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Comments

CALIFORNIA'S NEW LOBBY CONTROL ACT

As the outcome of extra sessions of its legislature in 1949 and 1950, California has a comprehensive lobby control law for the first time in its hundred year history.¹ The impetus for this legislation was general indignation as a result of nationwide publicity of the activities of Arthur H. Samish, representative for the California State Brewers'

¹ For a history of lobbying see Herring, *Lobby* in 9 ENCYC. SOC. SCI. 565 (1933).

Pressure politics have existed in California from its beginnings as a state, the activities of the lobbyists in the first legislature in San Jose in 1850 causing it to be known as the "legislature of a thousand drinks." CROUCH AND McHENRY, CALIFORNIA GOVERNMENT 55 (1949). This name reputedly resulted from the practice of one Thomas Jefferson Green, Senator from Sacramento, who was always ready to distribute hard liquor in staggering quantities and customarily invited everybody out for a drink after each session saying, "Come on, boys, let us take a thousand drinks." O'Brien, *The Legislature of 1000 Drinks*, S. F. Chronicle, Dec. 19, 1949. By 1870 the railroad monopoly reigned supreme, controlling everything from political parties to governor and legislators. ANDERSON, CALIFORNIA STATE GOVERNMENT 139 (1942). This domination terminated in 1910 when Progressive forces took control. Shortly thereafter there appeared a new lobby consisting of the representatives of hundreds of diverse interests, and today, every session is besieged by some thousand or more "legislative representatives" of pressure groups seeking to influence the course of legislation. ANDERSON, *op. cit. supra*, at 131; COMMONWEALTH CLUB, THE LEGISLATURE OF CALIFORNIA 339-340 (1943).

Institute.² Governor Warren used this opportunity to induce a not overly-enthusiastic legislature to enact a law which he states "will put California in the forefront of those states that have enacted lobby legislation."³

The history of the new legislation is worth more than the brief glimpse that can be given here. Governor Warren presented the 1949 extra session with a strong bill, but immediate opposition developed, outwardly to a section which would have prohibited lawyer-legislators from practicing before state agencies, and the bill was defeated.⁴ For want of a better alternative, the legislature enacted three modified versions of the Federal Regulation of Lobbying Act, one of which, the "Collier bill," was signed by the governor.⁵ The governor characterized the legislation as "half a loaf" and made lobby control one of the purposes of his call of the 1950 extra session.⁶ Between sessions an interim committee developed a completely new approach known as the "Erwin bill."⁷ After Governor Warren made known his opposition, the Senate rewrote the bill as a series of amendments to the 1949

² Interest in Samish was provoked by two sensational articles in *Collier's* which purported to reveal him as the "secret boss" of the California legislature. Velie, *The Secret Boss of California*, *Collier's*, Aug. 13, 20, 1949; Velie, *Boss of California*, *Reader's Digest*, Nov. 1949, p. 103; 95 Cong. Rec. 11815 (Aug. 16, 1949). The one-day legislative investigation which followed showed either that Samish was a master of evasiveness or that the committee was not anxious to delve too deeply. Samish characterized the *Collier's* articles as "clowning and nonsense," denied that he is the "secret boss," but admitted that he directs the policy and acts as "lobbyist" for the California State Brewers' Institute which he described as an organization of "terrific strength." The *Collier's* articles attributed the following statement to Governor Warren: "On matters that affect his clients, Artie unquestionably has more power than the governor." See *Hearings Held by Assembly Committee on Governmental Efficiency and Economy on Investigation of Arthur H. Samish* (1949); Behrens, *Artie Samish Inquiry Flops*, S. F. Chronicle, Nov. 10, 1949, p. 1. Samish was investigated once before, in 1937-1938, by the Sacramento county grand jury. PHILBRICK, LEGISLATIVE INVESTIGATIVE REPORT (1938).

³ S. F. Chronicle, May 4, 1950, p. 6; *Id.*, Mar. 28, 1950, p. 4. Since the other state laws are inadequate, being "in the forefront" is not necessarily praiseworthy. See text at note 25, *infra*. The senate showed considerably more willingness to adopt strong legislation than the assembly.

⁴ A. B. 30, S. B. 7, Extra Sess. (1949). See Behrens, *The Legislature*, S. F. Chronicle, Dec. 14, 1949, p. 1. The senate version passed each house without the lawyer-legislature provision; however the assembly added a crippling amendment which in effect made the bill apply to no one. The bill was killed when the assembly adjourned without awaiting the report of a conference committee. See Behrens, *Lobbyist Control*, S. F. Chronicle, Dec. 23, 1949, p. 1; Assembly Daily J., Extra Sess. 414, 417 (Dec. 21, 1949). It was reported in the press that the passage of the governor's bill in the senate panicked the assembly into passing the three measures which were presented to the governor. Behrens, *Maneuver Nearly Blocked State Lobby Control Bill*, S. F. Chronicle, Dec. 25, 1949, p. 6.

⁵ A. B. 2, 4 and 5, Extra Sess. (1949). A. B. 5 was signed and became Cal Stats., Extra Sess. 1949, c. 4. All copied the federal act with minor changes to fit local conditions.

⁶ Behrens, *Lobbyist Control*, S. F. Chronicle, Dec. 23, 1949, p. 1.

⁷ A. B. 74, First Extra Sess. (1950). The committee report can be found in Assembly Daily J., First Extra Sess. 373 (Mar. 20, 1950).

law. Conference committees weakened the bill and finally, a much amended Erwin bill and several strengthening amendments to the Collier bill were enacted and signed by the governor.⁸

These events make this a propitious time to examine the problems of lobby control as they relate to California.⁹

Considerations in Lobby Control

The principal cause of the existence of the lobby is the political necessity of functional group representation, for which no provision is made in our constitutions, under which legislators are elected on a geographic basis. A major factor is the growing complexity of legislative problems as government intrudes into virtually all fields of activity. This has been augmented in California by the contemporaneous decline in effectiveness of the political parties, accelerated by the cross-filing system.¹⁰ The end result is that "group representation

⁸ The Erwin bill is Cal. Stats., First Extra Sess. 1950, c. 66. Three Collier amendments, A. B. 41, 104 and 106, became Cal. Stats., First Extra Sess. 1950, cc. 68, 67, 69. A. B. 106 was signed after A. B. 74 and has the effect of amending it in part.

Other lobby control measures introduced at the extra sessions include: A. B. 9, 20, 29, 44, 52, 58; S. B. 6, Extra Sess. (1949); A. B. 2, 11, 42, 43, 103, 105, 124 and 135, First Extra Sess. (1950). Of these only A. B. 29, adding CAL. GOVT. CODE § 9056, became law. Cal. Stats., Extra Sess. 1949, c. 5. It outlaws "cinch bills" (measures introduced for the purpose of obtaining money to kill or pigeonhole them).

A 1949 resolution banned Samish "forever" from further appearances before the legislature. S.C.R. 11, Extra Sess. (1949). Samish has not appeared before committees for many years, so this was appropriately described by one writer as "dust in the public eye." Delaplane, *Samish Unagitated by Bar*, S. F. Chronicle, Dec. 22, 1949, p. 1.

