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NEW YORK’S NEW ETHICS LAW: TURNING THE TIDE ON CORRUPTION

Robert C. Newman*

Earl Long, scion of the famous Longs of Louisiana, once was asked if he believed in using “ethics” in government. “Hell, yes,” he replied, “I believe in using anything I can get my hands on.”

Revelations of recent years have made it appear that “anything goes” is the motto of a number of New York’s public figures as well. From Hempstead2 to Syracuse,3 one official after another has been convicted of betraying the public trust. Most of these convictions occurred in the federal courts, where anti-racketeering laws facilitate the prosecution of systemic corruption. As a result, many observers questioned the state government’s ability to maintain and uphold standards of official conduct.

In 1987, responding to intense pressure from the public, the news media, and Governor Cuomo, New York’s legislature adopted the Ethics in Government Act.4 This landmark law, the first overhaul of the state’s ethics codes in two decades, will prohibit state officials, employees, and lawmakers from representing private parties in state agency proceedings, and will require them to make detailed

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3. Lee Alexander, former Democratic mayor of Syracuse, admitted being a central figure in a plot to collect millions of dollars in kickbacks from City contractors. Lynn, Ex-Syracuse Mayor’s Schemes Detailed in Memo, N.Y. Times, Feb. 7, 1988, § 1, at 38, col. 1.
While recognizing that no statute can instantly and permanently cleanse the body politic of corrupt behavior, sponsors and supporters of the Ethics Act hope that it will encourage a moral climate in which integrity is expected and demanded by the voting public. At the same time, the Ethics Act greatly strengthens the mechanisms by which the State can deter, detect and punish those officials who prove unable, or unwilling, to draw the line between their private interests and their public responsibilities.

This Article sets forth the basic principles at stake in the drafting of government ethics laws, and will sketch how these laws have emerged at the federal level and in other jurisdictions. It then presents the major features of the 1987 Ethics Act, including its scope and coverage, its substantive restrictions on officials' behavior, its disclosure requirements, and its enforcement provisions. Finally, this Article comments on proposed amendments to the Act, intended to extend the Ethics Act's reach and strengthen its regulatory weave.

I. BASIC PURPOSES OF CONFLICT OF INTEREST LEGISLATION

As government has grown larger and its regulations more pervasive, laws governing the conduct of public officials have also become much more elaborate than the simple anti-bribery statutes of earlier eras. The goals of such laws have generally been described as: (1) avoiding favoritism in government's consideration of citizens' claims; (2) preserving the integrity of the policy-making process; (3) enhancing public confidence in government; (4) improving government efficiency; and (5) preventing the use of public office for private gain. Instead of relying solely on ad hoc determinations of propriety, reformers have preferred to prohibit officials from engaging in certain relationships that pose the potential for breaches of trust, on the theory that "situations of temptation should not be put in the way of human beings in high authority." Typical of such relation-

5. Id. at 1406-08.
9. Rauh, Conflict of Interest in Congress, in Conference on Conflict of Interest,
ships are a government official selling goods or services to the agency that employs him; an official taking employment that would permit him to use "inside" knowledge and connections to the advantage of his employer and to the disadvantage of competitors; and an official receiving gifts, other income, or property from outside entities that have an interest in his official actions.

Another aspect of current legal thinking in the ethics area takes its cue from Justice Brandeis' admonition that "Sunlight is said to be the best of disinfectants; electric light the most effective policeman." By requiring public disclosure of officials' financial holdings and sources of income, it is argued that citizens will have the information necessary to judge whether their representatives are acting in the public interest rather than for private gain. In spite of opponents' fears that government recruitment of talented professionals will be hampered, financial disclosure laws have been enacted in numerous jurisdictions.

Disclosure laws and "prophylactic" measures against conflict of interest each work best when applied in combination. Injunctions against impropriety are more easily enforced, and impropriety itself is deterred when financial disclosure is required. Most officials will draw back from ethically ambiguous conduct when they realize that truthful disclosures might generate scandal, while concealment risks discovery and prosecution. On the other hand, disclosure alone risks becoming "a symbolic act that increasingly becomes devoid of meaning" unless it stimulates public debate and provides the impetus for the further development of substantive conflict of interest standards.

Crucial to any set of ethics laws is the enforcement mechanism. Laws work best when their implementation is entrusted to a specially designated agency that is committed to the laws' purposes. In the case of ethics laws, such an agency should be bipartisan and independent, beyond the direct control of any of the officials whose conduct is being monitored. As will be shown, the failure to create one

10. L. BRANDEIS, OTHER PEOPLE'S MONEY 92 (1932).
11. See Jacobs, Ethics Act Prompts AG Staff Defections, 39 MANHATTAN LAW. 1 (1988) (stating that "[t]he impetus for the departures is the law's so-called revolving-door section . . . which prohibits lawyers from appearing before their former agencies for two years after they have left the government").
12. See infra notes 24-34 and accompanying text.
single independent enforcement agency represents one of the few major weaknesses of the New York Ethics Act.\textsuperscript{14}

II. EXPERIENCE IN OTHER JURISDICTIONS

A. Federal Government

The federal Ethics in Government Act,\textsuperscript{15} adopted in 1978, is in many ways a model conflict-of-interest statute. Public disclosures are required of high-level employees in all branches of government.\textsuperscript{16} Executive branch employees are subject to stringent restrictions against post-employment lobbying of their former agencies;\textsuperscript{17} these restrictions are currently undergoing their first major tests in the Lyn Nofziger\textsuperscript{18} and Michael Deaver cases.\textsuperscript{19} Receipt of gifts from lobbyists is strictly limited, and the well-known "special prosecutor law" is meant to ensure vigorous enforcement.\textsuperscript{20}

The weaknesses of the federal law, weaknesses it shares with many state enactments, are found in its application to the legislative branch. Members of Congress are allowed to receive considerable sums in honoraria and travel reimbursements from groups with an interest in legislation\textsuperscript{21} and are allowed to own stock in industries

\textsuperscript{14} See infra notes 122-34 and accompanying text; see also SOVERN COMMISSION RECOMMENDATIONS, supra note 8, at 47 (recommending the creation of a single permanent, independent Commission on Ethics in Government to enforce the conflict of interest and financial disclosure law).


\textsuperscript{18} See In re Nofziger, No. 87-1 (D.C. Cir. Independent Counsel Division).

