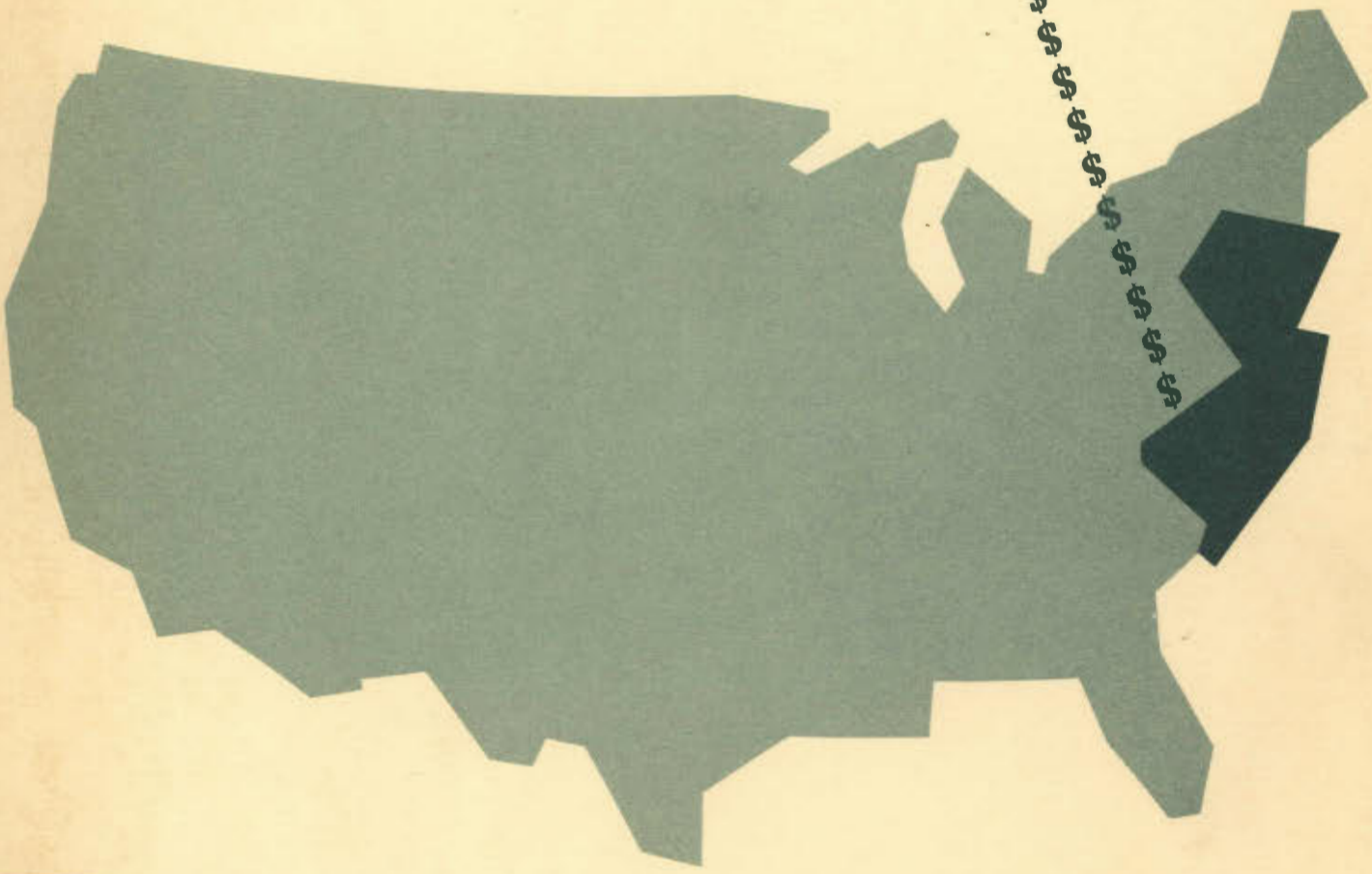
PUBLIC FINANCING IN NEW JERSEY

The 1977 General Election for Governor



NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
28 West State Street
August, 1978

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ELECTION LAW ENFORCEMENT COMMISSION

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August, 1978

Dear Governor Byrne and Members of the Legislature:

As you know, in 1977 New Jersey was the first State in the Nation to conduct a gubernatorial election campaign financed in substantial part with public funds. The Election Law Enforcement Commission was responsible for disbursing the public funds in the general election campaign and for administration and enforcement of other provisions of the public financing statute.

In this report we have summarized and evaluated the 1977 New Jersey experience and suggested ways in which the statute could be improved. We hope that the report will prove helpful to you in reviewing the existing statute and legislative proposals to amend it and to other persons who have an interest in the subject matter.

We believe that important steps have been taken in recent years in New Jersey to improve the electoral process. It is our hope that this report will contribute to further improvement in this process in New Jersey and elsewhere.

Respectfully submitted,

Frank P. Reiche

Frank P. Reiche, *Chairman*

Sidney Goldmann

Sidney Goldmann, *Vice-Chairman*

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Introduction

The wave of political reform that accompanied Watergate washed over New Jersey, initially in 1973 with the passage of the Campaign Contributions and Expenditures Reporting Act and subsequently in 1974 through an amendment to that Act which established a system for the partial public financing of gubernatorial general elections. The original Act provided for disclosure by candidates and political committees of the sources of campaign contributions and of expenditures made on behalf of candidates for public office. A limit was set on the expenditures which could be made on behalf of those candidates and the Election Law Enforcement Commission was created to administer the Act.

The 1974 public financing amendment prohibits general election candidates for Governor in New Jersey from accepting contributions in excess of $600 from any contributor. After raising a minimum of $40,000 in limited contributions, a candidate is qualified to receive from the State two dollars in public matching funds for every dollar of a contribution raised from private sources, and candidates who choose to receive public funding must limit expenditures for the campaign to $1,518,576. The Election Law Enforcement Commission is charged under the amendment with the administration of public financing.

The statute also provides limits on loans, limits on expenditures by county and municipal political party committees in behalf of gubernatorial candidates, limits on the use of public funds, certain free candidate use of public television broadcast time and the mailing, at public expense, of a statement by each candidate in the general election to all registered voters.

It was the Legislature's declared intent, by enactment of the public financing statute, that "such financing be adequate in amount so that the candidates for election to the office of Governor may conduct their campaigns free from improper influence and so that persons of limited financial means may seek election to the State's highest office."

The 1974 Act provides that the public funds used to match contributions raised from private sources will come from the general treasury. The State income tax enacted in 1976 provides for a gubernatorial election fund financed by a $1 optional taxpayer checkoff similar to the Federal income tax provision. In 1977, after the funds had been appropriated from the general treasury, the Governor did not substitute the checkoff funds for the 1977 general election.

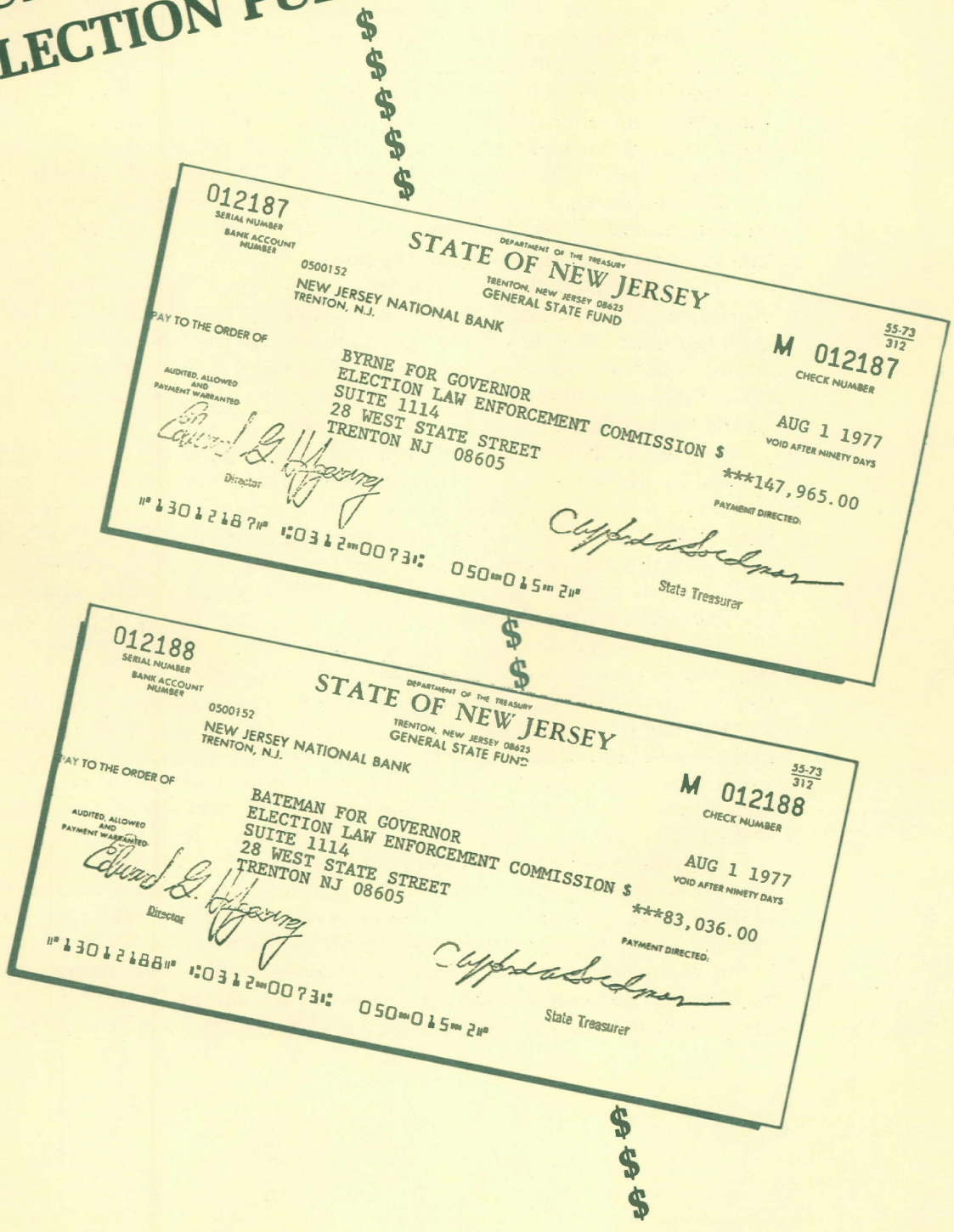
The 1977 New Jersey gubernatorial general election was the Nation's first publicly-financed gubernatorial election. In the June primary election, which was not publicly funded, eight Democratic candidates and four Republican candidates spent approximately $5 million and incumbent

Democratic Governor Brendan T. Byrne and Republican State Senator Raymond H. Bateman were nominated. They were challenged by 14 other candidates in the general election. Governor Byrne won the election by nearly 300,000 votes over Senator Bateman, with 55.7% of the total vote.

The two major party nominees were the only candidates who qualified for public funds. A total of $2,070,816 in public matching funds was disbursed, including $1,020,247 to Senator Bateman and $1,050,569 to Governor Byrne. Senator Bateman received contributions of $600 or less from 5,854 contributors who gave $636,035, and spent $1,496,188 subject to the $1,518,576 expenditure limit. Governor Byrne received $573,380 from 3,654 contributors and spent $1,505,878. The Byrne campaign made $161,471 and the Bateman campaign $145,829 in additional expenditures which were exempt from the spending limit, as described below, raising the total expenditures to $1,667,349 and $1,642,017 respectively. Public funds comprised 65% of the total funds available for the Byrne campaign and 62% of the funds available to the Bateman campaign.

