some terminology in the Code and the lack of specific regulations. Clarification of the relationship between the ethics prohibitions and criminal statutes was seen as a high priority by the Attorney General and some legislators.

Common Cause and some other witnesses believed that the lobbyist regulations should more clearly state that the prohibitions apply to lobbyist dealings with the executive as well as the legislative branch of government.

Several witnesses said that representatives of interest groups shape the policies of state administrative agencies by advocating their positions through routine visits and meetings with agency officials, and by drafting rules and guidelines for state agencies—in short, lobbying. They said
that administrative agency policies are substantially shaped by this lobbying.

Some witnesses believed that the Code of Ethics did not go far enough and that the prohibitions should be more stringent. Others felt that the statute was comprehensive enough but were disturbed by practices which they believed violated the intent if not the letter of the law.

For example, we were told that some legislators tend to view their office as including perquisites such as free tickets to sporting events and free lunches during the session. Others felt that these benefits were inappropriate although not specifically prohibited by law. This difference in interpretation is due in part to a conflict within the Code of Ethics. The Code provides that gifts of less than $100 in any year are acceptable but that public office should not be utilized for personal gain. A number of witnesses commented on this anomaly. This area is further confused by lobbyist expense reporting requirements, which mandate reporting of any expenditure of more than $38 on an official on any one occasion (see Section C., Disclosure Requirements).

Witnesses familiar with the legislative history said that the $100 gift limitation was set as a nominal limitation, unlikely to be sufficient to actually bias an official, but sufficient to allow several meals and drinks over the course of a year. Most witnesses we interviewed agreed that payments of any kind to officials by parties with an interest in their official business were not intended to be condoned; some felt that cumulative entertainment expenses were not intended to be included in the definition of "gifts."

Witnesses said that tabulating and assigning a dollar value to accumulating gratuities makes this provision difficult to comply with as well as difficult to enforce. Lobbyists, legislators, and observers told us that this $100 limit on gifts per year is simply ignored by many officials.

The Attorney General has called for a legislative clarification of the term "private gain." Common Cause urges that the receipt of gifts of any amount, and in any form, be prohibited. Senate Bill 389 proposed that the gift prohibition be eliminated but that officials be required to disclose all amounts received. None of these proposals attempted a further definition of "gift."

Witnesses who suggested that gifts be prohibited believed that such a policy is consistent with the more stringent standard voters set for public officials. They thought that private sector norms, where gratuities in the form of meals and entertainment are freely exchanged, were not acceptable public sector norms. Gifts, particularly entertainment, give the donor improved entre to public officials. Some witnesses felt that a total prohibition would be more easily enforceable than present standards which require proof of the value of all gifts received from a source during the year. Prohibiting gifts would also eliminate the problem of drawing a line about what is and is not an appropriate expenditure (or gift). It would eliminate the appearance of impropriety that arises from allowing officials to receive gifts of any amount.

Some witnesses felt that a total prohibition on gifts would require very clear definitions to distinguish prohibited gifts from gifts from per-

7 "Gift" is currently defined by statute (see Appendix E).
They pointed out that the current statutes accomplish this by prohibiting gifts only from persons who could reasonably be known to have an interest in the official's agency, and by defining "gifts" to exclude gifts from relatives. Other witnesses, particularly lobbyists, suggested that a no-gifts policy is naive because exchange of gratuities, such as meals, is very common outside of government. These witnesses feared that prohibiting gifts could lead to complaints and possible sanctions as a result of the receipt of a cup of coffee or an official borrowing his neighbor's lawnmower.

Witnesses noted that public officials frequently develop long-term friendships with other officials and lobbyists but several officials who testified said that it is not hard to decide whether a gratuity would have been extended were the recipient not a public official.

**Conclusions**

The Code of Ethics and the lobbyist prohibitions serve important roles in establishing standards of behavior and generally should be retained.

Lobbying activities directed at the Executive branch present the same opportunities for improper influencing of the government decision-making process as legislative lobbying. Administrative agency lobbying has had at least as much impact on the public as legislative lobbying, and should be subject to analogous regulation.

The Code of Ethics effectively legitimates gifts of up to $100 per year to public officials. We believe that gifts to public officials, including meals and entertainment, create an appearance of impropriety regardless of any dollar limit imposed by the legislature. The public's confidence in the government process would be enhanced by enacting an outright prohibition rather than continuing the practice of allowing gifts. The voters, by an overwhelming margin, adopted a Code of Ethics whose central tenet is that there should not be private gain from public office. Voters expect public officials to be above reproach.

Lobbyists contribute to the governmental process by providing important information and drafting skills. We do not intend to discourage communication between public officials and lobbyists, but it should cause neither unfair advantage nor any appearance of impropriety.

We conclude that no gifts to public officials should be permitted under the Code of Ethics (except those based solely on personal or family relationships).

**C. Disclosure Requirements**

1. **Disclosure of Potential Conflicts of Interest**

Oregon ethics legislation requires that subject officials inform the public of "potential conflicts of interest." "Potential conflict of interest" is defined as "any transaction where a person acting in a capacity as a public official takes any action or makes any decision or recommendation, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person's household..." A member of the household means "the spouse of the public official and any children of either who reside with the public official."
The ethics laws require that House and Senate members must announce publicly, according to the rules of each body, the nature of the conflict before voting on the issue giving rise to the conflict. Other elected officials, as well as members of boards or commissions, must announce the nature of their conflict before taking any action. Judges must step aside or advise the parties of the nature of the conflict. Appointed officials must give written notice of the nature of the conflict to the appointing authority who is to direct the appointee in his or her further action, or designate an alternate. Under separate statutes, local planning commission members are prohibited from participating in proceedings in which they, or family or business associates, have "a direct or substantial financial interest."

No action of a public body may be voided by a court solely because of failure of the official to disclose a conflict, however.

The principle that conflicts should be disclosed met with no dissent from witnesses interviewed during our investigation. However, application of the rules has caused considerable concern.

We were told that public officials have experienced great difficulty in deciding both whether they have potential conflicts and when or if they should disclose them. We also heard complaints that state legislators do not declare conflicts as they should. The law does not require a public official to announce a conflict more than once "on the occasion on which the matter out of which the potential conflict arises is discussed or debated." The 1981 House had no rule on when and how conflicts should be disclosed. The Senate rule required announcement of the nature of the conflict before casting a vote. We were told that there is no attempt to enforce the Senate rule, and that members who did comply frequently announced the conflict without disclosing the nature in any meaningful detail, and did not do so each time they voted on the same issue.

The Commission and the Oregon Attorney General have described a "tension" between the declaration of conflict provisions, which suggest that no violation can be found if a conflict has been declared, and the Code of Ethics, which prohibits the use of public office for personal gain.

In an attempt to clarify these issues, House Bill 2369, 1981 Regular Session, Oregon Legislative Assembly, was introduced at the request of the Commission. Among several proposals, the bill called for two changes in the law relating to conflicts of interest: an amendment emphasizing that declaring a conflict of interest does not permit an official to use public office for private gain; and an amendment to include in the definition of potential conflict of interest, actions to the private pecuniary benefit of "a business with which the person or a member of the person's household is associated." These two provisions were not enacted.

