LEGISLATIVE REFERENCE LIBRARY
JC341 .M55
Minnesota. Gove - Ethics in government; a report / b
3 0307 00036 0779

Ethics in Government

A Report by the
Minnesota Governor's Committee
on
Ethics in Government
to
Governor Orville L. Freeman

JC
341
.M55

January 4, 1959 • St. Paul, Minnesota

Ethics in Government

A Report by the
Minnesota Governor's Committee
on
Ethics in Government
to
Governor Orville L. Freeman

January 4, 1959 • St. Paul, Minnesota

This booklet has been printed in the public interest by the following:

Hamm Foundation

Twin Cities Conference B'nai B'rith

Minnesota AFL-CIO

Catholic Aid Association

Minnesota Association of Cooperatives

Minneapolis Junior Chamber of Commerce

Winton Family Foundation

MEMBERS OF COMMITTEE

Dr. Charles J. Turck, Chairman, September, 1957-June 30, 1958. Then President, Macalester College

Dr. W. Gunther Plaut, Chairman, July 1, 1958-December, 1958. Rabbi, Mount Zion Temple, St. Paul

Dr. William Anderson, Professor Emeritus, Department of Political Science, University of Minnesota

Mrs. David Aronson, Former President, Minnesota State Parent-Teacher Association

Mr. William Carlson, Ramsey County Commissioner, former member Minnesota House of Representatives

Mr. William Fallon, Former Mayor of St. Paul

*Dr. Floyd O. Flom**, Assistant Professor, Department of Political Science, University of Minnesota, former member Minnesota House of Representatives

Honorable William Gunn, Judge of the District Court, Hennepin County

*Mr. Eric Hoyer***, Former Mayor of Minneapolis

Mrs. Stanley Kane, Legislative representative, Minnesota League of Women Voters

Reverend James P. Shannon, President, The College of St. Thomas

Dr. Reuben K. Youngdahl, Pastor, Mount Olivet Lutheran Church, Minneapolis

* Mr. Flom could not be present for the final meeting of the Committee, but approved the report. Certain additional suggestions made by him will be transmitted separately to the Governor.

** Mr. Hoyer and Rev. Youngdahl were out of the city when the final report was adopted.

STAFF ASSISTANTS

Attorney General Miles Lord served as legal counsel for the Committee and made available to it the services of *Mr. Sydney Berde,* Special Assistant Attorney General,

and

Mr. Melvin J. Peterson, then Deputy Attorney General, now Judge of Probate, Hennepin County, who performed legal research for the Committee and for the sub-committees.

* * * * * *

Miss Rosalie Kollarich, Secretary to Dr. Turck,

and

Miss Donna Margette, Secretary to Rabbi Plaut, kept the minutes of the meetings, typed and circulated them, and did other secretarial work.

* * * * * *

Mrs. Dolphine V. Klein in the office of the Attorney General typed the Report.

SUBCOMMITTEES

Subcommittee on Legislative Ethics and Conflicts of Interest:
Rabbi W. Gunther Plaut, Chairman
Honorable William Gunn
Mr. William Fallon

Subcommittee on Campaign Finances and Methods:
Mr. William Carlson, Chairman
Reverend James P. Shannon
Mrs. David Aronson
Dr. Charles J. Turck

Subcommittee on Lobbying:
Dr. Floyd Flom, Chairman
Mr. Eric Hoyer
Mrs. Stanley Kane
Reverend Reuben K. Youngdahl

Subcommittee on Drafting:
Dr. William Anderson, Chairman
Rabbi W. Gunther Plaut
Mr. William Carlson
Mr. Floyd Flom
Counsel: Mr. Sydney Berde

TABLE OF CONTENTS

Letter of Transmittal

Summary of Recommendations

REPORT

Introduction to Report

Part I. *Ethics in Government: Some Basic Principles*

Part II. *Public Service Ethics and Conflicts of Interest*

Part III. *Campaign Finances and Methods*

Part IV. *Lobbying*

APPENDICES

I. Code of Public Service Ethics and Conflicts of Interest.

II. Code of Fair Campaign Practices.

III. Suggestions for Lobby Control Legislation:
  (a) Summary of the Wisconsin Regulation of Lobbying Act
  (b) Proposed Federal Legislative Activities Disclosure Act
  (c) Regulation of Lobbying Act Proposed by Governor Earl Warren

IV. Public Service Ethics and Conflicts of Interest—Legal Founrations.
  A study prepared for the Committee by Sydney Berde.

V. Statement by Governor Freeman on appointing the Committee.

VI. Appearances before the Committee and the Subcommittees.

LETTER OF TRANSMITTAL

To The Honorable Orville L. Freeman,
Governor of the State of Minnesota.

The Committee on Ethics in Government, appointed by you in September, 1957, herewith submits its report.

We have timed the completion and delivery of the report so as to have it follow the general election of November 4, and so as to put it into your hands early enough to have it published before the legislative session beginning in January, 1959.

The contents of the report and the recommendations of the committee were adopted unanimously.

Respectfully submitted,

THE COMMITTEE ON ETHICS IN GOVERNMENT

W. Gunther Plaut, Chairman.

St. Paul, Minnesota,
December 5, 1958.

SUMMARY OF COMMITTEE ACTIONS AND RECOMMENDATIONS

Conflicts of Interest

1. The Committee has drawn and adopted a Code of Public Service Ethics and Conflicts of Interest (given in full as Appendix I).

2. The Committee recommends that the legislature enact legislation based upon this Code, with appropriate sanctions, and that the legislature consider whether such legislation should not be made applicable, in whole or in part, to the local governments as well.

3. The Committee recommends that the Governor promulgate this Code to the heads of all state departments and agencies with such supplementary administrative regulations and sanctions as the needs of the various departments and agencies demand, and as is within the power of the Governor to do.

4. The Committee recommends that the legislature, in considering the problems of conflicts of interest, give serious thought to the passage of appropriate laws dealing with the activities of outside individuals and organizations who try to gain special advantages by the employment of legislators and public officials.

Campaign Finances and Methods

5. The Committee recommends that the present dollar limits on campaign expenditures by candidates for state office be repealed as unrealistic and deceptive; that no maximum dollar limits whatever be imposed; and that the law be changed to a basis of requiring full disclosure of all funds received and spent for and by each candidate and each party, including the candidate's personal funds and also any contributions in kind and the real value of such contributions.

6. The Committee recommends that the present law permitting the income taxpayer to deduct up to $100 a year from total income before calculating the tax liability be increased, but that a ceiling on such deductible contributions be retained. The Committee recommends that the legislature memorialize, and the Governor recommend to the Congress of the United States to make such contributions allowable as credits against income.

7. The Committee approves and adopts a Code of Fair Campaign Practices (given in full in Appendix II), for widest use in Minnesota.

8. The Committee recommends that the legislature and the Governor approve the code in principle by an appropriate resolution, as the United States Congress recently approved a code of ethics for government service;

   That the state political parties put themselves on record as strongly in favor of it, and that they call it to the attention of all candidates for public office and all campaign workers;

   That newspapers and other media of communication throughout the state publish the code, call attention to it in every campaign, and report upon the treatment accorded to it by candidates and campaign workers;

   That citizens' leagues and other good government organizations make it a part of their program of activities to see to it that all candidates receive, sign, and observe the pledge contained in the code.

Lobbying

9. The Committee recommends the enactment of legislation designed to require the disclosure of the activities and finances of legislative agents and of the related activities of their employers. The Committee did not draw a proposed law on this subject, but rather calls attention to and summarizes one act and two proposals (Wisconsin Act, proposed Federal Law, proposal by Governor Earl Warren) which it believes might guide the Minnesota Legislature in the formulation of such legislation (Appendix III).

REPORT

INTRODUCTION

Having accepted appointment to the Committee on Ethics in Government, we approached our work as citizens with a deep concern for ethical standards as they affect not only the current operations of our state government, but also the future strength and success of popular government in the United States as a whole. The background of our committee assured us of a not inconsiderable knowledge of government in general and of a wide range of contacts with, and experiences in actual government.

Early in our work we organized separate subcommittees of our own members to study three major groups of problems, namely, Legislative Ethics and Conflicts of Interest, Campaign Finances and Methods, and Lobbying. Later we set up also a subcommittee on the drafting of the committee's general report. The committee as a whole, and the three subcommittees on subject matter met many times over a period of twelve months. We had the benefit of valuable assistance in legal research provided for us by the Attorney General through two able and devoted members of his staff. Other than these two we had no research staff and no funds to employ any. Individually and through our subcommittees we inquired diligently into the laws and practices of Minnesota and several other states; examined reports emanating from committees and members of Congress and of various state legislatures; held hearings at which leaders in Minnesota politics and government presented their observations and ideas (See Appendix VI); and read a number of suggestions made by various citizen groups and students of American government. When the subcommittees had formulated their findings and recommendations, the members of the general committee read what they submitted, went over their reports and recommendations in open meetings, and then agreed on the substance of what the whole committee would report.

Thereafter the chairman of the drafting committee assembled all that had been agreed upon in one document, which the drafting committee then revised and presented to the general committee. Finally the whole committee considered this draft in detail, made further changes in it, and then voted to approve it as a whole. It is this document that is submitted herewith.

It should be noted that we at no time made an investigation of the activities of any state official or of any member of the legislature. We declined to consider suggestions that we pass judgment upon current campaign activities or upon any individual's

conduct in office or in gaining office, and we confined our studies to general problems and principles.

First of all we had to decide what aspects and parts of a very wide-ranging group of problems we should attempt to cover. Our decisions on this point were substantially as follows:

Since we were appointed to serve the State of Minnesota, *we decided to limit our studies and recommendations primarily to the problems of the state government.* Although we mention them at several points, we did not deal directly with the problems of the local governments in the counties, cities, villages, towns and school districts of Minnesota. We dare to hope, however, that some of the principles we state herein may have considerable application in local governmental affairs.

The state government itself is now a large organization that employs thousands of persons, expends tens of millions of dollars every year, and provides a wide range of public services. Ethical questions arise in some form in all its various activities. Realizing that we could not cover everything, and that present laws and practices provide Minnesota with a good merit system, substantially adequate standards of performance, and a generally high level of government, we decided to limit our studies to a few important problems of the state's government that have come in for public discussion and criticism in recent years.

Governor Freeman in appointing us recommended that we consider the twin problems of conflicts of interest and lobbying. (See Appendix V) We accepted these as important, but *we felt that there were several closely related issues that we should consider. One of these is the field of campaign finances and campaign methods.* There is a chain of connections between what candidates and political parties do in financing and conducting their campaigns, and what the elected officials and legislators do when they get into office. Pressure groups and lobbying organizations are interested in getting their candidates into office as a means of obtaining favorable legislation. Substantial campaign contributions to hard pressed candidates may be very important means of exercising improper influence.

We did not find it either possible or desirable, however, to cover all phases of campaigns and elections. A Legislative Interim Committee on Election Laws was already at work on a revision of the state's election laws, and it would obviously have to deal with many aspects of campaign financing and campaign methods, including corrupt practices. Not wishing to duplicate their work, *we decided to restrict ourselves to reporting on the general problem of controlling and getting publicity for campaign financing,*

and preparing a code of ethical and fair campaign practices, a code not intended for enactment into law, but to be submitted for voluntary acceptance and observance by candidates for state office and by political parties.

PART I. ETHICS IN GOVERNMENT—SOME BASIC PRINCIPLES

"A frequent recurrence to fundamentals" is nowhere more important than in the dynamic, swiftly growing and rapidly changing American society of which we all are members. It is all too easy in the rush of material and scientific progress that overwhelms us on every hand to forget the shore from which we started, the goal toward which we wish to move, and the necessary directions and conditions that we need to observe if our journey is not to end in disaster.

We are members of a society that is devoted to the principles of freedom, not license, for all men and women. We believe generally in the right of everyone to seek his own fulfillment and find his own happiness in any legitimate pursuit, whether in commerce or in culture, in science or religion, in any profession or vocation, that he chooses.

The freedom that we cherish includes of necessity the principle of equality of opportunity insofar as that can be provided by public education and other public services. But that is not all. Freedom and opportunity also imply the responsibility of every individual who is not hopelessly handicapped to make his own way in life, to provide for his own material needs and the economic security of himself and family.

All men are not made to be satisfied with these minimum achievements, however, and it is doubtful whether substantial progress in material things, in science, in culture, in matters of the spirit, could have been made if they had been so easily satisfied. Men desire distinction, wealth, political place and power, the feeling of having made outstanding achievements, as well as economic security. In short, their motives are many, complex, and often conflicting. If in a simpler society men were often puzzled over what was the right thing to do politically, in the complex society of today with its greatly increased governmental activities and its numerous opportunities for the advancement of one's personal interests, the difficulties of always making the right choice are much greater.

Partly because of these great complexities in modern society, and partly because many individuals are mistrustful that the ordi-

nary economic, political, and governmental processes will not adequately serve their own interests, or because they do not clearly distinguish their own from the public interest, many individuals proceed to promote their own advantage in ways that are not ethical but not forbidden by law, and too often in ways that the law expressly forbids.

It happens that the laws to protect private property and human life against violence, fraud, and deceit, and those against unfair practices in business, were historically among the first to be put into effect. Public prosecutors, courts, Better Business Bureaus, the Postal Inspectors, the Federal Trade Commission, and other agencies, both governmental and private, are continuously occupied in whole or in part with policing the boundaries of legitimate business in order to eliminate unethical practices.