⁹ The broad field of lobbying and pressure activities has been extensively studied. For convenience a bibliography follows: ANDERSON, CALIFORNIA STATE GOVERNMENT (1942); BLAISDELL AND GREVERUS, ECONOMIC POWER AND POLITICAL PRESSURES (1941); BLAISDELL, GOVERNMENT UNDER PRESSURE (1942); BURNS, CONGRESS ON TRIAL (1949); Cantwell, *Public and the Legislative Process*, 40 AM. POL. SCI. REV. 924 (1946); CHASE, DEMOCRACY UNDER PRESSURE (1945); COMMONWEALTH CLUB, THE LEGISLATURE OF CALIFORNIA (1943); CRAWFORD, THE PRESSURE BOYS (1949); Dillon, *Pressure Groups*, 36 AM. POL. SCI. REV. 471 (1942); GALLOWAY, CONGRESS AT THE CROSSROADS (1946); HERRING, GROUP REPRESENTATION BEFORE CONGRESS (1929); KEFAUVER, A TWENTIETH-CENTURY CONGRESS (1947); KEY, POLITICS, PARTIES AND PRESSURE GROUPS (1946); LASSWELL, PROPAGANDA AND PROMOTIONAL ACTIVITIES (1935); *Lobbies and Pressure Groups*, 195 ANNALS (1938); Logan, *Lobbying*, 144 ANNALS (Suppl.) (1929); MCKEAN, PRESSURES ON THE LEGISLATURE OF NEW JERSEY (1938); MOSCOW, POLITICS IN THE EMPIRE STATE (1948); MULLER, LOBBYING IN CONGRESS (1942); ODEGARD & HOLMES, AMERICAN POLITICS (1947); SCHATTSCHEIDER, POLITICS, PRESSURE, AND THE TARIFF (1935); VOORHIS, CONFESSIONS OF A CONGRESSMAN (1947); Zeller, *Lawmaker—Legislator or Lobbyist?*, 29 NAT. MUNIC. REV. 523 (1940); Zeller, *Modern Pressure Groups*, 29 AM. LAB. LEG. REV. 152 (1939); Zeller, *Pressure Groups and Our State Legislatures*, 11 STATE GOVT. 121, 144 (1938); ZELLER, PRESSURE POLITICS IN NEW YORK (1937); Comments, 47 COL. L. REV. 98 (1947); 56 YALE L. J. 304 (1947).

At the present time the House Select Committee on Lobbying Activities is making an extensive survey to obtain a clear picture of the extent to which lobbies of all sorts seek to influence legislative action by Congress. See 96 CONG. REC. A114 (Jan. 9, 1950).

¹⁰ McHenry, *Cross-Filing of Political Candidates in California*, 248 ANNALS 226 (1946); See MCKEAN, *op. cit. supra* note 9, at 237; CHASE, *op. cit. supra* note 9, at 9; HERRING, *op. cit. supra* note 9, at 240; Schattschneider, *Pressure Groups versus Political Parties*, 259 ANNALS 17 (1948); Comment, 56 YALE L. J. 304, 305 (1947).

through the lobby has obviously become as much a part of the democratic process as the political party."¹¹ In addition to the providing of group representation, the lobby also performs other services, furnishing specialized technical advice and information, legislative experience, as well as many of the ideas for legislation.¹²

Certain drawbacks accompany the performance of these useful functions. Every session of the legislature is beset by hundreds of lobbyists, each seeking to protect some small segment of the economy or to further some narrow interest. Most are only concerned with protecting their employers from unfair legislation, or pushing legislation favorable to some narrow interest. Groups such as the League of Women Voters whose interests more nearly coincide with the welfare of the state as a whole are scarce. It is inevitable that even legitimate groups pressing their contentions may present biased information. This together with the under-representation of some groups makes it difficult for the legislature to discover real majority opinions and legislate in the public interest.¹³

The influence of lobbyists should not be underestimated. They are selected for their ability to make friends and persuade, as well as for their technical knowledge. Some spend lavishly for entertainment and hospitality which underpaid legislators away from home can hardly be expected to refuse. Inevitably they build a tremendous reservoir of good will and, considering the likelihood that legislators are indifferent to many bills and will vote to please a friend, such lobbying must be extremely effective.¹⁴

A few lobbyists, outwardly undistinguishable from the others, represent groups which serve as fronts or which are organized on paper only; "... many an organization begins with no more than an ambitious man, otherwise unemployed, who has an idea for some group, who sets up the association and becomes its secretary."¹⁵

¹¹ GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH FOR THE N. J. CONST. CONVENTION, *THE LEGISLATURE: LOBBYING* 3 (1947).

¹² COMMONWEALTH CLUB, *op. cit. supra* note 1, at 338; ANDERSON, *op. cit. supra* note 1, at 131-132; Lane, *Notes on the Theory of the Lobby*, 2 WESTERN POL. Q. 154, 157 (1949).

¹³ COMMONWEALTH CLUB, *op. cit. supra* note 1, at 337; Parkman, *Lobbies and Pressure Groups: A Legislator's Point of View*, 195 ANNALS 95, 101 (1938); SEN. REP. NO. 1400, 79th Cong., 2d Sess. 4 (1946).

The over-representation of some groups and under-representation of others is unavoidable with an extra-legal system of group representation. As a result the legislature and public are left without balanced information. ZELLER, *PRESSURE POLITICS IN NEW YORK* 251 (1937).

¹⁴ ANDERSON, *op. cit. supra* note 1, at 175. Samish testified he spent from \$2000 to \$3000 a month for entertainment. *Hearings, supra* note 2, at 57. The *Collier's* articles quoted him as saying: "I can tell if a man wants a baked potato, a girl, or money." Vellie, *supra* note 2.

Query: What will be the result of the recent increase in pay to \$3600 per year?

¹⁵ MCKEAN, *op. cit. supra* note 9, at 134; BLAISDELL, *GOVERNMENT UNDER PRESURE* 22 (1942). A congressman from Texas likened such groups to coyotes in that they

Legislators lack information as to membership, organizational structure and extent of participation of rank and file in the legislative policies of the group, thus making evaluation exceedingly difficult.¹⁶

Finally there is the notorious minority largely responsible for the disrepute of the lobby. They not only have copious funds but spend them in such a way as to create suspicion. Actual bribery is probably rare, yet no session passes without rumors of its use. Large sums are spent on campaign contributions or disguised as fees paid for the "services" of legislators. It is difficult to draw the line between compensation for legitimate services and improper activities as few legislators are financially able to divorce themselves from their previous occupations or professions.¹⁷

All control legislation to date, including the new California act, centers on the lobbyists and practically ignores the groups behind them. For the legislation to succeed there should be some procedure to bring the groups into the open so that the legislature and public can evaluate their conflicting claims. This necessitates periodic reports disclosing membership, methods of determining policy, source of funds, and perhaps financial and other activities. The information must be compiled and released for legislative and public scrutiny. The lobbyists can be reached by requiring registration and periodic reports of activities. Past lobby control efforts have been based on a premise that disclosure and publicity alone will be beneficial,¹⁸ but a

"howl in divers keys and discords so that the listener is unable to tell whether it is one coyote or a dozen." HERRING, *op. cit. supra* note 9, at 244. The same organization may function under a variety of names. GRAVES, ADMINISTRATION OF THE LOBBY REGISTRATION PROVISION OF THE REORGANIZATION ACT OF 1946, 10 (1949).

¹⁶ Jones, *The Proposed Congressional Lobbying Investigation*, 35 A. B. A. J. 590 (1949); Schattschneider, *Pressure Groups versus Political Parties*, 259 ANNALS 17, 19 (1948); see McKEAN, *op. cit. supra* note 9, at 132-133.

¹⁷ ANDERSON, *op. cit. supra* note 1, at 133, 137, 165; PHILBRICK, *op. cit. supra* note 2, at I-3, I-4, I-7.

Samish reportedly had in excess of \$97,000 over one four-year period from one client-industry as a political fund which he could spend without accounting. *Id.* at I-6. Recently he admitted that he had been "very liberal" in directing the spending of his clients' money. *Hearings, supra* note 2, at 57.