In the preparation of this report the Commission staff reviewed and analyzed the data submitted by the gubernatorial candidates, including all campaign finance disclosure reports and public financing submission data, as well as documents relating to litigation and Commission orders. Commission members and staff discussed the basic issues with persons familiar with the events of the 1977 New Jersey election, including the Commission's general consultant, Dr. Herbert E. Alexander, Director of the Citizens Research Foundation, and widely known for his extensive work in the field of election financing over the last 20 years. Key officials of both the Byrne and Bateman campaigns were invited to attend a Commission meeting to present their views of the experience. Several did attend, offering valuable insights. Finally, in formulating this report, the Commission devoted several all-day meetings to extensive discussions of the major policy questions involved and a number of other meetings developing the final draft.

SUMMARY OF 1977 GUBERNATORIAL ELECTION PUBLIC FINANCING



Regulations

In the Fall of 1976 and the early part of 1977, the Commission met on numerous occasions to consider the development of regulations pertaining to public financing. Draft regulations were prepared and a public hearing was held on February 15, 1977. The Commission then adopted the regulations (N.J.A.C. 19:25-15.1 through 15.34) on March 7, 1977. These regulations clarified the applicability of the $600 contribution limit; set the standard for judging the independence of contributions made by affiliated corporations, associations and labor organizations; detailed the process by which candidates qualify for and receive matching funds; established a schedule for the submission of contributions which are to be matched; exempted compliance costs from the expenditure limit; and described the requirements for reporting independent expenditures.

The basic regulations were supplemented three times during 1977. In April regulations (N.J.A.C. 19:25-15.35 through 15.37) were proposed, dealing with post-election fund raising, the application of the $600 contribution limit to funds raised after the date of the primary election and repayment to the State of surplus campaign funds. A public hearing was held on April 27 and the regulations were adopted on June 14.

In August the Commission proposed other regulations to clarify the method by which the costs of the candidate's travel and the value of goods and services donated to a candidate are to be determined. These regulations (N.J.A.C. 19:25-15.40 through 15.41) were adopted on September 19 following a public hearing on August 25. At the same time regulations (N.J.A.C. 19:25-15.38 through 15.39) clarifying the reporting requirements for political action committees also were adopted.

Later in September the Commission prepared draft regulations to supplement existing regulations on the reporting of so-called "street money" and other election day expenditures. These regulations, (N.J.A.C. 19:25-12.1(b) which have general applicability to elections for all offices under the Commission's jurisdiction, were adopted on October 3 following a public hearing on September 19. They require the reporting of the ultimate payees of all such "street money" initially distributed in amounts of $100 and over.

Each time public financing regulations were considered the Commission made every effort to inform the public and all interested parties of its proposed actions. Press releases were issued announcing each public hearing and extensive mailings were made to interested parties containing copies of the proposed regulations and invitations to be heard. After basic regulations had been adopted copies were sent to all candidates for Governor and each one was invited to send a representative to a briefing on

April 13 by the Commission staff regarding implementation of the public financing procedures. Representatives of Governor Byrne, Senator Bateman and most of the other candidates attended. Following the primary election another meeting was held on June 28 for representatives of the county and municipal political party committees throughout the State to discuss the regulations particularly applicable to these committees. At the invitation of the Democratic State Committee the director of public financing attended a series of briefings sponsored by that committee for Democratic candidates and party officials to discuss the public financing procedures. The Commission staff prepared and disseminated a brochure explaining the basic provisions of the public financing law to the press and interested organizations and made it available to the public.

Administration

On January 3, 1977 a director of public financing was employed. The director's responsibilities included developing a plan of administration, hiring the public financing staff, coordinating the development of computer techniques to assist the Commission staff in monitoring compliance with the public financing statute and regulations, devising new disclosure forms for use in the gubernatorial general election and acting as the day-to-day liaison between the Commission and the campaigns.

Because it did not have experience in administering public financing, the Commission sought the advice of the Federal Election Commission in developing its administrative procedures. In view of the similarities between the New Jersey public financing plan and that used for the pre-convention period in the 1976 presidential campaign, the experience of the F.E.C. proved to be valuable, and suggested the need for strict controls on the verification of the propriety of contributions submitted for matching and on the subsequent distribution of public funds. The smaller scale of the New Jersey public financing system permitted the Commission to verify the propriety of every contribution submitted for match.

In early March a plan of administration was approved by the Commission. The plan required the campaigns to submit to the Commission the

name and address of the contributors, the dates and amounts of contributions, a photocopy of each check or signature card used in the case of a cash contribution, and other documentation in order to establish eligibility to receive public funds. Step-by-step procedures for Commission staff processing and Commission review of this documentaion also were included in the plan. A schedule for the submission of documentation was approved which called for bi-weekly submissions from August 1 to Labor Day and weekly submissions from then to the election. Forms for submitting documentation were designed and approved.

With the able assistance of the Division of Data Processing and Telecommunications of the Department of Treasury, computer programs were developed to enable the public financing staff to monitor the contributions submitted by the campaigns. An alphabetical list of contributors produced by the computer included an aggregate amount contributed by any person making multiple donations, while a separate set of programs facilitated searches for contributors in excess of the $600 contribution limit.

A public financing staff of four additional persons was hired, trained and in place prior to the June 7 primary election. These employees were recent college graduates who were hired as temporary employees to work between June and December. Their primary function was to process for computerization the documentation submitted by the campaigns and to analyze carefully each submission to insure its compliance with Commission regulations and the statute.

The public financing regulations require that each gubernatorial candidate who wishes to participate in public financing notify the Commission in writing of the intent to seek public funds. In response the Commission authorizes the establishment of the appropriate bank accounts for each candidate. In order to assure full accountability for the public funds the Commission in 1977 required the establishment of three bank accounts for each candidate who qualified for public funds. First, a clearing account was established for depositing all contributions eligible for match and for which the campaign sought public matching funds. All funds deposited in this account were then transferred to the second account, a campaign account. All campaign expenditures of non-public funds were made from the campaign account, and deposits of funds not eligible for match (such as loans and refunds) were made into this account. The third account, the public funds account, was opened by the Commission in a bank in Trenton for each candidate, specifically for the deposit and expenditure of public funds. Because the Act permits public funds to be used only for specified purposes, the Commission decided that it was necessary to segregate the

public funds from contributions raised from private sources so that a record could be established concerning the actual use of such funds.

The clearing and campaign accounts in 1977 were established upon receipt of the candidate's letter of intent to seek public funding, while the public funds account was opened only after the qualification requirements were met. The first letter of intent was received from Frank Flowers, an independent candidate, and bank accounts for his campaign were opened on May 13. The only other candidates to seek public funding were the major party primary winners, Governor Byrne and Senator Bateman, and an independent candidate, John Gallagher, who subsequently withdrew. Following the primary election the director of public financing met with representatives of the Byrne and Bateman campaigns to discuss the requirements for receiving public funding. During June and July the Commission and campaign staffs cooperated in preparing for the general election. Both campaigns employed attorneys to communicate with the Commission concerning statutory and regulatory questions. This communication was often conducted informally with the Commission staff and, when necessary, formal advisory opinion requests were made. Officials were designated by each campaign with primary responsibility for overseeing the finances of the campaign and ensuring compliance with the Campaign Contributions and Expenditures Reporting Act and the regulations of the Commission.

Documentation of contributions for which public matching funds were sought was submitted on Mondays, as specified in the schedule established by the Commission. During the week the public financing staff examined each written instrument and checked each contributor name against the computer list of the previous contributors. By the Friday following a submission the examination was completed and a summary of contributions accepted and rejected for match was prepared. This summary, along with the reasons for rejecting any contribution, was sent to each campaign and presented to the Commission for its consideration at a meeting scheduled for the next Monday. After a review of the material presented to it, the Commission voted to certify the appropriate amount of public funds to be distributed to each candidate.

Certification of these amounts was forwarded to the State Treasurer, who issued checks usually the next day (Tuesday), which were picked up by the Commission staff and deposited in the public financing account of each candidate for immediate use. The Commission received excellent cooperation from the Department of Treasury in this regard.

Following these procedures the Commission was able to provide certainty for the campaigns regarding cash flow and to schedule accurately the time required for processing documentation. The schedule established was not altered and, accordingly, the Commission was able to provide public funds without interruption.

In January and February 1978 the financial records of both campaigns were audited by the Commission staff to ensure that the public disclosure reports filed with the Commission provided an accurate reflection of financial activity and that the campaigns were in compliance with the public financing provisions of the Act.

Funding

The public funds utilized in the 1977 gubernatorial general election came from the General State Treasury. The Governor's decision to use such funds rather than the approximately $1.1 million in the special fund created by the 38% of the taxpayers who designated $1 of their State income taxes for this purpose had no effect on the actual amount of funds used or their availability. The fiscal 1978-79 State Appropriation Act provides for the transfer from the checkoff fund of an amount sufficient to reimburse the General Treasury for the public financing expenses of the 1977 election.

Governor Byrne attempted to have the necessary public funds for the 1977 gubernatorial general election appropriated in advance of that year. In his budget for fiscal year 1975-76 he requested $500,000 as the initial installment but the Legislature did not appropriate any funds. In the next fiscal year, the Governor requested $1,786,668 for this purpose and the Legislature approved $786,668 of this total. This amount was available for initial start-up costs, which proved to be minimal, and to pay the public matching funds in the last month (June) of the fiscal year, if necessary. No matching funds were necessary during that month, however. In fiscal year 1977-78 the Commission requested, the Governor recommended and the Legislature approved an appropriation of $1,812,088 to complete the public financing appropriation for the 1977 election. Thus, the total appropriation available over these two fiscal years was $2,598,756.

Funding

The public matching funds actually distributed for the 1977 general election totalled $2,070,816, with Governor Byrne receiving $1,050,569 and Senator Bateman $1,020,247. Because only two candidates reached the qualification threshold the Commission was not faced with the serious problem it might have confronted as to the adequacy of appropriated funds if more candidates had qualified.

While an accurate accounting of administrative costs incurred by the Commission for public financing is complicated by the difficulty in estimating the percentage of normal Commission operating expenses specifically allocated for this purpose, including salaries of the Commission executive director and counsel, the direct administrative costs are approximated as follows:

Salaries:	Director of Public Financing	$21,000	
	4 temporary staff members	20,200	
	Consultant services	2,000	$43,200
Other:	Data processing	10,450	
	Overhead (rent, furniture, telephone, photocopy)	7,000	
	Printing	2,000	19,450
Total Expenses			$62,650

Advisory Opinions

The Commission is authorized by the Campaign Contributions and Expenditures Reporting Act to issue advisory opinions as to whether a given set of facts and circumstances would constitute a violation of any of the provisions of the Act or render a person subject to any of the reporting requirements of the Act. During 1977 the Commission approved 18 advisory opinions concerning the implementation of the public financing portions of the Act in response to written requests from interested parties. The following is a summary of some of the issues considered by the Commission by way of advisory opinions. A complete copy of each request and opinion

is available for inspection at the Commission office.

1. Under New Jersey law, there is no general prohibition against contributions by a corporation, except that certain corporate entities such as banks, insurance companies, public utilities and casino interests are not permitted to make political contributions to candidates. The question whether a corporation wholly owned by a single person may make a contribution was considered by the Commission which concluded that the corporation could make a contribution separate from that of the individual owner, provided the corporate contribution was derived from assets or funds of the corporation.

2. With respect to contributions from partnership funds, the Commission concluded that for purposes of the contribution limitations the contribution is attributable to the person or persons whose signatures appeared upon the check (and not to the partnership so as to be considered a contribution by every partner in the partnership).

3. A contribution from a joint checking account is considered to be that of the owner whose signature appears on the check.

4. With respect to collections by a political action committee or similar organization of funds to be contributed to candidates, the Commission determined that if such funds were deposited in the bank account of the political action committee or similar association, then contributions from the account are attributable to the political action committee or similar association and not more than $600 could be contributed to a general election gubernatorial candidate. If the checks of individual persons were transferred by the political action committee or similar organization directly to the candidate or his committee for deposit and not deposited in the account of the political action committee or such other association, then they are considered contributions by the original contributor and each such individual source can contribute an amount not in excess of $600 to the candidate.