\textsuperscript{19} See In re Deaver, No. 86-2 (D.C. Cir. Independent Counsel Division).


\textsuperscript{21} See Kaplan, Join Congress, See the World, COMMON CAUSE MAG., Sept.-Oct. 1986, at 17. For example, [J]In 1986 the United Coal Co. invited several congressmen to its headquarters in Bristol, Va. They flew out in the company's corporate jet, toured the company mines, dined with company executives — and were each given $2,000. Assistant Attorney General William Weld, newly arrived in Washington, sent a memo to his staff proposing to indict the congressmen for illegally accepting gratuities. His staff sent a memo back: "Welcome to Washington. Members of Congress are exempt from the antigratuities statute."
that fall under the jurisdiction of their committees. Nevertheless, Congress has gone further than most state legislatures by treating its members as "full-time" public servants and placing some limits on the amount of outside honoraria that may be earned.

B. Other States

Virtually every state has anti-bribery statutes and laws restricting public officials and employees from certain activities. New York was an early leader in the enactment of ethics legislation in 1954, but many other states and municipalities adopted more comprehensive provisions in the 1970's while calls to reform the New York statute went unheeded. Many states have enacted language restricting officials from representing clients before public agencies, for example.

In 1978, Massachusetts strengthened existing ethics statutes in response to a citizens' initiative petition. Officials are prohibited...
from acting as agents for any private person whose interests are adverse to the State's. They are forbidden from having any substantial financial interest in any business dealings with the State. Gifts are restricted and so are appearances before state agencies, although only to a limited extent. Post-employment restrictions are in place, as are financial disclosure rules for officials and their spouses. Local officials are also covered. Somewhat unusual among ethics statutes is language restricting an official's business partner from engaging in representational activity that the official himself could not engage in, and language prohibiting the "steering" of government insurance business arising from construction contracts to particular brokers. Most importantly, the law is enforced by an independent Ethics Commission of five members, three appointed by the Governor, one by the Secretary of State and one by the Attorney General, all for five-year non-renewable terms. The Commission has jurisdiction over ethics matters in all branches of government, and its adjudicatory proceedings are normally public.

The constitutionality of the financial disclosure component of state laws has been tested in a number of states. Most courts have held that where the laws are carefully drafted they are valid, on the ground that the privacy interests of officials are outweighed by the more compelling public interest in preventing corruption and the appearance of corruption.

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31. Id. § 7 (restricting state employees from having financial interests in contracts of state agencies).
32. Id. § 4 (establishing criminal penalties for receiving compensation or gifts, directly or indirectly in relation to any particular state matter).
33. Id. § 5.
34. Id.
35. Id. ch. 268B.
36. Id. ch. 268A, §§ 17-18.
37. Id. § 5(c)-(d).
38. Id. § 8.
40. Id. § 3.
C. Local Governments

Comprehensive local ethics legislation is less common, but Austin, Texas and Chicago, Illinois are two cities that have recently adopted strong ordinances. In New York, local governments have long had the authority to enact ethics codes that go beyond state requirements. For example, New York City has banned City officials from representing private parties before City agencies and requires financial disclosures. Many other jurisdictions have adopted codes that build and improve upon the state's minimum standards, but it would appear that most of the local codes are incomplete and imprecise by comparison to the State's new ethics act. As will be seen, some portions of the Ethics Act are made to apply to local governments, and the question of applying further provisions at the local level, where corruption historically has been most notorious, is

42. Austin, Tex., Ordinance No. 860717-X (July 17, 1986) (amending AUSTIN, TEX., CODE ch. 2-3 (1981)). The Ethics Review Commission created by the ordinance has jurisdiction over the City Council as well as the executive branch. The commission is formed in a rather unique manner — one Commission member is nominated by the mayor, and each of the six members of the City Council nominates one Commission member. See id. § 2-3-27(b).

43. CHICAGO, ILL., MUN. CODE ch. 26.2 (1987). One unusual provision prohibits nepotism in city service, see id. ch. 26.2-13, a traditionally endemic species of Chicago corruption. Another strong provision bars officials from receiving any gifts from persons with a financial interest in specific city business. But a last-minute compromise before enactment stripped the independent enforcement agency of jurisdiction over members of the Chicago City Council. See id. ch. 26.2-37.


45. NEW YORK, N.Y., CITY CHARTER § 2604 (1986); NEW YORK, N.Y. ADMIN. CODE, ch. 49, § 1106-5.0 (1986); see Hunter v. City of New York, 58 A.D.2d 136, 396 N.Y.S.2d 186 (1st Dep't 1977) (upholding the constitutionality of an anti-corruption law which required financial disclosure by New York City employees earning more than $25,000).

46. See, e.g., NASSAU COUNTY, N.Y., ADMIN. CODE § 22-4.2 (1964) (Nassau County Code of Ethics); SUFFOLK COUNTY, N.Y., CHARTER art. XXX (1980) (Suffolk County Code of Ethics). Both codes are substantially stronger than the New York State General Municipal Law; Nassau's has particularly specific provisions on representation of private persons in dealings with the County, and on gifts to officials from persons with a financial interest in County business. Neither, however, requires detailed annual financial disclosures and consequentially both remain incomplete.

It should be noted that a special committee, appointed by the Presiding Officer of the County Legislature, has proposed a stronger ethics code for Suffolk. See SUFFOLK COUNTY, N.Y., CHARTER art. XXX (1980). In addition, the New York State Commission on Government Integrity recently drafted a proposed ethics act that would set minimum conflict-of-interest standards for all municipalities in the state. NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, DRAFT OF PROPOSED ETHICS ACT FOR NEW YORK STATE MUNICIPALITIES (May 23, 1988) [hereinafter FEERICK COMMISSION DRAFT].
one of the major issues left in the wake of the Ethics Act’s passage.47

III. THE 1987 ETHICS IN GOVERNMENT ACT

A. Prior Law

Prior to the Ethics Act, New York law barred state officers and employees, legislators and legislative employees from involvement in “contingent fee” arrangements with private clients where the earning of a fee would be dependent on state agency actions; from appearing for compensation on behalf of another, against the interests of the state; from selling goods or services in excess of $25 to the state in the absence of competitive bidding; and from using confidential information for private gain.48 These prohibitions also applied to partnerships and corporations in which the officer, employee or legislator owned or controlled 10% or more of the stock.49 In addition, a “code of ethics” warned state employees against any personal financial involvement in activities “in substantial conflict with the proper discharge of [their] duties in the public interest.”50 The code also instructed an employee to avoid “other employment which will impair his independence of judgment in the exercise of his official duties” and generally to “pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”51 Bribe-receiving by legislators and their employees was specifically prohibited.52