In 1936, a year when there was a chain store referendum, the California Chain Store Association mailed checks of from \$100 to \$700 to fifty-seven candidates for the legislature. Forty-four accepted the checks, of whom twenty were elected. Interestingly enough, though the association filed the report required by corrupt practices legislation, only one candidate reported the receipt. No action was taken against the others. PHILBRICK, *op. cit. supra* note 2, at V-6, V-11.

There are reported instances of one assemblyman who accepted \$58,233 and another who accepted \$26,437 from various interests over a four year period as "legal retainers." *Id.* at I-4.

¹⁸ This premise seems to be generally accepted, yet should be subjected to further analysis. A disclosure law burdens lobbyists and their employers by requiring reports which have among their purposes making it possible for legislators to evaluate the lobby, improving the practices and standards of the lobby, and uncovering "reprehensible" lobbyists. Full information about membership may help some legislators to evaluate the lobby, yet it is probable that many sophisticated legislators find such in-

good law could do more. Minimum standards and limits of activity might be prescribed and enforced. For example there could be a rule against representing employers whose interests are adverse. The constant probing and reporting of a legislative committee would tend to discourage objectionable activities. Whatever form the law takes it should be "some equitable rule which curbs the corrupt, the deceptive, and the predatory, and still leaves ample opportunity for the legitimate spokesman of a group to represent his organization unhampered by red tape."¹⁹

Along with the regulatory legislation, there should be penal statutes punishing those practices thought to be reprehensible, such as the more serious forms of money pressure. Even if prosecutions under such statutes are rare, their existence tends to set standards for all but the corrupt few. But they will serve no purpose unless there is some machinery whereby suspected violations are investigated and offenders prosecuted.

The Pattern of Lobby Control

Control efforts have accompanied the growth of the lobby and concurrent abuses of its power. Proposals for restraining the lobby other than control legislation are beyond the scope of this comment,²⁰ as are problems relating to initiatives and referendums.²¹ The courts

formation unnecessary. It is questionable that disclosure alone will change the practices and standards of the lobby. Finally, "reprehensible" lobbyists will certainly take full advantage of loopholes in the law and may not even be affected.

¹⁹ HERRING, *op. cit. supra* note 9, at 258.

²⁰ The most drastic method would be to eliminate the major function of the lobby by providing for functional representation, a remedy which appears worse than the disease. See Comment, 56 YALE L. J. 304, 305 and n. 8 (1947).

A partial solution would be to lessen the need for reliance on the lobby. KEFAUVER, *op. cit. supra* note 9, at 153. Legislative burdens lower the resistance to the lobby, making it doubtful that the legislature could even function without it. *Id.* at 155-156; ANDERSON, *op. cit. supra* note 1, at 141. Perhaps if the legislature were provided with adequate research facilities much of the dependence on the lobby would vanish. This was one reason for the Federal Legislative Reorganization Act of 1946, which included the Federal Regulation of Lobbying Act. 60 STAT. 812 (1946); Comment, 56 YALE L. J. 304, 306 and n. 9 (1947). Better pay and retirement provisions might make the legislature more independent and destroy the temptation of money pressure. KEFAUVER, *op. cit. supra* note 9, at 169. Whether the recent raise in pay of the California legislators to \$3,600 per year will have any effect remains to be seen. Conscientious enforcement of statutes limiting campaign expenditures and requiring disclosure might help to control the money pressure of campaign contributions and their accompanying moral obligations. The present law lacks adequate machinery for enforcement. See COMMONWEALTH CLUB, *op. cit. supra* note 1, at 343; CAL. ELECTIONS CODE §§ 4500-4651; text at note 17 *supra*. It has been urged that strong parties with comprehensive programs and party discipline could decrease the influence of the lobby; equally they might have the effect of causing the lobby to practice before the party units, removing it one step from the legislature. Pressure groups are responsible only to their own organizations, while the party organization in theory at least is responsible to the voters. See Dodds, *The Public's Responsibility for Legislation*, 24 NAT. MUN. REV. 200, 201 (1935).

²¹ See CAL. ELECTIONS CODE §§ 4750-4862.

early recognized that certain lobbying practices were against public policy; however, lobbying as such was found to be legitimate, and lobbying contracts were generally upheld where there was no showing of dishonesty, secrecy or other unfair conduct.²²

Statutory regulations, in addition to the nearly universal prohibition of bribery, have been attempted in thirty-five states and Alaska. Ten states²³ have limited their legislation to penal statutes forbidding specified lobbying practices such as obtaining money to corruptly influence a member of the legislature; these are seldom invoked and are completely inadequate. Twenty-four jurisdictions have enacted statutes requiring the registration of lobbyists, their employers or both.²⁴ To some extent registration varies inversely with the amount

²² *E.g.* *Miles v. Thorne*, 38 Cal. 335 (1869); *Foltz v. Cogswell*, 86 Cal. 542, 25 Pac. 60 (1890). *But cf.* *Le Tourneau v. Gilliss*, 1 Cal. App. 546, 82 Pac. 627 (1905). See 14 B. U. L. REV. 834 (1934), 2 CALIF. L. REV. 499 (1914); 15 CALIF. L. REV. 344 (1927).

²³ Alabama, Arizona, Louisiana, Missouri, Montana, Oregon, Tennessee, Texas, Utah and West Virginia. BOOK OF THE STATES 135 (1950-1951). These statutes are similar to the California provisions forbidding the soliciting of money to improperly influence the legislature. CAL. CONST. ART. IV, § 35; CAL. GOVT. CODE § 9054. No criminal appellate cases have been found covering violations of these laws, but a few cases construing the legality of contracts to lobby have referred to them, *e.g.* *Le Tourneau v. Gilliss*, *supra* note 22.

In 1929 the California senate adopted a rule requiring registration of persons appearing for the purpose of advocating the adoption or defeat of any measure. The assembly adopted a similar rule in 1937. Members of the legislature, elected state officials and individuals appearing on their own behalf were exempt. Similar rules have been adopted by subsequent houses. Standing Rules of the Senate No. 56 (1949); Assembly Standing Rules No. 21 (1949). Enforcement has been lax in both chambers. COMMONWEALTH CLUB, *op. cit. supra* note 1, at 343. Other states have similar rules. Colo. House Rule No. XXXI (1947); Fla. House Rule No. 75; Iowa House Rule No. 62; Tex. House Rule No. VII, § 41 (1947).

²⁴ Most of these statutes are compiled in a mimeographed document prepared by the Legislative Counsel of the State of California for the Assembly Committee on Governmental Efficiency and Economy entitled FEDERAL AND STATE LAWS ON LOBBYING (Dec. 1949). For convenience a list follows: ALASKA COMP. LAWS §§ 35-2-181 to 35-2-193 (1949), as amended by Alaska Laws 1949, c. 6; CONN. GEN. STAT. § 40 (1949); GA. CODE §§ 47-1001 to 47-1006 (1933); IND. STAT. §§ 34-301 to 34-309 (Burns, 1933); KANS. GEN. STAT. §§ 46-201 to 46-210 (1935); KENT. REV. STAT. §§ 6.990 (1942); ME. REV. STAT. c. 9, §§ 40-45 (1944); MD. ANN. CODE Art. 40, §§ 4-13 (Flack, 1939); MASS. ANN. LAWS c. 3, §§ 39-50 (1944); MICH. COMP. LAWS §§ 4.401-4.410 (1948); MISS. CODE §§ 3366-3373 (1942); NEBR. REV. STAT. §§ 50-301 to 50-307 (1943) as amended by Nebr. Laws 1945, c. 123; N. H. REV. LAWS c. 9, §§ 27-32 (1942); N. Y. CONS. LAWS Bk. 31, § 66 (1917); N. C. GEN. STAT. §§ 120-40 to 120-47 (1943) as amended by N. C. Sess. Laws 1947, c. 891; N. D. REV. CODE §§ 54-0501 to 54-0510 (1943); OHIO CODE ANN. §§ 6256-1 to 6256-8 (Throckmorton's 1940); OKLA. STAT. tit. 21, §§ 313-320 (1941); R. I. GEN. LAWS c. 305 (1938); S. C. CODE LAWS § 2070-1 (1942); S. D. CODE §§ 55.0701-55.0707 (1939); VT. STAT. §§ 419-423 (1947); VIRG. CODE §§ 30-20 to 30-28 (Michie, 1950); WISC. LAWS 1947, c. 609.