5. Where various local unions affiliated with a state or national union made contributions, the Commission ruled that each local union could lawfully make a contribution not in excess of $600 provided that the source of each such contribution was the funds of the union or committee making the contribution, that no transfers of funds among committees had enabled the contribution to be made, and that the decision to make the contribution was an independent decision by the contributing union or committee.

6. The public financing statute limits the purposes for which public funds can be used, generally to uses which involve direct communications with the voters. In this connection, the Commission determined that a campaign may properly make payments out of non-public funds for such expenditures and subsequently reimburse the non-public fund account with public funds, provided each such transaction is properly documented.

7. Expenses involved in a state party committee fund-raising event at which the gubernatorial candidate appears but does not benefit monetarily are not charged against the expenditure limit of the gubernatorial candidate provided that none of the proceeds of the event are used for his benefit. A share of the expenses of the event the proceeds of which benefitted several candidates including the gubernatorial candidate is subject to the expenditure limit in the same proportion as the gubernatorial candidate's share of the proceeds.

8. Election day expenditures by a county or local political party committee are regarded as expenditures to be partially allocated to the gubernatorial candidate.

9. The Commission determined that costs of compliance with the public financing statute and regulations are exempt from the expenditure limit.

10. A contribution made to an organization for the purpose of bringing legal proceedings to test the validity of the public financing statute was not regarded as a contribution to a candidate who was not involved in the litigation but who might be affected by the outcome of the litigation.

11. Voter registration drives conducted by a national or local political party have been held by the Commission not to be contributions to candidates (and therefore subject to the $600 limitation) unless specifically related to a gubernatorial candidacy. Expenses related to get-out-the vote drives are contributions to the candidates benefitting from the drive and only the share properly allocable to the gubernatorial candidate is subject to the $600 limitation.

12. The Commission determined generally that primary election campaigns and general election campaigns must be treated as separate campaigns, contributions to one campaign may not be commingled with those of another in a single checking account, and assets to be transferred from the primary campaign to the general election campaign must be valued on the basis of reasonable commercial value.

13. The valuation of in-kind contributions was determined by the Commission to be properly based upon the reasonable commercial value of the item contributed.

14. The New Jersey statute limits the amount of contribution to a candidate in a general election, but does not place a similar limitation upon the amount of a contribution to the primary election made prior to the date of the primary election. In this connection, the Commission determined that the forgiveness after the date of the primary election of a loan made prior to the primary election for the purpose of that election was not a contribution subject to limitation, but that the entire loan was a contribution at the time it was made.

Litigation and Enforcement

Two of the Commission regulations adopted in 1977 and two administrative orders were challenged in the New Jersey courts, and two of these suits were ultimately decided by the New Jersey Supreme Court. During the last month of the election campaign the Commission issued three administrative orders, all of which were related to a complaint filed by the Byrne for Governor Committee against the Bateman-Governor/77 Committee and the Republican State Committee's adjunct called the Republican Legislative Campaign Committee.

These matters are summarized below:

Use of Candidates' Own Funds

In light of the U.S. Supreme Court decision in *Buckley v. Valeo* 424 U.S. 1, 46 L.Ed.2d 659 (1976), and the language of the Act the Commission's public financing regulations permit a candidate to expend an unlimited amount of his own funds on behalf of his own candidacy. These expenditures count toward the $1.5 million expenditure limit. Only $600, however, from the candidate's own funds could be matched with public funds.

On April 20, 1977 Common Cause filed suit against the Commission challenging this regulation and arguing that the New Jersey statute permitted only $600 of a candidate's own funds to be used on behalf of his

candidacy. The case was not heard until after the election on December 19, 1977 and was decided on January 6, 1978. The unanimous opinon of the Appellate Division of the Superior Court in favor of the Commission's position was not appealed. *Common Cause v. New Jersey Election Law Enforcement Commission*, 155 N.J. Super. 241 (App. Div. 1978).

The decision permits unlimited spending by the candidate from his own funds in behalf of his own candidacy, subject only to the overall $1.5 million spending limit for the campaign. Since the case was heard and decided after the election and neither Bateman nor Byrne spent from their own funds in behalf of their candidacies, the case had no effect on the 1977 election. The decision might, however, have an effect on future elections. Conceivably a wealthy candidate might use large sums of his own funds to finance an election campaign, and it is the perceived advantage of this wealthy candidate over one who must raise funds from contributors that Common Cause sought to challenge in its suit. Congress has interpreted the United States Supreme Court decision in *Buckley v. Valeo* to permit in a publicly-financed campaign the imposition of limits on spending by candidates as a condition for receiving public funds, and thus established a limit in a publicly-financed presidential primary of $50,000 on the amount a candidate may spend from his own funds. Similar limits might be imposed in the New Jersey gubernatorial general election, but since the present statute does not specify such a limit, the Appellate Division upheld the position of the Commission that currently no limitation less than the overall $1.5 million campaign expenditure limit was possible.

Interpretation of the Contribution Limit Relative to Primary Contributions After the Date of the Primary Election

After extensive discussion and in an effort to avoid the retroactive effect which the adoption of a contrary regulation would have had upon candidates who had already incurred substantial primary debts, the Commission, in June, adopted a regulation permitting a contributor to contribute up to $600 to the general election campaign of a gubernatorial candidate and up to another $600 after the date of the primary election to pay off the primary election debts of the candidate in gubernatorial elections beginning in 1981 but not limiting post-primary contributions to pay primary debts in the 1977 election. Common Cause filed a challenge to this regulation on June 15, 1977 with the Appellate Division of the Superior Court and the case was argued orally on June 28. Common Cause argued that the statute in question, N.J.S.A. 19:44A-29(b), permitted only one $600 contribution to a general election candidate from any contributor after the date of the primary election to be used for the general election campaign and/or the primary election campaign. On July 1 the Appellate Division rendered

a unanimous opinion in favor of Common Cause. The Commission appealed that decision to the New Jersey Supreme Court on July 12 and the case was decided 6-0 in favor of Common Cause on July 30, 1977. *Common Cause v. New Jersey Election Law Enforcement Commission*, 151 N.J. Super. 265 (App. Div. 1977), aff'd 74 N.J. 231 (1977).

The Bateman-Governor/77 Committee intervened in both the Appellate Division and the Supreme Court to argue that the statute upon which the regulation was based was intended to apply only to the general election and did not regulate in any manner funds raised for the primary election. Senator Bateman finished the primary campaign with debts in excess of $300,000 while Governor Byrne had outstanding obligations of approximately $150,000.

Subsequently a bill to not restrict contributions to the primary election for Governor was introduced by the majority and minority leaders of the State Senate. The bill was reported to the Senate on July 18 but no vote was taken on it.

Following the Supreme Court decision the Commission reviewed contributions made after the date of the primary election for Governor Byrne and Senator Bateman and independent candidates and required the return to contributors of contributions in the aggregate in excess of $600 raised after the primary election. Senator Bateman returned $5,450 to contributors in response to the Commission directive. The decision had less impact on Byrne, the incumbent Governor and winner of the general election, than it did on the losing candidate, Bateman. By the end of 1977 the Byrne primary debt had been reduced to approximately $50,000 and was completely erased with funds raised during inaugural events in January 1978. In contrast, the Bateman campaign nine months after the primary remained in excess of $200,000 in debt and encountered difficulty finding potential contributors who had not already given the maximum $600 allowable.

Another effect of the Supreme Court opinion was that it applied the $600 contribution limit to any candidates for Governor whether or not they participated in the public financing. The Commission had interpreted the statute to exclude from any limitation the funds raised by candidates who did not seek to qualify for public funds, but the courts held that no such exemption is granted by the statute, and therefore the $600 contribution limit applied to all candidates for Governor in the general election. It is not possible to measure accurately the impact of the decision on campaigns which were run with comparatively small amounts of money (the most expensive campaign in this category was $9,000; all others cost less than

$4,000 each), since the Commission is not aware of potential contributions in excess of $600 which these candidates were required to refuse. In early August, however, the Commission did require them to report all contributions received to date which were in excess of $600, and the responses indicated that, in fact, none had been received.

Complaint Regarding a Violation of the Expenditure and Contribution Limits—Byrne for Governor vs. Republican State Committee and Bateman-Governor/77

On September 23, 1977 a complaint was filed by the Byrne for Governor Committee against the Republican State Committee and Bateman-Governor/77 Committee. The Byrne for Governor Committee alleged that solicitation to a fund-raising event held by the Republican Legislative Campaign Committee, an arm of the Republican State Committee, was an appeal to the donors to violate the $600 contribution limit and that expenditures made jointly by the Republican State Committee and the Bateman campaign for an "anti-Byrne" advertising campaign were improperly allocated between the committees. They argued that expenditures properly allocated to the Bateman campaign might result in expenditures in behalf of the Bateman candidacy beyond the statutory spending limit.

The Commission appointed a hearing officer, who conducted hearings on the complaint on September 29 and 30 and reported his findings to the Commission. After examining the 25-day pre-election disclosure reports for the Bateman campaign and the Republican Legislative Campaign Committee, the Commission examined advertisements purchased through expenditures shared by the two committees.

Following appearances by attorneys for the parties involved, the Commission made a determination in regard to this complaint at its meeting on October 21. The Commission determined that the proceeds from the fund-raising event in question were not used in behalf of the Bateman campaign and, therefore, the solicitation was not a solicitation of contributions for that campaign. The Commission also determined that the expenditures listed in the disclosure reports which were shared by the two committees had not been reasonably allocated between the committees. Accordingly, the Commission required these expenditures to be reallocated substantially increasing the share of the cost for the Bateman-Governor/77 Committee.

Following a review of expenses shared by the two committees reported on the 7-day pre-election disclosure reports filed on November 1, the Commission determined that additional shared expenses had been unreasonably allocated and on November 4, 1977 ordered the committees to adjust their respective shares of the expenditures to reflect a higher allocation to Senator Bateman's campaign.

The Commission's reallocations of shared expenses of six different items required the Bateman campaign to pay an additional $76,337 over what it had considered its reasonable allocation, as follows:

Items for which costs were shared	Total Cost	Bateman's Proposed Share	Amount	Bateman's share determined by Commission	Amount
1. Phone banks	$140,000	12.5%	$17,500	20%	$28,000
2. Bumper stickers	740	25%	185	50%	370
3. Production costs for "Anti-Byrne" TV ads	34,400	25%	8,600	66.6%	22,910
4. Broadcast time for "Anti-Byrne" TV ads	87,120	25%	21,780	66.6%	58,022
5. Polling	24,200	25%	6,050	75%	18,150
6. "New Jersey Blues" flyer	10,000	50%	5,000	80%	8,000
TOTALS	$296,460		$59,115		$135,452

Requested Reallocation of Byrne Campaign Radio Commercials

On November 1, 1977 the Byrne for Governor Committee filed an amendment to the 25-day pre-election report in which one-third of the cost for broadcasting what it characterized as "anti-Bateman" radio commercials was allocated to the Democratic State Committee for Legislative candidates. According to the Byrne for Governor Committee, the amendment was filed after an analysis of the commercials "in light of the precedent established by the Commission in its ruling on the 'anti-Byrne' media campaign undertaken by the Bateman for Governor Committee and the Republican State Committee." The total amount allocated to the Democratic State Committee was $33,177. The Commission reviewed this matter on November 3, 1977 and on November 4 made a determination that such allocation was unreasonable and that "100% of the production and dissemination (cost) of the radio ads in question" should be allocated to the Byrne for Governor Committee.

The Byrne for Governor Committee immediately appealed the Com-

mission's determination in this matter and the earlier Commission determination regarding the allocation of expenses between the Bateman-Governor/77 Committee and the Republican State Committee. The matter was argued and decided on November 4, with the Appellate Division affirming both determinations by a unanimous vote. This decision was appealed to the New Jersey Supreme Court which affirmed the Appellate Division opinion by a vote of 5-2 on Saturday, November 5, only 3 days before the election. Appellate Division Nov. 4, 1977, aff'd 75 N.J. 585 (1977).

