

ANNUAL REPORT

1975-76

Public Disclosure: The Second Year



MINNESOTA STATE ETHICAL PRACTICES BOARD

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STATE ETHICAL PRACTICES BOARD

ANNUAL REPORT

July 1, 1975 — June 30, 1976

*Received by
Director
State Ethical Practices Board*

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INTRODUCTION

The Ethics In Government Act, passed in 1974 by the Legislature, established the Ethical Practices Board which administers six programs: lobbying disclosure, campaign finance disclosure, personal economic interest disclosure, conflict of interest disclosure, representation disclosure and public financing of state level campaigns.

A Statement of Purpose, adopted unanimously by Board action on April 27, 1976, outlines four major goals of the Board in support of each program. The Statement of Purpose reads:

Public confidence in the integrity of government is a requisite of representative democracy. To this end, it is the purpose of the Ethical Practices Board to facilitate public disclosure in state government as provided by the Minnesota Legislature through its passage of the Ethics In Government Act.

The Ethical Practices Board believes the public interest is best served when full disclosure is made in political campaigns and lobbying. Disclosure of financial interests of public officials further enhances the public's right to know so that public confidence in state government is sustained by assuring the citizen of the impartiality of state public officials in all public transactions and decisions.

Public financing of statewide and legislative offices through an income tax checkoff is a program which enables taxpayers to voluntarily designate monies to political candidates. The purpose of public financing is to allow candidates for statewide and legislative offices who appear on the general election ballot to voluntarily receive public monies in order to reduce the candidates' reliance on large contributors.

Representation Disclosure and Conflict of Interest Disclosure allow public officials to provide the public with information on their personal financial interests which might be a conflict of interest when making public policies or decisions. The Board, as a matter of policy, encourages individual public officials to file such disclosure statements when deemed necessary.

The goals of the Ethical Practices Board are:

1. to facilitate public access to filed reports at the state and at the local level;
2. to provide timely summary information to the public on information filed with the Board;
3. to analyze and evaluate the Ethics In Government law in order to make recommendations to the Governor and Legislature for changes in the law;
4. and, when necessary, to enforce the compliance portions of the law as enacted by the Legislature.

Full access by the public to information filed with the Ethical Practices Board assures continuing confidence in state governmental processes and enhances sound governance and decision making in a free society.

The Annual Report is divided into three major sections. The first section outlines Board activities in each of the programs. The second section discusses the organization of the Board, the administration of the Board, its fiscal statement for Fiscal Year 1976, enforcement, and litigation. The third section lists recommendations for the 1977 Legislative Session, which, in the judgment of the Board, require legislative attention.

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PART I

PUBLIC DISCLOSURE 1975-1976

A. CAMPAIGN FINANCE DISCLOSURE

The Ethics In Government Act made substantial changes in the manner in which candidates for state constitutional offices, state supreme court judgeships, district court judgeships, the state house and state senate operate their campaigns. The law requires registration of the candidate's principal campaign committee, the reporting of all expenditures and contributions, and limits campaign expenditures by the committee, and contributions to the committees of all candidates; except candidates for state supreme court and district court judgeships. The statute also mandates the registration of associations which attempt to influence the nomination or election of candidates to office when more than \$100.00 is spent to further the nomination or election of the candidate. Contributions made to candidates by these political groups also require reporting and disclosure by the candidates' committees.

LEGISLATIVE AMENDMENTS – 1976 SESSION

The Board, through a committee, made legislative recommendations and worked with committees of both the House and Senate on a housekeeping bill introduced in the 1976 session. The members of the Board met with legislative committees providing input into the proposed bills.

The amendments to the law were generally designed to clarify existing statutory provisions. A summary of the major changes is as follows: 1) A definition of officeholder was added, and limits on campaign expenditures were extended to cover officeholders; 2) the campaign finance reporting times were reduced from five to three in election years; and from two to one in non-election years; 3) a penalty was added for treasurers of political committees and funds who knowingly failed to file campaign reports after receiving official notice of failure to file from the Board; 4) an exemption from allocation of campaign expenditures among candidates was added for official party sample ballots of three or more candidates; and 5) the law was also amended to require the Ethical Practices Board to file copies of the reports of principal campaign committees of legislative candidates with the county auditors of all counties contained within the legislative district.

CAMPAIGN FINANCE REPORTING PROGRAM – 1975-1976

In late 1975, the Board undertook a major review of the reporting forms and manuals for principal campaign committees, political committees and political funds. The Board formed a committee to review and revise the original reporting forms. The general goal of the committee was to simplify the form by making it more understandable to campaign committees and the public. After months of work by Board members and staff, as well as discussions with interested committee treasurers, two separate reporting forms were approved; one for political committees and political funds, and one for principal campaign committees.

The reporting forms are designed for two major purposes:

- 1) to fulfill the reporting and disclosure requirements of the law; and
- 2) to assist committee treasurers in their bookkeeping duties.