For a representative view of the variety and content of the statutes see those of Indiana, Massachusetts, Vermont and Wisconsin.

Florida and Idaho are listed in BOOK OF THE STATES 135 (1950-1951), as having lobby control laws but seem misclassified. The Florida law merely allows a legislative committee to require a witness to state under oath whether he is being compensated and by whom. FLA. STATS. § 11.05 (1941). Idaho requires persons employed to influence the legislature to file two copies of briefs, statements and addresses with the secretary of state. IDAHO CODE § 18-4707 (1947).

of the license fee. For example, in 1947, Wisconsin with a \$10 fee had over nine hundred registrations, while Georgia with a \$250 fee reported no registrants. Eighteen jurisdictions require financial statements from lobbyists, employers, or both, in addition to registration. Financial reports which have been filed show limited expenditures and vague and incomplete income figures. Although there is no objective criterion for evaluation of compliance, with few exceptions, general dissatisfaction is expressed with these statutes.²⁵

It was not until 1946 that a federal lobby control law was enacted, though various acts had reached some groups.²⁶ The provisions of the Federal Regulation of Lobbying Act are almost identical with parts of the new California law to be discussed below.²⁷ Although the federal law has been criticized for vague and ambiguous provisions, there has been considerable compliance with registration requirements and enforcement efforts are being made.²⁸

California's legislature was confronted with three alternatives in adopting lobby control legislation. It could pattern a law after the ineffective state laws; it could copy the more publicized federal law which was similar to the state laws in substance though not in form; or it could accept the governor's bill which copied the best provisions of various state laws and also struck at the legislator-lobbyist evil. The legislature had insufficient time to develop a bill of its own during the 1949 extra session and the governor's bill was found unaccept-

²⁵ BOOK OF THE STATES 126 (1948-1949); ZELLER, *PRESSURE POLITICS IN NEW YORK* 255 (1937); Pollock, *The Regulation of Lobbying*, 21 AM. POL. SCI. REV. 335, 339 (1927); Comments, 56 YALE L. J. 304, 315 (1947); 47 COL. L. REV. 98, 101 (1947). However, it has been said that the laws of Wisconsin, Maryland and Massachusetts operate successfully, though they are outwardly little different from the rest. GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH, *op. cit. supra* note 11, at 8.

²⁶ See 49 STAT. 803, 825 (1935), 15 U.S.C. § 791 (1946) (Public Utility Act of 1935) (requires registration and reports of representatives of utility holding companies and subsidiaries); 49 STAT. 1985, 2014 (1936), 46 U.S.C. § 1225 (1946) (Merchant Marine Act, 1936) (requires registration and financial reports of shipbuilders and ship operators advocating or opposing matter within the scope of various shipping acts); 52 STAT. 631 (1938), 22 U.S.C. § 611 (1946) (Foreign Agents Registration Act of 1938) (requires registration and financial reports of foreign agents).

²⁷ 60 STAT. 839, 2 U.S.C. §§ 261-270 (1946). See text starting at note 30 *infra*.

²⁸ Comments, 47 COL. L. REV. 98 (1947); 56 YALE L. J. 304 (1947). The act was apparently hurriedly modeled after the "Black bill," S. 2512, 74th Cong., 2d Sess. (1936). Comment, 56 YALE L. J. 304, 317 and n. 58 (1947). For a full discussion of the history of federal lobby control efforts see Zeller, *The Federal Regulation of Lobbying Act*, 42 AM. POL. SCI. REV. 239 (1948); Futor, *An Analysis of the Federal Lobbying Act*, 10 FED. BAR J. 366 (1949).

Approximately 2000 lobbyists have registered. 96 Cong. Rec. A114 (Jan. 9, 1950); see *Hearings before Senate Committee on Expenditures in the Executive Departments on Evaluation of Legislative Reorganization Act of 1946*, 80th Cong., 2d Sess. 88 (1948). But only 409 organizations have filed one or more financial reports. 96 Cong. Rec. A885 (Feb. 6, 1950). See note 47 *infra*. One author states that there are at least 800 lobby organizations in Washington which have not registered. GRAVES, *op. cit. supra* note 15, at 6. Approximately three-fourths of the appearances before the Judiciary Committees during the first two years were by organizations which had not registered. *Id.* at 6.

able.²⁹ It chose to copy the federal act in its entirety with minor changes. The 1950 amendments kept the 1949 law virtually intact, but added new sections so that the law now differs substantially from the federal model.

The California Lobby Control Law

The provisions of the new California act, which became effective as amended July 15, 1950, may be summarized briefly as follows:³⁰

Section 9906 requires every paid lobbyist to file a written authorization from his employer and register with the clerk of the assembly and the secretary of the senate before commencing to lobby, giving his name and business address, the name and address of his employer, the duration of his employment, how much he is paid and by whom, and how much he is to be allowed for expenses and for what expenses. He must also file monthly reports for so long as his lobbying continues, showing in detail all money received and each expenditure of \$25 or more in "carrying on his work," to whom paid, for what purposes, the names of publications in which he has caused matter to be published, and what legislation he is employed to support or oppose.³¹

Section 9906 exempts from registration any person who "merely appears" before committees, public officials in their official capacities, persons representing a church to protect its right to practice its doctrine, and newspapers and regularly published periodicals acting in the regular course of business.³²

Section 9901 requires persons who "solicit or receive" contributions for lobbying to retain detailed accounts of all contributions and expenditures for two years. These must include the name and address of every person from whom a contribution of \$100 or more is received, or to whom an expenditure of \$25 or more is made.³³

Section 9902 requires an individual who receives a contribution of \$100 or more for lobbying to render a detailed account to the organization for which the contribution was received, including name

²⁹ Since the bill was killed after the legislator-lobbyist provision had been amended out, the opposition must be traceable to the lobby, as well as political opponents.

³⁰ The act is Chapter 8, Part 1, Division 2, Title 2 of CAL. GOV'T. CODE. Further references will be by section number as the act will appear in the code.

³¹ The section is applicable to any "person" who lobbies. Section 9900(c) defines "person" to include "an individual, partnership, committee, association, corporation, and any other organization or group of persons."

The federal act does not require the filing of a written authorization. It requires a detailed report of all expenditures. 60 STAT. 841, 2 U. S. C. § 267(a) (1946).

³² Cf. 60 STAT. 842, 2 U. S. C. § 267(a) (1946).