Limited post-employment rules prevented former employees, within two years after termination of service, from appearing before their former agency in connection with matters in which the employee personally participated during his government service, and prevented former legislators from lobbying the Legislature within two years after leaving.53 Financial disclosure was required only

47. See infra notes 149-60 and accompanying text.
49. Id.
50. N.Y. PUB. OFF. LAW § 74(a) (McKinney 1988).
51. Id.
52. N.Y. PUB. OFF. LAW §§ 75-77 (McKinney Supp. 1986) (amended 1987); see People v. Hochberg, 87 Misc. 2d 1024, 386 N.Y.S.2d 740, aff'd, 62 A.D.2d 239, 404 N.Y.S.2d 161 (3d Dep't 1978). As originally enacted, § 76 also barred “vote-trading” among legislators, a practice that few would consider felonious. The drafters of the 1987 Ethics Act discreetly deleted this clause. See N.Y. PUB. OFF. LAW § 76 (McKinney 1988) (modifying the existing statute such that “vote-trading” among legislators is no longer explicitly barred, but continuing a ban upon the outright sale of votes).
where the entity in which the official or member of his household had an interest was "subject to the jurisdiction of a regulatory agency," unless the official determined "in his discretion" that this interest "might reasonably be expected to be particularly affected by legislative action." The specific value of financial interests did not have to be disclosed.

No enforcement agency existed except an Advisory Committee on Ethical Standards in the Attorney General's office, whose purpose was to issue advisory opinions on the application of the ethics code. Criminal prosecutions for violation of the conflict-of-interest rules were possible, but rarely attempted.

B. Legislative History

The Ethics Act had its genesis in bills that were championed for some time by Assemblyman G. Oliver Koppell (D-Bronx), Assemblyman Alexander Grannis (D-Manhattan), and Senator Franz Leichter (D-Manhattan), but made no legislative headway until Governor Cuomo made ethics legislation a personal priority in the wake of the scandals that rocked New York City throughout 1986. The Assembly first passed a strong bill late in the 1986 session, but the Senate did not act until the following year.

54. Id. § 73(6).
55. Id.
56. N.Y. Exec. Law §§ 63(11), 74 (McKinney 1982).
57. Compare People v. Zambuto, 73 A.D.2d 828, 423 N.Y.S.2d 770 (4th Dep't 1979) (holding that the acceptance of home repairs by a public officer was insufficient to support a conviction of receiving unlawful gratuities but adequate to support a violation of Public Officers Law § 73 despite a lack of proof that the gifts were intended to influence the defendant in the performance of his official duties) with People v. de Roos, 118 Misc. 2d 445, 462 N.Y.S.2d 99 (Sup. Ct. 1983) (requiring that the unlawful conduct have a particular effect on the performance of the public officer in order to sufficiently meet the jurisdictional requirements for a criminal violation).
60. See N.Y.S. 4661, N.Y.A. 7239, 210th Sess. (1987). The Senate bill was accepted by the Assembly and passed both houses on April 7, 1987, but was vetoed a week later by Governor Cuomo, who maintained that it was too weak. See Uhlig, Albany Lawmakers Fume Over
According to its Assembly sponsors, the Act was intended to maintain public trust and confidence by strengthening "prohibitions against behavior which may permit or appear to permit undue influence and broadening financial disclosure requirements to assure that the public is aware of all private and business interests which may influence public officials in their official acts." The Ethics Act significantly improved upon existing law in the areas of (1) appearances before state agencies; (2) post-employment restrictions; (3) financial disclosure; (4) coverage of certain political party leaders; and (5) administration and enforcement.

C. Provisions of the Act

1. Appearances Before State Agencies.— Many government officials, particularly legislators who are also lawyers, have engaged extensively in practices involving the receipt of compensation for the rendition of services or appearance on behalf of private parties in various types of proceedings before state agencies. This practice is disturbing for at least two reasons. First, it places officials who draft statutes and administrative rules in the position of being able to look out for their own interests and their clients' interests while they are ostensibly concerned only with serving the public. This conflict is especially apparent when a legislator plays a key role on a committee with jurisdiction over a particular area of regulation. Second, the appearances of legislators before state agencies give rise to a perception that favoritism may come into play because the legislators control the agency officials' livelihoods, i.e., their budgets. Beyond this, there has been general discomfort with the intuitive but widely shared belief that it is the lure of special access and the desire to curry favor, and not professional competence, that attracts clients to retain public officials as their personal representatives.


62. See infra notes 67-78 and accompanying text.
63. See infra notes 79-89 and accompanying text.
64. See infra notes 90-107 and accompanying text.
65. See infra notes 108-21 and accompanying text.
66. See infra notes 122-48 and accompanying text.
The final version of the Ethics Act addressed this problem by preventing appearances before state agencies in connection with: (i) the purchase, sale, rental or lease of real property, goods or services; (ii) rate-making; (iii) adoption or repeal of regulations; (iv) obtaining of grants or loans; (v) licensing; or (vi) franchises. Appearances before administrative hearing officers in “quasi-judicial” proceedings, excluded from an earlier version of the Act, are now encompassed within the prohibition. What the Act does not prohibit, aside from the expected exclusions for appearances in “ministerial matters” and public advocacy on behalf of constituents, are appearances before courts, and appearances before (or negotiations with) the Attorney General in his prosecutorial and investigatory functions; indeed, civil and criminal prosecutions generally appear to be the major area in which the restrictions do not apply.

Once the decision was made to prevent officials from practicing before state agencies, the question naturally arose as to whether it was proper for the officials’ partners and associates to practice before the state agencies. According to the American Bar Association’s Code of Professional Responsibility, representation by any member of a firm is equivalent to representation by the entire firm; thus, the Code on its face would seem to require that the statutory ban apply to the official’s partner. To a member of the public concerned about the appearance of undue influence, this seems eminently logical. However, a far greater number of lawmakers are associated with firms that appear before state agencies than the number who have commonly appeared before state agencies themselves. Indeed, state regulation is so extensive that it would be difficult for any firm with a large, business-oriented practice to avoid involvement in state agency matters. Placing a ban on partners’ practice before agencies would, in effect, require many covered officials to resign from their firms, and would in all likelihood be a prelude to a declaration that


68. “Appearance” is broadly defined by the statute to include any “appearance or rendition of services . . . in relation to [a] case, proceeding, application or other matter.” N.Y. PUB. OFF. LAW § 73(7)(a) (McKinney 1988).