To accompany the new reporting forms, new manuals of operating and accounting instructions for treasurers and candidates were prepared. The manuals are a complete source document for candidates and treasurers on provisions of Ethics In Government Act as they relate to campaign financing. The campaign finance rules were revised to permit introduction of the new reporting forms. They became effective on June 28, 1976, prior to the opening of candidate filing for office.

ADVISORY OPINIONS – CAMPAIGN FINANCING

During 1975-1976, the Board issued four advisory opinions on campaign finance questions. The syllabus of each opinion follows:

Advisory Opinion 24 – Adopted August 5, 1975 Expenses for Legislative Questionnaire in Non-Election Year

Expenses incurred by a legislator for a questionnaire and legislative report distributed to constituents in a non-election year need not be reported as campaign expenditures. Such expenses incurred in an election year after the legislative session, but before the election, are campaign expenditures.

Advisory Opinions 26 and 26A – Adopted November 6 and December 4, 1975 Expenditures for Campaign Materials

In general, expenditures for campaign materials are reported as expenditures in the year of purchase, but are counted toward campaign limitations in the year in which the materials are used or consumed. If materials are purchased and first used or consumed substantially in an election year, the entire purchase price will generally be counted toward the expenditure limit for that election year. The total purchase price of materials is counted toward expenditure limitations only, even if spread over more than one year. Items initially reported as consumed in one year, but salvaged and used in a subsequent year, are counted toward the limit only in the first year.

Advisory Opinion 27 – Adopted November 6, 1975 Bank Loans

A loan from a national or state banking institution made in the ordinary course of business to a campaign committee is not a contribution or expenditure subject to the limitations provided by Minnesota law; with the exception that in an election year, a loan outstanding on December 31 will be included in the limit of 105% of the difference between the campaign expenditure limit and the amount received from public financing. A bank loan, however, must be reported. Any repayment of such a loan by an endorser constitutes a transfer of funds or expenditures subject to statutory limitations, including the limitation on such an expenditure to 10% of the candidate's total expenditure limitations.

SUMMARY INFORMATION – 1975

The Ethical Practices Board considered summary information obtained from filed reports and documents important because it permits an evaluation of the campaign finance disclosure program by the public, the Governor and the Legislature. Lack of staff and funds precluded the Board from preparing any detailed summary information in 1975.

A total of 460 reports from registered principal campaign committees, political committees and political funds were filed; 229 were principal campaign committees and 231 political committees and political funds. The information contained in the summary is from the Reports of Receipts and Expenditures filed January 7, 1976, for the period July 1 through December 31, 1975.

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ERRATA: page 3 - CAMPAIGN EXPENDITURES 1975

Change amount reported for Samuelson Volunteer Committee from \$1668.58 to \$1436.18 (campaign expenditures) due to amendment by treasurer on May 4, 1976.

Mike George Campaign Committee
Lyndon Carlson Campaign Committee

1,088.51

Principal Campaign Committees — Summary Information (229 Reports Filed)*

Campaign Receipts

Number of committees showing receipts	126
Percentage of total committees filed showing receipts	55%
Total receipts reported by committees	\$202,608.00

Five officeholder committees reported 52% of the total \$202,608.65 raised during the reporting period.

The Campaign Committees were:

Anderson Volunteer Committee	\$ 84,336.43
Schmitz Volunteer Committee	5,514.74
Josephsen Campaign Committee	5,284.00
Wenzel Volunteer Committee	5,226.97
Stokowski Volunteer Committee	4,180.00
	<hr/>
	\$104,542.14

Campaign Expenditures (Chargeable against campaign expenditure limits of the candidate)

Number of committees showing expenditures	106
Percentage of total committees filed showing expenditures	51%
Total expenditures reported by committees	\$ 80,855.00

Five committees reported 57% of the campaign expenditures reported, or \$46,084.22

They were:

Anderson Volunteer Committee	\$ 33,159.83
Spannaus Campaign Committee	7,015.15
Grove Volunteer Committee	2,458.98
Schmitz Volunteer Committee	1,781.68
Samuelson Volunteer Committee	1,668.58
	<hr/>
	\$ 46,084.22

Non-Campaign Expenditures

Number of committees showing non-campaign expenditures	54
Percentage of total committees filed	24%
Total non-campaign expenditures reported by committees	\$ 76,939.00

Five committees reported 76% of the non-campaign expenditures reported, or \$58,037.72

They were:

Anderson Volunteer Committee	\$ 52,500.00
Jim Lord Volunteer Committee	1,580.33
Schmitz for State Senator Campaign Committee	1,560.49
Mike George Campaign Committee	1,308.39
Lyndon Carlson Campaign Committee	1,088.51

*The information contained in this summary was obtained from reports as filed by committee treasurers and has not been verified or audited by the Ethical Practices Board.