³³ The federal act requires a listing of contributions only where they are \$500 or more, and of all expenditures. 60 STAT. 840, 2 U. S. C. § 262 (1946). The apparent purpose of this section is to require retention of records so that an organization can have no possible excuse for having no records if it is called before an investigating committee or grand jury.

and address of the person making the contribution and the date on which received.³⁴

Section 9903 requires persons receiving contributions or expending money for lobbying to file with the clerk of the assembly and the secretary of the senate monthly statements showing the total of all contributions and expenditures. Contributions of \$100 or more must be listed by amounts with the name and address of the contributor. Specific listing of expenditures of \$25 or more by name, address, amount and purpose is required. The statements are required to be cumulative during the calendar year to which they relate.³⁵

Section 9910 establishes a set of standards for legislative advocates (persons registered or required to be registered under *Section 9906*) violations of which are cause for revocation or suspension of certificates of registration. A legislative advocate is required to register, to refrain from putting any legislator under personal obligation, never to deceive a legislator, to abstain from attempts to create a fictitious appearance of public favor or disfavor for a measure, not to represent ability to control votes of legislators, not to represent interests adverse to his employer, and to retain books and documents required to substantiate financial reports for two years.³⁶

Section 9906.1 requires a lobbyist who employs or causes his employer to employ a legislator, attache of the legislature, or any full-time state employee to file a statement under oath with the clerk of the assembly and the secretary of the senate showing the name, nature of employment and consideration to be paid.³⁷

Section 9906.5 prohibits arrangements whereby compensation is paid contingent on the passage or defeat of legislation.³⁸

Section 9909 provides that each house of the legislature through appropriate committees has a duty and power to grant, revoke or suspend certificates of registration to legislative advocates, investigate activities of legislative advocates, require explanations of persons who fail to register, recommend amendments to the act, and

³⁴ The federal act requires this accounting only where the contribution is \$500 or more. 60 STAT. 840, 2 U. S. C. § 263 (1946). The congressional committee report gives no clue as to the purpose of this section. Possibly it is to discourage attempts at concealment by having an agent turn contributions over to his employer in a lump sum. Futor, *supra* note 28; see Comment, 47 COL. L. REV. 98, 104, n. 55 (1947). This is the only section which uses the word "individual" instead of "person."

³⁵ The federal act requires specific listing by name in the case of contributions of \$500 or more and expenditures of \$10 or more. Reports under that act are filed quarterly instead of monthly. 60 STAT. 840, 2 U. S. C. § 264 (1946).

³⁶ There is nothing similar to this provision in the federal act or any state act.

³⁷ There is a second *Section 9906.1* which makes it unlawful to employ an unregistered lobbyist except upon condition that he register. Neither provision is found in the federal act.

³⁸ Such contracts are illegal in most states, but have been upheld in California. *Bergen v. Frisbie*, 215 Cal. 168, 57 Pac. 784 (1899); *Schweppé v. Sandberg*, 50 Cal. App. 507, 195 Pac. 454 (1920); see Note, 29 A. L. R. 157 (1924).

report violations of the lobby control laws to appropriate law enforcement officers.³⁹

Section 9906 requires the clerk of the assembly and the secretary of the senate acting jointly to compile all the information received from lobbyists under this section for monthly printing in the journals of each house.⁴⁰ The information received under Section 9903 is not published; however, Section 9904 requires all statements filed under the act to be open to public inspection.⁴¹

Section 9908 makes violation of registration and reporting provisions a misdemeanor punishable by a maximum fine of \$5,000, a maximum prison term of twelve months, or both, and provides for disbarring of violators from lobbying for three years. Failure to observe the disbarment is a felony.⁴²

Uncertainties and Ambiguities of the California Law

The California legislature enacted into the new act many of the uncertainties and ambiguities of the federal law.⁴³ The major difficulty is to determine to whom Sections 9901 to 9903 apply. Section 9905 states that the "provisions of Section 9901 to 9903, inclusive, shall apply to any person, except a political committee,⁴⁴ who . . .

³⁹ There is no similar provision in any other lobby control act. The section states: "It shall be the duty and responsibility of the respective houses . . . through appropriately established committees . . . on their own motion," or on the verified complaint of any legislator or other person "to investigate or cause to be investigated the activities of any legislative advocate or of any person who they have reason to believe or who it is alleged is or has been acting as a legislative advocate." Governor Warren interpreted the statute as requiring a public hearing where there were charges of illegal lobbying. Press Release (May 3, 1950). However, nothing in the context seems to require such a hearing, though it would be implied if the section had any sanctions.

There seem to be two types of registration under the act. Section 9906 requires the filing of a statement of registration by a lobbyist. Section 9909 provides for the granting, revocation and suspension of certificates of registration. This becomes understandable when it is realized that Section 9909 was adapted from the original Erwin bill (A.B. 74) which as introduced required application for registration. Since the penal provisions of Section 9908 do not apply to Section 9909, there seems to be nothing to prevent a lobbyist who has complied with Section 9906 from lobbying without the Section 9909 certificate. The legislature could do little more than prevent his appearances before committees. See note 8 *supra*.

Section 9906.1 supports this interpretation since it makes it unlawful to employ a lobbyist "who is not registered under Section 9906 except upon condition that such person register forthwith."

⁴⁰ Cf. 60 STAT. 842, 2 U.S.C. § 267(b) (1946).

⁴¹ Cf. 60 STAT. 841, 2 U.S.C. § 265 (1946).

⁴² Cf. 60 STAT. 842, 2 U.S.C. § 269 (1946).

⁴³ See Zeller, *The Federal Regulation of Lobbying Act*, 42 AM. POL. SCI. REV. 239 (1948); *Hearings, op. cit. supra* note 28; Comments, 47 CAL. L. REV. 98 (1947); 56 YALE L. J. 304 (1947).

⁴⁴ "The term 'political committee' includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors, or any duly authorized committee or subcommittee of a political party whether national, state or local." CAL. GOVT. CODE § 9900(f). Can a lobby organization obtain

solicits, collects, or receives money . . . to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of . . . the passage or defeat of any legislation.”⁴⁵ It therefore becomes vital to determine what the words “principally” and “principal” mean. Organizations not wishing to comply with the federal act claimed that the word “principal” means “primary” or “major.”⁴⁶ This interpretation is aided by the fact that the statute expressly says “the principal purpose” and not “a principal purpose.” Such an interpretation would exempt a wide variety of organizations which lobby; for example labor groups, farm organizations and veteran organizations. The Attorney General of the United States interpreted the words as meaning “any purpose which is not merely incidental to the activities of the person or organization in question.”⁴⁷ Any other interpretation would not only make Section 9901 to 9903 ineffective, but would also be contrary to the meaning indicated by the reports

exemption by setting itself up in the guise of a “political committee”? The federal act excepted political committees as defined in the Federal Corrupt Practices Act and duly organized state or local committees of a political party. 60 STAT. 841, 842, 2 U.S.C. §§ 266, 270 (1946).

⁴⁵ As originally enacted the section made the “principal purpose” qualification apply to the entire act. The Collier amendments of 1950 removed the uncertainty as to whether the qualification was intended to apply to Section 9906. See Assembly Daily J., Reg. Sess. 47 (Mar. 8, 1950); Futor, *supra* note 28; references note 43 *supra*.

Because the definition is in the disjunctive, the section is subject to the interpretation that it applies to two classes of persons: (1) those who solicit or collect money to be used principally to lobby, or (2) those whose principal purpose is to lobby.

⁴⁶ *Hearings, supra* note 28, at 89. *Webster's New International Dictionary of the English Language* (2d ed. 1934) defines the adverb “principally” as meaning “in a principal manner; in the chief place or degree; primarily; chiefly; mainly.” “Principal” is defined as “1. Highest in rank, authority, or importance; chief; directing; head . . . 2. Main; leading; outstanding; important . . .” Synonyms of “principal” are “prime” and “foremost.”

In construing statutes the lexicographer's definition must yield to the meaning of the word as gathered from the context of the statute in which it is used. *People v. Lewis*, 61 Cal. App. 280, 214 Pac. 1005 (1923).

One of the reasons for failure to file was the fear of some organizations that they might jeopardize their tax exemption under the Internal Revenue Code which exempts organizations “organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals . . . no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.” 26 U.S.C. § 101(6) (1945). But if the Attorney General's interpretation is adopted, an organization could file without confessing to “substantial” lobbying.