Oregon Common Cause has proposed that officials should not be allowed to vote on issues on which they have conflicts. Common Cause has also proposed that the law be clarified to require that conflicts must be disclosed at the earliest possible point.

As an example of the ambiguity in whether a conflict exists, an incident during the 1981 Legislative Assembly revealed that although a variety of business relationships have been described as giving rise to potential conflicts, the relationship between a shareholder and a closely-held business in which he or she holds stock has not been expressly provided for.
A provision which prohibits elected officials from voting, we were informed, would raise potential constitutional conflicts, because it would deprive citizens of the right to be represented by their chosen official due to circumstances outside of the citizens' control. Some witnesses said that since Oregon relies on "citizen-officials," it would be inconsistent to disqualify officials from participating since their participation frequently derives from an interest in the issues being considered.

Conclusions

We disagree with the policy implications of the Common Cause proposal that elected officials be prohibited from voting in cases of conflict of interest. Theoretically, at least, an informed public elects officials with knowledge of their outside interests. It seems inconsistent to us to disqualify elected officials from participating in the process because of these interests.

Public officials, whether elected or appointed, are themselves in the best position to determine whether a potential conflict of interest is enough to preclude their fair consideration of a matter. If it is, they can abstain from participation. We believe that retrospective scrutiny by the public of such determinations is a sufficient incentive.

We believe that the Commission proposals are meritorious. The proposed amendments make clear the primacy of the Code of Ethics and close a loophole which presently allows officials to conceal potential conflicts relating to personal or family businesses.

The present system is inadequate to disclose existence of a potential conflict of interest. We think the purposes of the disclosure provisions would be fully served if officials were required to announce the potential conflict at each public meeting when the subject matter arises. Otherwise, a significant possibility exists that members of the public may attend the session of a public body without ever being aware that a member previously has announced a potential conflict with regard to the pending matter. In order that the public be fully informed, the disclosure should be in sufficient detail to allow the public to make a judgment on the public official's actions. Practices which fall short of these guidelines are ineffective and unacceptable.

2. Filing of Statements of Economic Interest (SEIs)

A Statement of Economic Interest must be filed annually by most state elected and appointed public officials, certain local officials and candidates for certain public offices. The same form is completed by all. Local officials in 90 jurisdictions which voted in 1974 not to require their officials to file are excluded, as are pro tem judges. Approximately 7,000 persons filed SEIs with the Commission in the 1979-81 biennium. The SEI must be filed on or before April 15th of each year. All items on the report must be completed in the initial filing. Subsequent annual filings need only indicate changes from the initial report. SEIs require listing of various sources of income and property interest, but without specific dollar amounts. The reporting official judges, in part, whether to report

9 A review of other states' disclosure requirements indicates that only five states require disclosure of the dollar value of interests held. See Committee research monograph comparing Oregon's system with other states.
Income, assets, and business relationships. A sample of the statement is included as Appendix D.

Witnesses told us that the SEIs serve two basic purposes:

1. to deter public officials who might otherwise allow personal financial interests to affect their decision-making; and

2. to enable citizens, including the media, to be aware of potential conflicts of interest and of possible outside influences on the actions of public officials.

Some witnesses felt that the information contained in the SEI was not useful since dollar amounts are not provided in the forms. Others said that campaign funding sources make better press and are a more revealing indicator of economic influence on officials.

Some said that the SEIs should require disclosure of all assets and sources of income because there was a perception that officials would not necessarily be able to separate areas of potential conflict from innocuous areas.

Some witnesses believe that the potential for public scrutiny should not be relied on to insure accurate reporting. They suggested that the SEIs should be subjected to a random audit. The call for random audits of filed reports is included in the Common Cause proposal for changes in the ethics system.

The Commission’s Executive Director said that the Commission does not have the staff to undertake an audit. The cost of such a program was seen by many as a major barrier to its adoption. Witnesses also raised the corollary issue of what material would be used to verify the information entered on the SEIs.

Some witnesses urged varying the disclosure requirements to fit the position, believing that some positions were more susceptible to particular types of conflicts than others. Variable disclosure requirements are utilized by some other states and were recommended by the citizens task force in the original draft of Oregon’s ethics legislation.

Other witnesses felt that requiring more detail or differential disclosure may just make the system more confusing. Several witnesses believed that errors in completing the SEIs are evidence that SEIs are a trap for the careless or uninformed rather than evidence of duplicity. Many witnesses, including the Commission’s Executive Director, urged that the terminology now used in the SEI be clarified. The Commission staff informed us that a high proportion of their contacts were from officials seeking advice in completing the SEI.

The staff of the Commission tabulates the receipt of SEIs in order to identify nonfilers and reviews the reports to see that each item has some response. The reports are available for public inspection upon request at the Commission office in Salem. However, most witnesses agreed that the reports are utilized mainly by the press and political opponents after an issue has been raised.

Witnesses who had utilized SEIs to investigate influence stated that the retrieval of information was time-consuming, particularly since they
are available only in Salem. Many persons expressed interest in establishing some form of tabulation which would make utilization easier. However, since figures are not included in the statements, the number and type of items listed on each statement vary. Design of a tabulation system appears to be difficult. A few witnesses predicted that the cost of such a system would outweigh its benefits.

The statutory penalty for failure to file a SEI is a fine. In addition, a public official (except a judge) who refuses to file may be barred from beginning or continuing to exercise official duties until he or she complies. The compensation of a salaried official who fails to file may be terminated. A candidate who fails to comply with the disclosure requirements may have his or her name removed from the ballot. The Commission has assessed civil penalties for delinquent filing, but no official has been barred from taking or maintaining his or her position.

A few witnesses saw the SEIs as an invasion of privacy and therefore a barrier to public service. These witnesses believed that any demand for more detail would add to the inhibitions against citizen involvement in the governmental process.

The local and state government appointments coordinators we contacted stated that the disclosure requirements were not cited as a reason by prospective appointees for refusing positions and that there were many capable citizens willing to participate in government. They also said that the financial information required to be submitted to the appointing authorities often is more detailed than that required by the SEIs.

Conclusions

We believe that the statutory requirement for filing SEIs should be retained. The SEI serves as an educational tool by requiring public officials to contemplate at least once a year how their personal interests may affect their ability to serve the public. We conclude that requiring the completion of SEIs is not an obstacle to public service.

Officials should be required to complete the entire Statement at each filing, rather than only those items which have changed, in order to assure annual consideration by the official of potential conflicts, and to improve access to that information by making it available on a single form.

The current SEI form fulfills its purposes. We do not believe that an increase in required detail in the report would make the SEIs more effective.

The format and questions on the forms is less an issue than is public access to the information. We believe that copies of the SEI should be available to the public within the local jurisdiction which an official serves, in addition to Salem.

An investment of time and funds to specifically identify and remedy the problems which users have had in gathering meaningful data from the reports seems warranted to us. An effort should be made to make the retrieval of information as simple as possible.