Political Committees and Funds Other Than Principal Campaign Committees

(231 Reports Filed)*

Receipts

Number of committees showing receipts	156
Percentage of total committees filed showing receipts	68%
Total receipts reported by committees	\$920,585.00

Four party units and one labor related organization reported \$621,918 in receipts, or 68% of all receipts reported.

The political committees and political funds were:

DFL State Central Committee	\$161,220.65
DFL House Caucus Committee	21,768.63
Minnesota Drive	51,205.35
Minnesota Independent-Republican Finance Committee	356,950.74
DFL House Caucus Dinner Committee	30,773.00
	<hr/>
	\$621,918.37

Expenditures

Number of committees showing expenditures	128
Percentage of total committees filed showing expenditures	55%
Total expenditures reported by committees	\$810,592.00

Three party units and two labor related organizations reported \$636,536.00 in expenditures, or 79% of all expenditures reported.

The political committees and political funds were:

Minnesota Independent-Republican Finance Committee	\$357,107.78
DFL State Central Committee	162,993.36
Minnesota Drive	50,199.98
IMPACT	34,862.34
DFL House Caucus Dinner Committee	31,373.00
	<hr/>
	\$636,536.46

U.S. SUPREME COURT RULING – BUCKLEY VS. VALEO

On January 30, 1976, the U.S. Supreme Court issued a landmark decision on the federal campaign finance disclosure law. The effect of the decision was to raise serious questions concerning the constitutionality of the Minnesota Ethics In Government Act. Minnesota Statute 10A contains similar provisions to those found unconstitutional by the U.S. Supreme Court. The Court ruled that campaign expenditure limits are unconstitutional except when a candidate voluntarily accepts public financing. The Court did, however, uphold the constitutionality of some of the disclosure requirements of the law, public financing of political campaigns and contribution limits.

Jonathan Morgan, special counsel, summarized, in a report to the Board, his review of the **Buckley vs. Valeo** decision and its impact on the Minnesota Ethics In Government Act in this manner:

CONCLUSIONS

1. The upholding by the Supreme Court of major portions of the Federal law gives decisive support to the constitutionality of the counterpart provisions of the state law.

*The information contained in this summary was obtained from reports as filed by committee treasurers and has not been verified or audited by the Ethical Practices Board.

2. The striking down of expenditure limitations (except in cases of public financing) raises an issue concerning the constitutionality of the counterpart provisions of state law. However, there are differences in the state law (amounts of expenditure limitation, absence of criminal penalties) which may make the Minnesota law distinguishable.
3. It is premature and inappropriate at this juncture to conclude that any provisions of the Minnesota law are unconstitutional. There may be occasion for court action for declaratory relief, advisory opinion, or legislative amendment on these questions.

SOCIALIST WORKERS PARTY EXEMPTION FROM DISCLOSURE

On June 16, 1976, the Board granted an extension of its exemption from disclosure for candidates affiliated with the Socialist Workers Party. The exemption is only applicable in the 1976 election.

B. LOBBYIST REGISTRATION AND REPORTING PROGRAM

The lobbyist registration and reporting system passed in 1974, established the first permanent lobbyist reporting system in Minnesota, effective January 1, 1975. The lobbyist definition and reporting system generated some 8,068 lobbyist reports during 1975-1966, many of which disclosed no lobbying expenditures.

1976 LEGISLATIVE SESSION

During the 1976 legislative session, the Board sought unsuccessfully to extend the definition of lobbyist to include public officials.

Substantial changes were made by the legislature in the definition of lobbyist which narrowed the scope of the law by including only individuals who were paid or were authorized to spend money (not including travel expenses or membership fees) and who spent in excess of five hours in any month or in excess of \$250 in a calendar year to influence legislative or administrative action by communicating with or urging others to communicate with public officials.

"Urging others to communicate with public officials" extended the previous definition to indirect lobbying.

REVISION OF REPORTING FORMS

In the Fall of 1975, the Board reviewed the lobbyist disbursement reporting form. The original form had been used on five reporting dates. Experience gained through its use indicated it was too lengthy and time consuming for the lobbyist to complete. In addition, the staff found it consumed considerable manhours in processing.

The new lobbyist disbursement reporting form introduced in early 1976 is a major improvement over the original form. It is a concise one-page, two-sided report. Lobbyists universally responded favorably to its introduction and staff processing has been made easier.

LOBBYIST SUMMARY INFORMATION June 1, 1975 through May 31, 1976

Lobbying expenditures of \$147,936.00 were reported. This amount was reported by only 247 lobbyists which represent more than 300 associations. The remaining lobbyists reported no lobbying disbursements. During the same period of the preceding year, \$220,366.00 in lobbying expenditures were disclosed.