The problem now is to formulate and enact similar laws and means of enforcement for the fields of politics, labor organization and activities, and other areas of activity in which the laws have not been adequately developed as yet. This committee is concerned only with certain problems of ethics in the politics and government of the State of Minnesota. The laws of Minnesota and of the nation contain many provisions against unethical practices in government as well as in business, but the laws are never complete and they sometimes become obsolete. Again, at times they are not effectively enforced. But the occurrence of these marginal unethical practices by those who are trying to gain power and material advantages constitutes no reason for condemning either the basic American belief in freedom and private initiative or the system of popular government that goes with it.

Material progress is certainly one of the important aims of American society. Government, science, education, the churches, and other cultural forces agree in approving this objective. Higher standards of living in housing, nutrition, health protection, and many other fields represent material things that are accepted as important goals. These material things need to be kept in their place, however, as means rather than ends in themselves. Unfortunately there are individuals and some groups who do not make this distinction. Instead of being willing to trust to ordinary political processes which often require them to forego or sacrifice material gains for ethical and spiritual ends, they permit themselves to sacrifice ethical standards in order to gain political power and material means. It is at this point and against these marginal transgressors that the community must arouse itself to action. It must protect itself against unethical conduct and reduce its baneful effects in government and in every line of endeavor.

Aside from the principle of human freedom mentioned above, what are the ethical standards for which American culture stands and for which people continue to struggle? In other words, by what standards do we venture to test the conduct of others even in cases where no positive law forbids their actions?

The fundamental standards are written large so that no one should fail to see them in the great documents of American history, in the nation's finest literature, in the beliefs and scriptures of its religious faiths.

Most plain to see, along with freedom, is the principle of human equality, the equal worth and value and rights of every man, woman and child, without regard to national origin, race, color, or creed. The Declaration of Independence contains the famous utterance that "all men are created equal," the proposition to which President Lincoln rededicated the nation in his Gettysburg Address. The Constitution of the United States contains a number of clauses that support and buttress this principle, and not one phrase that justifies the giving of special favors or a preferred position to any class of people, any section of the nation's area, or any family or individual. Such phrases as "equal protection of the laws," "no religious test," "neither slavery nor involuntary servitude" help to round out the fulness of this all-persvasive doctrine of equality. The Emancipation Proclamation, many acts of Congress, and decisions of the Supreme Court also develop and underscore various specific applications of the principle.

Minnesota's state constitution and laws are in full agreement with this basic principle. Even before the Civil War, Minnesota took its stand for human freedom and equality in its constitution of 1857 under which the state was admitted to the Union just one century ago. It declared that "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent," and that "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than in the punishment of crime, whereof the party shall have been duly convicted." The constitution further forbade laws that would give any preference to one religion over another, and prohibited religious tests and property tests for either voting or officeholding. Further to assure equality through the electoral and legislative processes, the constitution provided that "The representation in both houses [of the legislature] shall be apportioned equally throughout the different

sections of the state, in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law."

All the provisions of the national and state constitutions referred to above are still parts of those respective documents. Taken as a whole, along with certain collateral provisions, they point to a determination to treat all the people as equal one to another, without any special favors or privileges to any race, class, religious group, or section of the state or nation. They bear witness to a great decision of the people, in both the nation and the state, that their governments, in the words of Lincoln, should be governments "of the people, by the people, for the people."

Even this basic principle of equality has hidden foundation stones that lie deeper still. One is the belief in the supreme worth and dignity of every human being, over and above every material distinction and consideration. Every human being has one life and only one life to lead, the meekest and humblest with the proudest, the poorest with the most affluent. The ultimate test of every human action, in government as in every other walk of life, is whether it makes for better men and women and children. And human life is not merely a material or physical thing, but a thing primarily of the spirit, whose values and welfare must be measured ultimately in moral or ethical terms and in the individual and communal self-respect that come with excellence in the moral life.

Another of the hidden foundation stones of the insistence upon human equality is the recognition of the brotherhood of all men. Acting upon the view that all men are brothers, people not only wish to lead moral lives and to refrain from injuring others; they are also motivated to reach out to give help wherever they can. Whoever does not have such feelings towards his brothers, his fellowmen, whoever is not willing to protect the equal rights of others, falls short in ethical stature even if he consciously refrains from injuring them.

These basic principles—human freedom and equality, the dignity and the brotherhood of men—may seem to some people rather remote from the practical problems that confronted this committee, but we submit that they are not. The committee insists that the principles of ethics and morality lie deep in the human conscience and spirit. Unless our outward conduct can pass the test of these deeper meanings of life and of the best American standards of right and justice, we may well feel uneasy about the way that we are going.

To bring the fundamental principles of all human values

still closer to the practical problems of government, let us look at a few other principles of a more instrumental and immediately practical character. These, too, are principles of conduct and of ethics, but their effect is primarily to assure the operation and perpetuation of the more fundamental rules.

One is the principle of *equality of representation in the legislature.*

> *The Committee did not find questions and problems in this area to be within the scope of its study and therefore makes no recommendations concerning re-apportionment.*

A *second* principle of action designed to help to assure more fundamental rights is that of *free and honest elections,* with the associated rights of freedom of candidature and freedom of citizens to organize and operate their own political parties. These closely related rights have been rather well protected in Minnesota up to now. The legislative interim committee that is now engaged in studying Minnesota's election laws is covering this area and we have not made any special study of the subject.

A *third* principle of this nature is what is called *constitutionalism.* Briefly stated this means governing in accordance with the constitution and not in violation of it. Under the Constitution of the United States every officer of the national government, legislative, executive, and judicial, and every officer of state and local governments as well, is required to take an oath to support the federal constitution. In addition every state and local officer in Minnesota is required to swear to support the state constitution. These oaths of office are not mere empty gestures. They impose moral as well as legal obligations on every officer to govern in accordance with the constitutional rules. To be sure, these oaths are sometimes violated. Men can object that they do not like some provisions of the constitution, but that fact in no way justifies a violation of the oath of office and of the constitution itself. If constitutional government is to be maintained, the only justifiable course of action is first to obey the constitution even if it hurts, and then to seek amendments by the methods the constitutions themselves provide.

A *fourth* principle to help keep government honest and constitutional is expressed in the saying that *a public office is a public trust.* That is to say, it is a trust accepted by the official on behalf of all the people. For every office, national, state, and local, the appropriate constitutions and laws provide lists of duties to be performed on behalf of the people, as well as certain emoluments for the officer, which are supposed to be his

compensation in full for his public official services. *No one is required to hold public office as a legislator or in the executive or judicial branch.* There are almost unlimited opportunities for employment and self-fulfillment in the many private walks of life. *He who seeks public office or employment must accept the conditions and make the sacrifices that are called for in that status.* The principle is that he should be satisfied to perform the duties of his office for the legally authorized emoluments and that he should not under any circumstances use the facilities, the powers, or the prestige of his office for additional private gain or for other advantage.

This principle is the same for all public offices but certain real difficulties arise where the official remuneration is obviously not for full time service and the officer finds it necessary to carry on a private business or profession in addition. Legislators in Minnesota are in the position just described. There are many lawyers who are members of the legislature, and a considerable number of them find this problem to be especially pressing because their work as legislators inevitably overlaps to some extent upon their private law practice. Clearly this problem of conflicts in interest is largely one that concerns lawyers in the legislature, but they do not stand alone. Non-lawyer legislators are also employed by trade associations, labor unions, and other special groups. Such employment may create situations of conflict of interest.

Legislators in Minnesota, as in all other states and in the national government, have long pondered these problems of conflicts of interest, not only as they affect themselves but also as they affect executive, administrative, and judicial officers. They have enacted considerable legislation to define what is and what is not permissible for public officers to do. Such legislation is never complete, never perfectly clear, and it is always getting out of date as conditions change. There are also many judicial decisions, attorney general's opinions, and other such attempts at clarification of official duties and official proprieties. With all these aids and guides to proper conduct there are still many marginal problems upon which no law exists. In such cases the officials must fall back upon their own codes of ethics and sense of the proprieties. These matters will come up again in the pages that follow. One of the most difficult questions is what should go into law and what should be left to codes of ethics.

Against the background provided by these brief remarks on some of the principles and problems of ethics in government generally, we now consider the topics that occupied most of the attention of the committee. On each of these topics we benefited

from the special studies of a subcommittee. In each case also the subcommittee's report, as revised by the whole committee, provides the major part of the text of the full committee's report.

PART II. PUBLIC SERVICE ETHICS and CONFLICTS OF INTEREST

The subcommittee that contributed most of the substantive material to this chapter was called the Subcommittee on Legislative Ethics and Conflicts of Interest. The broader title used above for this chapter is intended to indicate that there are ethical problems and conflicts of interest in all three branches of the state's service, although the special problems that arise in the judicial branch will not be discussed herein. In the two branches that will be considered the principles of ethical conduct are the same, but the specific problems and the applications thereto of the principles are not the same in the legislature as they are in the executive and administrative branches.

A conflict of interests, as the term is used in this report, exists whenever a legislator or other public official has placed himself in a position where, for some advantage gained or to be gained for himself, he finds it difficult if not impossible to devote himself with complete energy, loyalty, and singleness of purpose to the general public interest. The advantage that he seeks is something over and above the salary, the experience, the chance to serve the people, and the public esteem that he gains from public office. The advantage he seeks may be in the form of money. The extreme case of this is his acceptance of a bribe to vote or act in a certain way on a certain measure on which he must act, but there are more subtle approaches such as substantial payments into his campaign funds, or an ostensible retainer paid to a lawyer-legislator by some private interest when it is implied he will not be called upon to give legal services commensurate with such retainer. Other advantages to the official that are not directly in the form of money are free vacations, travel, entertainment and gifts of valuable things. Also, if a candidate for office were to make a blank-check pledge in advance to support any future program of an organization, in return for financial support or expected votes at the polls, this might give him a certain advantage in the election but it would surely make it hard for him thereafter to serve the whole public with complete devotion. He would be faced with a real conflict of interests.

We do not consider it unethical for a candidate to agree publicly to support the published platform of a political party, or

to work for the welfare of such extensive groups as agriculture, labor, business, the public schools, the aged, the taxpayers, or any other legitimate group or interest in the community. On the basis of such public statements of his position the voters can make up their minds whether to vote for him or not. We do, however, consider it distinctly unethical for a candidate to make any pledge of support in secret or for any consideration to any special interest group, or to pledge himself in effect to any special interest to vote or act in public office as the representatives of that interest may request. *It is one thing to pledge publicly to support an already formulated and published platform of a group, and quite another to barter away secretly in advance his independence of decision on public issues that may come before him for action.*

The voters are entitled to know where a man stands on the major public issues with which his office will be concerned before they cast their votes in the election, and each elected or appointed official is supposed to go into office free and untrammeled to serve the entire people with all his energy and ability, and with an unselfish devotion beyond that which is expected in some other walks of life. The ethical demands of public service set considerably higher and more positive standards of conduct.

In the committee we were not concerned with arguments which would attempt to prove that certain kinds of commitments to, retainers from, and relations with special private interests would not compromise the ethical position of a legislator or other public official. Above all we were not lured into the attempt to decide on the basis of charges made in recent political campaigns whether certain legislators, public officials, and candidates for office, had not been guilty of serious deviations from a sound code of public ethics.

The question is not whether in fact a legislator or public official laboring under the handicap of a conflict of interests in performing his duties has actually voted or acted differently from what he would have done without having so compromised himself. *The real question is whether he has not put himself in a position where public doubts may arise as to his loyalty to the public service and even as to his integrity and the integrity of others in the public service.* Having accepted or even sought special advantages and emoluments for himself from special groups, with the understanding that he will work for the special interests of those groups, has he not in fact helped to cast doubt upon the integrity of the entire government and upon the very

system of government of the people, for the people, and by the people? Guided by the principles noted above, the Committee

(1) HAS DRAWN AND ADOPTED A CODE OF PUBLIC SERVICE ETHICS AND CONFLICTS OF INTEREST (which Code is given in full as Appendix I);

(2) RECOMMENDS THAT THE LEGISLATURE ENACT LEGISLATION BASED UPON THIS CODE, WITH APPROPRIATE SANCTIONS, AND THAT THE LEGISLATURE CONSIDER WHETHER SUCH LEGISLATION SHOULD NOT BE MADE APPLICABLE, IN WHOLE OR IN PART, TO THE LOCAL GOVERNMENTS AS WELL;

(3) RECOMMENDS THAT THE GOVERNOR PROMULGATE THIS CODE TO THE HEADS OF ALL STATE DEPARTMENTS AND AGENCIES WITH SUCH SUPPLEMENTARY ADMINISTRATIVE REGULATIONS AND SANCTIONS AS THE NEEDS OF THE VARIOUS DEPARTMENTS AND AGENCIES DEMAND, AND AS IS WITHIN THE POWER OF THE GOVERNOR TO DO.

In the background of all the committee's discussions and proposals lie a great many American experiences with the problem of conflicts of interest in public life, and numerous able writings and wise utterances on the subject. Some of the ablest statesmen and scholars have contributed to the discussion, and it is interesting to note how close is the agreement on the issues of public ethics among practically all the great leaders of American thought from the establishment of the Constitution to the present. Recently there has developed a nationwide concern over the problem of the conflicts of interest in the public services. Many studies and reports have been made on the subject. Our recommendations for Minnesota follow the general lines of other proposals, but they are not a mere copy of any other document.

The Code we have adopted and are recommending for legislative and administrative adoption is based on a thorough analysis of the principles set forth in laws, judicial decisions, Bar Association Codes of Ethics, and other materials dealing with conflicts of interest in national and state governments generally. This is a fundamental document for legislators which has been appended to this report (Appendix IV).

It should be noticed that our code deals entirely with persons in the public service and not with those individuals or organizations who try to gain advantages for themselves by the employment of legislators and public officials to look out for their special interests.