Effect of Commission Orders

The orders of the Commission in each instance described above were issued after extensive deliberation and careful consideration of the evidence. The Commission viewed video-tapes of the television ads in question after their public showing, read scripts of radio ads, reviewed questions asked in polls, read messages delivered by telephone bank callers, and heard arguments by attorneys of the various parties.

Although both candidates were affected by decisions regarding the allocation of shared expenses, the impact was greater on the Bateman campaign. The transfers of funds from the Democratic State Committee to the Byrne campaign and then back to the State Committee took place in a short period late in the campaign and involved only one payment. In addition, the sharing of expenses between the two had not been planned, but occurred in reaction to the Commission's decision on shared expenses of the Bateman campaign and the Republican State Committee. Planning by the Republicans for shared advertising and other costs took place early in the campaign. Planning for the Bateman campaign included a budget near the $1.5 million spending limit, and an increase of expenditures of more than $75,000 within that budget during the final days before the election was clearly restrictive for the campaign. The Commission decisions prevented the Bateman campaign from spending $75,000 in some other manner, thus denying it budgetary flexibility. This inflexibility was caused in part by the level of the spending limit. Both campaigns budgeted and actually spent amounts near the statutory limit. Had that limit been non-existent or at such a level that the campaigns would not feel it necessary to spend the maximum allowable, then budgetary shifts such as those required by the Commission in 1977 would have had little or no impact on the campaign.

Qualification Threshold

The public financing statute requires gubernatorial candidates to raise and spend $40,000 to qualify for public matching funds and prohibits matching the amount raised for qualification. No distinction is made between major party and independent or minor party candidates, and it is not necessary that the candidate's name appear on the ballot in order to qualify. While two independent candidates, Frank Flowers and John Patrick Gallagher, sought public funds, neither received sufficient contributions to reach the qualification threshold. Flowers raised a total of $29,279, while Gallagher raised a total of $3,925. Only the two major party candidates, Governor Byrne and Senator Bateman, met the qualification requirements.

Contributions and Contribution Limit

In the 1977 gubernatorial general election no person was permitted to contribute more than $600 in the aggregate to any gubernatorial candidate. Senator Bateman succeeded in raising $636,035 from 5,854 contributions at an average of $109 per contributor while Governor Byrne raised a total of $573,380 from 3,654 contributions for an average of $157 per contributor. 463 persons contributed the maximum of $600 to Governor Byrne's campaign, while 429 gave the maximum to the Bateman campaign. For additional information see Table I of the Appendix.

The restriction in the 1977 general election resulted in a dramatic change from previous elections. In the 1973 gubernatorial campaign, when no public financing was provided and unlimited contributions were permitted, Brendan Byrne received $639,546 from 301 contributions in excess of $600 (exclusive of loans and party committee contributions) and Congressman Charles Sandman, the Republican nominee, raised $254,655 from 116 such contributions.

In the 1977 primary election Governor Byrne received 39% ($216,133) of the total $559,624 raised, exclusive of loans, from 119 contributions in excess of $600. Senator Bateman received 36% ($268,329) of his total of $754,466, exclusive of loans, from 181 contributions in excess of $600. Also, in that election, one individual contributed or loaned $298,277 to the unsuccessful campaign of Congressman Robert Roe.

Contributions and Contribution Limit

In addition to the funds raised for the general election, during the general election campaign both major candidates were able to raise funds to defray some of their primary election debts. Governor Byrne raised $91,680 and Senator Bateman $191,674 for this purpose during the general election campaign. Three elements of the public financing system—the contribution limit, the 2 for 1 match, and the $1.5 million expenditure limit, in combination made it necessary to raise at least $525,000 in contributions of $600 or less in order to have sufficient funding to ensure spending close to the expenditure limit amount.

Economic Interest Contributions

Despite the $600 limit on contributions from one entity, the total amount made available to each candidate from members of specific economic interests exceeded that amount. For instance, the Byrne campaign received more than $40,000 from 200 attorneys during the general election campaign and more than 300 physicians gave nearly $30,000 to Senator Bateman's campaign. Some groups specifically organized for the campaign, such as Pharmacists for Bateman and Psychologists for Byrne, were successful in raising a large number of small contributions.

Organized contributions indicate the ability of an economic interest or professional group in the aggregate to make substantial resources available to a candidate despite the $600 contribution limit. In the 1977 general election the Commission noted a number of instances where the facts and circumstances surrounding contributions from members of the same economic interest appeared to indicate an organized, coordinated effort. See Table VI of the Appendix for more details regarding these contributions.

Loans

Loans of large sums of money have played a significant role in the financing of previous gubernatorial campaigns, and the inability to repay those loans has contributed to the substantial campaign deficits of the past. The transfer to the state political party committees of the obligation for repayment of previous general election debts has resulted in continuing deficits for those committees. Brendan Byrne's 1973 general election campaign ended with an outstanding obligation of $132,000 in loans. That debt was taken over by the Democratic State Committee in June 1974, and consolidated with debts of that committee.

Candidates' debts incurred in the primary election may not be paid by the political parties due to a statutory prohibition. Both Governor Byrne and Senator Bateman incurred large 1977 primary election debts in the form of loans. While Governor Byrne was able to repay his debt of nearly $200,000 with funds raised during the general election campaign and through inaugural events, nine months after winning the party nomination the Bateman campaign still owed $210,000 to individuals who had loaned or endorsed loans in amounts of $10,000 and $20,000.

While loans comprised significant portions of the funds available and of the debts of previous campaigns, they were almost non-existent in the 1977 gubernatorial general election. The statute prohibits bank loans in excess of $50,000 for each candidate. Those loans may be endorsed only by candidate or the state committee of the political party and must be repaid 30 days prior to the election. Governor Byrne did not have any bank loans and Senator Bateman borrowed only $25,000, which was properly repaid. Loans from individuals were restricted to $600, but no such loans were made to either candidate. By contrast, in the 1977 gubernatorial primary election, Governor Byrne received $192,500 and Senator Bateman $230,000 in loans, and the other candidates in the primary borrowed $1,041,298. Congressman Robert Roe received a total of nearly $430,000 in loans, including $41,000 from one individual. In the 1973 gubernatorial general election, Governor Byrne received $435,000 in loans and Congressman Sandman $207,000. Table V in the Appendix details the loans and contributions of $5,000 or more to Governor Byrne and Senator Bateman in the primary election of 1977.

The expenditure limit in the gubernatorial general election was contained in the 1973 Campaign Contributions and Expenditures Reporting Act and, therefore, predates the public financing statute enacted in 1974. The limit, which is based on 50¢ per voter in the preceding Presidential election, was $1,518,576 in 1977. Although the expenditure limit originally applied to all state, county and local election campaigns in New Jersey, the 1976 decision of the United States Supreme Court in *Buckley v. Valeo* made expenditure limits unenforceable except in publicly-financed elections, such as the 1977 gubernatorial general election in New Jersey.

The Act specifically exempts from limitation the cost of the candidate's travel. One of the problems confronting the Commission was the valuation and reporting of travel costs for an incumbent candidate. The issue was addressed in regulations (N.J.A.C. 19:25-15.40 and 41) adopted on September 19, 1977. The Commission further determined that the costs of food and beverages for fund-raising events, the expenses for election night activities and the cost of compliance with the public financing provisions were not expenditures subject to the limit.

The total expenditures subject to the limit were $1,505,877 for Governor Byrne and $1,496,188 for Senator Bateman. Expenditures exempt from the limit totalled $161,471 for the Byrne campaign and $145,829 for the Bateman campaign, bringing the total campaign expenditures to $1,667,348 for Governor Byrne and $1,642,017 for Senator Bateman. Exempt expenditures in the 1973 election totalled $87,215 for Brendan Byrne and $128,565 for Charles Sandman (see Table II of Appendix). The increase in 1977 was due primarily to the addition of compliance costs.

The chart below summarizes the 1977 costs not charged against the spending limit.

Expenditures Exempt from Limitation

	Byrne	Bateman
Candidate's travel	$ 49,906	$ 54,350
Food and beverage fund-raising events	76,399	59,432
Election night activities	2,702	11,226
Compliance	32,464	20,821
	$161,471	$145,829

Public Fund Expenditures

Public funds totalling $2,070,806 were paid to Governor Byrne and Senator Bateman during the 1977 campaign and were required by statute to be spent for five specific purposes: the purchase of radio and television broadcast time; billboard rental; advertising in newspapers and other periodicals; advertising production costs; and the costs of printing and mailing campaign literature. While they were permitted to allocate the public funds in any proportions among these possible expenditures, both campaigns chose to concentrate their expenditures on the production and airing of advertising through the broadcast media. Radio and television advertising costs accounted for 95% of the Byrne public fund expenditures and 75% of the Bateman public fund expenditures.

The effect of providing public funding and imposing prescribed uses for those public funds was to increase the percentage of total campaign expenditures spent for communication purposes. In 1977 Governor Byrne spent 70% and Senator Bateman spent 67% of their total expenditures for communication, while in 1973 the comparable percentages were 59% for Brendan Byrne and 62% for Charles Sandman (see Tables I and II of Appendix).

The breakdown of these public funds expenditures by category is listed below:

Expenditures of Public Matching Funds

	Byrne	Bateman
Radio and TV broadcast time	$805,094	$661,217
Advertising production and consulting	180,000	96,021
Newspaper advertising	28,215	104,774
Billboards	—	66,973
Printing and mailing of campaign literature	37,260	80,735
	$1,050,569	$1,009,720

Political Party Committee Expenditures

Within the overall limit on spending, the public financing law imposes further restrictions on spending by party committees. Specifically, county and municipal committees of a political party are prohibited from making any contributions to gubernatorial candidates, but may spend funds in behalf of that candidate during the general election campaign within the following restrictions:

The county and municipal committees per party in any one county may not spend more than $10,000.

All of the county and municipal committees in the State combined per party may not spend more than $100,000.

The statute also provides that candidates shall determine the exact amount that individual county or municipal committees may expend in aid of their candidacies and shall file a report of such determination with the Commission no later than the 7th day prior to the general election.

The public financing statute did not set any limit on the total amount of expenditures that could be made on behalf of a gubernatorial candidate by a state committee of a political party. The statue and Commission regulations required, however, that a separate bank account be established and no more than $600 from any contribution made to a state committee be deposited in that bank account for use on behalf of the gubernatorial candidate. The state committee could contribute this sum to the gubernatorial candidate or expend it directly on his behalf, but the amount from the individual would count against the individual's overall $600 contribution limit. The funds deposited in this special state committee account and contributed by the state committee to the gubernatorial candidate would be eligible for matching with public funds, but the amounts expended directly by the state committee on behalf of the gubernatorial candidate would not be eligible for match.

In fact, neither state committee set up these bank accounts and allocated contributions on behalf of the candidates as permitted under the statute. Instead, the state committee efforts, primarily with respect to the Republican State Committee, were directed at assisting legislative candidates. Because the gubernatorial candidates benefited in part from these expenditures, the gubernatorial campaign committees in a number of instances reimbursed the state committees or their sub-entities for the allocated portion of the expenditures benefiting the gubernatorial candidate of that party. As discussed elsewhere, these shared expenditures became the subjects of complaints and Commission determinations in the last month of the campaign.

Political Party Committee Expenditures

Because of the restrictions on spending by political party committees, their role in the gubernatorial campaign was limited. Control over fund raising and spending was held by the candidates' campaign committees and it was they who determined the extent of party committee activities. Since both campaigns expected to spend an amount close to the limit, they were concerned that spending by the party committees and legislative candidates not authorized by the campaigns would be counted against the limit. The Bateman finance chairman, for example, informed Republican legislative candidates and party committees that "it is essential for us to control the expenditures properly charged to the Bateman campaign," and cautioned each of them to "obtain written permission from us before authorizing expenditures in your county or district in cases where a portion of the cost would be chargeable against the Bateman spending limitation. This includes such things as billboards, panels in brochures, bumper stickers, etc." In order to control this spending effectively, the campaign budgeted $39,500 of its own funds to be divided among the twenty-one county committees for expenditure by them in behalf of Senator Bateman. The Byrne campaign allocated $50,000 for expenditures by the various Democratic county committees, but unlike the Bateman campaign, each allocated share was to be paid by the county committee making the expenditure from its own funds. Democratic county chairmen were told by the Byrne campaign treasurer that, "under the law, you are required . . . to abide by our allocation of how much you may expend on the Governor's behalf."