Number of Lobbyists Filing Reports June 1, 1975 through May 31, 1976		
<u>Number</u>	<u>Filing Date</u>	<u>Period Covered</u>
1166	10-15-75	June 1 – Sept. 30, 1975
1617	2-15-76	Oct. 1 – Jan. 31, 1976
1725	3-15-76	Feb. 1 – Feb. 28, 1976
1915	4-15-76	March 1 – March 31, 1976
1645	6-15-76	April 1 – May 31, 1976

ADVISORY OPINIONS

Advisory Opinion 23 – Adopted August 5, 1975 Lobbying Before Metropolitan Council

The lobbyist registration and reporting requirements of Minnesota statutes do not extend to lobbying before metropolitan agencies.

Advisory Opinion 28 – Adopted March 15, 1976 Public Hearings on Transmission Lines

Persons who appear before the Minnesota Environmental Quality Council at hearings on routes for high voltage transmission lines need not register or report as lobbyists under Minnesota law.

Advisory Opinion 29 – Adopted March 15, 1976 Public Hearings on Certificates of Need

Persons who appear before the Minnesota Energy Agency at certificates of need proceedings for electric power generating plants or high voltage transmission lines need not register or report as lobbyists under Minnesota law.

C. PERSONAL ECONOMIC DISCLOSURE PROGRAM

Personal economic disclosure reporting is another key provision of the Ethics In Government Act. Annually in April, elected and appointed state public officials are required to disclose their personal financial holdings. In an election year, each candidate who files for office must also submit a Statement of Economic Interest to the Ethical Practices Board.

RULES REVISION

The Economic Interest Disclosure rules were amended so that new economic interest disclosure statements could be prepared. An economic interest disclosure form is under preparation for introduction in early 1977.

LEGISLATIVE AMENDMENTS

As a result of changes in M.S. 15A.081, all of the Attorney General staff except the Attorney General and his chief deputy are no longer required to file Statements of Economic Interest. In addition, reorganization of the Senate Staff removed the attorney's of the Senate Counsel's office from disclosure requirements under the Ethics In Government Act.

KLAUS VS. MINNESOTA ETHICS COMMISSION

The Minnesota Supreme Court, in a decision handed down on July 30, 1976, affirmed the constitutionality of personal economic disclosure. In 1974, former State Representative Walter Klaus challenged the constitutionality of Minnesota Statute 10A.09 which requires certain candidates to file economic interest disclosure forms.

Attorneys for Klaus argued "that the statute compelling a disclosure of Economic Interest is an unconstitutional invasion of his right to privacy; that there is no compelling state interest which justifies the statute; that the statute is not related to the ends sought to be obtained; that there are less drastic means for accomplishing the state's legitimate interests; that the statute is an unconstitutional infringement of appellant's First Amendment rights; and that the disclosure requirements impose on him an unconstitutional property qualification in violation of Minnesota Constitution Articles 1 and 17".

In an opinion written by Justice Otis, the court upheld the disclosure provisions. He stated:

"The considerations which prompt us to sustain the "Ethics In Government" statute are stated by the United States Supreme Court in **Buckley vs. Valeo** as follows:

'***In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.'

As other courts have pointed out, one who volunteers himself as a candidate for public office becomes thereby a public figure and is subjected to greater scrutiny as he aspires for positions of higher responsibility. Even the most conscientious candidate is not as well qualified to assess his own impartiality where potential conflicts of interest may emerge as are detached members of the public. In the words of Mr. Justice Brandeis as quoted in **Buckley**, 'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'

Nothing in our statute requires a candidate to disclose his net worth or the amount of his income; information which is traditionally personal and privileged. The statute simply requires that a person seeking public office make available to those whose vote he seeks, information regarding the property interests which he holds and which, if elected, he might be expected to protect. Not only does such information permit the electorate to obtain some insight into a candidate's potential conflicts of interest; but, inevitably, the disclosure itself tends to inhibit the candidate, if elected, from resolving in his own favor conflicts which otherwise would remain undisclosed.

We believe that the nature and extent of the disclosures required by statute are reasonable and proper, and that whatever invasion of privacy may result does not deprive a candidate of any protected constitutional right.

Nor do we find any merit in appellant's contention that the disclosure statute imposes a property qualification prohibited by Minnesota Constitution Articles 1 and 17, or imposes a condition on seeking public office prohibited by Minnesota Constitution Articles 6 and 7. The statute in no respect requires a candidate to be a property owner in order to seek or hold office, and failure to comply with the statute does not, in any manner, restrict a candidate's right to run for office. There is nothing

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in the statute which makes the filing of a financial statement a prerequisite to securing election. The statute simply imposes penalties for failing to comply."

D. CONFLICT OF INTEREST AND REPRESENTATION DISCLOSURE PROGRAM

The conflict of interest and representation disclosure provisions provide a method for state public officials to disclose potential conflicts of interest to the public by filing a notice with the Board.