(4) THE COMMITTEE RECOMMENDS THAT THE LEGISLATURE GIVE SERIOUS THOUGHT TO THIS PROBLEM AND TO THE PASSAGE OF AN APPROPRIATE LAW, WHEN PREPARING ITS LEGISLATION ON CONFLICTS OF INTEREST.

Assuming the passage of legislation in substantial accord with the proposals herein made, there remains the difficult problem of securing compliance with it. We do not think that there is any one simple way of bringing about the desired results. A variety of methods and approaches will probably be needed. Enforcement by criminal process and punishment should be the very last resort but it should be available.

For officers and employees in executive offices and in the administrative departments and agencies, while criminal prosecution should be available as a final resort, much more could probably be done under legislation and administrative regulations to make sure of the careful selection of personnel of integrity under the merit system, as well as for non-civil service positions. The administrative departments will wish to consider regulations for the discipline and removal of such officers and employees as fail to measure up to the best standards.

In-service training should also be aimed in large part at promoting employee morale at high ethical levels. An agency with a high sense of devotion to the public service and an ingrained habit of rectitude should have very few difficulties about compliance.

It is important, however, that the general public and various professional and business associations, churches and civic groups of all kinds, farm and labor groups, should play important parts in giving support to the raising and maintaining of high ethical standards in the public service. Business in general does not benefit by having some branches of business placed in a preferred position to influence legislative and administrative action.

The Minnesota Bar Association is in an especially strong position to influence public opinion and legislative action on the important subject of the ethical conduct of members of the Bar in the legislature and in state administrative positions. Newspapers in particular, and other media of mass publicity, have a great opportunity to promote a public demand for complete integrity in the public services. Cooperating with the schools, the colleges and the University, organizations and media such as we have mentioned can all be worthy participants in the continuous education of the people in the benefits and responsibilities of good citizenship. Minnesota already has good standards in general. The problem now is to raise them to even higher levels and to keep them on the upgrade. Problems of enforcement decline in importance as rectitude in public office becomes more general and more secure. But always alertness to evils which may develop will remain necessary.

PART III. CAMPAIGN FINANCES AND METHODS

The ethical problems in this field are many, varied, and difficult. They fall generally into two broad classes with some overlapping at the edges.

A. *Campaign Finances:*

No one knows or ever will know exactly how much money is spent in political campaigns and elections, but the amounts have truly become staggering. It has been estimated that the campaigns of the two major parties for the Presidency and Congress in 1956 cost over $200 million. This is well over $1 per capita for the whole population. With the steady enlargement of the electorate, the inflation in costs that has been going on in all lines of endeavor, the multiplication of expensive media of communication such as radio and television, the continued need for newspapers, billboards, handbills and other forms of the printed word, the rising costs of travel, telephoning, campaign headquarters, and other ways of getting the message to the voters, the costs are bound to continue to rise.

State campaigns are not nearly as expensive, of course, but their costs still run into large figures and unavoidably so. For either major party to elect a governor and the rest of the state list of officers, costs a good deal of money—and the losing party may spend as much or even more. It used to be said that the party with the largest purse bought the elections, but we think this is no longer so. We consider the campaigns and elections as very important means of stimulating the electorate and of educating the voters on the issues. The amounts expended by both parties and all candidates and their supporters on a biennial statewide campaign, large as those amounts are, are by comparison but a very small percentage of the amount of the biennial state budget. Whatever is spent for truly informative and educational purposes is not, in our judgment, money wasted or misused. *An informed electorate is essential to the successful operation of popular government.*

It is the opinion of the Committee, therefore, that the present limitations on campaign spending, as stated in the Minnesota Corrupt Practices Act, are highly unrealistic. The present

dollar limits set forth in Section 211.16 ($7,000 for the governor, $3,500 other state officers) would not allow enough money for a one hour statewide radio and television coverage at a desirable time. Since it is an advantage to the state to have the voters hear and see the candidates, and since radio and television now make possible a much wider audience, we think it is a matter of good public policy not to impose such unrealistic limits on expenditures for state candidates. Any specific dollar limitation would be very hard to justify, and would probably soon be out of date.

(5) WE RECOMMEND, THEREFORE, THAT THE PRESENT LIMITATIONS BE REPEALED, THAT NO MAXIMUM DOLLAR LIMITATIONS WHATEVER BE IMPOSED, AND THAT THE LAW BE CHANGED IN THE DIRECTION OF MAKING THE OBJECTIVE A FULL DISCLOSURE OF ALL FUNDS RECEIVED AND SPENT FOR AND BY EACH CANDIDATE AND EACH PARTY, INCLUDING THE CANDIDATE'S PERSONAL FUNDS AND ALSO ANY CONTRIBUTIONS IN KIND AND THE REAL VALUE OF SUCH CONTRIBUTIONS.

No one is really being deceived by present practices, but neither is anyone able to state how much money has been spent in any state campaign for either major party or for any candidate for state office—nor from what sources the money and the contributions in kind were received. This is important information that the public is entitled to have, and that it needs for intelligent voting.

In short, what we recommend is a different approach to the control of campaign expenditures. Partly because present limitations are so unrealistic we fear that many worthy candidates may have been forced to resort to various subterfuges to raise funds and get campaign help without directly violating the law. The setting up of various "volunteer committees" and committees of "independents" for various candidates illustrate this point. Another subterfuge is to have some organization or individual not raise money but make a substantial contribution in kind, such as paying for billboard space or advertisements in newspapers. Thus the expenditures pass though many channels—the candidate himself, his party, his volunteer committees, and other organizations and individuals who seem to act independently. Hence the funds need not all be reported as expenditures of the candidate although actually they are spent for his benefit.

We have given serious consideration to the drafting of such a law and to the problem of getting it enforced. We call attention especially to a recent statute of the state of Florida which requires each candidate for state office to appoint a treasurer who is

required to receive, handle and report all money that is raised and spent for the candidate in any way. This law has already been tried and the initial reports on it suggest that it is working well.

We believe that to be effective in Minnesota such a law should designate some state officer who is experienced in financial audits and investigations, such as the public examiner, to carry out its provisions, and should give him the power, the duty, and the necessary personnel and funds to compile and publish a complete accounting of campaign funds raised and expended, and the sources from which they came. The present indifference to such matters, and the semi-concealment that results, reveal a lack of candor that is not good for the political moral tone of the state.

Our position is that campaigns are necessary and that they can do a great deal of public good, but that they are unavoidably expensive. It is because campaign funds are raised and spent more or less secretly that the suspicion arises of unethical conduct and of the use of campaign contributions for bringing improper pressure to bear on candidates. If new laws calling for full disclosure were to have the effect of eliminating some campaign contributions of dubious honesty and purpose, that might have a wholesome effect on political morals.

The Committee believes also that efforts should be made to discover ways of bringing about widespread voluntary public support among people of ordinary or average incomes for the campaign finances of the major parties and their candidates for state office. A broader support base, bringing thousands and ultimately tens or even hundreds of thousands of small contributions to the major parties would, we believe, be highly desirable. The major political parties perform essential public services in informing and mobilizing voters in the performance of their roles in maintaining popular government, and they are therefore entitled to general public support. They should not be forced to rely so heavily upon large contributions from special interests.

Both in the subcommittee and in the general committee we have considered an oft-mentioned suggestion that was made fifty years ago by President Theodore Roosevelt that the national government finance each major party to the extent of twenty cents per voter in presidential election years and fifteen cents per voter in the "off-year" elections. Neither the national government nor any state has taken up this suggestion, and we think it is quite unrealistic. In a state like Minnesota, which nominates its candidates for state office by a fairly wide open primary, with party endorsement of one preferred candidate for each office, it would

be quite unfair and illogical to use any tax-raised funds to help nominate the party-endorsed candidates or, in fact, any others. Considering the general election alone, it is clear that to give tax support to the two major parties is in effect to make them agents of the government, to help "freeze" them into fairly static organizations by subsidies, to discourage the rise of new parties, and to penalize minor parties. The committee believes, therefore, than any attempt at direct tax support for parties and candidates is unwise.

We do believe, however, that Minnesota has made a sensible move in permitting the payers of state income taxes to subtract campaign contributions up to $100 a year from their total incomes before calculating their tax liability. This gives some public encouragement to people of moderate means as well as to the more affluent to make modest campaign contributions, and may have some effect in getting more people interested in their political parties.

(6) WE RECOMMEND THAT THE $100 CEILING ON SUCH CONTRIBUTIONS BE RAISED, BUT THAT A DEFINITE CEILING ON SUCH DEDUCTIBLE CONTRIBUTIONS BE KEPT;

THAT THE LEGISLATURE MEMORIALIZE AND THE GOVERNOR RECOMMEND TO THE CONGRESS OF THE UNITED STATES TO MAKE SUCH CONTRIBUTIONS ALLOWABLE AS CREDITS AGAINST INCOME.

In connection with the problems of conflicts of interest and campaign finances, it has been pointed out by some persons that legislative elections, which are not conducted on a party basis because legislators are elected without party designation, are especially susceptible to special interest influence. Since political parties are not made publicly responsible for the recruitment, nomination and election of legislative candidates, political interest groups and their lobbyists have found it relatively easy to move in on legislative races by recruiting and financing the campaigns of amenable candidates who would follow their guidance, a practice which is hardly conducive to the selection of legislators who will be free of any conflict of interest.

Since the problems involved in the election of legislators without party designation impinge only marginally on the issues before the Committee, we did not discuss them.

In enacting new legislation on the subject of campaign expenses it will be *important,* however, *for the legislature to consider the role and responsibility of the political parties and their*

treasurers and finance committees for keeping records and making reports on moneys received and expended.

B. *Campaign Methods:*

Our subcommittee in this field made an intensive study of the present Minnesota Corrupt Practices Act. Its general conclusion was that the act has a commendable and necessary purpose but that its provisions are now in great part outmoded. It pointed out that, while other parts of the act are not above criticism, Parts II and VI—Part II dealing with "Authorized Expenditures by Candidates' Committee; Limitations on Same; Solicitation", and Part VI dealing with Campaign Committee; Filing of Financial Statements by Candidates and Committees"— are in need of immediate revision to bring them into line with the realistic demands of modern political activity.

The subcommittee did not list all the provisions of the act that seem inadequate, nor did it try to enumerate and give examples of the many types of unethical, uncharitable, and sensational tactics that crop up in political campaigns and that apparently are not reached by, or are very rarely punished under the law. *The subcommittee discussed such practices as dishonest campaign promises, stooge filings, unsigned "letters to the editor," deceptive and misleading "sample ballots," smears, personal attacks, emotional appeals, and vandalism resulting in the destruction of placards and campaign literature.* Its conclusion was that many such unethical tactics cannot even be adequately catalogued, and certainly not be effectively restrained by legislation. It did not exclude the possibility that some practices could be adequately defined and punished by law, but it did not attempt to list these types.

Since the present Interim Legislative Committee on Election Laws is making a detailed study of the Corrupt Practices Act, we do not make any recommendations on this subject.

The Committee gives its wholehearted support to the movement now going forward in Minnesota and other states to formulate codes of fair campaign practices. Such a code, drawn up and endorsed by the National Committee on Fair Campaign Practices, which has been widely accepted in New York and is sometimes called the New York Code, has the approval of this committee, with only minor changes.

(7) THE COMMITTEE APPROVES AND ADOPTS THIS CODE (which is listed as Appendix II) FOR WIDEST USE IN MINNESOTA.

This code is not in legislative form, nor is it intended for

enactment into law. Instead it is drawn up in the form of a pledge to be made and signed by every candidate for public office. The enforcement, if any, will have to be by public opinion and by the actions of voters in rejecting any candidate who refuses to sign the pledge or who signs it and then clearly violates it.

The implementation of such a code calls for the united efforts of many organizations and agencies, both public and private.

(8) WE RECOMMEND THAT THE LEGISLATURE AND THE GOVERNOR APPROVE THE CODE IN PRINCIPLE BY AN APPROPRIATE RESOLUTION, AS THE UNITED STATES CONGRESS RECENTLY APPROVED A CODE OF ETHICS FOR GOVERNMENT SERVICE;

THAT THE STATE POLITICAL PARTIES PUT THEMSELVES ON RECORD AS STRONGLY IN FAVOR OF IT, AND THAT THEY CALL IT TO THE ATTENTION OF ALL CANDIDATES FOR PUBLIC OFFICE AND ALL CAMPAIGN WORKERS;

THAT NEWSPAPERS AND OTHER MEDIA OF COMMUNICATION THROUGHOUT THE STATE PUBLISH THE CODE, CALL ATTENTION TO IT IN EVERY CAMPAIGN, AND REPORT UPON THE TREATMENT ACCORDED TO IT BY CANDIDATES AND CAMPAIGN WORKERS;

THAT CITIZENS' LEAGUES AND OTHER GOOD GOVERNMENT ORGANIZATIONS MAKE IT A PART OF THEIR PROGRAM OF ACTIVITIES TO SEE TO IT THAT ALL CANDIDATES RECEIVE, SIGN, AND OBSERVE THE PLEDGE CONTAINED IN THE CODE.

It would be easy to ridicule the idea of a purely voluntary code and pledge having any influence on actual campaign practices. The Committee takes a different position. *No one can be sure that such a pledge will not have a good effect until it has been carefully and systematically tried.* Minnesota might be just the state to raise the standards of political campaign methods by a united and sustained public effort. Many statewide as well as local organizations might find their participation in such an effort most rewarding. The proposed code is certainly worthy of such a thorough trial.

The Committee believes that any code of fair campaign practices is as applicable to local campaigns and elections as it is to state and national. The moral principle of fairness in campaigning is not limited to any level or class of governments.