3. Lobbyist Registration and Reporting

Lobbyists are required to register with the Commission. More than 1200
lobbyists registered in 1979-81. Statements of funds expended in lobbying are required to be filed monthly. These statements report the total expenditures by various categories and the names of recipients of amounts in excess of $38 on any one occasion.10 A description of the nature of the activity giving rise to such expenditure is also required. Annual reports of total funds expended in lobbying are required of employers of lobbyists. All statements filed by lobbyists are available for public inspection.

Both paid and unpaid lobbyists are subject to the registration and filing requirements. The following persons are specifically exempted: news media representatives, legislative officials acting in their official capacity, uncompensated lobbyists whose appearances are limited to formal testimony, and individuals who spend no more than 16 hours and $50 in lobbying activities in any calendar quarter.

The Commission has the authority to levy civil penalties up to $250 for individuals violating any provisions of the statutes regulating lobbyists. A penalty of up to $1,000 can be assessed for a violation by corporations and associations.

Lobbyists generally asserted that the disclosure requirements were of little value. One expressed the sentiment that such rules catch the unsuspecting, not the cheater. Others identified the following problem areas:

- the difficulty of defining when one was lobbying;
- the ease of circumventing the expenditure limits;
- the questions raised by threshold gift limitations; and
- the dilemma faced by a lobbyist dealing with friends of years-standing.

Both lobbyists and other observers raised serious doubts as to the usefulness of information submitted. Some witnesses urged a tabulation of information gathered and a positive system of auditing, as discussed in Section C, SEIs. All conceded that the cost of such procedures was a major problem. One suggested the formation of a public group to review the files as a means of reducing dependence on the media to search for possible violations. Some witnesses saw the reporting of campaign contributions by candidates as a far better indicator of "influence" than lobbyist expenditure reporting.

Witnesses generally agreed that media representatives were the primary users of the reports of lobbyists, but that only when a tip was received did the media actually study the files.

Almost without exception witnesses felt that paid lobbyists could easily meet any reporting requirements.

A lack of detail in reporting of expenditures was noted by witnesses. Except for single expenditures in excess of $38, there is no requirement that the purpose be identified. It is not currently possible to relate expenditures to issues advocated. The Commission and Common Cause have called for legislation clarifying that "umbrella organizations"11 be re-

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10 Beginning July 1, 1979, the statutory amount of $25 was inflated annually using the Consumer Price Index.

11 An umbrella organization is a lobbying organization, such as a trade association, which lobbies on behalf of several businesses or associations.
quired to report the identity of their members and their specific contributions to the cost of the total lobbying effort.

Other witnesses called attention to the value of the requirements of reporting on business relationships between lobbyists and legislators. Attorney General David Frohnmayer has called for legislation clarifying that "substantial" economic relationships between legislators and lobbyists must be disclosed. Such disclosure would be required of the public official on his or her SEI, not on the lobbyist's report.

No witness believed that the filing requirements impeded lobbyist access to public officials. Many witnesses questioned whether the disclosure by professional lobbyists served to change their behavior or enlighten the citizenry in any meaningful way.

Proposed Senate Bill 389 would have increased the reporting detail required by lobbyists and others, and at the same time would have removed the prohibition of gifts in excess of $100.

Conclusions

We have concluded that gifts should be prohibited (see Section B., Prohibitions). This prohibition removes the need for reporting gifts. However, we believe that lobbyists should continue to register with the Commission, thereby identifying themselves as subject to its jurisdiction as well as revealing their identity to the public. Lobbyists should continue to report all of their remaining expenses, such as travel and their own meal costs. We were not convinced that the motives or backers of umbrella lobbying organizations are so obscure as to require additional disclosure from them.

Lobbyist and lobbyist employer reports should disclose the amount expended on each issue being promoted.

For the reasons described in the section on prohibitions, administrative agency lobbying should be subject to regulation analogous to that for legislative lobbying, including registration and reporting.

D. The Commission Adjudication Process

The Commission is charged with the duty to investigate any alleged violations of Oregon government ethics laws, including the reporting provisions applicable to public officials and lobbyists. The Commission has subpoena powers for use in connection with its investigations and hearings. All records of the Commission, including initial allegations of ethical violations, are public records.

A finding by the Commission that a public official has violated any provision of the government ethics laws or any rule of the Commission is prima facie evidence of unfitness and grounds for removal from office under the Oregon Constitution. Such a finding by the Commission has not been used to date to remove any public official from office.

The Commission may impose "civil penalties" not to exceed $1,000 for violating any provision of the government ethics laws. In addition, any public official who has "financially benefitted" himself or any other person through the violation of the ethics laws is subject to a mandatory penalty double the amount of the financial benefit. The latter sanction has never been imposed by the Commission.
The Commission may also issue advisory opinions in response to inquiries as to the application of ethics laws to a particular situation or at its own initiative in order to clarify application of law. The general process for adjudication of complaints is described in the diagram and the material following.

1. The Complaint

Upon receipt of a signed complaint, the Executive Director of the Commission reviews the complaint to determine whether or not the Commission has jurisdiction over the allegations. If the Executive Director decides jurisdiction does not exist, or that the complaint is unclear, a written reply will be sent to the complainant to that effect. The adjudication process begins once jurisdiction is found to exist and the complainant's allegations are stated clearly.

The Commission is required to respond to every complaint received. Most witnesses agreed that every citizen should have this guarantee. Some were disturbed that at present, an apparently valid and substantive complaint will not be acted on if unsigned. Several witnesses expressed a desire for the Commission to become more active and initiate its own investigations. The Executive Director informed us that there have been "known situations" which the Commission declined to pursue due to lack of a citizen complaint. Lack of funding is cited as the reason. Some felt that the Commission's correct role was to represent citizens and that "own motion" complaints could give rise to Commission "witch hunts."

Many witnesses were opposed to allowing all complaints to be made public information, prior to the official's opportunity to respond. The fact that the official is often "tried in the press" prior to any Commission hearing was seen by many as unfair. Witnesses believed that the situation encourages frivolous or unsubstantiated complaints, or complaints filed solely to harass officials. They told us that an official's reputation is irrevocably harmed by the publicity even though the complaint is ultimately dismissed, as the vast majority of them are.

The public's "right to know" is cited in support of this practice. Many witnesses acknowledge that the media play an important role in enhancing the deterrent effect of the Code of Ethics. All believed that a person found guilty should be exposed, but most also feared the damage inflicted upon the wrongfully accused. Those persons who advocated closed meetings in the early stages of the proceedings believed that the public's right to know could be satisfied by requiring that the complaints be disclosed, only after the Commission had determined whether there was probable cause for investigation.

2. The Investigation

Once it is determined that the Commission has jurisdiction, a preliminary investigation is undertaken to assist the Commission in determining whether "probable cause" exists. There are no firm criteria guiding the extent of investigation beyond the necessity to do enough to enable determination of probable cause. Investigations are generally conducted by the Executive Director and less frequently by contract investigators and student interns.