69. Id.


71. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-105(D) (1982). The ABA’s Committee on Professional Ethics, foreseeing this problem, has suggested that it would be proper to waive the rule in certain circumstances. See R. VAUGHAN, supra note 13, at 80.
legislators are to be considered “full-time”, with higher government salaries but strict limits on the amount of outside earned income they may receive. The Legislature is not yet willing to take this step. Accordingly, a compromise was developed which permits officials’ firms to appear before and transact business with state agencies so long as the official himself does not share in the “net revenues” resulting from such business. As an added precaution, the official whose firm is “appearing” before an agency may not “orally communicate” with the agency, even without compensation, about the merits of the case. The Legislative Ethics Committee is charged with developing guidelines regarding the calculation of the portion of a firm’s profits that are attributable to practice before state agencies; in the meantime, a legislator is safe from disciplinary action if he “reasonably believes, in good faith” that he is not sharing in the “net revenues” from state agency practice. Finally, any official complying with these rules is immune from any disciplinary actions under the lawyers’ Code of Professional Responsibility or similar professional disciplinary rules.

It remains to be seen whether this highly complex, refined scheme designed to reconcile conflicting interests will succeed in building public confidence that officials are not trading their influence and reputations for private gain. Courts tamper with the scheme at their peril, however, for the lawmakers have declared that if the provisions permitting partners to practice are struck down by court action, then the entire package of changes in the conflict-of-interest rules is nullified as well.

2. Post-employment Restrictions.— The need to slow down the “revolving door” between government service and private industry first became apparent at the federal level. Concern developed that regulatory agencies were becoming “captives” of those they regulated, and that large government contractors, especially defense con-

73. N.Y. PUB. OFF. LAW § 73(10) (McKinney 1988).
74. Id. § 73(10)-(12).
75. N.Y. LEGIS. LAW § 80(9)(d) (McKinney Supp. 1988).
76. N.Y. PUB. OFF. LAW § 73(10) (McKinney 1988).
77. Id. § 73 (11)(c); see also N.Y. PUB. OFF. LAW § 73(13) (McKinney 1988) (providing that a submission to a state agency on a firm's letterhead does not become an "appearance" by a public official merely by reason of the fact that the official's name appears on the letterhead).
tractors, were compromising the integrity of official decision-making by routinely hiring recently-retired Government officials as their agents. Consequently, post-employment restrictions at the Federal level are already substantial and may soon be tightened further.

States and localities have been slower to enter the area involving the need to strike a balance between the desire to prevent influence-peddling and the fear of making restrictions so onerous that talented individuals with high lifetime earning potential will shy away from entering government service. In New York, the law prior to the Ethics Act barred state officers and employees from appearing before their former agencies within two years after leaving, with respect to matters with which the official was “directly concerned” and in which he “personally participated.” The Ethics Act, recognizing the realities of personal influence, extends the two-year ban to appearances before the employees’ former agency with respect to any matter at all. In addition, there is now a lifetime ban, instead of a two-year ban, on lobbying in connection with matters in which the ex-official personally participated while in Government.

While prior law covered lobbying by former legislators, legislative aides were not covered at all. The Ethics Act purports to remedy this, but the remedy may be illusory. Former high-level legisla-


82. See, e.g., New York, N.Y., City Charter ch. 68, § 2604(h) (1986) (placing a three-year post-employment ban on an ex-official’s appearing, lobbying, etc., with respect to matters “in which he personally participated, or which was under his active consideration, or with respect to which special knowledge or information was made available to him as a result of his city employment”); New York, N.Y., Admin. Code & Charter ch. 68, §2604(h) (1986) (placing an eight-year ban on lobbying that is “against the interests” of the city). The N.Y.C. Charter Revision Commission has proposed making the aforementioned three-year ban a lifetime ban. The Commission also added a one-year post-employment ban on a public servant’s appearance before his former agency, and a one-year ban on an elected official’s or top city executive’s appearance before any agency in his former “branch” of government. New York City Charter Revision Commission, Draft of Proposed Conflict of Interest Legislation for New York City Public Servants (June 10, 1988).


85. Id.

tive aides will be barred from lobbying the Legislature in connection with matters they directly and personally participated in while legislative aides, but this bar only applies during "the term of office of the legislature in which he or she was employed." Since the Legislature begins a new term after each biennial election, a chief committee counsel could resign from his legislative staff position in December, and begin work as a lobbyist in January, lobbying in connection with the very same legislation that he shaped while committee counsel. This appears to mock the concept that an official should not be able to sell "insider" access immediately upon leaving government. To top it off, the bill exempts legislative employees who "acted primarily in a supervisory capacity" from even this weak restriction. The use of a double standard for post-employment lobbying, with strict rules for executive-agency employees and loopholes for legislative aides, appears to represent a clear case of self-interested bill drafting. One hopes this aspect of the Act will be revised.

Finally, it should be noted that there are no restrictions on "cross branch" lobbying. Ex-legislators may appear before executive agencies, and ex-agency officials may lobby the legislature. This presumably should ensure that former public servants still have adequate employment opportunities open to them.

3. Financial Disclosure.— The disclosure section of the 1987 Act is probably its most elaborate, its most bitterly-contested and its most salutary provision.