⁴⁷ *Hearings, supra* note 28, at 89. For an even broader interpretation see Futor, *supra* note 28.

A letter from the Department of Justice dated March 30, 1950, reports two pending prosecutions. In addition, The National Association of Manufacturers has commenced an action in the United States District Court for the District of Columbia to enjoin enforcement of the act as against the Association on constitutional grounds. On March 14, 1950 a motion to dismiss the indictment in the case of *United States v. Slaughter* (D.D.C. Crim. No. 1433-1448) on constitutional grounds was denied. 96 Cong. Rec. A2413 (Mar. 28, 1950). *Slaughter* was later cleared. 18 LW 2479 (1950); S.F. Chronicle, April 18, 1950, p. 6.

and debates.⁴⁸ The Legislative Council of California agrees with the United States Attorney General.⁴⁹ Thus interpreted, the act can have a broad application.

There is considerable doubt as to the application of Section 9906. It requires "any person who shall engage himself for pay or for any consideration for the purpose of" lobbying to register, exempting a person who "merely appears" before a committee. Many persons will be uncertain as to their status. For example, a corporation officer who is sent to Sacramento to lobby might contend that he did not engage himself for the purpose of lobbying. A member of a labor organization lobbying on a pending measure, but only reimbursed for out of pocket expenses, would appear to be exempt since he has not engaged himself for pay or consideration.⁵⁰ The section is too vague adequately to apprise such persons if their registration is contemplated.⁵¹

Attorneys who limit their legislative activities to advising clients, preparing briefs, and appearing before committees are probably exempt from registration under the new law. Advising clients is not influencing legislation and persons who merely appear before committees are expressly exempt. Lobbying for the State Bar apparently will not require registration as long as no pay or consideration is involved. A retainer or fee does not fit the definition of a contribution, so it is unlikely that an attorney who limits his activities as suggested will be required to keep records or make reports under Sections 9901, 9902 and 9903. However, a committee of the State Bar has

⁴⁸ The act "does not apply to organizations formed for other purposes whose efforts to influence legislation are merely incidental to the purposes for which formed." SEN. REP. NO. 1400, 79th Cong., 2d Sess. 27 (1946). See remarks of Representative Dirksen and Senator LaFollette, both members of the committee. 92 CONG. REC. 10148 (1946); 92 CONG. REC. 10151 (1946).

This raises the interesting question of what effect the California courts will give to legislative history where a federal statute is copied by the California legislature. Ordinarily when a statute which has received judicial construction in courts of another jurisdiction is adopted, it is considered to have been adopted in consonance with the construction put on it by the courts of that jurisdiction. *Ocean Accident and Guarantee Co. v. Industrial Acc. Com.*, 172 Cal. 313, 159 Pac. 1041 (1916); *Estate of Potter*, 188 Cal. 55, 204 Pac. 826 (1922); *but cf.* *Estate of Doe*, 1 Cal. 54 (1905). Here we are construing a statute which has not been interpreted judicially by the jurisdiction from which it was adopted. *Query*: is resort to the legislative and administrative history of that jurisdiction proper?

⁴⁹ Assembly Daily J., Reg. Sess. 45 (Mar. 8, 1950).

⁵⁰ If the expense money is used principally for lobbying he might be required to report under the terms of Section 9903.

⁵¹ Judge Holzoff in the *Slaughter* case (*supra* note 47) ruled that even though *Slaughter* was lobbying for such clients as the Kansas City and Chicago Boards of Trade, the Minneapolis Grain Exchange and the American Grain Export Ass'n., he did not have to register under the comparable federal provision since the government failed to show that he did more than appear before committees or prepare statements for others who were to testify. If this interpretation is upheld large numbers of lobbyists will be exempt from the provisions of the act.

been actively examining the law in relation to the status of attorneys.⁵²

As the act is written, it is even difficult to ascertain what records a lobbyist or employer must keep and file. The lobbyist for compensation appears to be within the scope of Sections 9901, 9902, 9903 and 9906, which would necessitate his keeping four types of records and filing two different monthly reports of his financial transactions. He may be a person who solicits or receives contributions under Section 9901, who receives contributions under Section 9902, who receives contributions and expends money under Section 9903 and who engages himself for pay or consideration under Section 9906. Section 9906 limits reports to money received and expended in "carrying on his work," but Section 9903 seems to require a report of all contributions and expenditures whether for lobbying or not. Proper reporting under the chapter seems not only to impose an excessive burden, but also to create a danger of concealment by over-exposure. The lobby can file so many reports that no one could possibly examine the conglomeration, much less ascertain violations.⁵³

Suggestions for Clarification

The uncertainties of the new law should be clarified so that there can be no doubt as to its application and requirements.⁵⁴ The governor's bill offered a clearer approach.⁵⁵ It defined a "legislative representative" as "a person who is employed or engaged directly or indirectly as an employee, agent, attorney or otherwise for compensation by an individual, partnership, committee, association, corporation or any other organization or group for the purpose of promoting, advo-

⁵² No report has been rendered to date. Futor, *supra* note 28, asserts that the phrase "merely appears" refers to the average person, and that lawyers who appear for compensation are required to report under the comparable federal provisions.

⁵³ But see Futor, *supra* note 28. A total of 412 legislative representatives registered under Assembly Standing Rules No. 21 in 1949. ASSEMBLY FINAL HISTORY, Reg. Sess. 24 (1949). Assuming that these and no others register and that each has but one employer who must register, there would be 412 initial registrations, 412 reports each month by lobbyists, and 412 reports each month by employers, or a total of 5356 reports in a six months session. See note 65 *infra*.

However, these difficulties may not prove insurmountable in practice. A private attempt to summarize the reports of employers over a one year period is reprinted in 96 Cong. Rec. A1505 (Feb. 27, 1950). Reports filed under the federal act have ranged from extremely sketchy documents to voluminous reports. 96 Cong. Rec. A885 (Feb. 6, 1950).

Effective March 31, 1950, a consolidated form for all reports was adopted by those administering the federal law, which will alleviate this problem.

⁵⁴ One problem raised by these deficiencies is the effect of the rule that criminal statutes are interpreted strictly. *Screws v. United States*, 325 U.S. 91 (1945); *United States v. Slaughter*, *supra* note 47. Although this rule has been to a large extent abrogated in California by PENAL CODE §4, one wonders how far the courts will go when faced with a law as crude and vague as the one under discussion. *In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347 (1905); *Ex parte Galivan*, 162 Cal. 331, 122 Pac. 961 (1912); *People v. Jackson*, 24 Cal. App. 2d 182, 74 P. 2d 1085 (1937).

⁵⁵ A. B. 30, Extra Sess. (1949).

cating, opposing or influencing legislation." A "principal" was defined as "an individual, partnership, committee, association, corporation or any other organization or group that employs or engages another directly or indirectly as an employee, agent, attorney or otherwise, for the purpose of promoting, advocating, opposing or influencing legislation and that makes contributions aggregating in value one hundred dollars (\$100) or more in any calendar year to legislative representatives for the purpose of promoting, advocating, opposing or influencing legislation." The reporting and registration requirements of the legislative representatives and principals were then enumerated in simple language. Under such a law, both lobbyists and employers could easily determine their duties without speculating on the meaning of the statute or risking sanctions. At the same time the problems of application of the statute caused by the use of the "principal purpose" and "principally" would be eliminated.