Numerous complaints were heard regarding the Commission's investigative process. Some complained of the lack of training and supervision of inven-
SUMMARY OF COMPLAINT ADJUDICATION PROCESS
OREGON GOVERNMENT ETHICS COMMISSION

- Complaint Filed
- Preliminary Investigation Undertaken
- Staff Makes Recommendation On Probable Cause
  - No Probable Cause Found
    - Complaint Dismissed
  - Probable Cause Found
    - OGEC Holds Probable Cause Meeting
      - Probable Cause Found
        - Investigation Continued
          - Informal Disposition
          - Formal Contested Case Hearing
            - Respondent Found at Fault and Sanctions Imposed
              - Complaint Dismissed
            - Investigation Continued
              - Informal Disposition
      - Investigation Continued
        - Expedited Contested Case Hearing
          - Case Dismissed
          - Respondent Admits Fault and Sanctions Imposed
            - Complaint Dismissed

tigators. We were informed by the Executive Director that student investiga-
tors receive one or two days of "orientation" which includes reading the
statute, prior Commission reports, and an investigative procedures manual.
Investigations usually occur without direct supervision. The Executive Di-
rector stated that she has had trouble with investigators exceeding their
authority and is not comfortable with the system. The Executive Director
would prefer to hire professional investigators in all cases, but cannot
due to budget limitations.

The Attorney General and others expressed concern that, due to the lack
of formality and professionalism involved in Commission investigative pro-
cedures, any evidence obtained by them may be inadmissible in any subse-
quent or concurrent criminal proceedings.

Some persons felt that the low rate of violations found and sanctions
imposed is due to inept investigations. The Groener investigation was
cited as an example of the failure of the Commission staff to compile
evidence effectively.

3. The Probable Cause Meeting

OAR 199-20-024, adopted in 1975, states: "Should the Commission decide
not to pursue a request for investigation, it must determine that no prob-
able cause exists to justify the investigation." This determination is
made at a monthly public meeting where the complaint, the summary of the
investigation, and the staff's recommendation are presented to the Commis-
sion. Possible actions by the Commission at this meeting are: dismiss for
lack of probable cause; find probable cause to continue investigation; or,
find probable cause to conduct a contested case hearing.

This session is an open meeting and not a formal hearing. The majority
of complaints are dismissed at this stage.

A probable cause meeting is not held in cases where the violation is
simply one of delinquent filing of an SEI or lobbyist report. Rather, a
letter is mailed to the delinquent party and a date set for a hearing, typ-
ically before the Executive Director as a hearings officer.

Witnesses felt that the term "probable cause" should be further clari-
fied, since the probable cause "meeting" now appears to be the forum in
which guilt or innocence is being determined although this is not its func-
tion. One prior Commission member informed us that dismissal for "lack of
probable cause" is used to describe not only situations where the Commis-
sion has decided there is insufficient evidence but also where the Commis-
sion has determined that an issue is too insignificant to pursue. The Com-
mission does not necessarily disclose which ground is the basis for dismis-
sal, and, moreover, does not explain its reasoning when the dismissal is
based on the insignificance of the violation.

We were informed that the probable cause meeting has a "circus-like at-
mosphere" particularly if media interest is high. Several witnesses who
are attorneys said that the Commission meetings are so poorly structured
that they violate elements of due process as well as courtesy.

4. After the Probable Cause Meeting

Following the probable cause meeting, the Commission may elect to hold
an expedited contested case hearing, continue investigation and consider
informal disposition, or proceed to a formal contested case hearing. An expedited hearing procedure is pursued if a respondent admits fault and stipulates to that effect on the record and if the investigation conducted so far is complete enough to support the complaint. The Commission frequently will conduct the expedited hearing immediately after the end of the probable cause meeting.

When investigations are continued, Commission procedures permit the Executive Director to bring a case back to the Commission at any time and propose a means of informally disposing of the matter, such as an agreed settlement.

The third major option following the probable cause meeting is a formal contested case hearing which occurs when neither an expedited hearing nor informal disposition is workable. Due to the infrequency of these hearings, relatively few comments were heard about this proceeding. In light of the problems identified in relation to the probable cause meeting, most witnesses who commented preferred that a hearings officer rather than the Commission preside over this hearing.

5. Work Load and Disposition

According to Commission figures, the number of complaints received and requests for advisory opinions received were as follows:

<table>
<thead>
<tr>
<th>Blennium</th>
<th>75-77</th>
<th>77-79</th>
<th>79-81</th>
<th>81-83(Est.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Received</td>
<td>20</td>
<td>57</td>
<td>93</td>
<td>102</td>
</tr>
<tr>
<td>Advisory Opinion Request Received</td>
<td>34</td>
<td>53</td>
<td>101</td>
<td>162</td>
</tr>
</tbody>
</table>

The Commission does not keep formal statistics on disposition of complaints. The only tabulation available was prepared by a Commission student intern and it has not been verified. The intern reviewed 128 files opened and closed between 1975 and 1980. During that time period, the Commission:

- dismissed 55 without investigation;
- conducted full investigations on 35;
- dismissed 22 complaints following investigation for a total of 77 dismissals;
- found probable cause in 12 of the remaining cases; and
- found substantive violations and assessed fines in 5 and either dismissed or resolved 7 cases through other means.

Since 1980, an additional 73 case files were opened and closed and in 8 of these cases, probable cause was found to exist. These data again are unverified and were compiled under different categories than the 1975-80 statistics.

Penalties assessed have ranged from $100 to $1,700 for substantive violations. The majority of other penalties levied by the Commission are for delinquent filings, with most on the order of $250. The Commission has never imposed the double-forfeiture penalty despite its mandatory language.
In her extensive testimony before us, the Executive Director stressed the heavy and increasing workload and insufficient budget resources as the major problems impeding the Commission's effectiveness. Several other witnesses agreed that the investigative workload exceeds the agency's resources, especially if investigations are to be conducted by more qualified individuals. The data supplied by the Executive Director do indicate a substantial increase in workload for the Commission and its staff during the past seven years. Funding, discussed in Section F., clearly will determine how the agency handles its workload in the future.

Regarding disposition of cases, Common Cause and others feel strongly that the statute requiring double forfeiture of personal benefits derived by officials Is mandatory and that a determination of the amount of that benefit by the Commission is required. The Attorney General's proposal also calls for clarification that this forfeiture is mandatory.

Conclusions

We were disturbed that in some instances the Commission knew of alleged wrongdoing but did not initiate investigations. We believe that the Commission should adopt a policy of beginning investigations on its own initiative and of selectively pursuing investigations after receipt of anonymous complaints, rather than requiring signed complaints.

We believe that the filing of a complaint, the Commission investigation which results, and any proceedings prior to the Commission's determination of probable cause should be confidential. Once probable cause (or its lack) has been determined, the complaint, file, and all proceedings would become matters of public record. Such a change would protect public officials from the damaging publicity resulting from false or unsupportable accusations, discourage frivolous use of the complaint process for personal or political reasons, and provide a period of time during which a criminal investigation could proceed without public disclosure of Commission material.