The effect of the restrictions on political party and legislative candidate spending in behalf of the 1977 gubernatorial candidates was to reduce substantially the amount spent in comparison to 1973. The largest amount spent in any one county in 1977 was $8,619 by the Essex County Democratic Committee in behalf of Governor Byrne. Although the statute permitted a maximum of $100,000 in local spending benefiting each of the gubernatorial candidates, neither campaign budgeted that amount and only $43,704 and $39,500 of such expenditures were actually made in behalf of Governor Byrne and Senator Bateman, respectively. The payment by the Bateman campaign to the county committees was initially made from public funds, but because of a Commission decision that this procedure failed to meet the requirements of the Act regarding the use of public funds, the Bateman campaign reimbursed its public funds bank account with $39,500 in private contributions.

By comparison the political party committees played a more significant role in 1973. In that election contributions totaling $202,889 to Brendan

Political Party Committee Expenditures

Bryne and $58,000 to Charles Sandman were made by the parties. The relatively small amount in 1977 is related not just to the $100,000 spending limit for local spending, but is more closely related to the overall spending limit. Apparently neither campaign budgeted near the maximum allowable for party spending because of the desire by both campaigns to maintain control over expenditures within the $1.5 million limit. To this extent, the local party units were denied flexibility in their own expenditures relative to the gubernatorial candidates.

Independent Expenditures

In *Buckley v. Valeo* the United States Supreme Court found that the "advocacy of the election or defeat of candidates . . . is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." The court further reasoned that any limitation on expenditures "for express advocacy of candidates made totally independently of the candidate and his campaign" is unconstitutional.

The Commission in its public financing regulations required reporting of such independent expenditures, including a declaration on literature or advertising that such literature or advertising was undertaken independently of the candidate and campaign.

The only independent expenditure in the gubernatorial general election reported to the Commission was made by the Coalition of American Public Employees in behalf of Governor Byrne's candidacy. This Washington, D.C.-based coalition reported that its affiliates in New Jersey included the New Jersey Education Association and the American Federation of State, County and Municipal Employees, and that expenditures in behalf of Governor Byrne for a poll and newspaper advertising totalled $10,700.

Free Public Television and Candidates' Statements

In addition to the public matching funds, the New Jersey statute provides two other means of public assistance to gubernatorial candidates in the general election. This assistance is available to gubernatorial candidates regardless of whether they qualify for the public matching funds.

First, the New Jersey Public Broadcasting Authority is required to promote full discussion of public issues by the candidates for Governor in the general election, free of charge to any such candidates. The Authority is required to make available at least one hour of time on its stations for joint appearances by the candidates and at least one additional hour of time for individual appearances by each of the candidates. In the general election of 1977 the Authority did provide free time to the candidates.

Another provision permits candidates to have forwarded to the registered voters with the sample ballots for the general election a statement of up to 500 words. Those candidates wishing to participate must submit a copy of such statement to the Election Law Enforcement Commission by 60 days prior to the general election. The Commission then must supply each county clerk with the text of the statements on or before the 45th day prior to the election. The county clerks then provide for the printing and mailing of such statements with the sample ballot at a cost borne by the counties.

During 1977 the Commission received 15 such statements and forwarded 14 of them to the county clerks. Charles Spector, the Communist Party candidate, was not certified for the ballot by the Secretary of State because, under the State Constitution, his age would have precluded his assumption of office should he have won. In view of the ruling by the Secretary of State, the Commission did not include Mr. Spector's statement with those sent to the county clerks.

After consultation with the Attorney General's office, the Commission decided that the statements should be translated into Spanish to accompany the bilingual ballots required in certain election districts. Accordingly, the Commission gave the candidates the option of submitting a Spanish translation or having the Commission arrange for a translation. Only one of the candidates submitted his own translation which could not be used due to certain word usage. The Commission employed a Rutgers University language professor to translate the statements into Spanish.

After extensive discussion with some of the county clerks, the Commission decided to prepare these statements in camera-ready, typeset form to be sent to the county clerks. The completed statements were forwarded within the statutory timetable and provided to the registered voters in

Free Public Television and Candidates' Statements

accordance with the statutory provisions. In virtually all of the counties, the statements were printed on the back of the sample ballots. The Commission incurred a cost of approximately $2,000 in arranging for Spanish translation and typesetting of the statements.

Some legislators and county clerks believed that these statements imposed an undue financial burden upon the counties. Assembly Bill 3034, which proposed to repeal the statutory provision authorizing these statements, passed in the Assembly on May 16, 1977 by a vote of 52 to 9 and in the Senate on September 19 by a vote of 30-0. Senator Bateman supported the bill, but the legislation failed to become law because Governor Byrne did not sign it. On September 29, 1977, the Governor stated in his veto message:

> It would be hypocritical of me to single out a portion of the public financing campaign law for repeal since I am a candidate taking advantage of public financing. A denial of the opportunity for other candidates to be presented to the voting public is contrary to my sense of equal access, the premise upon which the law was passed.

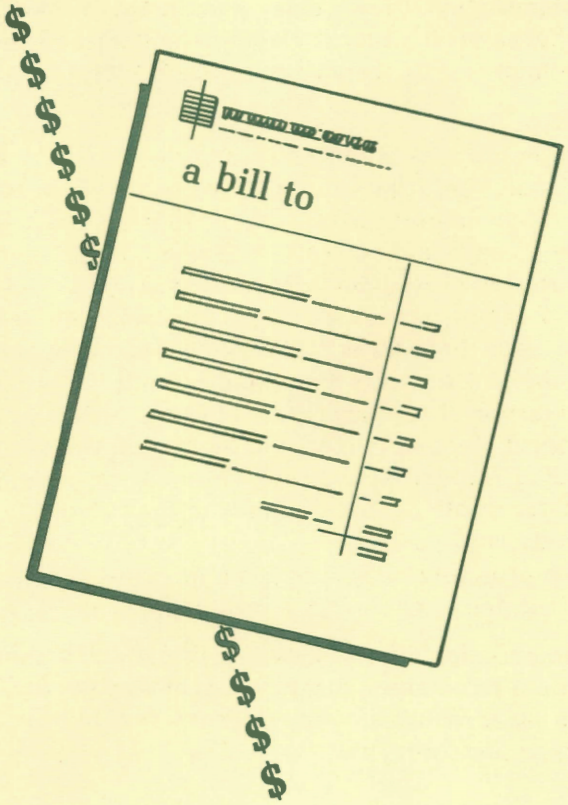
Inaugural Affairs

Some proceeds from fund-raising events held in conjunction with the Governor's January 1978 inauguration were used to pay obligations incurred in the Byrne primary and general election campaigns. It was necessary, therefore, to establish procedures to ensure that the proceeds used for campaign purposes did not include any contribution in violation of the $600 limit. The procedure suggested by the Commission and used by the Byrne Inaugural Committee called for segregating in a separate bank account contributions of $600 or less or some portion (not more than $600) of contributions larger than $600. Funds in this account were used to pay a proportionate share of the expenses of the Committee and to pay outstanding campaign obligations. Through the inaugural fund-raising events the Byrne Inaugural Committee raised approximately $500,000. Of that sum $8,000 was transferred to the Byrne general election committee to pay campaign obligations; $48,600 was transferred to the primary election committee to

pay its obligations; $125,000 was transferred to the Democratic State Committee, and the remainder was used to pay the expenses of inaugural events.

While funds raised for campaign purposes were isolated and limited in amount, there was no limit on contributions raised by the Byrne Inaugural Committee for other purposes. A list of contributions to this Committee of $5,000 or more appears in Table IX of the Appendix.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS



Summary of Conclusions and Recommendations

1

Public Financing Concept

Public financing is a desirable means of funding a significant part of the cost of gubernatorial campaigns. Both major party candidates participated, received public funds on schedule and used them for permitted purposes. The public matching funds replaced large contributions in excess of $600 that would have been raised and used in the absence of the contribution limit. Public funds are a preferable alternative source of funds to large private contributions. They also provide a floor of resources to assist candidates in conducting serious and competitive campaigns. The Commission believes that limited private contributions should continue to play a significant role in financing elections.

The rationale for public financing in the general election for Governor is applicable to the gubernatorial primary election as well. In fact, without application of similar provisions to the primary election, much of the desirable effect of the general election provisions is diluted.

Recommendation: New Jersey should retain partial public financing of gubernatorial general elections and extend the concept to primary elections for Governor beginning in 1981.

2

$40,000 Qualification Threshold

While only the Republican and Democratic candidates qualified for public matching funds in 1977, we are convinced that a broad-based independent candidate could in the future qualify for public funds, possibly in a very significant amount. A threshold amount is desirable to permit concentration of limited resources on broad-based candidates, whether of major or minor parties. The 1977 general election campaign experience persuades us that a threshold of $40,000 is reasonable.

While the amounts expended by individual major party candidates in gubernatorial primaries traditionally have been lower than those for the general election in New Jersey, the experience of the 1977 Primary (see Table VIII Appendix) indicates that a $40,000 qualification threshold to qualify for public matching funds in the primary would have little impact on serious candidates.

The principle of having a common threshold applicable to all major and minor party candidates is sound and should be retained.

Recommendation: the $40,000 qualification threshold for all candidates should be retained for the general election for Governor and a separate $40,000 threshold for the primary should be established to qualify for public matching funds.

3

$600 Contribution Limit

Both major party candidates, generally considered as mainstream candidates within their respective parties, were able to raise sufficient funds for the general election plus additional funds to help reduce their primary debts in contributions of $600 or less. Staff members of both campaigns believe that some additional campaign funds could have been raised in the absence of an expenditure limit. Both campaigns concentrated on raising $600 contributions. Governor Byrne received 48% of the total amount of private contributions in $600 amounts and Senator Bateman received 40%. With the expenditure limit at $1.5 million, the campaigns did not need to concentrate on raising small contributions.

The contrast between the source of funds for the 1977 general election with its $600 contribution limitation and public matching funds, and the source of funds for the 1973 gubernatorial general election without these elements, is dramatic. In 1973, 51% ($894,201) of the total contributions (exclusive of party committee contributions and loans) raised by the two major party candidates was in amounts in excess of $600. In 1977, of course, there were no contributions in excess of $600, and public funds comprised 63% of the total funds available for the Byrne and Bateman campaigns (see Tables I and II of the Appendix).

Despite the limitation on contributions during the general election, contributions in the gubernatorial primary election and to gubernatorial inaugural affairs are not limited. In the 1977 primary election the two successful gubernatorial nominees raised a total of $484,462 (exclusive of loans) from persons contributing more than $600 each (see Table IV of the Appendix). Thirteen contributing entities each donated $5,000 or more, for a total of $82,619, to the 1978 gubernatorial inaugural affairs (see Table IX of the Appendix).

Proponents of contribution limits argue that such limits help to reduce the potential for undue influence of large contributors on the electoral and governmental processes. This was the rationale for the imposition of limits in the 1974 statute. To better achieve this aim the Commission believes that limits should be extended to cover the total amount persons may contribute in primary elections and to gubernatorial inaugural affairs.

Governmental policies should not deny candidates the opportunities to raise adequate funds for their campaigns. While a somewhat higher limit combined with a 1 for 1 match of public funds might be acceptable, we believe that the $600 limit is preferable and was not unduly restrictive in the 1977 experience which provided sufficient opportunity for contributor participation in a 2 for 1 match, and was accepted by the public as a reason-

able figure.

In our judgment the arguments for a contribution limit apply to the primary election for Governor as well as the general election.

