

OPINION 19

OFFICIAL OPINION NO. 19

July 10, 1974

Honorable Otis R. Bowen, M.D.
Governor of Indiana
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen:

This is in response to your request for my official opinion on the following question:

“Would you please prepare an official opinion explaining the mechanics, the limitations, and the proposed guidelines of Senate Enrolled Act No. 245 enacted by the 1974 General Assembly, concerning financial disclosure, ethics, and conflicts of interest involving state officers and employees, and establishing penalties?”

ANALYSIS

I

Senate Enrolled Act Number 245, Public Law Number 4 of 1974, enacted by the Indiana General Assembly, and now codified as the Indiana Code of 1971, Section 2-2.1-3-1 to Section 2-2.1-3-12, and Section 4-2-6-1 to Section 4-2-6-10, establishes a uniform system of financial disclosure, by which disputes concerning ethics and conflicts of interest involving state legislators and certain state elected and appointed officers might be resolved.

It is well to note, however, that these two sections by no means comprise all of the existing legislation on this subject matter, and that Indiana has long had a large volume of law on the subject of misconduct and corruption of public officials. This Act also affirms those subjects.

Some such practices already prohibited by existing statutes in Indiana are as follows:

1974 O. A. G.

Extortion of public officials—IC 1971, 35-1-95-1 [Burns' (1956 Repl.) § 10-3701], and IC 1971, 35-22-6-1, [Burns' (1956 Repl.) § 10-3702].

Hiring of public employees without duties—IC 1971, 35-22-8-2 [Burns' (1973 Supp.) § 10-3733], and IC 1971, 35-22-8-4 [Burns' (1973 Supp.) § 10-3735].

Fraud by election officials—IC 1971, 3-1-32-32 [Burns' (1969 Repl.) § 29-5932].

Prohibited practice of law by officials—IC 1971, 35-1-95-2, *et seq.* [Burns' (1956 Repl.) § 10-3101, *et seq.*]

Impeachment—IC 1971, 5-8-1-1, *et seq.* [Burns' (1964 Repl.) § 49-801, *et seq.*]

Disqualification because of federal crime—IC 1971, 5-8-3-1 [Burns' (1964 Repl.) § 49-303].

Disqualification from office—Constitution of State of Indiana, Article 2, § 6.

Bribery of employees—IC 1971, 35-18-10-1 [Burns' (1956 Repl.) § 10-604].

Bribery of Legislators—IC 1971, 35-1-90-4 [Burns' (1973 Supp.) § 10-601].

Bribery of municipal officers—IC 1971, 35-1-90-5 [Burns' (1956 Repl.) § 10-602].

Bribery of state examiners—IC 1971, 5-11-1-17 [Burns' (1961 Repl.) § 60-220].

Bribery of election officials—IC 1971, 3-1-32-5 [Burns' (1969 Repl.) § 29-5905], and IC 1971, 3-1-32-19 [Burns' (1969 Repl.) § 29-5919].

Neglect and misfeasance of officials—IC 1971, 35-1-101-1 to -16 [Burns' (1956 Repl.) § 10-3708 to 10-3727].

Violation of tax laws—IC 1971, 6-1-1-35 [Burns' (1961 Repl.) § 64-109].

Intimidation of officials—IC 1971, 35-1-97-1 [Burns' (1956 Repl.) § 10-1011].

OPINION 19

Corrupt practices generally—IC 1971, 3-1-30-1, *et seq.* [Burns' (1969 Repl.) § 29-5701, *et seq.*].

Bribery in obtaining public contracts—IC 1971, 35-1-101-9 [Burns' (1956 Repl.) § 10-603].

Corrupt practices in awarding municipal contracts—IC 1971, 17-1-24-35 [Burns' (1973 Supp.) § 26-536].

For general reviews of laws affecting conflicts of interest and other related areas, see also Official Opinion of the Attorney General Number 13 of 1970, and Official Opinion of the Attorney General Number 10 of 1973.

The first section of Public Law Number 4 of 1974 deals with legislative disclosure. It requires members of the Indiana General Assembly, as well as candidates for such offices, to file a statement of their economic interests for the preceding year. (The *disclosure* requirements do not apply to the Secretary of the Senate, the Clerk of the House, or other employees and agents of the Indiana General Assembly or Legislative Council.)

Such statements must include the names and nature of certain business interests which the legislators or their families might have, in either their employment or in proprietorship, partnership, and corporations; their relationship with lobbyists; the donors of certain gifts; the names of state agencies regulating certain business interests, and the names of persons or entities they might have represented before a state agency and the nature of that representation.