Clarification is also needed as to how unincorporated associations can be subjected to criminal prosecution under the act. The term "person" as used throughout the act includes "individual, partnership, committee, association, corporation, and any other organization or group of persons."⁵⁶ Prosecution of "persons" other than individuals, small partnerships and corporations will be difficult. Since a large proportion of organizations which employ lobbyists are unincorporated associations, this is a serious loop-hole. One solution would be to provide that all reports of associations be signed by a responsible officer who would be personally liable; all officers should be personally liable for failure to submit reports.⁵⁷

Furthermore, the law should provide for the withdrawal of the registration of an inactive lobbyist. Registration files under the federal law include many who are dead or inactive, simply because there is no procedure for withdrawal.⁵⁸ A lobbyist should also be required to file a supplemental registration each time he undertakes additional employment. Although this is implied by Section 9906, it should be

⁵⁶ CAL. GOVT. CODE § 9900(c).

⁵⁷ Comment, 56 YALE L. J. 304, 326 (1947). The Indiana statute meets this problem by providing that every unincorporated association or combination of two or more persons to collect, receive or expend money to promote or oppose legislation must first appoint a treasurer by a writing filed with the secretary of the state. The treasurer is responsible for reports required by the statute. It is unlawful to contribute to an unincorporated association unless a treasurer has been appointed. IND. STAT. § 34-505 (Burns, 1933). The following suggests another solution: "Each officer . . . and each director . . . shall be under obligation to cause such agent to execute and file a registration statement . . . and shall also be under obligation to cause such agent to comply with all the requirements . . . of this subchapter. In case of the failure of any such agent . . . to comply . . . each of its officers and each of its directors . . . shall be subject to prosecution therefor." 56 STAT. 256 (1942), 22 U.S.C. § 617 (1946) (Foreign Agents Registration Act of 1938).

⁵⁸ 96 Cong. Rec. A885 (Feb. 6, 1950); GRAVES, *op. cit. supra* note 15, at 36. Another solution would be to require a new registration at the beginning of each session.

expressly stated. Provision should be made for financial reports by a lobbyist who is paid several months after his activities have ceased. As the act now reads, these reports need be filed only "so long as his activity continues."

Enforcement and Publicity

The leading weakness of previous lobby control laws has been the lack of adequate enforcement and publicity procedures. All have failed to provide an agency to make investigations, check reports and call violations to the attention of the attorney general. Printing of registration in legislative journals and making reports available to the public is insufficient. A busy attorney general and his deputies cannot be expected to go through a mass of records to search for violations. If these officials act at all, it is where there is flagrant violation. A hasty examination of filings will show many infractions, for example failure of a registered lobbyist to report expenditures, as a result of which one may conclude that the lobby control laws are broken with impunity.⁵⁹ That only three cases involving lobby registration laws have reached appellate courts is some indication of the nonuse of criminal sanctions.⁶⁰

The conclusion is inescapable that a law requiring registration of lobbyists will be largely ineffective unless a suitable agency is designated to supervise its application. There would seem to be a possible choice between several agencies: the governor, the attorney general, a special administrative agency or a legislative agency. Selection of any of the first three would almost inevitably cause resentment among legislators and have little chance of passage since the legislature is a coordinate branch of government and will always object to surveillance of its activities. Furthermore, knowledge of the activi-

⁵⁹ See examples in ZELLER, *PRESSURE POLITICS IN NEW YORK* 255 (1937); see generally Orfield, *Improving State Legislative Procedure and Processes*, 31 MINN. L. REV. 161, 187 (1947); Zink, *Indiana Lobby-Control Found Insufficient*, 27 NAT. MUNIC. REV. 543 (1938); Zeller, *Pressure Groups and Our State Legislatures*, 11 STATE GOVT. 144, 147 (1938). The quarterly reports filed under the federal act are often incomplete or extremely sketchy. 95 Cong. Rec. 11615 (Aug. 12, 1949); 96 Cong. Rec. A885 (Feb. 6, 1950). They occupy 40 to 60 pages of fine print, e.g. 95 Cong. Rec. 11091 (Aug. 5, 1949).

The first filings under the California law have been very sketchy and would seem to be of little value in their present form. They are reproduced in Sen. Daily J., First Extra Sess. (April 5, 15, 1950); Assembly Daily J., First Extra Sess. (April 5, 14, 1950). Violations are already apparent since out of 94 who registered in one or both houses, only 66 filed the required monthly financial report.

⁶⁰ *State v. Crites*, 277 Mo. 194, 209 S.W. 863 (1949) (contingent compensation provision held to violate state constitution for defective title); *Campbell v. Commonwealth*, 229 Ky. 264, 17 S.W.2d 227 (1929) (conviction reversed); *Commonwealth v. Aetna Life Ins. Co. v. Hartford, Conn.*, 263 Ky. 803, 93 S.W.2d 840 (1936) (dismissal affirmed); *Comment*, 47 Cor. L. Rev. 98, 102 and n. 33 (1947). Alabama reports one conviction (member of legislature expelled); North Dakota reports one conviction; Oklahoma reports one indictment; Wisconsin reports eleven indictments and two convictions. Assembly Daily J., First Extra Sess. 396-397 (Mar. 20, 1950).

ties of lobbyists is particularly within the province of the legislature. A year round legislative committee would be useful, but the low pay of the legislature makes it impracticable for members to give sufficient time.⁶¹ The logical solution is to establish a full time legislative staff agency under the supervision of a joint committee.⁶² The financial and moral backing of the legislature is essential to enforcement and the legislature could never complain of insufficient appropriations for its own agency. Establishment of the proposed agency would center responsibility so that both public and legislature would always know whom to credit or blame.

The California law is unique in that it makes an effort to meet this situation. Section 9909 provides for committees in each house having the duty to grant, revoke and suspend certificates of registration of lobbyists, with full powers to investigate violations of the registration provisions. While there is no express statement that lobbying will be illegal without such a certificate, the power to prevent appearances before the legislature without a certificate would seem to follow.⁶³ There is no express provision for a full time committee staff, but this is certainly within the power of the houses in establishing the committees. As yet no appropriations for the committees have been granted.

While the enforcement sections of the new law are a step in the right direction, still further legislation is desirable. A joint committee would cut across the traditional bicameral system, but may be a more efficient device than the separate committees. Whatever the organization, the committees should have the duty and power to investigate the employers of lobbyists as well as the lobbyists themselves. This plus some discretionary power to demand information in addition to that required by the reports would form an adequate basis for enforcement.

⁶¹ It may be argued that the legislature would be willing to pass this difficult problem to some other agency, thus relieving itself of responsibility. The governor's bill provided that the attorney general and secretary of state would observe the operation of the act and report to the governor and legislature, as well as calling violations to the attention of the proper district attorney. A. B. 30, Extra Sess. (1949).

See ANDERSON, *op. cit. supra* note 1, at 165, and COMMONWEALTH CLUB, *op. cit. supra* note 1, at 346. The Joint Interim Committee recommended such a committee. Assembly Daily J., First Extra Sess. 389 (Mar. 20, 1950).

⁶² The agency could design the registration and report forms, analyze and compile the filed reports, investigate lobbying activities, use persuasive methods to obtain compliance, report violations to enforcement officers and prepare an annual report including recommendations for administrative and legislative improvements. The joint legislative committee could oversee the work of the staff agency as well as hold hearings in suitable cases. Thus if a lobbyist registers for only one employer when it is generally known he represents others, he could be called before the committee for explanation. See *Hearings, supra* note 2, at 8, 9, 110; PHILBRICK, *op. cit. supra* note 2, at IV-47. The mere existence of the committee plus an occasional hearing would tend to cause compliance by most organizations.

⁶³ See note 39 *supra*.