PART IV. LOBBYING

The practice of lobbying to bring about the passage or the defeat of legislative proposals, national, state, and local, and in some cases also to influence the actions of administrative bodies, has long been a concern of the students and practitioners of government in the United States. In no country has there been such an extensive organization of interest groups in all lines of endeavor as there has been here, and in none are there so many paid lobbyists, legislative agents, public relations consultants and other specialists in influencing public action. The dangers of the use of improper influences, from the crudest sort of bribery through a long list of more subtle and insidious inducements, are not mere figments of the imagination. Many instances of improper actions have been proved in judicial and legislative investigations.

The subcommittee appointed to study this field made a thorough study of the conclusions reached by other investigators and of the legislation on the books of the national and state governments. It found that Congress and thirty-eight state legislatures have enacted lobby control legislation. This means that Minnesota is one of only ten states (now elevn since the admission of Alaska) that do not have laws on this subject.

For reasons that are more fully stated below, the Committee believes that a law is needed in Minnesota to govern the activities of political interest groups and their legislative agents. Such a law will assure that the legislative activities of these groups will be a matter of public knowledge. Public opinion will be served by the publicity that flows from the requirements of such a law. The ultimate safeguard in a democracy is an informed public.

(9) THE COMMITTEE THEREFORE RECOMMENDS THE ENACTMENT OF LEGISLATION DESIGNED TO REQUIRE THE DISCLOSURE OF THE ACTIVITIES AND FINANCES OF LEGISLATIVE AGENTS AND OF THE RELATED ACTIVITIES OF THEIR EMPLOYERS. THE COMMITTEE DID NOT DRAW A PROPOSED LAW ON THIS SUBJECT, BUT RATHER CALLS ATTENTION TO AND SUMMARIZES ONE ACT AND TWO PROPOSALS (Wisconsin Act, proposed Federal Law, Proposal by Governor Earl Warren) WHICH IT BELIEVES MIGHT GUIDE THE MINNESOTA LEGISLATURE IN THE FORMULATION OF SUCH LEGISLATION (APPENDIX III).

We believe that not only will the general public interest benefit from such legislation but that the interest groups that employ legislative agents will also benefit from the increased

public understanding and confidence that such disclosure will assure. The prohibition of certain pernicious practices designed to influence legislation should also prove generally beneficial.

Despite the bad connotation that is usually connected with the words "lobbyist" and "pressure group," the courts, political scientists and other students of government are in general agreement that the act of organizing a group for the purpose of seeking to influence the government is a right guaranteed to every citizen by the First Amendment to the Constitution of the United States, which assures "the right of the people peaceably to assmble, and to petition the government for a redress of grievances."

Most students of government and men engaged in government therefore agree that the organized groups that seek to influence governmental processes and that employ agents to appear for them before legislative and other governmental agencies are exercising a fundamental right. Without this type of representation, government officials would find it very difficult if not impossible to ascertain the views of the segments of the public that will be affected by the decisions they are called upon to make. Group representation and participation in the legislative process in our country today at every level of government are as essential a part of the democratic process as are elections, political parties and the freedom of speech and press.

The legislative agent, or "lobbyist," therefore performs a legitimate and indispensable function for those he serves. Not all members of a group can find it possible to be present and testify at legislative hearings, nor would it be physically possible for all members of most groups to appear at the seat of government at one time or over a reasonable period of time to present their views on public policy matters. The members of a group, however, through participation in group meetings, committees and other activities, develop policy views which they adopt and seek to persuade the public to adopt through the legislative process. Since it is the role of the legislative agent of the group to present these policy proposals to the public and to the legislature, his duty is to seek to persuade legislators and other officials and the public itself that the policy goals of his group are necessary and desirable.

So long as the legislative agent's attempts to persuade are based on reliable information, a fair presentation of the facts, and appeals to reason, he is performing a valuable educational service for the legislators and the public. The communication of knowledge about public issues that results from the competition of political interest groups and their agents in the marketplace of public

opinion and in the legislature serves to provide much of the substantive knowledge that goes into the making of public policy.

It is when the legislative agent seeks to use other means than appeals to reason to influence legislative decisions that his activities become subversive of our democratic way of life, and of our governmental processes. To the extent that the activities of legislative agents and the groups they represent depart from appeals to reason and seek to use other means to accomplish their policy goals, the public interest necessarily suffers. Legislation to prevent such departures is justified, we believe, in the public interest, even though such legislation may inconvenience those who are made subject to it.

The legislation that has been adopted in over three-fourths of the states and by the United States Congress is intended mainly to assure the public disclosure of the facts surrounding the activities of legislative agents who are compensated for seeking to influence legislation, and the related activities of their employers. Certain practices that are subversive of our governmental processes are also prohibited by such laws. *It is not intended that such laws prohibit or restrict anyone from appearing before the legislature in support of, or in opposition to any legislation.*

It should be said that it is the conviction of the members of this committee that the overwhelming majority of legislative agents and political interest groups in Minnesota are honest and forthright in their activities. We regret that they may be inconvenienced by any legislation that may be adopted, but, as is often the case, *the rules must be made for all in order to regulate and control the few who flout decency rather than for the many who conform to decency and the law.*

In all the thirty-eight states that regulate the activities of legislative counsel, registration and reporting are relied on to secure the disclosure of their activities. Enforcement is accomplished either through criminal sanctions or denial of the right to continue as lobbyists. Registration is with either the Secretary of State or an officer of the legislature.

Studies reveal that a major weakness in the several state acts is the absence of an agency with sufficient facilities, powers, or personnel properly to administer the act or to publicize the information obtained. Since disclosure is considered the important element in eliminating the undesirable aspects of lobbying, it is obvious that the mere registration and filing of information without provision for analyzing and publishing the data do not achieve the purposes of the acts.

In most cases the states limit the applicability of their laws

to lobbying that involves some direct pecuniary interest on the part of the lobbyist and his organization in proposed or pending legislation. There is a rather uniform recognition that constitutional limitations do not permit states to require prior licensing or registration of those seeking to exercise their right, as citizens, to be heard for the purpose of influencing legislation. Kentucky and Wisconsin have tested the constitutionality of their statutes, and the laws have been upheld.

APPENDICES

APPENDIX I.
A CODE OF ETHICS DEALING WITH PUBLIC SERVICE AND CONFLICTS OF INTEREST

Recommended for Adoption by the Legislature of the State of Minnesota, by the Governor's Committee on Ethics in Government.

Declaration of Intent:

It is declared that high moral and ethical standards among the public servants are essential to the conduct of free government; that a code of ethics for the guidance of public officers and employees is necessary in order to eliminate conflicts of interest in public office, improve standards of public service, and promote and strengthen the faith and confidence of the people of Minnesota in their government.

Section 1. *Definitions:*

(a) State agency—means any state board, commission, bureau, department, division, or tribunal other than a court.

(b) Legislative employee—means any officer or employee of the legislature other than members thereof.

(c) Personal and private interest—means any interest which pertains to a person, firm, corporation or association whereby such person, firm, corporation or association would gain a special benefit or advantage as distinguished from a general or public benefit or advantage.

(d) Confidential information—means such information as is declared confidential by other specific statutes.

Section 2. No officer, employee of a state agency, member of the legislature, legislative employee or other public official should have any interest, financial or otherwise, direct or indirect, or should engage in any business or transaction or professional activity, or should incur any obligation of any nature, which is in conflict with the proper discharge of his duties in the public interest.

Section 3. Standards of conduct—No officer or employee of a state agency, legislator or legislative employee or other public officer should use his position to secure special privileges or exemptions for himself or others.

(a) No legislator or legislative employee should directly or indirectly receive or agree to receive any compensation, gift, reward or gratuity from any source except the state of Minnesota

for any matter connected with or related to the legislative process unless otherwise provided for by law.

(b) No officer or employee of a state agency, or other public officer should directly or indirectly receive or agree to receive any compensation, gift, reward or gratuity from any source except the state of Minnesota, its political subdivisions, or employing municipal government, for any matter connected with or related to his services as such an officer or employee unless otherwise provided for by law.

(c) A member of the legislature who has a personal or private interest as defined herein, in any measure or bill proposed or pending before the legislature, or who is a paid representative of any person, firm, corporation or association having such interest, should disclose such interest to the legislative assembly or committee of which he is a member, and such disclosure shall be recorded in the journal or minutes of such committee.

(d) No member of the legislature, officer or employee of any department or agency of the state of Minnesota should act as an agent or attorney for the prosecution of any claim against the state of Minnesota, nor should he aid or assist in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, nor receive any gratuity or any share of or interest in any such claim.

(e) No person who has served as an officer or employee of a state agency should, within a period of two years after the termination of such service or employment, appear before such agency or receive compensation for any services rendered on behalf of any person, firm, corporation or association in relation to any case, proceeding or application with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment.

(f) No officer or employee of a state agency, legislator, legislative employee or public official should accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by him by reason of his official position.

(g) No officer or employee of a state agency, legislator, legislative employee or public official should disclose confidential information gained by reason of his official position nor should he otherwise use such information for his personal gain or benefit.

(h) No officer or employee of a state agency should transact any business in his official capacity with any business entity

of which he is an officer, agent, employee or member, or in which he owns an interest.

(i) No legislator should accept any employment or retainer for appearances before any state board or agency. Inquiry for information on behalf of a constituent may with propriety be made, but no fee, gift or favor should be accepted therefor, either directly or indirectly.

(j) The head of each state agency should publish for the guidance of its officers and employees a code of public service ethics appropriate to the specific needs of each such agency.

(k) No officer or employee of a state agency nor any firm, corporation, or association, or other business entity in which such officer or employee of a state agency is a member, agent, officer, or employee, or in which he owns a controlling interest, or any interest acquired after the acceptance of state employment, should sell goods or services to any person, firm, corporation, or association which is licensed by or regulated in any manner by the state agency in which such officer or employee serves.

Section 4. (a) Each legislator or legislative employee, agency officer and such employees thereof as the agency head may by regulation provide, who is an officer, agent, member of, attorney for, or who owns an interest in any firm, corporation, association or other business entity which is subject to state regulation should file a sworn statement with the secretary of state disclosing the nature and extent of his relationship or interest, said statement to be kept in confidence and to be disclosed only to members of the legislature or any legislative committee which may be organized for the purpose of ascertaining a breach of this code, and the same also to be disclosed to any other authority having the power of removal of any public official or servant.

(b) Each elective or appointive officer of the state of Minnesota, or any department or agency thereof, execpt members of the legislature, shall file annually with the secretary of state a report containing a full and complete statement of the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift (other than gifts received from members of his family), received by him during the preceding calendar year which exceeds $100 in amount or value; including any fee or honorarium received by such officer, including also the monetary value of any subsistence, travel and other facilities received for or in connection with the preparation or delivery of any speech or address, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication.

Section 5. This code should be construed liberally to effectuate its purposes and policy as set forth in the "Declaration of Intent", and to supplement such existing laws as may relate to the same subject.

* * * * * *

APPENDIX II.

CODE OF FAIR CAMPAIGN PRACTICES*

There are basic principles of decency, honesty and fair play which every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the Country.

THEREFORE:

I SHALL CONDUCT my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I SHALL CONDEMN the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his personal or family life.

I SHALL CONDEMN the use of campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate, as well as the use of malicious or unfounded accusations against any candidate which aim at creating or exploiting doubts, without justification, as to his loyalty and patriotism.

I SHALL CONDEMN any appeal to prejudices based on race, creed, class or national origin.

I SHALL CONDEMN any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE the support of any individual or group which resorts, on behalf of my candidacy, to the methods and tactics which I condemn.

I, the undersigned candidate for election to public office in the United States of America, hereby endorse, subscribe to and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices, so help me God.

* The Code was prepared by the National Committee on Fair Campaign Practices, 8 E. 66th Street, New York 21, N. Y.

_____ Date

_____ Signature

APPENDIX III.

SUGGESTIONS FOR LOBBY CONTROL LEGISLATION

Report of the Subcommittee on Lobbying

The Committee has examined the statutes of several states and the Congress, as well as two proposed statutes. On the basis of the examination, we feel that three meaures are deserving of careful consideration. One has been enacted in Wisconsin, one proposed by Governor Warren of California in 1949, and one proposed by a committee of the U. S. Senate in 1957.

(An exhaustive analysis of laws relating to the regulation of lobbying, prepared by Mr. Sydney Berde, is available from the Committee, through the office of the Attorney General.)

A. *The Wisconsin Regulation of Lobbying Act:*

The Wisconsin Stat., Sections 13.61—13.71 (1955) is simple, clear, broad in scope of coverage, and aims to prohibit defined activities. It regulates not only lobbyists, but principals as well both being subject to the penalty provisions of the Act.

Coverage:

Section 13.66 prohibits any person from practicing as a lobbyist unless he has registered first with the Secretary of State, and disclosed his employment "in respect to such matters as he shall be promoting or opposing". This section also prohibits "principals" from employing, "directly or indirectly", lobbyists in any matter affecting the "pecuniary interest of such principal until both the principal and the lobbyist have registered and disclosed their interest."

By Section 13.62(1) lobbying is defined as "the practice of promoting or opposing" legislation before the legislature or its committees or members. Section 13.62(2) defines a lobbyist as "any person" engaging in the practice of "lobbying for hire", including "officers, agents, attorneys or employees of any principal who are paid a regular salary or retainer *** and whose duties include lobbying". A "principal" is defined by Section 13.62 (4)(a) as any "person, corporation or association" engaging a "lobbyist or other person in connection with any legislation", affecting the "pecuniary interest" of such person, etc., and includes

also state, county, or municipal boards, agencies and commissions. "Pecuniary interest" includes "legislation which creates, alters or repeals a tax, license fee, registration fee" etc., or which affects any privilege, power, duty, or obligation of such principal or of any court or agency before which the principal does business. Section 13.62(7)

Registration Requirements of Those Covered:

Section 13.63 empowers the Secretary of State to issue licenses to persons of "good moral character" who desire to practice as lobbyists. Principals who employ lobbyists are required to register the name of the person so employed. The names and addresses of principals and lobbyists are thus made matters of public record.