Detailed annual disclosures will be required, starting in 1989, from candidates, from all elected officials and from all others in the executive, legislative and judicial branches who earn more than $30,000 per year or who hold "policy-making positions." Unlike the earlier, poorly-drafted statute which gave officials wide discretion in determining what financial information needed to be disclosed, if any, the Ethics Act dictates what is to be disclosed and how. Covered items include offices and directorships, including

87. N.Y. PUB. OFF. LAW § 78(8) (McKinney 1988).
88. Id.
89. One might imagine a situation in which a change in party control causes widespread, sudden unemployment among high-ranking legislative aides, justifying an exemption from revolving-door restrictions, but the statutory loophole is not limited to this hypothetical case.
92. See supra notes 53-56 and accompanying text.
93. See N.Y. PUB. OFF. LAW § 73-a (McKinney 1988) (requiring public officials to com-
honorary positions; trade, business or professional positions; interests in contracts with state or local government; political party offices; sources of gifts and reimbursements; interests in trusts, excluding trusts established by or for relatives; post-employment agreements; deferred-compensation agreements; nature and sources of income, including deferred income; assignments of income; securities held; real property held, excluding personal residences; notes and accounts held; and liabilities.\textsuperscript{94} Items need not be reported when the amount involved is deemed \textit{de minimis}, generally less than $1,000.\textsuperscript{95} For items that are reported, the exact amount of the items need not be specified but a "category of value" must be reported. The "category of value," however, unlike the rest of the disclosure form, is to be kept confidential and shielded from public view.\textsuperscript{96} If a business activity of the reporting individual is either licensed or regulated by a state or local agency, or did business with or had "other than ministerial" matters before a state or local agency as a "regular and significant part" of its business, then applicable state and local agencies must be listed on the form.\textsuperscript{97} Where the official does not himself do business with a state or local agency, but is associated with a firm or partnership that does, the name of the state or local agency must still be disclosed.\textsuperscript{98}

Officials who are partners in law firms must "give a general description" of the "principal subject areas of matters undertaken" by the firm.\textsuperscript{99} Real estate brokers and other licensed professionals must do likewise.\textsuperscript{100} Names of individual clients, customers or patients need not be listed.\textsuperscript{101} This provision represents a compromise between drafters of the original Assembly bill, who sought disclosure of the nature of specific clients' business before state agencies,\textsuperscript{102} and
legislators who claimed that any disclosure along these lines would intrude upon the attorney-client relationship.\textsuperscript{103} The potential efficacy of the compromise language in deterring ethically questionable representation is difficult to predict. Where an official's firm is engaged in a highly specific type of practice that is closely regulated, cooperative conversions for example, the Ethics Act's disclosure formula would be revealing. On the other hand, the law is less likely to shed light on the ethical questions that arise when a large business such as a bank, that has many types of matters pending before government, chooses to hire a lawyer-legislator to represent it with respect to portions of its business that appear to be non-controversial in themselves, such as mortgage closings.\textsuperscript{104}

Another contentious aspect of the financial disclosure debate was the extent to which disclosure should cover financial interests of spouses and children. In a significant victory for Governor Cuomo and other reformers, the Ethics Act requires that income of an official's spouse be listed along with the official's own income. Unemancipated children as well as spouses are covered within the disclosure provisions with respect to positions held, gifts received, interests in government contracts, and interests in licensed or regulated businesses.\textsuperscript{105} Privacy concerns, affecting both officials and family members, are dealt with by the exemption provisions, which permit the enforcement agency to delete from the public record any item on the disclosure form which "will have no material bearing on the discharge of the reporting person's official duties."\textsuperscript{106} The grounds for exemption appear broader than an earlier draft of the bill which limited exemptions to matters which were of a "highly personal nature" and "unrelated" to official duties.\textsuperscript{107} One hopes that the enforcement agencies will not interpret the phrase "no material bearing" so liberally as to nullify the apparent strength and comprehensiveness of the public disclosure requirements.

4. Coverage of Party Leaders.— Ethics laws have traditionally governed the activities of public officials only. In fact, prior to the

\textsuperscript{103} See Schmalz, \textit{supra} note 102, at B2, col. 1 (reporting that Senate Majority Leader Warren Anderson "repeated his position that it would be unethical for a lawyer to release a list of his clients.").


\textsuperscript{105} N.Y. PUB. OFF. LAW § 73-a(3)(5) to -(a)(3)(6) (McKinney 1988).

\textsuperscript{106} N.Y. EXEc. LAW § 94(9)(h)-(i) (McKinney Supp. 1988); N.Y. LEGIs. LAW § 80(8)(h)-(i) (McKinney Supp. 1988).

\textsuperscript{107} See N.Y.S. 4661, 210th Sess. (1987) (vetoed by Governor Cuomo), discussed \textit{supra} note 60.
Ethics Act, there was only one New York statute of limited application covering political party officials in their party capacities.\textsuperscript{108} It was the threat of scandal, once again, that propelled legislators in this new direction. Stanley Friedman, a key figure in the New York City influence-peddling prosecution that began in 1986, engaged in his "racketeering enterprise" while holding no office except the chairmanship of the Bronx County Democratic organization.\textsuperscript{109} Recognizing that in jurisdictions where a single party is dominant, the party leader may exert greater power and influence than the elected officials whose nominations he engineers, both the State Democratic Party and the Legislature moved to address this problem in 1987.\textsuperscript{110}

The Democrats, trying to "deter and penalize misconduct by party leaders without imposing needlessly burdensome restrictions on party participation," approved a Code of Ethics\textsuperscript{111} stating that no party leader shall use or try to use his position as a means of influence to secure any Government benefits for himself, relatives or associates that are not generally available to members of the public.\textsuperscript{112} Specific prohibitions, applying to party chairmen, officers and full-time employees, as well as firms they own or control, interdict paid lobbying of government agencies or legislative bodies in the party leaders' jurisdiction.\textsuperscript{113} Furthermore, the Code of Ethics prohibits the sale or lease of goods, property or services to government agencies without competitive bidding, and the acceptance of gifts or other things of value, including campaign contributions from a person who has financial interest in the outcome of a pending party decision.\textsuperscript{114}

It is noteworthy that the only expressed opposition to this Code came from Democrats who argued that it did not go far enough in defining prohibited conflicts of interest.\textsuperscript{115}

\textsuperscript{108} See N.Y. GEN. MUN. LAW § 809 (McKinney 1986). Upon application for a zoning variance or plat approval, there must be disclosure of any state or municipal official's affiliation with the entity submitting the application. Id. § 809(1). In Nassau County, however, such disclosure also applies to a "party officer." Id. § 809(3).


\textsuperscript{110} See REPORT OF THE NEW YORK STATE DEMOCRATIC PARTY SPECIAL COMMITTEE ON ETHICS 7 (Mar. 1987) [hereinafter DEMOCRATIC PARTY REPORT]; see also Purnick, Panel Seeks New Law On Finance of Officials, N.Y. Times, Oct. 8, 1986, § 2, at 1, col. 6; Governor's Program Bill No. 220 (1986).