Closely related to enforcement is publicity which has long been regarded as a vital factor in the few states which report some success with lobby control.⁶⁴ However, the financial and other statements as filed have little "news value" and are seldom printed. The California law requires registration statements and financial reports of lobbyists to be printed in legislative journals and states that all reports will be open to the public.⁶⁵ The possibility of wide publicity of such a mass of material seems more illusory than real. However, some newspapers have shown considerable interest in the lobby and would undoubtedly use the reports if they were timely and easily available. Probably the main use of the material will occur when some legislator or group wishes to attack some other group. The information would be extremely useful in helping the legislative staff agency to select lobbyists and organization for intensive investigation. Certainly if the reports are to be of any use, provision must be made for analysis and compilation into convenient form. The committees or the proposed staff agency could perform this service.

Other Suggestions

Remaining suggestions for improvement may be examined briefly. Consideration might be given to reducing the amount of information to be reported. The mass of reports required under the present act can be of little use until it is sifted and analyzed.⁶⁶ The apparent theory is that the legislators and others who want the information will uncover it for themselves. It might even be feasible to eliminate the financial reports but require lobbyists and their employers to keep complete records of all financial transactions, such records being subject to production by subpoena by a legislative committee.⁶⁷

⁶⁴ Wisconsin, Maryland and Massachusetts are said to rely on publicity with some success. GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH, *op. cit. supra* note 11, at 8.

⁶⁵ Under the federal law three forms were formerly used, form A for the detailed statement required under the equivalent of Section 9903, form B for initial registration, and form C for periodical reports required under the equivalent of Section 9906. The forms are repetitions of the words of the statute with blank spaces for answers. See 95 Cong. Rec. 11091 (Aug. 5, 1949) for samples. The contents of the filings of forms B and C are printed quarterly in the Congressional Record. Futor, *supra* note 28 has developed improved forms. Effective March 31, 1950 a new form consolidating the three former forms was adopted.

Of the first registrants under the California law (see note 59 *supra*) 84 registered in both houses and 10 in only one house. Monthly reports, as required by Section 9906, were filed by 66 registrants, all of whom filed identical reports in both houses. An examination of the reports indicates that they are of little use other than to put the lobbyist on record. As a result of the cryptic reports in some cases, and the varying interpretation of the requirements in others, some procedure for following up with requests for more information seems essential.

⁶⁶ See notes 53 and 65 *supra*.

⁶⁷ Section 9901 of the present act could be redrafted as the basis of such a provision. See Report of the Joint Interim Committee Investigating Lobbying Activities, Assembly Daily J., First Extra Sess. 391 (Mar. 20, 1950). Governor Warren is on record as stating that a bill without an itemization of the lobbyists' expenditures "is not in the interest of the public welfare." S. F. Chronicle, Mar. 29, 1950, p. 9.

However, there will be time enough to make this change after the present provisions are given a trial. Perhaps the public and legislature will gain from availability of the information as to how much money various organizations are spending to influence the legislative process.

A considerable amount of wasted effort and expense could be saved by doing away with the duplicate filing required by the present system. The act requires registration statements and monthly reports to be filed with the clerk of the assembly and the secretary of the senate. Registration statements and monthly reports filed in accordance with Section 9906 are printed in the journals of both chambers. Considering the mass of the material and the fact that most registrants will register in both houses, some system which requires reporting to but one officer and printing in but one journal should be installed.

Reports should be required which would disclose the nature of the employer's activities, the number of members (if any), the qualifications for membership, the method for determining policy of the organization on each measure, the manner in which funds are raised, and a list of matters concerning which the lobbyist is engaged to lobby. The Special Committee on the Organization of Congress recognized the value of such information in assisting the legislator to assess the conflicting aims of pressure groups. It might even induce some groups to develop more democratic procedures.⁶⁸

Some authorities would require registration of lobbyists who seek to influence executive and administrative officials and agencies.⁶⁹ The present act will reach lobbyists whose method is to persuade a state official actively to support or oppose legislation, but will not cover lobbying for direct administrative action. If lobby control is viewed as a narrow legislative problem, lobbying before state agencies for direct administrative action is a separate problem requiring dissimilar treatment. In most instances the legislature exercises little control over administrative agencies. To require a legislative staff agency, which is deemed essential to successful lobby control, to investigate lobbying before state agencies would complicate the problem of regulation.

The difficult problem of money pressures disguised as a fee paid for "services" has already been discussed.⁷⁰ The chief opposition to the governor's measure centered around a section to prohibit legislators from representing the interests of others before the legislature

⁶⁸ SEN. REP. NO. 1400, 79th Cong., 2d Sess. 5 (1946); Zeller, *The Federal Regulation of Lobbying Act*, 42 AM. POL. SCI. REV. 239, 245, 269 (1948); see Jones, *supra* note 16; Report of the Joint Interim Committee Investigating Lobbying Activities, Assembly Daily J., First Extra Sess. 390 (Mar. 20, 1950).

⁶⁹ *Hearings, supra* note 28, at 110. The California act reaches persons who attempt to influence the approval or veto of legislation by the governor. CAL. GOVT. CODE §§ 9905, 9906.

⁷⁰ See text at note 17, *supra*.

or administrative agencies.⁷¹ The resentment aroused by this provision added to normal political opposition was sufficient to kill the bill. It has even been suggested that legislators should be required to file sworn statements showing the source of their income together with lists of clients having interests in legislation.⁷² The potential advantages of such provisions are probably overbalanced by the need for attracting good men from all walks of life to be legislators. Most legislators are above acting as lobbyists, and the elimination of the few who continue the practice is a matter for the electorate.⁷³

Conclusion

The new law with all its weaknesses is an improvement over previous legislation. Whether it "will put California in the forefront of those states that have enacted lobby legislation" as predicted by Governor Warren will depend on how the law is administered. Given active enforcement, favorable interpretation by the courts, and the support of the legislature, it may succeed. The next legislature should immediately establish the enforcing committees and give them substantial appropriations. It should further clarify the law so that there can be no doubt as to its application and requirements, and improve the provisions for enforcement and publicity.

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⁷¹ Lawyer-legislators reportedly make frequent appearances before the State Board of Equalization in connection with applications for liquor licenses. Behrens, *The Legislature*, S. F. Chronicle, Dec. 14, 1949, p. 1. See note 2 *supra*. At least twelve senators and twenty-five assemblymen present at the 1949 extra session were attorneys. SEN. FINAL HISTORY, Extra Sess. 6 (1949); ASSEMBLY FINAL HISTORY, Extra Sess. 12 (1949).

⁷² PHILBRICK, *op. cit. supra* note 2, at 1-7, 1-8.

⁷³ Section 9906.1 requires a statement under oath showing name, nature of employment, and compensation when a lobbyist employs or causes his employer to employ a legislator. This provision should be amended to require such a report also from employers of lobbyists who employ legislators.

It has been suggested that committees be required to interrogate persons coming before them as to registration status, on whose behalf they are testifying and whether they will receive travel expenses, gratuities or other compensation. Zeller, *The Federal Regulation of Lobbying Act*, 42 AM. POL. SCI. REV. 239, 254 (1938). A timesaving alternative, if such a device is thought to be desirable, would be to require all witnesses to complete an affidavit designed to elicit the required information.

A statement of all contributions within the preceding four years to the campaigns of candidates for governor, lieutenant governor or senator, and within the preceding two years for candidates to the assembly would be required by the governor's bill, to be submitted by both lobbyists and employers. See note 17 *supra*.

The clerk of the assembly, one of the two officials with whom the reports are to be filed under the act, has complained that he is employed only during sessions, that he is given no authority to delegate his functions under the act, and that his desk is on the floor of the assembly where he cannot receive registrations. Assembly Daily J., Reg. Sess. 37 (Mar. 8, 1950). The reports should be filed with a year around employee, possibly the clerk of the legislative staff agency suggested *supra* at note 63.

* Walter S. Lewis, Jr., member third-year class, assisted in the preparation of this comment.