Section 13.64 provides that every principal employing a lobbyist must enter his name on a docket with the Secretary of State. In addition, each lobbyist must also enter his name in a like manner. The purpose of the docket with the Secretary of State is to identify lobbyists, principals, and the legislation in which they are interested. As lobbyists and principals become interested in new subjects of legislation they are required by Section 13.65 to inform the Secretary of State of that fact.

The Act prohibits any person from acting as a lobbyist until registered in the manner required by law. In addition, a duty is imposed upon principals employing lobbyists to insure the registration of their employees before acting on behalf of legislation for which hired. The Act also prohibits contingent fee employment contracts, where the compensation is paid conditional on successfully opposing or favoring legislation.

Reporting Requirements:

Section 13.67 requires every lobbyist, monthly during the session, to file with the Secretary of State a sworn statement of expenses in connection with his activities of the preceding month relating to matters in which he was engaged as a lobbyist. Personal living expenses are excluded from this report.

In addition, within 30 days of adjournment every principal is required to file with the Secretary of State a "detailed statement verified under oath" of all expenses incurred in connection with employment of lobbyists or relating to the "promoting or opposing in any manner the passage *** of any legislation affecting the pecuniary interest of such principal".

These reports are incorporated in the journal of each house and are open to inspection by the public. The Act specifically provides in Section 13.67(2) that any expenditures made or

obligations incurred by a lobbyist for entertainment of any state official or employee shall be reported in the same manner.

The Secretary of State is required, each week during the session, to report from his records to each house of the legislature (a) the names of the lobbyists registered (b) the persons they represent (c) and the subjects of legislation in which interested. These reports are incorporated in the journals of the house, and a copy of the reports is also forwarded.

Exclusions and Exceptions:

Section 13.70 provides that unless persons are licensed as lobbyists, they may not "personally and directly" attempt to influence legislation except by appearance before regular committees of the legislature, or by newspaper or public address to persons other than legislators, or by written or printed arguments addressed to legislators.

Officers, agents and employees of state and federal agencies are prohibited from attempting to influence legislators in matters affecting the pecuniary interest of those state and federal agents, except in the manner authorized for lobbyists.

The Act specifically recognizes the constitutional right of citizens to communicate with legislators, and provides that persons not lobbying for hire may freely communicate and discuss legislative matters with their representatives on pending or proposed legislation. Furthermore, persons whose lobbying is confined solely to appearances before legislative committees or either house or in committee or the whole, and who register their appearances on the record, are not required to be licensed as lobbyists nor file any of the reports required by the law.

Restrictions—Violations—Penalties:

Section 13.71 prohibits lobbyists from going on to the floor of the chamber of either house during daily sessions except on invitation of the members.

Section 13.72 provides that newspapers or other periodicals, and their editors, owners, publishers or agents who, for a consideration, publish matters designed to influence pending or proposed legislation, must file with the Secretary of State a statement showing the amount so paid. This requirement, however, does not apply to paid advertisements. Violation of this provision is punishable by a fine of not less than $500 nor more than $5,000.

Section 13.63 provides for the suspension or revocation of licenses. This section permits the enforcing authority to proceed against a license holder charged with having been guilty of unprofessional conduct or with having procured a license by fraud

or perjury. Conviction results in automatic revocation of the license. The licensing authority may commence such action on his own motion. A lobbyist whose license has been suspended or revoked may not engage in legislative representation until reinstatement of his license by the Secretary of State.

Section 13.69 extends the penalties of the law to both lobbyists and principals. This section provides that a principal violating any of the provisions of the law may be fined not less than $200 nor more than $5,000.

Lobbyists who fail to comply with the requirements of law, or persons acting as lobbyists without first having obtained a license, upon conviction may be fined not less than $100 nor more than $1,000, and in addition may be disbarred from practicing as a lobbyist for three years.

For failure to make the reports required by Section 13.67, a lobbyist or principal may be fined $500, or six months imprisonment, or both. Any lobbyist or principal found guilty of making false statements in connection with his activities as a principal or a lobbyist may be fined not less than $500 nor more than $1,000, or may be imprisoned for not less than 30 days nor more than one year.

Other Provisions:

Section 13.73 is designed to prohibit log-rolling. This section prohibits legislators from agreeing or promising to agree to exchange votes on pending or proposed legislation. Violation of this provision constitutes a felony punishable by a fine of not less than $500 nor more than $1,000, or by imprisonment in the state prison for not less than one year nor more than three years.

Section 13.74 is aimed to curb executive favor. This section prohibits a legislator from giving or agreeing to give his support on behalf of legislation on the condition that the governor shall approve or disapprove such pending or proposed legislation or on the consideration that the governor will appoint or nominate for appointment or remove anyone from office. Violation of this provision constitutes a felony punishable by a fine of not less than $500 nor more than $1,000 or by imprisonment for not less than two years.

Section 13.75 notes that nothing in the Act shall be construed to limit or impair freedom of debate or discussion. Nor is the prerogative of legislators to compromise conflicting legislation infringed in any way by the provisions of the Act.

Wisconsin Laws 1957, C. 706, amended the Wisconsin

Lobby Law by adding to the definitions of unprofessional conduct of lobbyists the following paragraph:

> Directly or indirectly furnishing or being concerned in another's furnishing to the governor, any legislator, or to any officer or employee of the state, to any candidate for office or for the legislature, any food, meal, lodging, beverage, transportation, money, campaign contributions, or any other thing of pecuniary value. This paragraph does not apply to entertainment by a nonprofit organization at a bona fide social function or meeting of such organization.*

* * * * * *

B. *The Legislative Activities Disclosure Act:* (proposed federal bill)

This measure has been drafted by the U. S. Senate's Special Committee to Investigate Political Activities, Lobbying, and Campaign Contributions, a bi-partisan committee consisting of four members of each major political party. This proposed statute was drafted as an amendment to the existing Federal Regulation of Lobbying Act passed in 1946, its purpose being to correct the deficiencies noted in the operation of that act over the past decade.

It is designed primarily to clarify and simplify existing law, delineate its coverage clearly and precisely, and provide for its effective administration. Emphasis has been placed upon disclosure and not regulation and the Act has accordingly been renamed the "Legislative Activities Disclosure Act."

It requires that "legislative agents," defined in the Act as persons who, for any consideration, are employed or retained to influence legislation by means of direct communication with Congress, must file notices of representation identifying themselves and their principals, and the terms of their representation. In addition, the bill would require the filing of periodic reports and the maintenance of specified records by legislative agents, as well as certain others who for a stated amount of compensation are employed to influence legislation by direct communication, or who employ others for that purpose, or who have made expenditures in excess of a stated amount in presenting a program intended or designed to influence legislation.

Administration of the Acts is vested in the Comptroller General of the United States, who is given certain stated duties and functions in connection with prescribing appropriate forms, insuring compliance with the provisions of the Act, compiling and making available certain information, and reporting periodically to the Congress.

---

* The committee does not recommend this section for adoption by the legislature.

Criminal penalties for failure to comply with the registration and reporting requirements of the Act are limited to legislative agents. All others who are covered by the provisions of the Act are subject only to civil action by means of the injunctive process. Additional criminal penalties are provided for the transmission to Congress of spurious communications and for making false statements.

If this measure is to serve as a guide for legislation in Minnesota, its provisions would have to be modified in a number of ways. The administration of the Act might be vested in the Legislative Research Committee, the Rules committees of the House and Senate, the Secretary of State, the Public Examiner or the Legislative Auditor if such an office is created. Provisions pertaining to amounts of money that must be reported and criminal penalties might also be modified. (See Report No. 395, Senate, 85th Congress, 1st Session, pages 83-105, for information and proposed statute).

C. *Regulation of Lobbying Act Proposed by Gov. Warren:*

This measure, though not enacted into law, was proposed by Gov. Warren in 1949 as a means of coping with the problem in that state. The bill was explained by Governor Warren in his Inaugural Message to the California legislature on Dec. 12, 1949 as follows:

In brief, it requires any legislative representative commonly referred to as a lobbyist to be certificated by the Secretary of State after filing a statement listing the subjects on which he proposes to influence legislation, together with the names of his employers and the amount of his compensation. Thereafter he is required to account for his expenditures and any financial transactions he has with, or any campaign contributions made to any legislator, the Governor, or the Lieutenant Governor, all of whom are a part of the legislative process. His employers must also file a statement authorizing the employment and confirming the amount paid pursuant to it.

Up to this point the restrictions are against the lobbyist. Now we propose to apply the principle to ourselves. Whenever a citizen accepts public employment he must, of necessity, limit his financial transactions in a manner that will avoid a conflict between his personal interest and that of the public. No man can serve two masters. And when one in public service tries to do so, it is invariably the public interest that suffers. It is therefore provided in the bill that except in performance of official business no elected officer or employee of the State shall represent anyone for compensation before the Legislature or before any officer, board, commission or administrative agency, or prosecute any claim against the State before such agency. There have been flagrant examples of such employment and they have not been to the best interests of the State. A clear line of distinction drawn

between public and private interest in this regard would greatly increase the integrity as well as the efficiency of State Government.

I want to state with emphasis that my proposal to regulate lobbying and this bill in particular are not designed to hamper or in any manner discredit those legislative representatives who represent their clients in accordance with principles of decency. It is honest employment. The honest ones are greatly in the majority. They render a service to the State by bringing to the Legislature practical information that is not always within the experience of legislators or the Governor. I would not discourage their presence at the capitol. On the contrary they are welcome at my own office to explain the viewpoint of their employers. Their information is often helpful but I want to know who they represent. But everyone around this capitol knows the kind of lobbyist influence that is not helpful; that is not honest. As with other businesses and professions, therefore, the rules must be made to regulate and control the few who flout decency rather than for the convenience of the many who conform to decency and law.

I have dwelt on this subject at some length because I am sure it is one of the important problems of the day. Every citizen knows in his heart that corrupt lobbying deprives our government of the equality which he cherishes for it. He cannot understand why it is not scourged from the halls of our capitols. He believes it can be done. And so do I. If it is done, it will make our jobs—yours and mine—easier, more wholesome, more satisfying. I trust we can do it.

This measure provides for the regulation of legislators, other public officials and public employees as well as the lobbyists. If conflict in interest legislation is not proposed by that subcommittee as a part of our report, this measure may provide a corrective for some of the practices we have felt are undesirable. The Warren proposal was introduced in the California Senate as Senate Bill 7.

* * * * * *

APPENDIX IV.

PUBLIC SERVICE ETHICS and CONFLICTS OF INTEREST —SOME LEGAL FOUNDATIONS

A Study Prepared
for the
Governor's Committee on Ethics in Government,
by
Sydney Berde, Special Assistant Attorney General.

The Problem of Public Service Ethics and Conflicts of Interest:

The problem of conflicts of interest in public service has been well stated by Senator Paul H. Douglas. Summarizing the

work of the subcommittee of the Committee on Labor and Public Welfare,[1] he said:

> "(1) In this day of big government, there is much at stake in public policies which directly affects the income and welfare of individuals, industries, and groups.
>
> (2) Members of Congress have almost free discretion in making these policies, and administrative officials have great discretion in administering them.
>
> (3) The great authority vested in elected officials is justified by the principle that they, as representatives of the public, will exercise their authority in the public interest and for public purposes; similarly, the discretionary authority delegated to administrators is based on the assumption that they will exercise it reasonably in accordance with public policies, and for the furtherance of public purposes.
>
> (4) Although the importance of the issues, the breadth of discretion involved, and the basic nature of responsible government make it necessary that as far as humanly possible issues shall be decided on their merits, interested parties are not willing to let the wheels of government turn unassisted, but in a great variety of ways bring pressure to bear upon legislators and administrators in order to secure favorable decisions.
>
> "From these basic factors emerge special problems, most of which, in the opinion of the witnesses, call for affirmative and corrective action by the government."[2]

The purpose of this study is to identify and describe the basic legal materials out of which our courts and legislatures have created rules of conduct for public servants. The prinicples of conflict of interest law are derived, in the main, from the law of fiduciaries. These principles find expression in the oft-quoted maxim that "no man can serve two masters". As expressed in the Canons of Legal Ethics, the lawyer is admonished to "avoid not only situations where a conflict is actually presented, but also those in which a conflict is likely to develop".[3]

Public service presents a special case of the conflicts of interest problem. "Those holding public office, as servants of the public, are not owners of authority but agents of public purpose".[4] There is a compelling analogy between the true trust relationship which creates duties and obligations enforceable in a court of equity, and the relationship of the officer to the public he serves. In the latter case there is an obligation, approaching a

[1] *Ethical Standards in Government Report of Subcommittee of Senate Committee on Labor and Public Welfare,* Committee Print, 82d Cong., 1st Sess. (1951).
[2] *Improvement of Ethical Standards in The Federal Government: Problems and Proposals,* 280 Ann. Am. Acad. Pol. and Soc. Sci. 149 (1952).
[3] Drinker, *Legal Ethics* (1953), p. 105.
[4] *Public Administration Review,* Vol. 13, No. 2 (1953), p. 120.

legal duty "founded upon the trust and confidence reposed in the integrity and fidelity of one who holds title to public office, to act for the benefit of the Government representing the public as the *cestui que* trust, and not to profit at the expense of the Government."[5] It has long been held that the public's representatives may not profit from transactions committed by law to their trust. In a landmark case,[6] the Minnesota Supreme Court said:

> "*** The relation of members of the council to the village [is] one involving trust and confidence, and such members could not make contracts with themselves relating to public affairs, or derive any emoluments therefrom not specifically authorized by law.
>
> "It is a fundamental principle that the same person cannot act for himself, and at the same time, with respect to the same matter, as the agent of another, whose interest might be in conflict with his. The two relations impose different obligations, and their union would at once involve a conflict between interest and duty. *** This rule is applicable to the officers of public as well as private corporations. ***"

It is important to distinguish between representation of differing economic and political views by legislators, and other activities that may give rise to a charge of conflict of interest. In the former case, there is often present both "conflict" and differing "interests"; yet, that is not the kind of conflict that the law censures. In the declaration of intent of the *New York Code of Ethics for Public Officers,*[7] the legislature noted that "Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any form of government".