An additional change which appears needed is to have the Commission adopt the contested case hearing procedures of the Oregon Administrative Procedures Act for the probable cause meeting to provide for a more structured, legal hearing format for the initial handling of complaints.

A trained hearings officer should conduct the contested case hearings. We were troubled by allegations that Commission investigations are not professional. We are not convinced that transfer of the function to the Attorney General is an adequate or necessary solution to this problem. We believe that operation of the Commission should be kept totally out of the offices of partisan, elected politicians.

The Commission should impose the mandatory double-forfeiture penalty when it determines that a violation has led to a financial benefit.

E. Education

The Commission's duty to inform and educate, as mandated by statute, is:

1. To prescribe and publish rules, regulations, and reports;

2. To develop and publish a manual to set forth "recommended uniform methods of reporting for use by persons filing statements;"
3. To issue on request advisory opinions based on "real or hypothetical circumstances." A party who requests an advisory opinion and complies with it, shall be immune from liability as to that issue.

The Commission Director said that every year her office sends a copy of the Commission brochure to those individuals required to file an SEI along with blank forms and a cover letter. In addition, copies of the statute, the rules, and the brochures, as well as all advisory opinions, are made available to the public upon request. The Commission issued some 5,000 copies of summaries of the ethics laws in the 1979-81 biennium; of these 3,800 were sent to parties required to file SEIs. Each January the Commission asks various agencies of government for listings of those who are to file. A standing request is left to obtain additional names as they become available.

The Commission's administrative rules are available but outdated, having been revised most recently in 1975, and are not routinely distributed to public officials.

A manual regarding uniform methods of reporting does not currently exist. A 35-page booklet was issued in 1975, but is now obsolete. An explanatory letter currently accompanies SEIs when sent to public officials.

The Commission responded to more than 100 advisory opinion requests in the 1979-81 biennium, many from lobbyists. The opinions are on file at the Commission and at the University of Oregon library in Eugene.

The Commission regularly mails notices of all Commission meetings, including the names of the respondents, to such groups as the League of Oregon Cities, the Association of Oregon Counties (AOC), and other interested persons. According to the Executive Director, these groups frequently request copies of advisory opinions and decisions.

The Commission contributes to a quarterly publication of the Oregon State Bar Government Law Section, entitled "Government Perspective," which contains a summary of the opinions and actions of the Commission.

The Executive Director advised us that she speaks to representative groups as often as possible, both by invitation and at her own request. She has actively solicited speaking engagements before such groups as the AOC, the League of Oregon Cities, the Administrative Law Institute, and the State Management Association.

The Executive Director noted that there is no educational packet as such which is sent to public bodies or local groups by the Commission for training purposes. The Executive Director said she prefers to respond to such requests by offering to speak to the group and that she generally accepts any request she receives.

The Commission estimates it handles 28,000 "public contacts" biennially. A public contact is a letter, a phone call, an inquiry at the offices, and even includes questions from a member of the audience at any occasion where the Commission staff may speak. The vast majority of contacts are inquiries about the proper information to report on disclosure forms and the need to declare various types of conflicts.

The educational aspect of the Commission was not considered a high priority by most witnesses. Those who did discuss education considered it
Identical with the dissemination of information, not with formal and systematic training or instruction.

Some witnesses suggested broader publication of summaries of Commission actions and opinions. Others, including current members of the legislature, urged formal compilation and distribution of the registration and disclosure information submitted to the Commission. Some persons argued that such distribution is required by statute. However, those favoring formal distribution conceded that its cost would probably outweigh any possible educational benefits.

One witness believed that the efforts of the press and of special interest groups in finding and disseminating information sufficed. On the other hand, other witnesses strongly urged development of mechanisms to better publicize the information on file.

One former state legislator suggested providing more information to better educate members of the Legislature. A former member of the Commission also urged that the Commission take an active role in educating public officials. Another witness suggested that municipal attorneys, who frequently advise local officials on ethics matters, lack accurate understanding of the ethics statutes. In general, concern was expressed by witnesses that better explanation of the conflict of interest rules would be valuable, particularly as to when and how often to make declarations.

A suggestion was made by one witness that hearings be held in the jurisdiction where the violation allegedly occurred. We were told that this would have a salutary educational effect on local citizens, but also could subject the Commission to intense local pressures.

Lobbyists told us that their organization, the Capitol Club, conducted educational efforts through its "self-policing." One lobbyist expressed skepticism on this point.

Although a cohesive plan for education was not put forth by any witness, we heard many comments, in addition to the foregoing suggestions, regarding the vagueness and apparent ambiguity of statutes, and concern that officials and lobbyists could be subjected to sanction due to misunderstandings regarding filing procedures.

Witnesses reported that the Oregon ethics system relies on citizens because it is only as a result of a signed complaint that investigations are undertaken. There is little effort, however, to educate the public regarding its role in or rights under the Oregon ethics system.

**Conclusions**

We conclude that the Commission has not taken sufficient initiative in systematically training and instructing public officials, lobbyists, and the general public. Efforts to educate officials and lobbyists should focus on helping them to (1) understand what behavior is appropriate, (2) meet their reporting requirements, (3) determine when they have a potential conflict of interest, and if so, (4) disclose the potential conflict with meaningful detail. Efforts to educate the general public should focus on explaining the dilemmas and obligations of public officials, and the functions of the Commission.
Increased educational efforts may reduce the number of cases which are opened as a result of delinquent or improperly completed SEIs and lobbyist reports. We also conclude that, if the general public is better informed, it could become a major policing force. We believe that an educational program will minimize costs in the long term, reduce the frustration of officials attempting to comply with the law, and increase Commission effectiveness.

F. Funding

The Commission is exclusively funded out of the State's General Fund. The Commission budget for 1979-1981 was $231,116. Witnesses consistently cited "underfunding" as a reason for the limitations and inadequacies of the Commission.

This shortage of funds is reputed to be the reason for inadequate investigation, failure to pursue complaints, and lack of detail in processing complaints. Witnesses said it is important that a citizen be able to allege wrongdoing when it is perceived, and to expect the Commission to complete the investigation.

Many witnesses suspected that the legislature is reluctant to appropriate sufficient funds for the Commission to investigate lobbyists or legislators. Several witnesses noted that the state legislature had halted consideration of Commission appropriations pending conclusion of the investigation of then-Senator Richard Groener. Legislators denied any connection. Whether or not there was any connection, the perception that the Commission is susceptible to political pressure is undesirable.

On the other hand, some witnesses questioned whether the Commission impact on governmental ethics was worth its current appropriation, particularly in a time of fiscal strain when social services are being cut.

Common Cause has proposed that a fixed funding base be provided in the Constitution in order to avoid biennial political involvement in the process.

Conclusions

We believe that the need for sufficient and reliable funding is one of the most critical issues facing the Commission. The steadily growing Commission workload and limited budget resources combine to present a serious impediment to the agency's effectiveness. Symptoms of these problems include use of inexperienced personnel to conduct investigations of complaints and inability to investigate complaints to the extent necessary. Most important, a source of funds is needed which is independent of biennial or more frequent approvals of the legislature.