\textsuperscript{111} The Code was drafted by a special party committee under the Chairmanship of Theodore C. Sorenson and was adopted by the state committee on Sept. 30, 1987. See Lynn, New York State Democrats Pass Ethics Code, N.Y. Times, Oct. 1, 1987, at B3, col. 3.

\textsuperscript{112} DEMOCRATIC PARTY REPORT, supra note 110, at 13.

\textsuperscript{113} Id. at 14.

\textsuperscript{114} Id.

\textsuperscript{115} See Lynn, supra note 111, at B3, col. 3. These critics advocated a "flat ban on dual
The Legislature's treatment of this question bears all the earmarks of political compromise. County chairmen and "county leaders" in counties of 300,000 or more, and any other county chairmen or leaders who receive $30,000 or more per year in their party capacities, are governed by the same conflict of interest and financial disclosure rules that apply to state officials and legislators. In addition, county leaders in a city with a population of more than one million, like New York City, are barred from doing business with City agencies without competitive bidding, and are barred from representing private clients before City agencies. Party leaders in the remainder of the state are left to their own devices and to local ethics codes.

The Ethics Act does not address what some perceive as the problem of "dual office-holding," in which a party leader simultaneously holds public office, using the power of one position to buttress the power of the other. Under existing law, the only offices party leaders may not hold are judgeships and law enforcement positions. The state's Democrats, prodded by Attorney General Robert Abrams, have moved toward barring party leaders from holding "executive" offices such as mayor or borough president, but the Legislature has shown no signs of moving in this direction.

5. Administration and Enforcement.— For at least twenty-five years, commentators have recommended that ethics statutes be administered by agencies that have investigatory powers, can impose sanctions, and most importantly, are independent of political influence.

office-holding." Id.; see infra notes 120-21 and accompanying text. Although the Code must be adopted by each county committee before it can govern county leaders, state party leaders believe local committees will readily comply. Id.


117. See N.Y. PUB. OFF. LAW § 73(4)(b) (McKinney 1988).

118. See Lynn, supra note 111, at B3, col. 3 (discussing the Act's failure to prohibit dual office-holding thus allowing party leaders to represent outside interests).

119. See N.Y. PUB. OFF. LAW § 73(9) (McKinney 1988). For the purpose of this subdivision the term "party officer" includes a member of a national committee, an officer or member of a state committee, or a county chairman of any political party. Id.

120. Attorney General Robert Abrams has proposed that no party leader in a jurisdiction with a population of more than 10,000 may hold any elective public office. Attorney General's Legislative Program No. 149, at 15 (1988).

121. See supra notes 109-15 and accompanying text. Interestingly, the party's Code contains a ban with a "grandfather clause" permitting current dual office-holders, such as Brooklyn Borough President and Democratic Party leader Golden, to continue in office. See Lynn, supra note 111, at B3, col. 3.
ence. According to one such commentator in 1963, legislative creation of an independent ethics commission with jurisdiction over all branches of government “would take advantage of a temporary peak in the legislature’s reforming spirit by permanently entrusting this spirit to a body less likely to let it die.”

Massachusetts did follow this advice a number of years later, but few others have. Except where reformers have been able to bypass legislatures through an initiative process, lawmakers generally have been unwilling to allow any agency they do not control to oversee their own behavior. Independent “Boards of Ethics” exist in many places, but play only an advisory role. When enforcement is at issue, the phrase “separation of powers” is frequently invoked to justify lawmakers’ refusal to surrender or share the power to discipline themselves.

The elaborate scheme created by New York’s Ethics Act is a case in point. The Act creates an independent Ethics Commission, composed of five members serving staggered terms and removable only for cause, but its limited jurisdiction covers only executive branch officers and employees. Legislators and legislative aides are to be monitored by a “Legislative Ethics Committee” consisting of eight legislators, four from each party, to be appointed by the majority and minority leaders.

When this Commission/Committee scheme was first proposed, good-government advocates warned that the plan carried the seed of paralysis. Specifically, the advocates argued that the politically divided Legislative Ethics Committee would be incapable of acting in any matter which became a partisan issue, and would be unlikely to act, except under pressure, in a matter with the potential to embar-

125. Ohio and Florida are among the states with Ethics Commissions that act as administrative and enforcement bodies for all officials other than state legislators. See SOVEREIGN COMMISSION STAFF REPORT, supra note 25, at 62 (discussing the structure and configuration of administration and enforcement bodies in other states which oversee their conflict-of-interest laws).
126. Id. at 60-63.
rass a powerful legislator or a large number of legislators.\textsuperscript{129} Reformers suggested that if legislators genuinely believed that constitutional separation-of-powers concerns precluded merging the Commission and the Committee, provision should at least be made for the addition of one or more non-partisan “public members” to the Legislative Ethics Committee.\textsuperscript{130} In response, legislative leaders agreed to create an “advisory council” within the Committee, consisting of three non-legislators and two legislators.\textsuperscript{131} This council has the limited duty of giving initial consideration to requests that particular financial information be kept off limits to the public;\textsuperscript{132} it has no role in determining whether sanctions should be imposed for violations of the Act. Although “outside” members of the advisory council are to be jointly nominated by the Assembly speaker and Senate majority leader, there is no provision for the contingency that would occur if politics prevented the two leaders from agreeing on joint appointments.\textsuperscript{133}

Setting aside the legislature’s failure to permit independent oversight of lawmakers, there is much to admire in the Ethics Act’s carefully crafted administrative provisions. The Ethics Commission’s independence is enhanced by requirements that at least two of the five members come from the private sector, and that none of the members may be lobbyists or party officeholders.\textsuperscript{134} In order to effectuate their duties, both the Commission and the Committee have investigative powers pursuant to which they may administer oaths,

\textsuperscript{129} See, e.g., Letter from New York State Common Cause to Speaker Melvin H. Miller (May 1, 1987); Letter from Robert M. Kaufman, President of the Association of the Bar of the City of New York, to the legislative leaders (Apr. 13, 1987); Letter from New York State Common Cause to Governor Mario Cuomo (Apr. 10, 1987).

\textsuperscript{130} Letter from Robert M. Kaufman, President of the Association of the Bar of the City of New York, to Governor Cuomo (Mar. 30, 1987) (recommending that there should be a single independent commission with a structure designed to prevent domination by a single party).

\textsuperscript{131} See N.Y. LEGIS. LAW §§ 80(17)(a), (b) (McKinney Supp. 1988). The two legislators are the Chairmen of the Judiciary Committees in the Senate and Assembly. Id. § 80(17)(b).