Recommendation: the $600 contribution limit should be retained for the gubernatorial general election and applied also to contributions to the gubernatorial primary election.

4 Matching Principle, Ratio and Amount Matched

Public funds can be provided by means of matching funds based on some amount of contributions raised or flat grants based upon qualification or status as a candidate. The New Jersey matching system worked well in its first trial. While a matching system provides incentive to successful effort, it is generally more complex to administer than a grant system. Because New Jersey has only one statewide elected state official, the Governor; because public financing applies only to the general election; and two candidates qualified in 1977, the administration of the first United States experiment with public financing of a gubernatorial election was less difficult than it might have been in another circumstance.

The 2 for 1 match with public funds of the entire contribution up to $600 maximum guarantees that a substantial portion of the total funds available to a candidate will be public funds. It also helps a candidate who is successful at early fund-raising to have substantial funds available at the outset of a campaign. This is especially helpful to the lesser-known candidate or candidates who need to achieve name recogntion, as appeared to be the case in the 1977 campaign where, by mid-September, the Commission had authorized the payment of $543,000 in public funds to Senator Bateman and polls indicated that from July to September there was a dramtic increase in the percentage of voters able to recognize his name.

The Commission believes that the 2 for 1 match of the entire $600 proved satisfactory and generally acceptable to the public and participants. It assures that a substantial portion of campaign resources will be public funds and thus helps ensure an adequate floor for a significant campaign.

The Commission finds no compelling reason why the matching principle, ratio or amount of match should be different in a gubernatorial primary election. Indeed, the simplicity of having the same system for both primary and general is very attractive. While administration would be more difficult with a greater number of candidates, the Commission is confident that given adequate resources such a program could be carried out adequately and effectively.

Estimates of the additional cost involved in extending the present matching system to the gubernatorial primary election depend, of course, on the elements of the system and the number of candidates involved. Using the 1977 gubernatorial primary as a base, with the system suggested herein, the estimated cost in additional public matching funds, exclusive of administration, would have been $2.9 million (see Table VIII of Appendix). The Commission believes that the additional cost, while a substantial sum, would be worth the price because of the benefits gained by reduced dependence of candidates on large campaign contributions.

Recommendation: The matching principle, 2 for 1 matching ratio and match of the entire amount of a contribution up to the $600 maximum should be continued for the general election and applied in similar fashion to the primary election.

5 Expenditure Limits and Ceilings on Public Funds

Many of the campaign finance statutes enacted in the various states in the last five years, including New Jersey, have provided limits on the total campaign expenditures. Following several pre-*Buckley* years of experience with expenditure limits, and particularly after an intensive experience in the 1977 gubernatorial general election, the Commission believes that the New Jersey provision needs reappraisal.

Advocates of expenditure limits cite the need to reduce the cost of political campaigns, reduce the impact of large contributions, neutralize the advantage of a candidate with greater financial resources available, equalize spending among candidates and lessen the use of television advertising.

Opponents of expenditure limits argue that they are not needed to to protect against the "undue influence" of large contributors or to reduce some of the advantage of wealthy candidates. Limits on contributions and the use of a candidate's own funds serve those purposes. They argue that expenditure limits work to the disadvantage of challengers who generally need more expenditures to achieve name recognition and do not have some of the campaign advantages of incumbency. Further, expenditure limits which can be easily reached deny a candidate the opportunity to outspend an opponent by attracting more permissible contributions and the opportunity to communicate his views to the public to a greater degree. They maintain that limits focus on "money" as the only ingredient to be regulated, leaving candidates with superior party organization backing, celebrity status, or the ability to attract volunteers, in a possibily advantageous position.

After careful deliberation, a majority of the Commission is persuaded that if the election process includes limits on contributions, loans and a candidate's own personal funds, and a cap on the amount of public funds available to any candidate, then expenditure limits are unnecessary and undesirable.

The potential for undue influence of large contributions can be regulated by contribution and loan limits. The advantages of candidate wealth can be largely curtailed by limits on expenditures of a candidate's own funds. Challengers frequently do need to make more expenditures to compete successfully with incumbents. Easily reachable expenditure limits tend to equalize spending. A candidate who can broaden his base of support with more contributors of $600 or less should not be prohibited from doing so by an arbitrary limit on total expenditures.

Statewide campaigns in New Jersey are costly. It is expensive to adequately communicate the ideas and character of a candidate to the public. Candidates should be encouraged to maximize communication with the public, and the public should have ample opportunity to become acquainted with the candidates. This process should be accomplished using all forms of media. Surveys have indicated that Americans rely heavily on television for news and information. The 1977 gubernatorial candidates used television to a greater extent than previous gubernatorial candidates largely because they considered it the medium by which they could directly communicate with the greatest number of voters. Expenditure limits tend to reduce the opportunities for such communication with the average citizen.

The application of the expenditure limitation provision in the 1977 election led to the controversies in October over joint expenditures and to the Commission's necessary role in these controversies. The concern over possible advantage to be gained by a gubernatorial candidate paying less than his justifiable share of joint expenditures with other candidates was heightened by a situation in which both candidates could reach an expenditure limit without great difficulty. The Commission was faced with the problem of making difficult but necessary decisions in a tight time frame in these matters which may have had significant impact upon the campaign.

A principal value of public financing is as a "floor" to permit candidates sufficient funds to conduct a meaningful campaign. In view of this, and recognizing the desirability of limiting public expenditures, the Commission believes that there should be a ceiling on the amount of public funds any candidate may receive. Such a ceiling would assist the Com-

mission in estimating the maximum amount of public funds needed for any election. An appropriate basis for the ceiling for any candidate in the 1981 gubernatorial general election would be 40¢ per New Jersey voter in the 1980 presidential election. An appropriate basis for the ceiling in a primary election would be 20¢ per voter in the preceding year's presidential election. Using the number of voters casting ballots in the 1976 presidential election as an example, the ceiling on public funds to any one gubernatorial candidate would be $1,214,860 in the general election and $607,430 in the primary election. Without expenditure limits, candidates would be free to raise as many contributions of $600 or less as they could, but once public matching funds aggregated the ceiling the additional private contributions would not be matched. While it is difficult to determine how much campaign spending might increase under such a system, one participant remarked to the Commission that "The contribution limit acts as a practical expenditure limit; there are only so many contributions out there."

The reasons for a system of public money caps and no expenditure limits in the general election apply to the primary election with one exception. Because of the experience and tradition in New Jersey of substantially lower spending campaigns of individual candidates in the primary election and the likelihood of a greater number of candidates expected to participate, with the resultant substantial amounts of public matching funds needed, the Commission believes that a lower ceiling on public funds for the primary election is desirable.

Recommendation: A cap on public funds available to any candidate of 40¢ per New Jersey voter in the last presidential election should be established in the 1981 gubernatorial general election. The cap in that year's primary election for Governor should be 20¢ per voter in the preceding presidential election. These caps should be reviewed by the Legislature after the 1981 gubernatorial election to assess their adequacy for future gubernatorial elections. A majority of the Commission recommends that the expenditure limitation provision in the present law should be deleted if the system includes contribution limits, limits on a candidate's own personal funds, loan limits and the cap on the public funds. Should any element of this recommendation not be included, the Commission would want to review its entire recommendation, including the possibility of the retention of some overall expenditure limitation.

6
Loan Limits

The contrast in the use of loans as between the primary and general elections for Governor in 1977 is dramatic. In the general election, where loan limits of $50,000 for bank loans and $600 for individual loans applied, Senator Bateman borrowed only $25,000 from a bank and Governor Byrne had no bank loans. In the primary election, with no such loan limits, these two candidates borrowed a total of $422,500. There were many loans from individuals of from $600 to $50,000.

While loans can be helpful to candidates as seed money or to assist with cash flow problems, they also have frequently comprised a major portion of substantial post-election debts. Without loan limits gubernatorial campaigns in the past frequently have overcommitted the candidates and left both candidates and party organizations with substantial obligations. The Commission believes that such debts are unhealthy for public officeholders and the public and for the viability and vitality of the political parties.

We believe that the experience of the 1977 election demonstrates the effectiveness of loan limits in reducing the potential for undue influence of contributors of large loans, while at the same time reducing the level of campaign obligations and the difficulties of political parties in maintaining financial stability. These first two arguments apply as well to primary elections.

Recommendation: Loan limits of $600 on individual loans and $50,000 on bank loans, along with the requirement of repayment of bank loans 30 days prior to the general election should be retained and extended on a similar basis to primary elections for Governor. Persons other than the gubernatorial candidate (and the state committee of a political party for general elections only) should be able to endorse loans, but such endorsements should be limited to a maximum of $600 for each endorser.

7
Candidate's Own Funds

After *Buckley v Valeo* Congress imposed a limit in a publicly-financed presidential primary of $50,000 on the amount a candidate may spend from his own funds. In *Common Cause v. ELEC*, the New Jersey Appellate Division uled that the New Jersey Campaign Contributions and Expenditures Reporting Act imposed no limits on the amount of personal funds a gubernatorial general election candidate could spend in behalf of his own campaign.

An example of the recent use of substantial candidate personal wealth in a campaign occurred in the 1977 Republican gubernatorial primary elec-

tion where one candidate spent $135,000 of his own resources and at least $148,000 more was contributed by his relatives in his unsuccessful effort. Total family expenditures or contributions represented nearly 50% of the total funds available to his campaign.

Because neither Brendan Byrne nor Raymond Bateman contributed or expended any personal funds in the 1977 general election campaign, the question of use of a candidate's substantial resources was not a factor. It could, however, be a major factor in some future election in New Jersey.

Limiting the amount of personal funds a candidate may use is not a matter of reducing undue influence, but it helps to reduce the disproportionate financial advantage enjoyed by wealthy candidates over opponents without access to similar resources. The Commission believes that this interest is sufficient to justify such a limitation.

Recommendation: Gubernatorial candidates receiving public funds should be limited to contributions or expenditures for their campaigns of no more than $25,000 in the aggregate of their own funds for the primary election and an additional $25,000 of such monies for the general election. "Own funds" should be defined to mean funds to which the candidate is legally and beneficially entitled, but would not include funds for which he is a trustee, or funds given or otherwise transferred to the candidate by any person other than the spouse of such candidate for use in aid of his candidacy.

8 Restrictions on Use of Public Funds

The 1974 statute provided for the separate treatment of public funds by restricting their use to purposes which are closely related to direct communication with the electorate. To assist in adequately monitoring their use, the public funds were kept in segregated bank accounts.

Staff of both the Bateman and Byrne campaigns were critical of the statutory provision as unduly restrictive and arbitrary. They argued that public funds should be available for any legitimate campaign expenditure, or at least for other means of direct communication with voters such as telephone banks, polls and storefront headquarters. Telephone deposits and use charges which could not be paid with public funds represented major cost items in the 1977 gubernatorial campaign.

While we believe that some additional flexibility in the use of public funds is desirable, we conclude that the concept of limiting their use to certain enumerated purposes is sound in the present context. If the experiment of public financing of election campaigns is to succeed, it must have general acceptance by the public. A key element in such acceptance is the fact

and perception that taxpayers' funds used for this purpose are not "abused." If public funds were available for payment of certain legal campaign expenditures, such as "street money" and payment of campaign salaries to relatives of the candidate, for example, this might seriously undermine public acceptance.

Recommendation: Public matching funds should be permitted to be used for the five purposes now enumerated in the statute and additionally for the:

[a] Payment of the cost of legal and accounting expenses incurred in complying with the public financing statute and Commission regulations regarding public financing; and

[b] Payment of the cost of telephone deposits, and installation charges and monthly billings in excess of deposits.

9 Gubernatorial Inaugural Fund-Raising Events

Gubernatorial inaugural balls and other private festivities conducted in conjunction with the inauguration of Governors, have frequently been used as fund-raising vehicles. The January 1978 festivities were more successful in the fund-raising sense than any in recent memory.