Representation disclosure requires a public official to disclose his representation of a client for a fee before a state agency, board or commission. Three Conflict of Interest forms were filed by members of the legislature indicating possible conflict of interest in certain specific instances. Four notices of representation disclosure were also filed.

One advisory opinion request was answered during the period. A syllabus follows.

ADVISORY OPINION

Advisory Opinion 25 – Adopted September 29, 1975 Conflicts of Interest

A legislator should be reluctant to accept employment by a client for a fee in a matter which is likely to present a conflict of interest between his obligation to his client and his obligation as a legislator. In the case in which a legislator does accept a fee from a client, determination of existence of a conflict of interest requiring disclosure depends upon a number of factors, including: (1) size of the fee; (2) relationship with the client; (3) duration of the relationship; (4) the degree of impact of the legislation upon the client; and (5) the nature of the services rendered to the client.

E. PROGRAM OF PUBLIC FINANCING OF POLITICAL CAMPAIGNS

RULES PREPARATION

The first public financing of legislative campaigns will take place in 1976. After several committee meetings, staff work, attorney general staff preparation and review, rules and regulations to implement public financing were prepared for public hearing which was held on May 14, 1976.

After completion of review of the rules for legal sufficiency, the Attorney General's office disapproved the proposed rules and the Board suspended their promulgation; however, the Board directed staff to use as guidelines those portions of the proposed rule wherein the law is silent.

LEGISLATIVE AMENDMENTS – 1976 SESSION

The legislature passed substantial technical amendments to the public financing provision of the Ethics In Government Act.

The amendments clarified the responsibilities of the Department of Revenue, the Ethical Practices Board and the State Treasurer in public financing. The important amendments are as follows:

- 1) Clarified the method by which minor political parties are included on the income tax return;
- 2) Changed the percentages of distribution of checkoff funds to candidates;

- 3) Clarified the contribution limit of 105% of the difference between the campaign expenditure limit of the candidate and that amount received from public financing for candidates voluntarily accepting public financing; and
- 4) Required that a candidate provide written notification by September 1, whether a candidate wishes to participate in Public Financing, as well as signing an agreement to abide by certain limitations on campaign expenditures and contribution receipts.

The Legislature did not respond to the Board's concern that:

- 1) Cash on hand balance at the beginning of an election year should be considered contributions and apply to the 105% contribution limitation.
- 2) Write-in candidates who receive 5% or 10% of the vote are eligible for funding from the general account.
- 3) Under the law, a candidate may raise the total amount a candidate spends from private sources, thereby, have no debts, and still receive public financing monies.

PART II

BOARD ORGANIZATION

The decision and policy making body of the Ethical Practices Board is a six-member, citizen board appointed by the Governor and confirmed for four-year terms by the state house and state senate. The membership of the Board is so constituted as to assure equal political representation from the two major parties. The law also requires that Board members meet certain experience and appointment criteria. A quorum of the Board is four members; and, as such, four votes are required to accomplish any business.

ETHICAL PRACTICES BOARD COMMITTEES

In 1975-1976, the Board established several committees to develop new forms, administrative procedures and to hire a new Executive Director following the resignation of David L. Norrgard. Those committees were:

The Campaign Finance Committee

Elizabeth Ebbott, Rosemary Davis and Spencer Sokolowski directed development of a new campaign finance reporting form. Numerous meetings with staff, as well as public recommendations from interested individuals, culminated in the adoption and issuance of a new reporting form.

The Administrative Procedures Committee

Elizabeth Ebbott, Rosemary Davis and Spencer Sokolowski developed administrative procedures with staff on handling complaints, personnel matters and budget controls; and developed a policy on confidentiality, later adopted by the Board.

The Search Committee

David Durenberger, Elizabeth Ebbott and Irene Scott screened over 120 applications for position of Executive Director. Eighteen individuals were asked to meet with the committee. Six finalists were interviewed by the full Board prior to selection of B. Allen Clutter, III, as the new director.

Lobbyist Committee

Stanley Holmquist, David Durenberger, and Irene Scott began review of the lobbying provisions in the law which was completed in February by full Board action.

ADMINISTRATION

The Legislature authorized \$108,308 for Fiscal Year 1976. In January, after a thorough review of the agency's fiscal situation, the Board submitted a deficiency appropriation request for \$34,276. However, it was not included in the Governor's deficiency appropriation bill.

In March 1976, the Board made a second request for Fiscal Year 1976 to the Legislative Advisory Committee. The request amounted to \$12,862.00, and the committee approved \$8,000.00.

In May 1976, a request was made for additional funding for Fiscal Year 1977. The Legislative Advisory Committee approved \$16,250.00 of the \$147,784.00 request for a total budget of \$133,014.00 for Fiscal Year 1977.