\textsuperscript{132} Id. § 80(17)(g). If the advisory council denies a request that a particular item be kept confidential, the “aggrieved” person may appeal to the full Legislative Ethics Committee. Id. There is no corresponding provision for a member of the public to “appeal” a decision against public disclosure.

\textsuperscript{133} See id. § 80(17)(b).

\textsuperscript{134} N.Y. EXEC. LAW § 94(2) (McKinney Supp. 1988). The Attorney General and Comptroller are each given the right to nominate one of the five members seated on the Commission; the others are to be selected by the Governor. Id.
subpoena witnesses, and require production of records. Detailed procedures are created for the granting of exemptions from financial disclosure requirements to individuals and to defined classes of persons. Equally detailed rules establish an adjudicatory process leading to the imposition of civil penalties up to $10,000 for those who (1) knowingly and intentionally violate the conflict of interest rules; (2) knowingly and wilfully fail to file an annual financial disclosure statement; or (3) make false statements, knowingly, wilfully, and with intent to deceive on financial disclosure statements. Provision is also made for the enforcement bodies to issue advisory opinions upon written request from a covered public official. As a rule, such advisory opinions by the Commission or Committee are binding upon the issuing body in any subsequent proceeding and shall be a defense in any criminal or civil action.

The Attorney General has urged the legislature to modify two other troublesome aspects of the Ethics Act’s enforcement scheme. First, in a step backward from current law, the Act permits criminal prosecution for violation of its provisions only if the case is first referred to a prosecutor by the State Ethics Commission or the Legislative Ethics Committee. This “prior referral” requirement applies not only to non-filing and false filing of financial disclosure forms, but also to violations of the ban on practicing before state agencies and other conflict-of-interest rules. Moreover, the enforcement body must choose between imposing a civil penalty or referring the

135. Id. § 94(16)(c).
136. Id. § 94(9)(i); N.Y. LEGIS. LAW § 80(8)(i), (l) (McKinney Supp. 1988). Specifically, an individual may request an exemption from disclosing information relating to his or her spouse or unemancipated children. N.Y. EXEC. LAW § 94(9)(i) (McKinney Supp. 1988); see supra notes 106-07 and accompanying text. If the request is denied by the Commission, the individual has the right to appeal his or her request for an exemption pursuant to the detailed rule governing the adjudicatory process. Id. The individual may also request the Commission to delete a particular item of information from the publicly available copy of the financial disclosure statement. Id. § 94(9)(h).
139. N.Y. EXEC. LAW § 94(15) (McKinney Supp. 1988); N.Y. LEGIS. LAW § 80(14) (McKinney Supp. 1988). Of course, the advisory opinion is not binding on the Commission once it is amended or revoked.
matter for prosecution, as it cannot do both. These restrictions are wholly unprecedented, as the Attorney General states. Many types of unlawful conduct are subjected both to penal and to administrative sanctions. Moreover, the requirement of prior referral may be inconsistent with the State Constitution's provision that “[t]he power of grand juries to inquire into the willful misconduct in office of public officers . . . shall never be suspended or impaired by law.”

The second unfortunate aspect of the Ethics Act's enforcement procedures is the blanket exemption from the open meetings and freedom of information laws for most proceedings and records of the enforcement agencies. Although no one could quarrel with the initial investigations into alleged violations remaining confidential, once the enforcement body has found “reasonable cause to believe” that a violation has occurred, the purpose of the Ethics Act would best be served if subsequent adjudicatory hearings, and records of them, were presumptively open to the public. This would better balance legitimate privacy interests with the public's right to be informed about the workings of government.

IV. PROPOSED EXTENSIONS OF THE ETHICS ACT

One area that deserves further consideration in an analysis of the Ethics Act is its limited reach beyond Albany. Far more public corruption has occurred in New York State's counties, cities, towns and villages than in the state capital. Although the Ethics Act con-


144. Attorney General's Legislative Program, No. 160 (1988) (opining that the prior referral requirement, together with the bar to the use of both civil and criminal sanctions, removes teeth from the legislation).

145. For instance, a police officer who assaulted a suspect could be prosecuted for assault and official misconduct. N.Y. Penal Law § 120.00 (McKinney 1987) (assault in the third degree); id. § 195.00 (official misconduct). A police officer may be removed from the force as a result of departmental disciplinary proceedings. N.Y. Civ. Serv. Law § 75 (McKinney 1987).

146. N.Y. Const. art. I, § 6, cl. 2; see also Attorney General's Legislative Program, No. 149, at 4 (1988) (proposing an amendment to the Ethics in Government Act which would delete the requirement of prior referral before permitting criminal prosecution).


tains extensive amendments to the General Municipal Law, and creates a "Temporary State Commission on Local Government Ethics". It does not promulgate an ethics code for city, county or local officials. Other than the aforementioned restrictions on political party chairmen, the only substantive provisions of the Act affecting local government relate to financial disclosure. Counties, cities, towns and villages are given until January 1, 1991, to adopt their own financial disclosure forms. If they fail to do so, then after that date their elected officials, officers and employees, and local political party leaders will have to complete the same financial disclosure form that state employees must complete. However, only in New York City must the local disclosure law "be at least as stringent in scope and substance" as the state's law. Other covered localities may continue to use their existing disclosure forms or may opt for new forms that are either more or less comprehensive than the state's, both in terms of who must disclose (e.g., party leaders may be excluded) and in terms of what must be disclosed. The only clear implication from the complicated statutory language is that continued citizen vigilance will be necessary to ensure adequate local compliance with the spirit of the disclosure requirements.

The notion that local governments should retain the flexibility to adapt their conflict-of-interest rules to local conditions has considerable merit. The part-time nature of public service in many smaller

149. N.Y. Gen. Mun. Law § 813 (McKinney Supp. 1988). The nine-member commission, to be in existence from 1989 through 1992, is given essentially the same powers and duties as the State Ethics Commission with regard to enforcing the disclosure requirements, insofar as they apply to officials of local governments which have not vested the enforcement function in their own boards of ethics. See id. § 813(13).

150. A few limited conflict-of-interest rules, narrower than the Ethics Act's provisions, are already mandated for local officials. See N.Y. Gen. Mun. Law § 800-813 (McKinney 1986 & Supp. 1988); see also supra notes 44-46 (discussing some of the conflict-of-interest rules governing in New York City and Long Island).