To the extent that such affairs provide monies for the retirement of campaign debts, they have been viewed in part as gubernatorial campaign fund-raising events. Thus, the Commission required utilization of certain procedures for the January 1978 affairs to ensure that proceeds used for campaign purposes did not include campaign contributions which, when added to prior contributions made during the campaign, would exceed $600. There is no overall limit on the total amount a person may contribute to such affairs, however.

In view of the time at which they are conducted and the nature of the solicitations for such affairs relative to the gubernatorial campaign and candidate, we have concluded that it is desirable to limit the aggregate contribution to gubernatorial inaugural fund-raising events by any person to an amount essentially related to defraying their cost. This amount would be in addition to any contribution of $600 or less a person might have made previously in aid of the candidacy in either or both the primary or the general election.

Recommendation: The aggregate amount any person could contribute to gubernatorial inaugural fund-raising events should be limited to $100. "Gubernatorial inaugural fund-raising event" should be defined to mean any event or events held between the date of the general election

for the office of Governor and a date 30 days after the date of the inauguration of the Governor, whether such event is sponsored by the inaugural committee, the state political party committee representing the party of the Governor-elect, or any other person or persons, and at which the Governor-elect is a prominent participant or for which solicitations of contributions include the name of the Governor-elect in prominent display.

10 Candidate Statements to Registered Voters

One of the more controversial features of the New Jersey public financing statute is the provision for candidate statements to be sent to the registered voters at public expense. In 1977 the Commission shared some of the concerns of the critics of this provision regarding its possible abuse and excessive cost. In fact, however, potential abuses did not materialize and the costs were substantially below the original estimates, due largely to the feasibility of printing the statements on the reverse side of the sample ballots in most cases.

Recommendation: The provision for 500-word statements of the gubernatorial general election candidates to be sent to the registered voters with the sample ballots at public expense should be retained and the costs paid by the State rather than the counties.

11 Free Public Television Time

The provisions of the Act authorizing certain public television time free of charge was administered by the N.J. Public Broadcasting Authority, not the Election Law Enforcement Commission. While we conclude that the concept of providing such time is sound as another form of public assistance to candidates, we question whether the time allowed is sufficient.

Recommendation: Adequate free public television time should be made available to gubernatorial general election candidates and should be provided to primary election candidates for the office of Governor as well.

12 Clarification of the $600 Contribution Limit

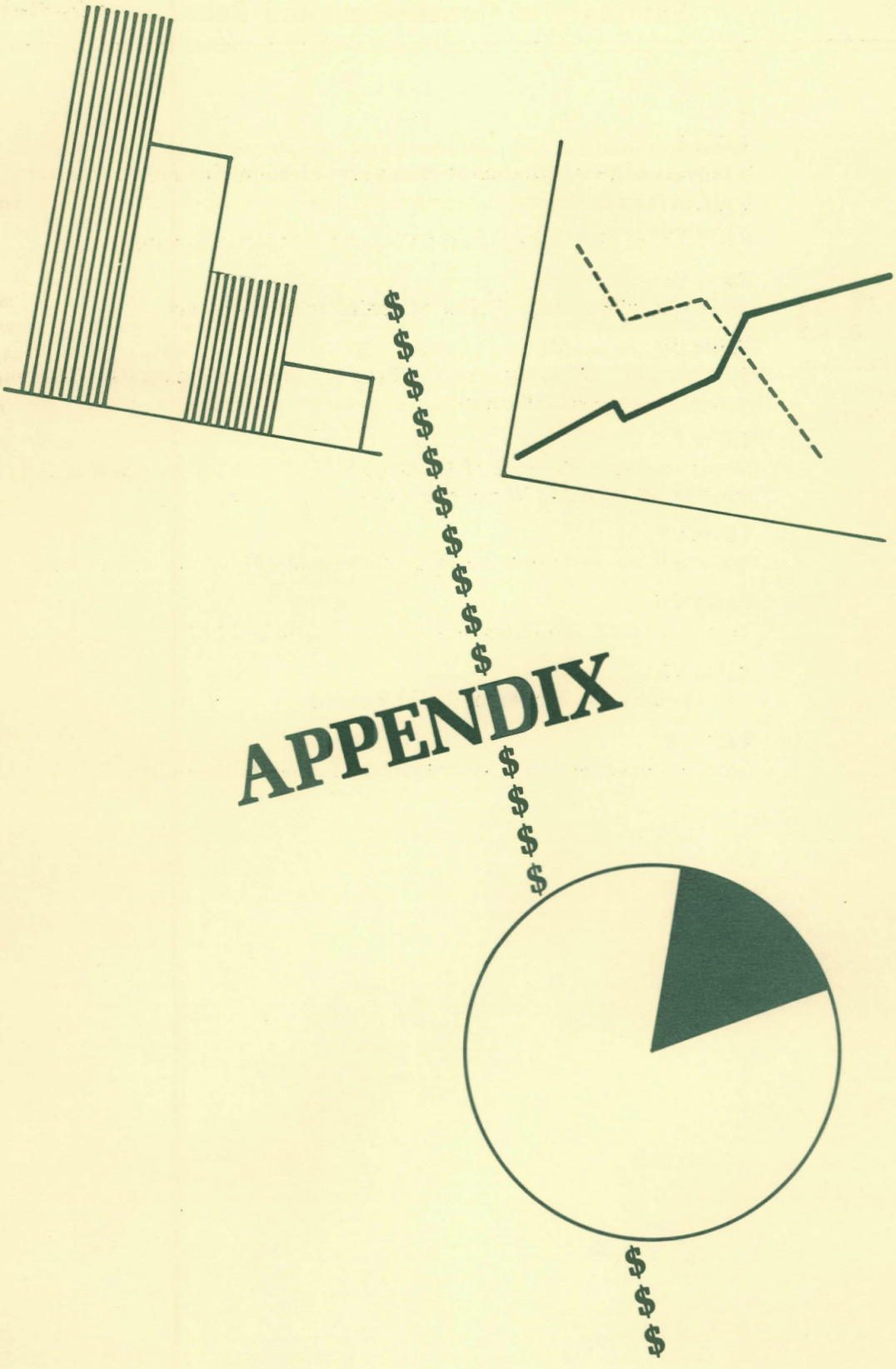
To resolve any question concerning legislative intent concerning the application of the $600 contribution limit in reference to general and primary elections separately, the language of the Act should be amended.

Recommendation: Subsection (a) of N.J.S.A. 19:44A-29 should be amended to specify clearly that a maximum of $600 may be contributed in the aggregate by a person to a gubernatorial candidate for the primary

election in aid of the candidacy and that an additional maximum of $600 may be contributed by the same person for the general election in aid of the candidacy. Subsection (b) of N.J.S.A. 19:44A-29 should be repealed.

13 Public Financing and Legislative Elections

This report deals with the public financing of gubernatorial elections. The Commission has not attempted to evaluate the issue of whether New Jersey legislative elections should be financed in part with public funds. While we generally espouse the concept of public financing, there are significant practical considerations which would need to be resolved in considering whether to extend public financing to legislative elections.



APPENDIX

Appendix

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Table I Summary of 1977 Gubernatorial General Election Financing

		Byrne [D]			Bateman [R]		
		Amount	Number of Cont'ns.	Average Amount	Amount	Number of Cont'ns.	Average Amount
Contributions	$100 or less	$ 98,401	2,271	$ 43	$ 182,324	4,639	$ 39
	$101 – $599	197,179	920	214	196,311	786	250
	$600	277,800	463		257,400	429	
	Sub total	573,380	3,654	157	636,035	5,854	109
	Loans (repaid)				25,000	(25,000)	
	Public Matching Funds	1,050,569			1,020,247		
	Total Funds Available	$1,623,949			$1,656,282		

		Byrne [D]	Bateman [R]
Expenditures	A. Expenditures exempt from limitation		
	– candidate's travel	$ 49,906	$ 54,350
	– Food and Beverage fundraising events	76,399	59,432
	– Election night activities	2,702	11,226
	– Public financing statute compliance	32,464	20,821
	Total expenditures exempt from limitation	161,471	145,829
	B. Expenditures subject to limit		
	– Administration (includes polls, office expenses, salary, telephones, etc.)	411,604	486,468
	– Communication[1]		
	-Radio and TV broadcast time	805,094	661,217
	-Advertising production and consulting	180,000	96,021
	-Newspaper advertising	28,215	104,774
	-Billboards		66,973
	-Printing and mailing of campaign literature	37,260	80,735
	Total communication expenditures	1,050,569	1,009,720
	– Expenditures by party committees[2]	43,704	
	Total expenditures subject to limit	1,505,877	1,496,188
	C. Total campaign expenditures	$1,667,348	$1,642,017

(1) These amounts reflect the distribution of public funds expended.
(2) These expenditures were made from funds raised by the party committees and not by the Byrne campaign.

Table II Summary of 1973 Gubernatorial General Election Financing

		Byrne [D]			Sandman [R]		
		Amount	Number of Cont'ns.	Average Amount	Amount	Number of Cont'ns.	Average Amount
Contributions	$100 or less	$ 213,971	approx. 5,000	$ 43	$ 95,780	2,787	$ 34
	$101 – $600	380,568	approx. 900	423	165,121	571	289
	Sub total	594,557	5,900	101	260,901	3,358	78
	$601 and over	639,546	301	2,125	254,655	116	2,195
	Loans (repaid)	435,000	(435,000)		207,000	(105,682)	
	Party Committee Contributions	202,889			58,000		
	Total Funds Available	$1,436,992	6,201		$674,874	3,474	

		Byrne [D]	Sandman [R]
Expenditures	A. Expenditures exempt from limitation		
	– candidate's travel	$ 19,233	$ 42,209
	– Food and Beverage fundraising events	67,982	86,356
	Total expenditures exempt from limitation	$ 87,215	$ 128,565
	B. Expenditures subject to limit		
	– Administration (includes polls, office expenses, salary, telephones, etc.)	555,353	222,860
	– Communication		
	-Radio and TV broadcast time	353,906	not
	-Advertising production and consulting	161,509	
	-Newspaper advertising	62,275	available
	-Billboards	67,530	
	-Printing and mailing of campaign literature	145,991	
	Total Communication expenditures	791,221	365,563
	Total expenditures subject to limit	1,346,564	588,423
	C. Total campaign expenditures	$1,433,779	$ 716,988

Table III 1977 General Election Public Matching Fund Payments

Date of Payment		Byrne	Bateman
Aug.	2	$147,965	$83,036
	16	51,330	51,116
	30	28,486	191,262
Sept.	12	53,530	217,394
	20	115,790	42,513
	27	59,058	73,048
Oct.	4	63,148	39,191
	11	85,580	65,332
	18	145,386	47,738
	25	100,002	65,754
Nov.	1	121,005	96,738
	9	45,888	18,660
	17	33,401	26,215
Dec.	10	—	2,250
	Total	1,050,569	1,020,247

Table IV Summary of 1977 Gubernatorial Primary Election Financing— Contributions to Major Party Winners*

Byrne [D]	Amount	No. of Cont'ns.	Avg. Amt.
$100 or less	$131,884	2,233	$59
$101-$600	211,607	644	329
$601 and over	216,133	119	1,816
Subtotal	559,624	2,996	187
Loans (repaid)	192,500	(158,500)	
Total funds Available	593,624		

Bateman [R]	Amount	No. of Cont'ns.	Avg. Amt.
$100 or less	$157,807	3,283	$48
$101-$600	328,330	635	517
$601 and over	268,329	181	1,482
Subtotal	754,466	4,099	184
Loans (repaid)	230,000	(20,000)	
Total funds Available	964,466		

*Based on contributions received during 1977

Table V Loans and Contributions of $5,000 or More Made for Purposes of the Primary to 1977 Primary Winners as of January 1, 1978

BATEMAN

	Loans	Contributions (Not including loans)
Raymond H. Bateman	$ 20,000	
Nicholas F. Brady	20,000	$ 3,000
Stuart Coven	10,000	2,000
Melville P. Dickenson, Jr.	10,000	1,275
C. Douglas Dillon	20,000	3,000
Mrs. Charles W. Engelhard, Jr.	10,000	3,000
Millicent Fenwick	10,000	3,000
Leon Hess	10,000	3,000
Raymond L. Hughes	10,000	3,155
John F. Inganamort	10,000	6,526
J. Seward Johnson		6,000
Walter Mannheimer	10,000	3,000
William Marfuggi	10,000	3,000
Harry Richardson, Jr.	10,000	1,500
Richard B. Sellars	20,000	3,000
Sledgers-Forbes, Inc.	10,000	3,000
William F. Taggart	20,000	371

BYRNE

	Loans	Contributions (Not including loans)
Atlantic City Racing Association		$ 5,000
Edward Barr	$ 5,000 (repaid)	1,000
Bergen County Associates		5,000
Mr. Charles W. Engelhard, Jr.	20,000 (forgiven)	20,000
Adrian M. Foley	25,000 (repaid)	350
Martin S. Fox	10,000 (repaid)	5,000
Milton Gilbert	5,000 (repaid)	5,000
John Hanson	5,000 (repaid)	
Bernard Hellring		6,000
Leon Hess		20,000
Eugene Jacobsen	5,000 (repaid)	1,000
Mack Properties Co. #3		5,000
Alan Sagner	50,000 (5,000 forgiven) (45,000 repaid)	
David M. Satz, Jr.	10,000 (repaid)	5,075
Seaboard Properties		5,000
Joel Sterns	5,000 (repaid)	750

Table VI
Economic Interest Contributions—1977 General Election for Governor

Tobacco and Candy Distributors

Forty-two tobacco and candy distributors made identical contributions to the Byrne and Bateman campaigns. Checks for $100 from each of the distributors were delivered as a group, or a $4,200 contribution to both campaign committees.