FISCAL REPORT AND STAFF

Ethical Practices Board
Fiscal 1976 Financial Statement

Receipts

Fiscal Appropriation	\$108,308	
LAC Order 3/76	8,000	
Salary Supplement	3,529	
TOTAL		<u>\$119,837</u>

Disbursements

Full time employees	63,876	
Part-time employees	803	
Appointed Board and Commissions per diem	6,545	
Retirement	7,221	
Employee Group Insurance	2,311	
Rent — office space	2,764	
Leases — Xerox	3,603	
Advertising	160	
Repairs and Maintenance	620	
Printing and Duplicating	10,448	
Legal Fees	7,728	
Hearing Examiner	2,749	
Postage	4,973	
Telephone and Telegraph	1,219	
Inserting Fees	304	
Travel In-state	971	
Travel Out-state	285	
Office Supplies	2,455	
TOTAL Expenses	119,035	
Balance returned to General Account of State	802	
		<u>\$119,837</u>

The number of full time employees was limited to five by the Legislature. The first Executive Director, David L. Norrgard, resigned in December, 1975, and was replaced in January, 1976, by B. Allen Clutter, formerly on the faculty at the U.S. Air Force Academy.

One of the two generalist staff persons resigned and was replaced by an accountant.

As a result of action of the Legislative Advisory Committee, funding became available to hire part-time help to assist the full time staff in preparations for the election year.

Staff Positions on June 30, 1976

	<u>Salary</u>
B. Allen Clutter, III, Executive Director	\$24,367
Elsa Carpenter, Staff Associate	14,720
Daniel Lundstrom, Staff Auditor	14,157
JoAnn Hill, Senior Clerk Typist	8,978
Linda Armstrong, Intermediate Clerk Typist	7,308
Helen Larson, Part-time Clerk Typist	\$3.15/hr.

ENFORCEMENT, COMPLAINTS AND LITIGATION

The Board issued five findings of fact pursuant to its authority under Minnesota Statute 10A.02, Subd. 10.

- 1) Campaign Contribution – Minneapolis Federation of Teachers, Local 59 Volunteer Fund; Minnesota DRIVE; Transportation Political Education League; International Association of Machinists. Finding issued May 10, 1976.

In the Matter of the Review of Reports of Receipts and Expenditures Filed by Principal Campaign Committees for the Calendar Year 1975.

After lengthy review of Board records, the Board voted to seek civil fines against the registered committees for making excessive campaign contributions in 1975 to legislative officeholders.

Spencer Sokolowski, Board member, filed a minority report dissenting from the majority opinion of the Board stating that Minnesota law does not have a limitation of contributions when there are transfers of funds, as was the case in each of these situations.

- 2) Campaign Contribution – 1975 – Finding Issued June 7, 1976.

The Board was asked to determine if a \$1,500 campaign contribution by an individual, Mayme Engleman, to the Wegener Volunteer Committee was permissible in 1975. After lengthy review and receipt of statements from all parties concerned, the Board determined that Mrs. Engleman sought to give the maximum allowable contribution in 1975; that she acted in good faith on information solicited and received which proved to be erroneous; and as a result there was a no probable cause determination made by the Board and \$1,200 was returned by the Wegener Campaign Committee.

- 3) Complaint Against Wenzel Volunteer Committee and Morrison County DFL – Issued June 16, 1976.

On the basis of a formal complaint, the Board conducted an investigation of the 1975 financial dealings of the Stephen G. Wenzel Volunteer Committee. This investigation resulted in the Board taking legal action for a declaratory judgment and civil fines against:

- (1) the Wenzel Volunteer Committee and its treasurer, James Doschka
- (2) Laura J. Musser, and
- (3) the Morrison County DFL and its treasurer.

All three of the above matters are in litigation at the present time.

4) Campaign Expenditures – Heinitz Volunteer Committee – Finding issued July 6, 1976.

As a result of an anonymous complaint, the Board determined after an audit of the Heinitz Volunteer Committee that it exceeded the campaign expenditure limits in 1975 by \$142.59. The Board voted to seek a civil fine against the Heinitz Volunteer Committee. Such a fine was paid by the Committee.

5) Financial Disclosure Complaint, Bradley G. Pieper – Finding issued November 7, 1975.

Based upon the files and records of the Commission, and the evidence obtained during the hearings and the investigation the Minnesota State Ethics Commission made the following findings:

- (1) On August 6, 1974, Bradley G. Pieper, then an incumbent Minnesota State Representative seeking re-election, filed with the Minnesota State Ethics Commission a Statement of Economic Interest as required by law.
- (2) There is no evidence that Bradley G. Pieper received compensation in excess of \$50.00 between July 1 and July 31, 1974, from any source other than those listed on his Statement of Economic Interest of August 6, 1974, therefore, the complaint against Bradley G. Pieper is dismissed for lack of probable cause to believe a violation has occurred.