We considered and rejected putting Commission funding in the Oregon Constitution. A Constitutional funding base would be inflexible because to adjust funding would require a Constitutional amendment.

In seeking an adequate and independent funding mechanism, we discovered that, during the course of the program authorizing the $1.00 check-off on income tax forms for the benefit of political parties in 1978-1981, $955,258 was raised. Citizens indicated on their personal income tax return that they desired a dollar of the General Fund to be allocated to a political party.
We suggest that this system be initiated to fund the Commission. Such a funding mechanism would remove the funding issue from the partisan arena. It would also relieve state legislators of criticism for underfunding the Commission out of self-interest. In addition, such a system would provide a gauge of citizen support for the Commission.

Results of the check-off mechanism cannot be predicted with accuracy. If the Commission received more funds than it had budgeted, it could, of course, return those monies to the General Fund. Should the funding be inadequate, the legislature could then determine whether to provide a supplementary appropriation. Chronic public underfunding would suggest that the Commission be eliminated.

G. Need for the Commission and State Ethics Laws

A key part of our charge was to evaluate whether the Commission should be changed or abolished. Nearly every witness we contacted indicated that the State of Oregon needs a set of laws and related implementation mechanisms to encourage high ethical standards of public officials. Most also agreed that the state does not have a significant problem with corruption of government officials, but that the possibility for such a problem exists. Most witnesses pointed out that there is no way to gather hard evidence that the existing system of ethics laws is effective.

However, there was consensus among witnesses that the current Oregon approach of requiring disclosure, adopting a code of ethics, and establishing an independent body to oversee implementation is a workable system. At the same time, witnesses recommended changes in the Commission's operations to make it more effective.

Based on review of the legislative history and testimony of witnesses, we have found that the public purposes for which the Commission was initially established were:

- to establish an independent citizen body charged with overseeing the administration of government ethics laws;
- to rebuild and maintain public confidence in government officials and institutions;
- to concentrate the enforcement and adjudication responsibilities for state ethics laws with one visible, specialized public body;
- to provide an easily accessible forum for citizen complaints against public officials;
- to provide public access to information regarding potential economic conflicts of public officials;
- to prohibit use of public office for personal financial gain and provide officials with guidance on acceptable and unacceptable behavior.

The history of the legislation also indicates that a widely felt need to restore public confidence in the wake of Watergate was at least partly responsible for the creation of the Commission. Witnesses we interviewed agreed that no particular events or unethical behavior in Oregon led to creation of the Commission.

Witnesses, including those who had been involved with complaints later dismissed, concurred that it is important to public confidence in government to have a place for people who are offended by apparent impropriety by public officials to register complaints. Witnesses agreed that it is im-
important that a mechanism be in place so that a person can file an ethics complaint without the burden of collecting evidence and conducting a private investigation. There was general agreement that such a system discourages unethical behavior by making the filling of a complaint a minimal burden.

Witnesses also agreed that it is essential to have a body which is independent and not subject to challenge on the basis of political bias or motivation.

Finally, we found that the question of need for a state ethics Commission is tied closely to an evaluation of alternative means for obtaining the objectives of the state ethics laws. While most witnesses agreed that state ethics laws and programs are needed, few had specifically evaluated the question of the need for a Commission, although at least one witness suggested seriously that the Commission be abolished.

Conclusions

The Commission was established to rebuild and maintain public confidence in government, to provide public access to information on public officials' potential conflicts of interest, and to provide officials with guidance on acceptable behavior.

The public purposes for which the Commission was established remain valid. An independent public entity is needed to focus attention on these purposes. Despite the impossibility of measuring the Commission's effectiveness quantitatively and the serious operational problems which impede its effectiveness, we have concluded that the Commission should be maintained and various measures should be taken to improve its effectiveness.

IV. SUMMARY OF CONCLUSIONS

1. The Oregon Government Ethics Commission and the legislation it administers constitute a needed institution in Oregon government. The intent of the voters in establishing the Commission remains valid.

The Commission was established as an independent body to make it non-political and to provide an accessible forum for citizens. No major duplication of effort exists among the offices of the Attorney General, the Secretary of State, and the Commission. A single, non-partisan agency with responsibility for record keeping and with an accessible complaint mechanism should be retained. The Commission should maintain an autonomous role in investigating and prosecuting complaints within its statutory responsibilities.

2. A steadily growing workload and limited budget resources combine to present a serious impediment to the Commission's effectiveness. Secure funding, independent of the political process, is essential to the continued viability of the Commission.

3. Gifts to public officials create an appearance of impropriety regardless of any dollar limits. Disclosure does not eliminate the appearance of impropriety. The public's confidence in the government process would be enhanced by enacting an outright prohibition on gifts to public officials with the exception of those arising from a personal or family relationship.
4. The Commission's current appointment process encourages members with strong political ties, precisely the taint sought to be avoided when the Commission was established. A Commission charged to oversee ethical responsibilities of public officials should be composed of members with a reputation for integrity, drawn from many vocations and avocations. The present system should be replaced by a system of appointments by a single official directly responsible to the electorate, but which retains involvement of two branches of government.

5. The Commission has not taken sufficient initiative in systematically improving public officials' and lobbyists' understanding of their ethical responsibilities. Little effort has been made to educate the public regarding its role in and rights under the Oregon ethics system. Increased educational efforts would reduce the frustrations of officials attempting to comply with the law. A major policing force could result from a better informed public, increasing the effectiveness of the Commission.

6. Increased structure and confidentiality in the Commission's adjudication process are required to prevent damage to the reputations of unjustly accused persons. The infrequency of assessed penalties suggests that sanctions available to the Commission have not been adequately utilized.

7. Effective disclosure by a public official requires detailed announcement of a potential conflict of interest at each public meeting when the subject matter which causes the conflict arises.

8. Lobbyist registration and reporting requirements should be continued. Lobbyist reports should disclose the amount spent on each issue being promoted.

9. Lobbying activities directed at Executive branch policy formulation and implementation present the same opportunities for improper influencing of the government decision-making process as legislative lobbying and should be similarly regulated.

10. Statements of Economic Interest (SEls) serve as educational tools by requiring public officials to contemplate at least once a year how their personal interests may affect their ability to serve the public. The requirement to file an SEI is not a substantial deterrent to citizen willingness to serve in public capacities. The statutory requirement of the filing of SEls should be maintained.

V. RECOMMENDATIONS

To implement our conclusions, we recommend that:

A. The Oregon Legislative Assembly enact in its next regular session legislation to:

1. Achieve a more reliable, less political method of funding the Commission, through an income tax check-off system similar to the program passed for the benefit of political parties.

2. Enact a prohibition on gifts to public officials except for those arising solely from family or personal relationships.
3. Replace the present system of appointment of Commission members with a system of gubernatorial appointment, with Senate confirmation.