152. Id. This rule applies only to political units with populations of 50,000 or more. Id. § 810(1).

153. Id. § 811 (1)(a) ("In a city with a population of one million or more, such local law ... shall be at least as stringent in scope and substance as the provisions" complied with by state civil servants, set forth in § 812).


155. See Sovereign Commission Recommendations, supra note 8, at 57-58 (discussing the Commission's recommendations on New York City's conflict-of-interest and financial disclosure law). California has created one of the strongest independent state ethics commissions.
political subdivisions places them on a different footing than New York State and New York City with their thousands of workers. On the other hand, strong personal relationships play a particularly powerful role in the workings of smaller local governments, and these strong relationships offer particularly tempting opportunities, in the wrong hands, for favoritism and undue influence. Therefore, the Attorney General reasons, local officials should be subjected to conflict-of-interest rules at least as strict as the rules for state officials. For instance, local officials should not be able to appear before local agencies in their own jurisdiction or in any jurisdiction that geographically coincides with it. As an illustration, “an employee of Town A located in County X could not appear before any government agency of either Town A or County X.” Post-employment rules would also apply at the local level, thereby preventing such practices as a defeated Town Supervisor joining an engineering firm to render services to the town pursuant to a contract he negotiated while still in office.

Other similar potential extensions of the Ethics Act might expand coverage to political subdivisions with as little as 10,000 in population, rather than 50,000, and extend coverage to local party leaders who do not receive $30,000 in annual compensation or reimbursements. Local officials could be barred from doing business with, or appearing before, state agencies, on the theory that the dynamic nature of politics makes it unrealistic to think that one level of government can be insulated from another. Conversely, state officials could be prohibited from appearing for compensation before local agencies, in view of the potential for special influence that arises from the degree of control that state government has over local government budgets.

Various “loophole-closing” amendments have been suggested in earlier portions of this article. Two additional areas deserving ex-

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the Fair Political Practices Commission, which has an annual budget of $3.4 million. See generally CONFLICT OF INTEREST LEGISLATION, supra note 28, at 11. Each California locality is permitted to adopt its own ethics code subject to approval by the Commission to ensure that the local code is consistent with general state standards. Id.

156. See Attorney General’s Legislative Program, No. 149, at 1 (1988).
157. Id.
158. Id. at 3.
160. Id.
161. See supra notes 89, 130-33, 147-48 and accompanying text.
amination involve receipt of gifts, and the activities of legislative employees.

The Ethics Act continues the restriction in prior law on the amount that a public official may accept in gifts "under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties . . . ." According to the New York City Bar Association, gifts under such circumstances are "repugnant in concept;" thus, one would think they should be banned, not just restricted in amounts to $75. Moreover, the broad application of this rule illustrates its practical shortcomings in terms of enforcement. Any large gift from a lobbyist, or from a person seeking a contract from an official's agency, or from a person who recently received a "discretionary" benefit from the official's agency, is inherently suspect. At the risk of cutting off a few gifts which truly result from "friendship" rather than favor-seeking, there should be an outright ban on gifts to officials from persons in such categories, above a nominal amount.

Finally, one might ask whether the existing hortatory rule that an official may not accept outside employment "which will impair his independence of judgment in the exercise of his official duties" should be translated into a specific injunction that key legislative aides may not receive compensation from any person, firm or association that has a direct interest in legislative decisions that the aide is in a position to influence. It may be unrealistic to expect the Legislature to enact any further restrictions on its own policy-making employees. In all fairness, the Ethics Act covers legislative aides more forthrightly than the ethics laws of many other jurisdictions.

162. N.Y. PUB. OFF. LAW § 73(5) (McKinney Supp. 1988). The Ethics Act, however, increased the permitted value of such gifts from $25 to $75. See id. § 73 at 127 historical note to § 73(5).

163. Letter from Robert M. Kaufman, President of the New York City Bar Association, to Honorable Melvin H. Miller, speaker of the New York State Assembly (Mar. 30, 1987) (discussing the first version of the Ethics Act that was eventually vetoed).

164. This position was adopted in Nassau County's ethics code, NASSAU COUNTY, N.Y., ADMIN. CODE § 22-4.2 (1964), and recommended by both the Sovern Commission, see SOVERN COMMISSION RECOMMENDATIONS, supra note 8, at 51, and the Feerick Commission, see FEERICK COMMISSION DRAFT, supra note 46, at 7.

165. N.Y. PUB. OFF. LAW § 74(3)(a) (McKinney 1988).

166. The type of "revolving door" restrictions extended to New York's legislative aides by the Ethics Act would be applied to Congressional aides for the first time if Congress adopts the pending Integrity in Post Employment Act. 134 CONG. REC. S4236-67 (daily ed. Apr. 19, 1988); see supra notes 17, 80-89 and accompanying text.
ethereless, some high-level aides, persons who are counsel to major committees, have been implicated in glaring conflicts of interest. One influential aide serves simultaneously as a committee counsel, as counsel to a major political party, and as counsel to private firms that frequently have applications pending before local government agencies. The Act’s disclosure requirements will shed long-awaited light on these conflicts, but disclosure alone is insufficient. The spirit of the Ethics law requires that the top Assembly and Senate staffers, who are paid as well as their counterparts in civil service, owe the same undivided loyalty to the public. One hopes that in the not far distant future, the Legislature will overcome the pulls of partisanship and seriously address this issue.

V. CONCLUSION

Ethical rot in government is nothing new. Exposures of corruption have sparked surges of reform for as long as anyone can remember. Ultimately, the character of the citizenry will determine the character of public life. In the 1987 Ethics in Government Act, New York’s Legislature set a standard of behavior, and fashioned tools that can be used to maintain the standard. While imperfect, the Act is a detailed, well-crafted document that reflects much credit upon its creators. What is currently needed, however, is that the public outrage that impelled the Act’s passage be transmuted into sustained attention. By learning and applying the Act’s tools, we can improve on its form, and assure that its spirit lasts.

167. Thomas Spargo, counsel to the Senate Elections Committee, also serves as counsel to the State Republican Party, and represents private developers who recently made campaign contributions to local candidates in a small upstate city while they were seeking the city’s permission to build a major shopping center. His role in possible election law violations is being investigated by the Feerick Commission. Lynn, Ethics Unit Investigating Elections Board, N.Y. Times, Jan. 21, 1988, at B3, col. 1.