LITIGATION

The Board, as of July 30, 1976, is in litigation in State District Court, Morrison County, against the Wenzel Volunteer Committee, Morrison County DFL and Laura Jane Musser. Civil fines have been paid by Heinitz Volunteer Committee and Transportation Political Education League. Other civil fines are pending against the Minnesota Drive, Minneapolis Federation of Teachers, Local 59 Volunteers Fund, and the International Association of Machinists, Little Falls, Minnesota.

PART III
RECOMMENDATIONS FOR LEGISLATIVE ACTION
1977 SESSION

The Ethical Practices Board has developed fifteen policy issues which, in its judgment, require legislative attention. The following statement was adopted on October 27, 1976, and is the basis for a legislative program in 1977.

INTRODUCTION

The Minnesota Ethics In Government Act, initially passed in 1974, and amended through a house-keeping bill in 1976, needs substantial review and revision because of the U.S. Supreme Court decision, January 30, 1976, in a case *Buckley vs. Valeo et al.* (96 Supreme Court 612 [1976]). The U.S. Supreme Court ruled unconstitutional certain provisions of the federal campaign finance disclosure law, on the grounds that the law severely infringed on protected 1st Amendment rights. The Supreme Court decision has direct application to Minnesota since the Minnesota law has very similar language to the federal law declared unconstitutional and, since the 1st Amendment patently applies to state as well as national government action. In addition, as a result of the U.S. Supreme Court ruling and statutory ambiguities in Minnesota Statute 10A, there is one lawsuit pending in state court and one in federal court wherein the plaintiffs and defendants raise constitutional defenses.

United States Federal Court, Ramsey District, on October 12, 1976, enjoined enforcement of one provision of Minnesota law and made comment on other provisions.

POLICY ISSUE 1
Constitutional Issue

The Board believes the Ethics In Government Act must be brought into conformance with Federal Supreme Court ruling in *Buckley vs. Valeo*. The Board strongly recommends this be a priority recommendation of the Governor to the Legislature. It is recommended that the federal law reconstructed after the Supreme Court decision be used as a model for revising the Ethics In Government Act. The Board recommends particularly the use of the definitions in the federal law; they are clearer and more precise than those in the current state law.

POLICY ISSUE 2
Expenditure Limits

The United States Supreme Court in *Buckley vs. Valeo* struck down all campaign expenditure limits except when a candidate voluntarily accepts public financing of his/her political campaign. The Board supports a public policy which establishes campaign expenditure limits for a candidate accepting public financing. The Board supports the current campaign expenditure limits as defined by Minnesota Statute 10A.25. However, the Governor and Legislature may wish to review those limits.

Since the Supreme Court decided that a candidate cannot be limited in what he expends on his own behalf, if he does not accept public financing, the Board supports a public policy which treats the immediate family as one with the candidate. It follows that expenditure limits could be set for the candidate and his immediate family as a condition for accepting public funds. This is the manner in which the federal law conditions expenditures by presidential candidates accepting public funds.

POLICY ISSUE 3
Contribution Limits

The United States Supreme Court (in *Buckley vs. Valeo*) upheld a public policy of limiting contributions to a candidate. The Board supports a public policy of limiting contributions to candidates and officeholders. Such limitations should apply in election and non-election years. The Board believes the contribution limitation should continue to be based on a percentage of an expenditure limit, such as exists in the Ethics In Government Act, 1974. (Even though it is not constitutional to limit expenditures of individuals and groups operating independently of candidates, there is still a point to limiting contributions. Hence, there is value in tying contributions to expenditure limits set for those accepting public funding.)

A majority of the Board supports a policy of removing party legislative caucuses from their inclusion within the definition of party units, thus reducing the amount of money which such a caucus may contribute/transfer to candidates.

The Board supports a policy of limiting or prohibiting transfers of funds between candidates' principal campaign committees.

POLICY ISSUE 4
Public Financing

The Board has considered making recommendations on M.S. 10A.30-32. However, no Board position has been adopted since the impact of the public financing program on the 1976 election has not yet been assessed. The Board may make recommendations later.

POLICY ISSUE 5
Corporate Political Activity

The Federal Election Campaign law permits corporate political activity on a voluntary basis within certain strict confines.

A majority of the Board has concluded that fairness requires our election laws to treat all interest groups alike. If organized labor is permitted to engage in political activity in Minnesota through political action committees, then corporate management should be able to form corporate political action committees similar to those which can operate under federal law.

POLICY ISSUE 6
Penalty Provisions

The Ethics In Government Act, 1974, provides severe penalties (criminal and civil) for infractions of the law. The Board supports a revision of the penalty provisions to permit the Board the option of entering into conciliation agreements between the Board and a person(s) or committee(s) which may have violated the Act. Such conciliation agreements should enable the Board to make out-of-court, yet court-approved settlements. Such agreement proceedings must be exempt from contested case proceedings under the Administrative Procedures Act. Penalty revisions might include a mechanism for compelling payment for late filing of reports.