4. Specifically extend the provisions of the Oregon Administrative Procedures Act to the probable cause meetings conducted by the Commission.

5. Revise the adjudicatory process to provide for confidentiality through the probable cause determination stage.

6. Require officials to announce a potential conflict of interest at each public session of the body at which they participate in any discussion, debate or vote regarding the issue as to which the conflict exists. The nature of the conflict should be disclosed in sufficient detail to allow the public to make a judgment on the official's actions.

7. Emphasize that declaring a potential conflict of interest does not permit a public official to use public office for private gain.

8. Include in the definition of conflict of interest actions to the benefit of a business with which the person or a member of the person's household is associated.

9. Require lobbyists and their employers to report the amount expended on each issue being promoted.

10. Revise the ethics statutes so that lobbying of administrative agencies is subject to prohibitions and disclosure requirements similar to those for legislative lobbying.

11. Define and clarify "use of public office for private gain."

12. Require public officials who file Statements of Economic Interest to complete the entire statement annually rather than signify "no change."

13. Clarify the relationships between ethics prohibitions and criminal statutes.

B. The Oregon Government Ethics Commission take action to:

1. Develop an educational program including: publication of a revised manual and instructional materials to be distributed to officials, lobbyists, and interest groups; material for use in school civic studies programs; conducting ethics clinics for newly elected and appointed officials; and expanded publication of advisory opinions on selected issues.

2. Revamp the enforcement process to:
   a. Use trained investigators.
   b. Provide for a trained hearing officer to conduct a contested case hearing once probable cause has been established.
   c. Insure that the full Commission consistently applies sanctions as required by statute when it adopts the recommendations of the hearings officer.

3. Adopt a policy of pursuing investigations on the Commission's own initiative and in response to anonymous complaints.
4. Make copies of SELs available to the public at locations within the local jurisdiction which an official serves.

5. Begin a study of the feasibility of a centralized system of computer record keeping for information compiled by the Commission.

Respectfully submitted,*

Richard P. Hutclison
Joy Kary
Katherine H. O'Neill
Robert L. Weil
L. Ramsay Welt
Morton A. Winkel
Paul S. Wilson, Chairman

* The Committee is indebted to Dan Hay and Jean S. Morrison, members who were unable to complete the study with us, for their valuable contributions during our research and deliberations. Our work would not have been possible without the indefatigable Mimi Bushman, the Club's Research Manager.

Approved by the Research Board on October 21, 1982 and submitted to the Board of Governors. Received by the Board of Governors on December 6, 1982 and ordered printed and submitted to the membership for discussion and action on January 14, 1983.

APPENDIX A

Bibliography

Annual Verified Statement of Economic Interest form
Article from Municipal Year Book, 1975, of the International City Management Association, titled: Conflict of Interest Legislation and the Common Cause Model Act, by Thomas Belford and Bruce Adams from Common Cause
Bylaws of the Capitol Club, 1981-1982
Groener v. ODEC 59 Or App 459, (1982)
House Bill 2369 (1981)
House Rules, Senate Rules, 1981 Oregon Legislative Assembly
Letter from Betty Reynolds, Executive Director, Ethics Commission, to Drew Davis, Oregon State Representative, July 2, 1981, with suggested revisions to Oregon statutes
Letter from Betty Reynolds, Executive Director, Ethics Commission, to City Club dated February 2, 1982
Lobbyist Expenditure Report form
Lobbyist Registration Statement form
Minutes of City Club Standing Committee on State and Local Government, March 19, 1980
Newspaper: Oregon Common Cause, Summer 1981, containing an interview with Betty Reynolds
Oregon Revised Statutes, particularly Chapters 171 and 244
Prepared remarks to the Study Committee by Richard Groener
Report by Dave Frohnmayer, Oregon Attorney General, dated August 28, 1981, addressed to: Governor Victor Atiyeh, Senator Fred Heard, and Representative Hardy Myers, covering the Groener Investigation
Research Monograph of Legislative Research, Salem, titled: Conflicts of Interest by Carla D. Thompson, Research Associate, March 20, 1981

Research Monographs Prepared by the Committee
- Legislative History of the Ethics Commission
- Other Agencies, Programs and Laws Regulating Ethics
- A Comparison of Oregon's System to Other States
- Summary of Formal Proposals for Change to Ethics Commission

Senate Bill 389 (1981)
Senate Bill 605 (1981)
Senate Bill 374 (enacted)

APPENDIX B

Persons Interviewed

Don Balmer, Professor of Political Science, Lewis and Clark College
Earl Blumenauer, Multnomah County Commissioner, former legislator
Ron Cease, Professor of Public Administration, Portland State University
L.B. Day, Oregon State Senator
Mike Dewey, Independent lobbyist; officer, Capitol Club
Tom Donaca, General Counsel and lobbyist, Associated Oregon Industries
Edward N. Fadeley, Oregon State Senator
Nellie Fox, Political Director, Oregon AFL-CIO
David Friedly, Member, Ethics Commission
David Frohnmayer, Oregon Attorney General
Felicia Gnelwoscz, Counsel, Joint Interim Committee on the Judiciary
Richard Groener, former Oregon State Senator
Lewis Hampton, first Chair, Ethics Commission
Dick Hoppes, Crook County Judge
Tom Hughes, League of Oregon Cities
Larry Johnson, former Mayor, City of Hillsboro
Frank Josselson, Counsel to local elected official appearing before Ethics Commission
Myron Katz, Member and former Chairman, Portland Planning Commission
James Kuffner, Appointments Coordinator, City of Portland Mayor Frank Ivancie
William R. Lesh, registered lobbyist and Director of Public Relations, Publishers Paper Company
Boyd Levet, KGW-TV
Jim Long, The Oregon Journal
Jane McCarvin, Clerk of Board of County Commissions, Multnomah County
Greg McMurdo, Assistant Secretary of State
James Orrick, Association of Oregon Counties
Maria Rae, Communications Director, Oregon Department of Justice
Betty Reynolds, Executive Director, Ethics Commission
Russell Sadler, Columnist and Commentator
Kevin Smith, State Coordinator, Oregon Common Cause
Raul Soto-Sellig, former member, Ethics Commission
Shirley Van Loo, Curry County Commissioner
Gary Wilhelms, lobbyist, Pacific Northwest Bell
Caroline Wilkins, former Member, Ethics Commission
Henny Willis, Eugene Register-Guard
Shirley Woodrow, Appointments Coordinator, Governor Victor Atiyeh
Jan Wyers, Oregon State Senator
Les Zaitz, The Oregonian
APPENDIX C

Code of Ethics for Public Officials

ORS 244.040 Code of Ethics

(1) No public official shall use his official position or office to obtain financial gain for himself, other than official salary, honoraria or reimbursement for expenses, or for any member of his household, or for any business with which he or a member of his household is associated.

(2) No public official or candidate for office or a member of his household shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of $100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority.

(3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.

(4) No public official shall further his personal gain through the use of confidential information gained in the course of or by reason of his official position or activities in any way.