Legislators and candidates therefor also must file a statement listing those persons or entities who contributed more than \$50.00 to their primary or election campaigns, (excluding contributions from political parties) but including contributions to agents or political committees in their behalf.

Another portion of this section establishes legislative ethics commissions in each house of the Indiana General Assembly, whose members are to be appointed by the majority and minority leaders of each house. Each committee is to recommend a code of ethics to its respective house, and is to hear, investigate, and recommend sanctions with respect to allega-

1974 O. A. G.

tions of violations of ethics, and to advise members of each respective house as to particular questions which may arise, as well as to recommend supplemental legislation.

This section also provides a method for investigation, notice, and hearing upon allegations of ethics violations, giving persons so charged the right to counsel, to call witnesses, to introduce exhibits, and to cross-examine witnesses. Each such committee shall report any finding of violation to the speaker of the house or president pro tempore of the senate.

II

The second major section of Public Law Number 4 of 1974 concerns certain state elected and appointed officers and deals with ethics and conflict of interest. This again is basically a disclosure law.

This section also establishes a state Ethics and Conflict of Interest Commission composed of five members appointed to staggered terms. The Governor is to appoint such commissioners by August 1, 1974. No state employees, elected or appointed officials, or registered lobbyists may be appointed to this Commission. Staff assistance and office space are to be provided by the Governor's office and the State Budget Agency.

The State Ethics and Conflict of Interest Commission is to adopt a code of ethics by January 1, 1975. Such a code would necessarily have to be adopted in the same manner as rules are promulgated by other state agencies, i.e., by publication of notice, a public hearing, formal adoption, submission to the Attorney General, submission to the Governor, and filing with the Secretary of State, as detailed in the Administrative Procedure Act, Indiana Code of 1971, Sections 4-22-2-1 through 4-22-2-11.

In addition to developing a code of ethics, once it is promulgated, the Commission may hear complaints alleging a breach of any privilege, misconduct of any state officer or employee, or any violation of the code of ethics.

In connection with hearing such charges, the Commission is given discovery and subpoena power, the power to make

OPINION 19

recommendations as to sanctions and possible legislation, and to advise state officers, agencies, and employees as to conflicts of interest.

The notice and hearing provisions relating to the resolution of such allegations are similar to those in the preceding section, except that the report required in the event the Commission discovers a violation shall go directly to the Governor.

The disclosure provisions are also similar to those under the preceding (legislative) section. Written statements of economic interests are required from persons holding, or campaigning for, the offices of Governor, Lieutenant Governor, Secretary of State, Attorney General, and State Superintendent of Public Instruction. In addition, such a report is required from the "chief executive officer of a department in the executive branch of state government."

This last provision may require clarification. It would clearly exclude officers of the judicial and legislative branches, thus excluding the Clerk and Reporter of the State Supreme Court and Court of Appeals, but the determination of which person or persons are "chief executive officers" in certain cases may be difficult to ascertain. However, where the authority is collectively shared (for example, the Public Service Commission), it would presumably appear to cover all who share it.

If further clarification is deemed necessary to guarantee uniform coverage under this section, it is suggested that the Legislature might provide additional definitions. The Commission itself is authorized to make recommendations to the Legislature, and the aforementioned might be addressed in this manner.

The disclosure statement itself is similar to that required from legislators under the first section of the Act. It requires names of various business interests the official and members of his family may have, the names of donors of certain gifts, and the location of certain real property which may be owned by the official.

Other provisions of this section duplicate or reaffirm some previously existing code sections. For example, state officers

1974 O. A. G.

and employees are prohibited from accepting profit from certain transactions entered into as a result of obtaining confidential information, and from receiving other than normal business compensation from others with a substantial economic interest. Officers and all state employees are prohibited from participating in any decision in which they or members of their families have substantial economic interest. A provision making it a felony to bribe an official is also provided.

CONCLUSION

It is, therefore, my Official Opinion that Public Law Number 4 of 1974 is basically a financial disclosure law applicable to state legislators and certain other elected and appointed state officials and candidates for those posts which are elective. It supplements and reaffirms, but does not supersede, existing laws on similar subjects. Implementation of the provisions of section two relating to the powers and duties of the State Ethics and Conflict of Interests Commission will also require compliance with the Administrative Procedure Act (Indiana Code of 1971, Sections 4-22-2-1 through 4-22-2-4) in the promulgation of the Code of Ethics required. This Act also prohibits *all* state officials and *all* state employees from self-dealing conduct, and prescribes felony penalties therefor.