POLICY ISSUE 7
Economic Interest Disclosure

M.S. 10A.09 – Statements of Economic Interest need clarification. The Board supports a public policy of personal economic disclosure by important state-level policy and decision makers. Economic disclosure is currently tied to M.S. 10A.01, subd. 17, which defines a public official. Persons who are required to file a personal economic disclosure statement changes:

- 1) with the inclusion or exclusion of a position in M.S. 15A.081;
- 2) with organizational changes in the legislature;
- 3) with a state board or commission's rule making power as defined by M.S. 15.0411.

The Board recommends a precise, consistent method of determining which public officials and state employees must file economic interest disclosure.

M.S. 10A.09, subd. 5 (c) (real property disclosure) needs clarification. The current language is unclear. Does real property sold on contract for deed valued in excess of \$2,500 require disclosure, or is real property purchased on a contract for deed valued in excess of \$2,500 require disclosure? How does the Legislature intend the value to be determined?

POLICY ISSUE 8
Data Privacy and Closed Meetings By Board

M.S. 10A.02, subd. 10 permits the Board to conduct closed meetings when it is hearing complaints or conducting investigations. The Board desires to call to the attention of the Governor and the Legislature that the Data Privacy Act and its implementation may impact on this particular provision in M.S. 10A. How should material gained during the course of a confidential investigation be handled after probable cause or no probable cause is found?

POLICY ISSUE 9
Lobbying Reporting Dates

The Board supports full disclosure of lobbying activities and disbursements for lobbying expenses. The Board suggests the Governor and Legislature review the current lobbying reporting dates which are outlined in M.S. 10A.04, subd. 2. The Board recommends the reporting system be designed on a calendar year basis.

Three alternative proposals are suggested:

- 1) change reporting dates to: January, March, May, July, October; or
- 2) change reporting dates to January, March, April, June, October; or
- 3) change reporting dates from five to four times on a calendar year basis.

POLICY ISSUE 10
Conflict of Interest

The Board has received complaints filed by individuals alleging conflict of interest under M.S. 10A.07. The Board would appreciate guidance from the Governor and Legislature in this area, either with some explicit provisions outlining what constitutes conflicts of interest, or in lieu of such explicitness, the Board considers that there are no sanctions for failure to file a notice of conflict of interest under M.S. 10A.07.

POLICY ISSUE 11
Economic Interest Disclosure
Clients of Partnerships, Proprietorship and Solely Owned Proprietors

The Board wishes to point out that persons who are sole proprietors, in partnerships, as well as individuals who are personally incorporated, need not disclose real property holdings, clients, or sources of income under the existing statute. The Board suggests these disclosure issues need to be addressed and clarified in legislation.

POLICY ISSUE 12
Lobbying Reporting Dates 10A.04, Subd. 4 (a)

The Board requests language change in this subdivision to make it clear that a lobbyist shall report lobbying disbursements paid by the lobbyist's employer. The Board interprets the existing statute in that manner; however, the statute does not make that clear.

POLICY ISSUE 13
Fair Campaign Practices Act, M.S. 210A

The Board strongly recommends a revision of the Fair Campaign Practices Act. The Board should be named an election board with the power to administer the law, or, another executive branch agency should be charged with administering the Act. Currently, no agency has authority to provide advice or administer provisions of the Fair Campaign Practices Act.

POLICY ISSUE 14
Request for Disclosure Exemption and
Administrative Procedures Act

The Board requests an exemption from the Administrative Procedures Act so that it may hold exemption from disclosure hearings without referring them to an office of Hearing Examiners. Such requests generally occur prior to election year reporting dates. The Administrative Procedures Act makes it prohibitive, expensive and very difficult and cumbersome to issue a hearing order, hold a hearing, obtain findings, and adopt or reject them in a timely and equitable manner prior to reporting dates.

POLICY ISSUE 15
Administrative Procedures Act

The Board finds the Administrative Procedures Act burdensome and expensive. It has significantly lengthened the time it takes to promulgate rules. The Board suggests the role of the Attorney General in the rule making and rule review process be more clearly defined since in the Board's experience, rules which have been issued for hearing, are prepared and reviewed by a member of the Attorney General's staff; then, at the completion of all hearings, after a great deal of time and expense, another member of the Attorney General's staff has the power to deny the rules. It is suggested the Administrative Procedures Act outline rule review standards.

SUMMARY

In the judgment of the Ethical Practices Board the issues addressed herein require legislative attention in order that the Ethical Practices Board can better perform its legislative mandate. The Board is prepared to supply specific language for proposals to accord with its recommendations, if such is desired.

We respectfully call attention to the fact that pending court litigation in state and federal courts may impact further on selected provisions of the Ethics In Government Act.