(5) No person shall offer during any calendar year any gifts with an aggregate value in excess of $100 to any public official or candidate therefor or a member of his household if the person has a legislative or administrative interest in a governmental agency in which the official has any official position or over which the official exercises any authority.
OYER GOVERNMENT ETHICS COMMISSION
102 Public Service Building
Salem, Oregon 97310
378-5105
1982
ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

COVERING THE PERIOD FROM
JANUARY 1, 1981 TO DECEMBER 31, 1981

NAME

TITLE OF OFFICE(S)
Include name of jurisdiction in title; i.e., Commissioner, Multnomah County

Mailing Address

INSTRUCTIONS

1. You are required to file a Statement if you held or will hold office at any time between April 15, 1981 and April 15, 1982.
2. Information should be reported for the period Jan. 1, 1981 through Dec. 31, 1981.
3. Return this form on or before April 15, 1982. FAILURE TO FILE ON OR BEFORE APRIL 15, 1982 MAY RESULT IN A CIVIL PENALTY OF UP TO $1,000 AND OTHER SANCTIONS (ORS 244.350 - ORS 244.390).
4. Attach additional sheets if needed.
5. If information in individual questions remains unchanged from the last Statement of Economic Interest you filed with the Ethics Commission, simply write “No change”.

7. [ ] If you have previously filed a Statement of Economic Interest, and if all the information remains unchanged from the last Statement of Economic Interest you filed, check here and sign on Page 4. (There is no need to answer the individual questions.)
DEFINITIONS

"Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

"Honorarium" means payment apart from your official salary for an appearance or service, for which custom or propriety preclude establishment of an amount.

"Household income" means gross, pre-tax income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honoraria, return of capital, forgiveness of indebtedness, or anything of economic value.

"Legislative or Administrative Interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the formal vote or official action of a public official.

"Person" means an individual, corporation, partnership, joint venture, and any other similar business organization or association.

1. BUSINESS OFFICE OR DIRECTORSHIP, ASSUMED BUSINESS NAME

A. if you, your spouse, or a child of either living with you held a business office (see definitions above) or directorship during 1981, list:

<table>
<thead>
<tr>
<th>Title of Office/Directorship</th>
<th>Name of Business</th>
<th>Business Address</th>
<th>Description of Business</th>
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B. If you, your spouse, or a child of either living with you, do business (see definitions above) under an assumed business name, list:

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<th>Name</th>
<th>Business Address</th>
<th>Description of Business</th>
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2. HONORARIUM If you received an honorarium (see definitions above) of more than $50 during 1981, list:

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<tr>
<th>Received from</th>
<th>Address</th>
<th>Description of Appearance or Service</th>
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3. INCOME SOURCES

A. List the sources (not amounts) that during 1981 produced 10% OR MORE, BUT LESS THAN 50% of your household income (see definitions, p. 2).

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Description</th>
<th>Optional: Household Member Who Received</th>
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B. List the sources that during 1981 produced 50% OR MORE of your household income.

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<th>Name</th>
<th>Address</th>
<th>Description</th>
<th>Optional: Household Member Who Received</th>
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C. Does a source listed under 3-B do business or could it reasonably be expected to do business with the public body over which you have authority?  Yes ______  No ______

D. Does a source listed under 3-B have a legislative or administrative interest (see definitions, p. 2) in the public body you serve or over which you have authority?  Yes ______  No ______

4. REAL PROPERTY  List all real property in which, during 1981, you, your spouse, or a child of either living with you, had any personal, beneficial ownership interest, any option to purchase or sell, or any other right of any kind in real property located within the boundary of the public body of which you are a member or over which you have authority. The description need not be a legal description; rather, describe in general terms; i.e., size, location, boundary and use designation.

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<th>Description</th>
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5. SHARED BUSINESS WITH LOBBYIST  If you, your spouse, or a child of either living with you, shared with a paid lobbyist during 1981 a partnership, joint venture, or similar substantial economic relationship, list:

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<th>Name of Lobbyist</th>
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6. OFFICE RELATED EVENT  If, during 1981, you participated in any event related to your office, and at which you appeared in your official capacity, AND the aggregate value of food, lodging and travel provided by the host or sponsor of the event exceeded $50, list:

<table>
<thead>
<tr>
<th>Name of Event</th>
<th>Date</th>
<th>Value of Food, Lodging and Travel</th>
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INSTRUCTIONS FOR ITEMS 7, 8, 9 and 10:
Answer items 7, 8, 9 and 10 ONLY IF:
1. It is a source of economic interest that did business, does business, or reasonably could be expected to do business with the public body you serve or over which you have authority, OR
2. It is a source of economic interest with a legislative or administrative interest (see definitions, p. 2) in the public body you serve or over which you have authority.

7. INCOME OF MORE THAN $1,000  List each source (not amounts) of income over $1,000 whether or not taxable, and other than a source previously listed on this form, that you, your spouse or a child of either living with you received during 1981.

<table>
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<th>Income Source</th>
<th>Address</th>
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8. DEBT OF $1,000 OR MORE  If you, your spouse, or a child of either living with you owed to an individual or business during 1981, $1,000 or more, list:
(NOTE: DO NOT list loans from state or federally regulated financial institutions, or retail credit accounts, and do not list the amounts owed.)

<table>
<thead>
<tr>
<th>Name of Creditor</th>
<th>Date of Loan</th>
<th>Interest Rate of Loan</th>
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9. BUSINESS INVESTMENT OF MORE THAN $1,000  If you, your spouse or a child living with you had a personal, beneficial interest or investment in a business (see definitions, p. 2) during 1981 of more than $1,000, list:
(NOTE: DO NOT list the amount of the investment. DO NOT list individual items in a mutual fund or blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.)

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<tr>
<th>Business</th>
<th>Address</th>
<th>Brief Description of Business</th>
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10. SERVICE FEE OF MORE THAN $1,000  List each person (see definitions, p. 2) for whom you performed a service for a fee of more than $1,000 in 1981 (NOTE: DO NOT list fees if you are prohibited from doing so by law or professional code of ethics. Please indicate the nature of the exemption to this requirement. The Commission recognizes Professional Codes of Ethics for Attorneys, Physicians, Surgeons, Licensed Psychologists and Certified Public Accountants.)

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Under penalties for false swearing, I declare that I have examined this Statement of Economic Interest and to the best of my knowledge and belief it is true, correct and complete.

(Signature)  (Date)

Your Statement is incomplete without a signature.

Thank you for your cooperation.
(5) "Gift" means something of economic value given to a public official or member of the official's household without valuable consideration, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials; and something of economic value given to a public official or member of the official's household for valuable consideration less than that required from others who are not public officials. However, "gift" does not mean:

(a) Campaign contributions.

(b) Gifts from relatives.

(c) The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, provided that when such expenses incurred exceed $50, such expenses shall be disclosed yearly on a form prescribed by the commission stating the name, nature and business address of the organization paying the public official's expenses and the date and the amount of that expenditure. The disclosure requirements of this paragraph apply only to public officials required to file a statement of economic interest under ORS 244.050.