Dairies

Contributions from eleven dairies for the Byrne and Bateman campaigns were received by the New Jersey Milk Industry Association and subsequently forwarded as a group to the candidates' committees. Governor Byrne received $2,175 and Senator Bateman $2,575 in contributions forwarded by the Association.

Food Retailers

During the 1977 campaign the Food Council Committee for Good Government, the political action committee of the New Jersey Food Council, contributed $600 to both the Byrne and Bateman campaigns and $250 to the Byrne Inaugural Committee. In 1973 this committee contributed $3,000 to Byrne and $2,500 to Sandman. Four corporations, Foodarama Supermarkets, Johanna Farms, Tuscan Farms, and Wakfern Food Corp., supported the Food Council Committee and made contributions directly to the Byrne campaign. Another corporation, Supermarkets General, which supported the Food Council Committee, gave $600 to both Governor Byrne and Senator Bateman. This corporation, which in 1973 gave $6,000 to Governor Byrne, also made a $5,000 contribution to the 1978 Byrne Inaugural Committee.

Automobile Dealers

In the 1973 general election the New Jersey Committee of Automotive Retailers (N.J. CAR) contributed $10,000 each to Brendan Byrne and Representative Charles Sandman and $34,150 to legislative candidates. In 1977 the committee gave $37,600 to legislative candidates and $600 each to Governor Byrne and Senator Bateman. Additionally, a number of individual dealerships made their own direct contributions.

Governor Byrne's primary campaign received a total of $6,625 from seventy-six individual dealerships and all of these contributions were received on two dates, May 25 and June 15. During the general election period the auto dealers gave equivalent support to the Bateman campaign. Senator Bateman received $6,515 from thirty-two dealers, most of which was contributed in the last week of October.

Economic Interest Contributions—1977 General Election for Governor

Real Estate

The Real Estate Political Action Committee (REPAC) contributed $5,000 to Governor Byrne's 1973 election campaign and $12,050 to legislative candidates. The committee made an increased effort in behalf of the legislative candidates in 1977 by contributing $43,700 to their campaigns while only $600 was contributed to both Governor Byrne and Senator Bateman.

Insurance

There were no contributions to Governor Byrne's 1977 campaign from political action committees of the insurance industry which in 1973 had given him $1,250. Four committees representing the industry gave a total of $1,850 to Senator Bateman and nearly one hundred and fifty individual insurance agents contributed $14,690 directly to his campaign. The committee contributions to Bateman are listed below:

Insurance Brokers Association of N.J.	$600
Independent Insurance Agents of N.J.	$250
N.J. Professional Insurance Agents PAC	$600
Bergen County Association of Independent Insurance Agents	$400

Labor Organizations

PBA and Retail Clerks

To ensure the integrity of the $600 contributions limit, the Commission, in its public financing regulations established guidelines for affiliated organizations making contributions to a gubernatorial candidate. The regulation (N.J.A.C. 19:25-15.12d) states that "a corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or local organization shall not make any contribution or contributions to or in behalf of a candidate which, when added to all such contributions by every related or affiliated corporation, association or labor organization, exceed $600 in the aggregate, **unless such contribution or contributions are independently made**" (Emphasis added). The criteria for establishing independence is related to such factors as the degree of control by the parent organization over the subsidiary unit, the source and control of funds used for the contribution, and the degree to which the decision to contribute is an independent decision.

During the 1977 general election campaign the Commission permitted contributions to the Byrne campaign from affiliated units of the Policemen's Benevolent Association and the Retail Clerks International Association based on statements signed by representatives of the contributing units

that each contribution met the requirements of the regulations. The result of this independent yet coordinated giving by units of the Retail Clerk's Active Ballot Club was seven contributions totalling $3,050. The New Jersey State PBA contributed the maximum $600, but also hosted a fund-raising affair for the Byrne for Governor Committee to which sixty-one units of the PBA purchased tickets totalling $6,515. In connection with this fund-raising effort the PBA president stated that "No local was required to purchase tickets and the decision to purchase tickets was made by the officers of the respective locals. No funds were provided to the local unions to purchase tickets and the locals that purchased tickets did so from their own funds. Each PBA local in this state is an independent unit and acted independently in contributing to the Governor's campaign."

The PBA used a similar method of contributing to Byrne during the primary campaign. In addition to the $1,300 given by the New Jersey State PBA, thirty-six units made contributions on May 12 and 27 which totalled $4,600.

UAW

In 1973, the United Auto Workers through its Community Action Program contributed $5,400 to Byrne and $7,030 to other New Jersey candidates. In 1977 their contribution to Byrne was $500, and $20,406 was contributed to others, including nearly $11,000 which went to the Democratic State Committee.

NJEA and AFSCME

The New Jersey Education Association Political Action Committee contributed $250 to the 1973 Byrne election campaign and nearly $10,000 to 1973 candidates for the State Senate and Assembly. In 1977 NJEA gave $600 to Byrne's general election campaign and almost $17,000 to the legislative candidates.

The national organization of the American Federation of State, County and Municipal Employees in Washington, D.C. contributed $5,000 to Byrne in 1973, but made no contribution to his 1977 campaign. AFSCME did, however, contribute $10,000 to the Democratic State Committee and, as was noted in an earlier section on independent expenditures, participated in a combined effort with others, including the National Education Association which is affiliated with NJEA, in the Coalition of American Public Employees (CAPE) which spent almost $11,000 in behalf of the Byrne campaign.

Table VII Votes Cast for Candidates for Governor - 1973 & 1977

1973 General Election

	Votes Cast	% of total votes cast
Brendan T. Byrne	1,397,613	66.4
Charles W. Sandman, Jr.	676,235	32.1
A. Howard Freund	6,412	.3
Alfred V. Colabella, Jr.	5,088	.2
Robert Clement	4,249	.2
John A. Goodson	3,071	.2
James J. Terlizzi	2,670	.1
Stanley Knis	2,108	.1
Kenneth Newcomb	2,008	.1
Angelo S. Massaro	1,898	.1
Jack D. Alvino	1,843	.1
George Gilk	1,814	.1
	2,105,009	100

Registered voters 1973 – 3,541,809
Ballots cast in the 1972 Presidential Election – 3,030,496

1977 General Election

	Votes Cast	% of total votes cast
Brendan T. Byrne	1,184,564	55.7
Raymond H. Bateman	888,880	41.8
Frank W. Flowers	8,677	.4
Chester Grabowski	8,494	.4
Frank J. Primich	5,674	.3
Chauncey E. McSpirit	4,464	.2
Paul B. Rizzo	3,691	.2
Richard D. McAleer	3,688	.2
John F. Donato	3,189	.1
Angelo S. Massaro	3,031	.1
William Zsidisin	2,947	.1
Julius Levin	2,276	.1
Jasper C. Gould	2,248	.1
Leif Johnson	1,601	.1
Robert A. Ganteaume	1,480	.1
Bill Gahres	1,333	.1
	2,126,237	100

Registered voters 1977 – 3,656,394
Ballots cast in the 1976 Presidential Election – 3,037,151

Source: Results of the General Election 1973 and 1977, Secretary of State, State of New Jersey

Table VIII 1977 Primary as a Model for Public Funding

Candidate Name	1977 Primary Contributions of $600 or Less	(1) Total Amount Actually Available for 1977 Primary	(2) Total Available Under Proposed Plan	(3) Public Funds Received Under Proposed Plan
William Angus (R)	$ 8,299	$ 24,227		
Raymond Bateman (R)	486,137	964,466	$1,093,567	$ 607,430
Thomas Kean (R)	214,789	577,458	564,367	349,578
Robert Sarcone (R)	45,958	189,468	57,874	11,916
Brendan Byrne (D)	343,491	593,624	950,473	606,982
Paul Jordan (D)	159,630	297,932	398,890	239,260
Robert Roe (D)	270,352	1,009,389	731,056	460,704
Joseph Hoffman (D)	201,740	333,905	525,220	323,480
James Florio (D)	138,533	269,101	335,599	197,066
Thomas Kean (R)	214,789	577,458	564,367	349,578
Ralph DeRose (D)	119,906	389,227	279,718	159,812
Raymond Garramone (D)	43,076	73,876	49,228	6,152
Emery Zold (D)	2,745	29,745		
			Total Cost	$2,962,380

(1) Based on reports filed through January 1, 1978; these figures include loans which remained outstanding on that date. The total cost of the primary (which includes outstanding obligations) was nearly $5.2 million including approximately $3.4 million spent or owed by Democratic candidates and $1.8 million by Republicans.

(2) Determined by adding the amount of 1977 primary contributions of $600 or less actually received and the public funds each candidate would have received if the public financing plan proposed by the Commission had been in effect.

(3) Determined by subtracting $40,000 (unmatched threshold) from the amount of 1977 primary contributions of $600 or less actually received and multiplying the difference by 2 (2 for 1 match). Only Bateman would have reached the maximum public funding of $607,430 (based on 20¢ per New Jersey voter in the preceding presidential election).

Table IX Contributors of $5,000 or More to Byrne Inaugural Committee

Peter Levine	$14,419
Hartz Mountain Industries	10,000
Sills, Beck, Cummis, Radin & Tischman	7,025
Domenico Bus Service	5,750
Ace Alagna	5,350
CBA Industries Inc.	5,000
Eastern Airlines	5,075
Essex County Democratic Comm.	5,000
Johnson & Johnson	5,000
Jack Kraft	5,000
Marriott Corp.	5,000
Smith, Barney, Harris Upham & Co.	5,000
Supermarkets General Corp.	5,000

found between p. 24 - 25

N.J. Elections Law Enforcement Cmssn → charged w/ administration of Public financing

↓ public f. law also
- limits loans
- " expenditures by munic. + cty. pol. party ctes in behalf of gubernatorial candidate
- limits on use of public funds
- provides free public t.v. broadcast time
- mailing at public expense of a statement by each candidate in the general election to all registered voters

→ 1977 N.J.'s ~~first~~ gubernatorial election = 1st+ publicly financed

→ 2 major party nominees only ones who qualified for financing

→ Public funds = 65% of Byrne's money
62% " Bak.'s "

- reliance on FEC advice in developing administrative procedures

- development of computer programs to enable public f. staff to monitor contributions submitted by campaigns, assistance of Treasury's Dev. of D.P. + Telecommunications