The kind of conflicts of interest a legislator should avoid are those which tend to impair his independence of judgment in the exercise of his official duties. Thus the first problem of the subcommittee would appear to be the classification and characterization of those situations or activities having that tendency. But there is another reason why this task is of first importance. In a review of the federal conflict of interest laws, one commentator has suggested that:[8]

> "It is difficult, and probably impossible, to enact into the criminal law a series of prohibitions which, when regarded in their entirety, will lay down a comprehensive code of ethical conduct. In addition, overly stringent or unreasonable conflict

[5] *Government Service and Private Compensation,* 20 Geo. Wash. L. Rev. 174, 189 (1951).
[6] *Stone v. Bevans,* 88 Minn. 127, 129; 92 N. W. 520.
[7] Laws 1954, Ch. 696, Sec. 1.
[8] Davis, *The Federal Conflict of Interest Laws,* 54 Col. L. Rev. 893, 895 (1954).

of interest laws will add measurably to the serious recruitment problem ever-present in Government. These reasons have probably been a major factor in discouraging Congress from broadening, or even changing, the present restrictions that apply to the activities of Government employees."

Another article on the subject warns:[9]

> "There is a danger that in attempting to legislate morals we are likely to surround the Government service with so many snares, snags, and spring-guns that only the unwary can be recruited."

The "recruitment difficulty" argument has been used to support the position that legislators must be free to continue their private pursuits while serving the public; that lawyer-legislators cannot be expected to forego or reject retainers from clients having matters involving state government. It should be noted, however, that the objection is valid only to the extent that the words of such statutes prohibit activities in which the ingredients of a conflict of interest setting are absent. Since state and federal conflict of interest laws and codes are the expressions of standards and mores of accepted currency in the law of fiduciaries and attorney-client relationship, it is unlikely that these laws will ordinarily place unusual or burdensome strictures on public employees. If representation of his client's interest involves the lawyer-legislator in a conflict problem, he is barred from such employment by the principles of conflict of interest laws, as expressed in our common law, statutes, and canons of legal ethics, not by virtue of overstringent codes or laws relating to conduct of public officers.

> "Whenever a citizen accepts public employment he must, of necessity, limit his financial transactions in a manner that will avoid a conflict between his personal interest and that of the public. No man can serve two masters. And when one in public service tries to do so, it is invariably the public interest that suffers."[10]

It is apparent that before a statute or guide lines can be drawn it is important first to describe or identify the kind of activity that would place a legislator in the position of representing conflicting interests. In that way the candidate will have reasonably clear notice what activities he must forego. With respect to government operations, adherence to conflict of interest principles promotes the interest of the public in achieving two concepts basic to democratic government:

> "First, Government employees must always be impartial, and

[9]McElwain and Vorenberg, *The Federal Conflict of Interest Statutes,* 65 Harv. L. Rev. 855 (1952).
[10]From Address by Governor Earl Warren before California Legislature, *Sen. Journal,* Dec. 12, 1949 (p. 35).

> second, no Government employee, present or past, is entitled to an advantage over private persons in the conduct of business with the Government by virtue of his Government position. In relation to the latter concept, three sorts of advantage are involved: (1) that resulting from an individual's performance of his own official duties in a self-serving way; (2) that gained through the influence one Government employee may exercise on another because of personal association or the prestige of high Governmental position; and (3) that accruing from personal knowledge of a particular case, transaction or project gained in the course of official activity."[11]

Stated another way, integrity in the administration of government requires that its political and administrative decisions be the result of reasoned argument addressed to the merits of an issue. The principle has achieved judicial recognition in the form of refusal to enforce contracts which involve a violation of public trust. For example:

> "All agreements which tend to introduce personal influence and solicitation as elements in procuring and influencing legislative action, or action by any department of the government, are contrary to sound morals, lead to inefficiency in the public service, and come under the condemnation of the rule here under consideration. * * * public policy and sound morals imperatively require that courts shall condemn every act, and pronounce void every contract, the elements or probable tendency of which would be so sully the purity or mislead the judgment of those to whom official position has been intrusted."[12]

The writer has examined the statutes, common law, canons of ethics, and codes of this and other jurisdictions, relating to government operations, and conduct of public employees. From such an analysis it may be possible to characterize and classify those activities from which legislators or other public servants have been generally barred. If a pattern of activity is consistently censured, it is at least some evidence that our society has developed certain standards of ethics and morals *vis a vis* public employees that could command the support of most well-intentioned lawmakers.

Summary of Minnesota Statutes Dealing with Bribery and Other Improper Conduct of Public Officers:

The following sections of Minnesota Statutes relate to bribery and corruption of public officials. They are criminal statutes and provide for punishment by imprisonment, fine, or both.

(1) Section 3.14 provides that each house may punish as a

[11]McElwain and Vorenberg, *supra,* at p. 958.
[12]*Houlton v. Nichol,* 93 Wis. 393, 67 N. W. 715 (1896).

contempt the giving or offering of a bribe to any member, or attempts by any *corrupt or improper means to control or influence a member in giving or withholding his vote*. The legislature may compel one charged with this offense to appear before it and give testimony.

(2) Section 613.02 defines the crime of bribery of a public officer. It prohibits any person from offering, giving or promising anything of value, directly or indirectly, to any officer, executive, or member of the legislature of the state with intent to influence him in respect to any act, decision, vote, or opinion. The statute also prohibits "attempts directly or indirectly by menace, deceit, suppression of truth, or other corrupt means, to influence such member to give or withhold his vote or to absent himself from the house of which he is a member; or from any committee thereof. The section extends the same prohibitions to attempts to influence by similar means, judicial officers, or any "person authorized by law to hear or determine any question, matter, cause, proceeding, or controversy".

(3) Section 613.03 relates solely to bribery of members of the legislature. It prohibits a person from offering, giving or promising to give anything of value to a member of the legislature, to influence such member to give or withhold his vote or absent himself from the house or from a committee of which he is a member. In addition, this statute also prohibits attempts, directly or indirectly, "by menace, deceit, suppression of truth or other corrupt means, to influence legislators in their legislative duties".

(4) Section 613.04 repeats the prohibitions of §§ 613.02 and 613.03, but in addition forbids the giving of "any consideration, or any money, property, or value of any kind, or any promise or agreement therefor ***." The provisions of the section are extended to attempts to influence any "person executing any of the functions of public office other than those hereinbefore specified".

(5) Section 613.05 makes it a crime for any executive or administrative officer or any person elected or appointed to such office to ask for or receive or agree to receive any bribe or anything of value in exchange for a promise or understanding that his vote or opinion or judgment will be influenced thereby. In connection with this statute, our court has held that a legislator violates the act when he solicits or receives money for the purpose of influencing the votes or official action of his colleagues.[13]

(6) Section 613.06 applies specifically to legislators. It provides for criminal punishment if a member of either house

[13]*State v. Durnam*, 73 Minn. 150, 75 N. W. 1127 (1898).

accepts a bribe in exchange for an understanding that his vote, opinion or judgment will be influenced thereby. In addition, all of these statutes provide that a violation of the bribery statutes carries with it automatic disqualification from holding public office.

(7) Section 613.07 again relates to accepting or receiving bribes by any "executive, or administrative officer, or person elected or appointed to an executive or administrative office". The statute prohibits any such officer from receiving or agreeing to receive:

> "any bribe, or any consideration, upon an agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may by law be brought before him in his official capacity shall be influenced thereby; every member of either house of the legislature who asks, receives, or agrees to receive any bribe, or any consideration, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives, offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question; every judicial officer, every person who executes any of the functions of a public office, not hereinbefore specified, and every person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive a bribe, or any consideration, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision, or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, shall be punished by imprisonment in the state prison for not exceeding ten years, or by fine of not exceeding $5,000, or by both; and, in addition thereto, he shall forfeit his office and be forever disqualified from holding any public office under the state. ***"

(8) Section 613.19 relates to misconduct of executive or administrative officers. It punishes as a misdemeanor the seeking of a reward or gratuity except such as is authorized by law, for doing or omitting to do any official act imposed by the duty of the office. A federal court construing a similar statute has held that the prohibitions against extra compensation relates to extra or additional duties imposed upon an officer as a part of his duties

of office. In such case he is not permitted extra compensation for doing that which the office requires of him.[14]

Wisconsin provides[15] criminal penalties for any public officer who: (1) in his capacity as such officer does an act which he knows he is forbidden by law to do in his official capacity; (2) who, in his capacity as such, exercises a discretionary power in a manner inconsistent with the duties of his office or the rights of others and with intent to obtain a dishonest advantage for himself or another; or (3) under color of his office, intentionally solicits or accepts for the performance of any duty anything of value which he knows is greater or less than is fixed by law.

It is at least clear that legislators are prohibited by law from accepting retainers or fees for the purpose of preparing, introducing, or influencing legislation. *In other words, legislators may not, at the same time, lobby on behalf of private clients.* This point has not been always clearly understood. In interviews with legislators and agency heads questions were raised relating to the propriety of legislators accepting retainers from interests directly concerned with pending or proposed legislation. Rarely was it recognized that such employment is illegal *per se*. Usually there was an attempt to delineate the proper from the improper retainer or to differentiate between acceptable and unacceptable legislative advocacy.

The foregoing statutes are clear and broad in their coverage, extending their prohibitions to "action upon any matter *** which may by law be brought before" any public officer. It should be noted that the statutes go beyond corruption of public officials by money or other things of value. It is unlawful "by menace, deceit, suppression of truth, *or other corrupt means*" to influence, legislators. Also included within the prohibition of the statutes is the practice commonly called "log-rolling", and agreements to vote for certain measures, in consideration that another member shall vote on some subject in a particular way.

The recurring idea in all of these statutes is that public officers shall exercise their reasoned judgment on official matters free of corrupting influences; that in a free society legislative decisions must be grounded in sound public policy supported by evidence and reasoned argument.

Common Law Principles:

A large body of case law deals with contracts to procure legislation. Some of these contracts are unenforceable on the grounds that they are contrary to public policy, while others are

[14]*United States v. Stowe*, 19 F. 807 (D. C. Minn.) (1884).
[15]*Wisconsin Stat.* 946. 12(2)(3)(5) (1953).

valid and enforceable. An analysis of these cases reveals a clear line of distinction with respect to legislative practices and activities deemed proper by our courts.

Contracts which contemplate the procuring of legislation through "subtle acts of importunity", "personal influence", "solicitation of personal aid of members of Congress", or provide that "compensation is to be contingent upon favorable outcome" are contrary to public policy and void.[16] Neither private citizens nor public officers are permitted to

> "sell their personal influence over a city council; and public officials cannot bargain away their future judgment and discretion upon matters of public concern. Such contracts are contrary to sound public policy and void. Obviously they lead to inefficiency in the public service ***.
>
> "In fact, the prevailing rule is that such agreements are illegal, and the conclusions have not been reached upon the theory that improper influences were to be used, but upon the corrupting tendency of such agreements. 'The law meets the suggestion of evil and strikes down the contract from its inception.' Such agreements are not consistent with sound morals. They call for the same jealous protection as the principle contained in Stone v. Bevans, 88 Minn. 127, 92 N. W. 520. Straw should be kept away from the fire. In other words, the best punishment is to prevent the wrong. The law guards against the incidental temptation that must necessarily accompany such agreements. In short, contracts for the purchase of the influence of a majority of a city council and contracts for the purchase of the influence of private persons upon the action of present and future city councils are against public policy, and for that reason are void. Influence in this sense is not a salable article under our system of laws and morals. ***
>
> "Of course the individual has the right to approach legislative bodies and by petition by legitimate argument, and by a fair showing of the circumstances, appeal to the judgment and reason of the legislative officials for or against any proposed measure."[17]

Not all such contracts are illegal, however. Contracts for the performance of services in procuring legislation have been upheld where "fair and honorable means have been used, and *** when such legislation results in great public benefit," or where services consisted in preparation of petitions, briefs, arguments, collection of evidence or documents.[18] The cases uniformly support the validity of such contracts where services consist of presentation

[16]*Wells v. Floody*, 155 Minn. 126, 192 N. W. 939 (1923); *Houlton v. Dunn*, 60 Minn. 26, 61 N. W. 898 (1895).
[17]*Goodrich v. Northwestern Telephone Exchange Co.*, 161 Minn. 106, 201 N. W. 290 (1924).
[18]*Houlton v. Dunn*, cited *supra*, at Note 16.

of private claims by "fair argument and legitimate evidence" addressed to legislative bodies; or "appeals to judgment and reason of legislative officials". The rule is stated as follows:

> "While there are cases holding that contingent fee contracts for the collection of claims against the United States are void as against public policy, we think the saner and better rule is that 'there is nothing illegal, immoral, or against public policy, in an agreement by an attorney at law to present and prosecute claims against the United States, either at a fixed compensation, or at a reasonable percentage on the amount recovered.' The test is: 'does the contract, by its terms or by necessary implication, require the performance of acts which are of a corrupt character or which have a corrupting tendency.'
>
> "In determining the validity, or lack thereof, of the present issue, it should be remembered that there is a clear distinction between contingent fee contracts having for their objective the procurement of what is generally termed 'favor legislation' and legislation which provides means for settlements of debts or obligation founded either upon contract or violation of a generally recognized legal right. The cases, generally speaking, refer to this class as 'debt legislation.' In the latter kind of case a legislative body in considering such legislation sits in a quasi-judicial capacity. Contingent contracts for fees of attorneys in such cases are not condemned."[19]

A similar idea is repeated in other cases from the federal courts, and the United States Supreme Court.[20]

The category of services that the law approves include all those things:

> "intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case. ***
>
> "*** The theory of our government is, that all public stations are trusts, and that those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. *** Any departure from the line of rectitude in such cases, is not only bad in morals, but involves a public wrong. No people can have any higher public interest, except the preservation of their liberties, than integrity in the administration of their government in all its departments.
>
> "The agreement in the present case was for the sale of the

[19] *Hollister v. Ulvi*, 199 Minn. 269, 278, 271 N. W. 493 (1937); see also *Perkins v. Hegg*, 212 Minn. 377, 3 N. W. (2d) 671 (1942).
[20] *Gesellschaft v. Brown*, 78 F. (2d) 410; *Trist v. Child*, 21 Wall. 441 (1874).

> influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy. **No one has a right, in such circumstances, to put himself in a position of temptation to do what is regarded as so pernicious in its character. The law forbids the inchoate step, and puts the seal of its reprobation upon the undertaking.**
>
> "If any of the great corporations of the country were to hire adventurers who make market of themselves in this way, **to procure the passage of a general law with a view to the promotion of their private interests,** the moral sense of every rightminded man would instinctively denounce the employer and employed as steeped in corruption, and the employment as infamous." (Emphasis added) (See *Trist v. Child*, Note 20)

The cases distinguish between contracts for the prosecution of claims against the government, which are in the nature of private claims or debts, and contracts for "procuring favors from the heads of government departments, or the *procuring of general remedial legislation.*" The latter are void as against public policy. As stated by one federal court:[21]

> "In the former the head of a department or Congress acts in a quasi-judicial capacity in adjusting an individual debt or claim. Services rendered for the claimant in petitioning and appearing before the officers of the government or committees of Congress are as professional as appearing in a court of justice."

From the foregoing cases, it is possible to formulate certain ethical principles relating to limits of proper influence in the decisional processes of government. These principles are based on a division of operations of government into legislative or quasi-legislative activities and judicial or quasi-judicial activities. The former are characterized typically by the legislature, its committees, and certain kinds of agency action involving the creation of policies, rules and regulations having general applicability. On the other hand, agency action may involve questions relating to specific parties, and their specific problems. Cases involving revocations of licenses, or settlement of claims are examples of the latter kind of agency activity.

We have seen that our statutes prohibit public officers from accepting fees to act in matters which by law are committed to their trust. Thus legislators may not engage themselves for pay in any matters involving the legislative process. Logically this prohibition should extend to all those legislative questions before

[21] *Gesellschaft v. Brown*, cited *supra*, at Note 20.

applicability. However, where a question involves "adjudicative administrative bodies involving judgments about policies of general facts", that is, facts about parties, which require the presentation and weighing of evidence and a determination based solely upon record evidence, then the question of the propriety of a legislator's appearance would turn on the presence or absence of a conflict of interest between his position as legislator and his representation of a private litigant before a government tribunal, or any other tribunal. In such a case the canons of legal ethics would determine the propriety of the lawyer-legislator's conduct. For the layman-legislator representing private clients in such cases, the canons of the bar would have no effect absent general legislation barring such appearances.

Federal Conflicts of Interest Laws:

The Congress of the United States recognized, as early as 1864, the impropriety of permitting any member of that body or any other federal employee to receive compensation for prosecuting on behalf of private parties matters affecting the government. 13 Stat. 123, June 11, 1864. This original statute has been amended and enlarged and now appears under Title 18 of the United States Code as part of the Federal Criminal Code.

In 18 U. S. C. A. Sec. 281, it is provided that members of Congress, officers and other public employees may not receive compensation for services performed on behalf of a client where the United States is a party. This statute provides:

> "Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States. ***"

18 U. S. C. A. Sec. 282, provides that no member of Congress may practice before the Court of Claims, while Sec. 283 provides:

> "Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or house of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than $10,000 or imprisoned not more than one year or both. ***"

The disqualification of federal servants from prosecuting claims against the United States continues after termination of such employment. 18 U. S. C. A. Sec. 284, provides:

> "Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty, shall be fined not more than $10,000 or imprisoned not more than one year, or both."

Canons of Legal Ethics:

The *Canons of Professional Ethics of The American Bar Association,* and the rules of practice prepared by the bar associations of the several states provide a guide by which attorneys may be judged and controlled. These standards which find their roots in our traditions of Anglo-American jurisprudence have become part of the statutory law of many states. The Minnesota State Bar Association has adopted the canons, and the opinions of the Committee on Professional Ethics are accepted as the standards of interpretation of those canons. Our court has adverted frequently to the controlling force of those standards as a guide in determining what constitutes unethical conduct by lawyers in this state.[22] By an order of the Minnesota Supreme Court, dated May 2, 1955, The Canons of Ethics of The Bar were adopted as the standard of professional conduct of attorneys in this state.

Attorneys who represent conflicting interests are, by virtue of the disciplinary power of the courts, subject to sanctions. These may take the form of: (1) disqualification from appearing in the case, (2) invalidity of the judgment, (3) denial of fees and liens, (4) disciplinary proceedings including disbarment.

Of special interest to the lawyer-legislator are the following canons:

Canon 36.

> "A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

---

[22]*Gardner v. Conway,* 234 Minn. 468, 48 N. W. (2d) 788 (1951).

"A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

Canon 26.

"A lawyer openly, and in his true character, may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action."

In connection with this Canon, the Committee on Ethical Practices has ruled:

"A member of the bar is bound to disclose to other lawyers on a legislative committee an interest on his part in the subject being considered by the committee.

"A lawyer member of a committee of the legislature should make clear to his colleagues any interest of his clients which might be affected by legislation dealt with by such committee.

"He may not be employed to use his influence to secure a Government loan, or to have a given person appointed to office."

Canon 6.

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

The federal conflict of interest laws[23] are based on the general principles enunciated in the above cited Canons. The federal law, of course, extends to lawyers and laymen alike in government service. The Canons, on the other hand, are drawn to

[23]Rev. Stat. § 190 (1875) 5 U.S.C. § 99 (1946); 18 U.S.C. §§ 281, 283, 284, 434 and 1914 (Supp. 1952).

cover a broader scope of activity than are the statutes. They are presented "as ethical precepts rather than specific proscriptions". By the "doctrine of imputation" the Canons operate to disqualify a partner of the firm though another associate may have been directly involved in the conflict situation. Similarly, under the federal law, where a government attorney has private connections, his firm may engage in government business, only if the "government partner" dissociates himself from the firm.

Conflict of interest canons or statutes aim at eliminating two evils of unethical conduct: (1) The undermining of government employees' fidelity so that the interests of clients will be favored over the interest of the government; and (2) the subverting of the integrity of government through the sale and use of influence.

The single idea repeated by Opinions of The Committee on Ethics relating to an attorney in public life is that he may not, even at personal sacrifice, accept employment from a party in a matter against the state and at the same time properly represent the public interest. As stated in Opinion 49, an attorney should not only "avoid all impropriety but should likewise avoid the appearance of impropriety". (See also Opinion No. 128.) In the latter instance the Committee pointed out that administrative and regulatory bodies are created in the public interest. Where a lawyer sits as a public official, and then accepts employment in a matter which may conflict with the interests of the public, he is placed in a position of extreme delicacy. The sweep of the principles stated in the opinions cited admonish that prudent conduct directs that the public servant eschew such employment that *might* invite adverse comment, no matter how undeserved. Thus in Minnesota, the Ethics Committee of the State Bar Association deemed it improper for a county attorney to represent one whose conviction he had brought about in an attempt to obtain a pardon or parole. The Committee there stated that the "statutory permission to practice law while in office must have been intended to be limited to matters in which the state is not a party". (Opinion 118, Dec. 14, 1934) The fact that the proceeding is one in which the state is interested adversely makes it improper for a public servant to appear against the state. In another opinion on similar facts, the Committee decided that a lawyer who had, prior to his election to public office, worked for the release of a convicted criminal, could no longer pursue his client's cause before the Pardon Board. (Opinion No. 136, March 15, 1935.) In this case, it was emphasized that election to office produces such a change in relationship as to render it improper for the county attorney to advocate a cause in opposition to the public's apparent interests. To permit a county attorney to appear

on behalf of one seeking a pardon would, in the view of the Committee, "tend to destroy the public's confidence in the integrity of its machinery for the administration of criminal justice".

The standards by which lawyers as public servants are to be guided and judged have been developed from many sources. Just as our common law has grown by judicial decisions based on analogous facts, the Bar, in its continuing effort to elevate the public morality, looks to judicial decisions and its prior opinions for guidance. It is proper, therefore, to consider what other states have thought about the status of lawyers in public office.

In Illinois, a lawyer elected to the legislature may not, with propriety, act professionally for any person or corporation which is actively or specially interested in the promotion or defeat of legislative or other matters proposed or pending before the public body of which he is a member or by which he is employed. As stated in *Canon 49* of the Illinois Bar Association:

> "The principal is not that these interests do not necessarily conflict, but that they may conflict; no lawyer (say the courts), having duties to perform of a fiduciary nature, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect. There are other applications of the code of legal ethics to the special case of a lawyer in public office, but it is unnecessary to detail them. These are over and above the duties which are not peculiar to lawyers, but which apply equally to laymen in public office; such as the duty to preserve the legislative branch free and independent of control by the executive, an independence which can scarcely be maintained if a considerable number of members of the legislature are in receipt of salaries from employment in the gift of public officials, or boards, local, state or federal; for it is to them that the member may feel responsible for his conduct in office, and he may look to them for direction and advancement, passing over the public, the true and ultimate source of his authority. These are the considerations which the lawyer in public office, above all men, should have at heart; and in failing to observe them he is recreant not only as one in public office or employment, but also to his professional obligations as a lawyer."

By statute, New York has provided that:

> "No officer or employee of a state agency, member of the legislature or legislative employee, should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest. ***

> "No officer or employee of a state agency, member of the legislature or legislative employee, should accept other employment which will impair his independence of judgment in the exercise of his official duties.'
> (Laws, N. Y. 1954, Chap. 696, Sections 74 (2), Section 3 (b).)

New York recognized that certain conflicts of interest which are improper for public officials may be prohibited by legislation. Others, however, may arise in so many different forms that it would be impossible to prescribe by statute for inflexible enforcement. For matters of such complexity, the legislature found that a code of ethics is desirable to set forth, for the guidance of state officers and employees, the "general standards of conduct to be reasonably expected of them."

In the Canons of Ethics promulgated by the Association of Interstate Commerce Commission Practitioners, Rule 4 states:

> "It is unethical for a practitioner to attempt to sway the judgment of the Commission by propaganda, or by enlisting the influence or intercession of members of the Congress or other public officers, or by threats of political or personal reprisal."

In Rule 8 of those same Canons, it is stated that the Commission exercises quasi-legislative powers and also acts in a quasi-judicial capacity. In administering the act the Commission must, at all times, consider the public interests, beyond the mere interests of the particular litigants before it. This is essentially the role of regulatory and administrative bodies whether they operate at national or state levels. It would appear indeed difficult for practitioners to "scrupulously refrain in their *** discussions with the Commission and its staff from going beyond ex parte representations" where those practitioners are, at the same time, influential members of the legislative body that has created the Commission.

If the administrative agency and the public official both owe their primary duty to the public interest, it is apparent that in contested proceedings before such an agency the lawyer-legislator may find that, in behalf of the public, "It is his duty to contend for that which duty to his client requires him to oppose". The principles set forth in the opinions of the committee on professional ethics and grievances of the American Bar Association and the principles referred to in the several selected statutes and Canons accord with that view. They indicate that it is improper for a public servant to act on behalf of a client in a matter adverse to the state.

While some of the authorities cited do not have the force of law, it should be reiterated that it is not law solely with which we are dealing. The question is simply what the bench and bar

expects of the lawyer in his role as a public servant, if he would merit the approbation of the public and the legal profession. Except in those instances where there could be no question of antagonistic interests, or even the barest inference of pressure or political influence, it would appear improper for a legislator to prosecute cases before state agencies.

CONCLUSION

In the typical rule-making or rate-making activities of a regulatory agency, the decisional process is analogous to the legislative process. Rates could be set and rules made by the legislature, but experience has taught that effective government and the public interest is served by delegating to an administrative body the details of a broad legislative purpose. The agency thus becomes an arm of the legislature and has the same affirmative duty to promote the public good.

It is, of course, desirable that legislators should contend for those political decisions which they believe to be in the public interest. This they may do in legislative committee or on the floor of the house or senate. But when a legislator appears, on behalf of a private party, to argue a matter before a regulatory body, he is placed in the anomalous position of contending on behalf of his client for that which duty to the public interest *may* require him to oppose. He may indeed find himself attacking the validity or construction of the very legislation which he has previously supported. Since a legislator may in such a case be subject to the charge of betraying public confidence, though unmerited, it would appear that prudence and propriety would require that the lawyer-legislator avoid the possibility of such a charge.

Senator Wm. E. Borah once observed:

"*** if the lay citizen owes something to the public, far greater the obligation of the lawyer. Obligations to the public are to be measured accurding to ability and opportunity to serve the public, and the public interest has a right to exact services in proportion to our ability to meet the exaction just as the government should collect taxes in accordance with the ability to pay.***

"*** The American lawyer looks out upon a field crowded with problems equal in moment and fully as difficult as those with which Selden and Marshall dealt. He ought to find time, if possible, to share in the pleasure and exhilaration as well as the glory of working not now and then but daily in this vineyard.

"But while this seems to be the plain duty of the lawyer not in office, what are the equally plain and more obvious duties of a lawyer who has entered the halls of legislation as a sworn officer and with the

public alone for his client? * * * I do not believe that a lawyer has any more right, as a matter of correct public service, to hold a retainer while writing a law in the public interest and that a law which may affect his client adversely, than has a judge to hold retainers from those whose interests may be affected by the decisions which he renders or the judgment which he signs. * * * Is it not as important to the public that laws be framed free of the influence, conscious or unconscious, of private interests as that they be administered free of such influence? Custom has inured us to a different code of ethics, but this custom has brought in its wake many inapt, inefficient statutes, timid and ineffective in their terms, shielding special interests and protecting private advantages and altogether inefficient for the service and protection of the public interest. I maintain that many of our important statutes are inapt and ineffective because of that timid, compromising spirit born of an effort to adjust conditions which cannot be adjusted and which ought not to be adjusted.

"*** The relationship of client and attorney is the closest. Consciously or unconsciously he comes to feel that his client's demands are wholly just. Yet men will argue that a lawyer with a thirty or forty thousand dollar retainer from some client is perfectly fitted to shape legislation which his client will argue is all wrong, wholly unjust and vitally injurious to his business interests. I am not speaking now of a conscious corruption which some people assume to take place in legislation more often, perhaps, than it does. There is no occasion for conscious, open, affirmative corruption for which some one may be sent to the penitentiary when the same thing can be accomplished by that unconscious and subtle influence for which there is no punishment and which may even be justified by good people. Suppose every lawyer in the legislatures of the country or in Congress were in the employ of those great business interests engaged in interstate commerce. What do you think would be the necessity of employing lobbyists in order that no laws seriously affecting interests might be passed? A member of Congress is in an indefensible position who is called upon to legislate concerning those matters in which his clients may have an interest and which may concern them vitally. The man who would be permitted to walk into my office in Washington as my client, paying me a large retainer, and in after months sit down to argue against a bill which has come up for consideration would have a vast advantage in impressing me with his views over the public, the far removed and wholly impersonal public who pays me nothing more than my board and seldom calls at all. Men do not give large retainers to men engaged in public service in order that these men may more thoroughly look after the public interests and out of sympathy with the small salary which they get. They give them because they expect them to be amenable to reason in an emergency, and in order that they may be sufficiently conservative in not yielding to that radicalism which takes alone into consideration the public interest.

"You would impeach a judge who would consult with a client

over a decision whether the decision affected him or not, even a discussion of the wisdom or unwisdom of such a decision. In fact, you would impeach a judge who dealt in a business way with litigants before his court. A few sessions ago we had the painful duty imposed upon us of unfrocking a federal judge. You may think it an easy thing to do, but whatever your convictions as to the necessity, you will move on to a performance of that duty with reluctance and pity. I do not hesitate to say that in the realm of strict morals, in the matter of correct public ethics and of true and upright public service, the judge thus unfrocked was guilty of precisely the same offense and no other and greater than that of the legislator who draws a salary of $7500 a year from the government and $25,000 from some client, and flatters himself that he can thread his way with honor and a clean conscience between the public interests and the antagonistic demands of private interest.

"But let us concede, for the sake of argument that he can successfully thread his way and satisfy his conscience, and let us pass over the structure of the conscience and seek not too closely to inquire how it arrived at its present structure. Still there is another proposition almost equally grave. Next to efficient and conscientious public service is the prerequisite of the confidence placed in that service. Next to the virtue and worth of the law that is written is the faith of the people in the law and in those who have made it and who are to administer it. This government rests almost entirely upon the confidence which the people have in it and in those who administer it. Without that confidence the government could not operate or long maintain itself. If a legislator should feel that the rights of some great corporate interests were being unjustly assailed, if he should feel that some law which seemed to favor interests then under public censure was entitled to his support, he would be perfectly powerless to be of any service to them if it was known that he held a retainer from those engaged in a similar kind of business. In other words, it is just as important that the legislator be free from entanglements and those associations which seem to direct his actions in order that he may do justice to the business and corporate interests of the country as that he may do justice to the public. If he feels called upon to make a fight for the rights of those under public censure I cannot imagine his being fitted for that fight unless he is wholly disengaged in every conceivable way from any business or personal interests in the result.

"I venture to prophesy that the people will in due time insist that their representatives in Congress shall stand as free from the relationship of client and attorney with reference to all those matters upon which they are called to legislate as now characterizes the great tribunal which passes finally upon the constitutionality of the laws which we make. There is a large class of professional business wholly disconnected in every way from the public service and which the public service will not affect one way or the other, and as to this business there is no reason why a lawyer, if he finds time, may not enjoy the remuneration which comes from attending to it. In fact,

it may well be argued under the present compensation allowed to Senators and Representatives that such work is essential in order that a man may clothe and educate his family. But with all that class of professional business which deals directly with those subject matters concerning which we legislate, the lawyer in public service must consent to be divorced wholly and completely."[24]

Most lawmakers would agree that the legislative and administrative process should be protected by law from improper influence. At the same time they are quick to point out the definition and enforcement problems that inhere in the term "improper influences". It is appropriate, therefore, to refer again to the Douglas Subcommittee and its excellent study.[25] In distinguishing between "courteous gestures and expressions of good will", on the one hand, and favors which really mean something, on the other, the subcommittee observed:

> "At the moment a doubt arises as to propriety, the line should be drawn. Innocence is perhaps lost when one is conscious it exists."

* * * * * * * *

APPENDIX V.

STATEMENT BY GOVERNOR ORVILLE L. FREEMAN IN APPOINTING A COMMITTEE ON ETHICS IN GOVERNMENT

High ethical and moral standards are essential to good and effective government. Minnesota does have high standards, and, as a whole, government at all levels in our state is carried on with a keen awareness of the public interest and the recognition that self-interest must at all times be subordinated to the public well being.

But government in Minnesota is not perfect. It is my conviction that despite the progress we have made and the high standards generally held, there is much room for improvement in both the administrative and legislative branches of government in terms of eliminating or minimizing the effect of self-interest on decision making.

It is easy to talk in general terms about ethical and moral standards and the elimination of self-interest in making government decisions. It is, however, often extremely difficult to apply these standards in specific instances. Countless situations arise in which honest public officials, sincerely devoted to the public interest, face real dilemmas in deciding on the right course of

---

[24]Senator Wm. E. Borah, *The Lawyer and The Public,* 2 A.B.A.J. 776 (1916).

[25]*Ethical Standards in Government Report of Subcommittee of Senate Committee on Labor and Public Welfare,* 82d Cong., 1st Sess. 23 (1951).

action. To the extent that prevailing practices and methods,—rather than individual qualities,—create or encourage such situations, a sincere effort to change such practices could materially improve standards of action.

It is my conviction that a careful examination of the whole area of ethical and moral standards in government by a non-partisan committee of leading citizens could contribute enormously to improving our practices in the State of Minnesota. I am therefore appointing such a committee, selected on a completely non-partisan basis, and including members who have knowledge, experience, and understanding in different areas of government, as well as well-known scholars and religious leaders.

I am asking this committee to study the problems involved in achieving higher ethical standards in government in Minnesota, not from the point of view of investigating and exposing, but from the point of view of making recommendations that would result in greater integrity in public office,—with consequent better service to, and representation of, the interests of the people. I am suggesting to the commitee that particular attention should be given to those factors that could militate against the highest observance of the public interest.

There are two areas in which such factors arise:—those relating to lobbies and those relating to personal conflicts of interest. I am submitting certain suggestions in regard to these areas to the committee, as a guide to their study and deliberation. I believe that recommendations in these areas, would in themselves constitute major steps forward in improving the prinicples and standards of government in Minnesota.

LOBBYING

The "public interest" in our society, is made up of many group interests;—and under our system of government such interests are represented by lobbies—by whatever term they may be called. In the vastly complicated fields in which modern legislative and administrative action take place, lobbies fulfill a most essential function. They present information and points of view that legislative and administrative bodies should hear. Governmental processes today involve weighing the arguments on one side in balance with the arguments on the other, and lobbies fill a useful and necessary function in presenting such arguments.

But there exist serious problems relating to lobbying. The strength and effectiveness of a lobby may be all out of proportion to the numbers of people it represents. It may use methods of persuasion other than a presentation of the arguments. And it may

even conceal its existence by failing to openly state what and whom it represents.

Legislation affecting lobby registration and control has been enforced in the Federal Government for some years. Some states also have legislation on this subject. The committee could inquire into the practical results of such legislation, and make suggestions for effective laws to regulate lobbying in Minnesota.

In addition, the problem of lobbyists dealing with the administrative branch of the government should be considered.

THE AREA OF CONFLICT OF INTEREST IN BOTH THE ADMINISTRATIVE AND THE LEGISLATIVE BRANCHES OF GOVERNMENT

Conflicts of interest present difficult and complicated problems for which satisfactory solutions have not been reached on either state or federal levels. In the final analysis, the existence of such a conflict involves the personal standards and integrity of each individual concerned. I nevertheless feel that there are legal restrictions that should be enacted, and that an ethical code might be adopted. Such a code would constitute a standard which administrators would be required to follow and to which legislators and administrators would be asked to conform.

There is general agreement on the principle that no legislator, administrator, quasi-judicial or judicial official should act on a matter where he has a direct financial interest peculiar to himself. Once we leave this simple statement, the problem of conflict of interest grows increasingly complex. In the administrative branch, there is the question of what should be the administrator's relationship with people he is bound by law to regulate. How is a determination made as to the propriety of accepting a business-luncheon engagement or a weekend fishing invitation? What gifts and gratuities may properly be accepted at holiday seasons and when does the gift involve a courtesy and when does it become an obligation? These questions should be explored at length.

The problem of a legislator's relationship to the public at large and to special pleaders is also an extremely complex and difficult one. What about the legislator whose occupation may mean a conflict of interest in certain legislation? For instance, many legislators represent trade associations, such as insurance councils, savings and loan associations, bar associations and various economic groups. Other legislators are intimately involved with farm organizations in which they may own stock or hold office; likewise, unions are represented in the Legislature by employees, officers and members. In addition, there is the more

specific question of propriety when legislators are retained and paid fees by corporations, associations, private businesses and other interests with the resulting difficulty of knowing whether they are representing their legislative districts or a particular economic or financial interest, when they act and vote on certain legislation.

LOOKING TOWARD SOLUTIONS

1. *Legal Restrictions*
   a. Minnesota and other states have the problem of legislator lawyers representing clients before administrative agencies in state government. The Federal government prohibits by law any Representative or Senator from representing a private interest before the United States Government. I believe we should have similar legislation in the State of Minnesota which would prohibit lawyer legislators from representing private clients before any state agency whose actions might be directly or indirectly influenced by the fact that he was a member of the legislature.
   b. It is obvious that legislation cannot be enacted that will take care of every specific instance in violation of public trust. However, I think at a minimum, effective legislation can be introduced dealing with lobby regulation and direct conflict of interest.
   c. On occasion, it has been recommended that all public employees in the unclassified service and all legislators should make available to public inspection their private financial circumstances. This would mean that the income tax filed by such officials would become a matter of public record. It is recognized that such a requirement might constitute invasion of personal privacy. On the other hand, it might well be the greatest deterrent towards accepting income from sources which otherwise could be very subtly related to legislation, but could not be discovered without the initial information as to the receipt of the funds in question.

2. *A Code of Conduct*

   Equally, if not more, important than laws would be the development of a practical, workable code of conduct for public officials. I believe such a code of conduct might be developed to include general propositions with specific examples explaining agreed-upon principles. I believe such a code, thoughtfully and carefully developed, would command wide public support. It would help the conscientious public servant to resist the argument, "Every one does it," or "It is part of the process," which is made again and again to justify questionable conduct.

In addition, it would provide clear criteria by which the public could measure and compare the conduct of public officials.

The Attorney General of Minnesota, the Honorable Miles Lord, has agreed to serve in an official advisory capacity and make available to this committee general information and legal interpretations for their guidance.

APPENDIX VI.

APPEARANCES

The following persons appeared before the Committee and its subcommittees and made available their views and experiences.

Members—Senate, State of Minnesota
Elmer L. Andersen
Donald Fraser
Arthur Gillen

Members—House of Representatives, State of Minnesota
Alfred I. Johnson, Speaker
William L. Shovell
Aubrey W. Dirlam
Karl F. Grittner

Commissioners, State of Minnesota
Ewald W. Lund, Railroad and Warehouse Commission
Joseph M. Robertson, Department of Taxation
Byron G. Allen, Department of Agriculture, Dairy and Food

Maynard E. Pirsig, Professor and Former Dean, Law School, University of Minnesota.

William C. Blethen, Attorney, Mankato, Minnesota—Member of the Practice of Law Committee, Minnesota State Bar Association.

Joseph Robbie, Attorney, Minneapolis, Minnesota.

Mrs. George Seltzer, Hennepin County League of Women Voters.