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REGULATION OF CAMPAIGN FINANCE –
THE MARYLAND EXPERIENCE†

By DWYNAL B. PETTENGILL*

EARLY HISTORY

Campaign finance became regulated by state statutes only after the excesses of business corporations and other wealthy donors in political affairs, together with the increasing cost of campaigning and the larger constituencies of modern times, brought elections in their entirety under the scrutiny of the legislative branch of the government. It was in keeping with a predominantly pragmatic approach to government that, toward the end of the nineteenth century, campaign finance joined the ranks of railway transportation and other such items as the making of insurance contracts on the statute books of several states.

It is not generally known, however, that the first attempt to regulate campaign finance was enacted by the British Parliament in 1883. And, perhaps typically, in England the regulation has endured with great effectiveness to the present day, with a unique delineation of the whys and wherefores of this important part of the electoral

† In this article, as originally written, the author's references were to the particular section numbers of Article 33, as they appeared in Chapter 122 of the Laws of 1908, and these have been preserved. However, since it is impossible, under the present arrangement of Article 33 in the 1957 Code, to trace the legislative history of each section back through the 1951 Code, and into the Laws of 1908, Ch. 122, the author and the Editorial Secretary of the Review have collaborated to include in parentheses (after the section reference to the Laws of 1908, in the first part of the article) the corresponding section of the 1951 Code (which contains the legislative history), and in brackets, the corresponding section of the 1957 Code. Except as noted in fn. 31 hereof, the 1945 revision of Article 33 (Ch. 934) made no significant changes in the sections under discussion in this Article. The changes brought about by the 1957 revision of Article 33 are discussed in detail, infra, ps. 107-114. In this portion of the Article, the parenthetical references to the 1951 Code come after the references to the 1957 Code, to enable the reader to follow the section back if he so desires.

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process. The outstanding feature of the British law, made possible in part by the cohesion of the political parties and an homogeneous population inhabiting a comparatively small geographical area, was the placing of responsibility on the candidate for all expenditures in his behalf. This ingenious provision still marks the chief characteristic differentiating British legislation from weaker American attempts to accomplish the same purpose.

In this country, New York was the first state in modern times to adopt a so-called corrupt practices statute aimed specifically at the publicizing of facts regarding contributions and expenditures in elections. Apparently it was thought that publicity would bring to light former nefarious practices and inform the curious public of those candidates likely to be committed to specific persons or groups for financial reasons. When the Maryland statute was passed in 1908, several other states had initiated their own individual versions of the original British law.

Very few changes were adopted in the Maryland law until 1957. It is planned, in the following pages, to discuss an attempted drastic revision of the reporting provisions in 1955 as well as the 1957 revision as finally enacted. We will then proceed to an evaluation of the Maryland corrupt practices act in comparison with similar laws of some other states.

Entitled "Election Expenses and Prohibition of Corrupt Practices at the Election," the fifteen new sections added to Article 33 of the Maryland Code by the 1908 General Assembly represented a sort of dual attack on campaign financial customs prevailing at that time. In the first place, certain practices were expressly forbidden by the new law; and definite limits were established in regard to the amounts of money which could be used in a campaign. In the second place, the underlying philosophy of the remaining sections seemed to depend on the attainment of publicity for the hitherto unrevealed sources of campaign funds and the recipients of such funds.

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2 Ibid. Cf. 8 HALSBURY'S STAT. ENG. (2d ed. 1949) 476 et seq., and Representation of the People Act, 1949, 8 HALSBURY, ibid., 573 et seq.
3 Supra n. 1 §33.
4 Cited in SIKES, STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION (1928) 122, fn. 43.
5 Md. Laws 1908, Ch. 122.
6 Colorado, Michigan, and Massachusetts, cited in SIKES, op. cit. supra n. 4, 123, fn. 44 and fn. 45.
7 Md. Laws 1908, Ch. 122.
Obviously enough, one of the most important questions to be posed about the statute is whether it was effective. Indulgence is asked while details of the reporting procedures and the prohibitions are examined, along with the relatively minor changes to which the law was subjected in the next half century, since the detailed provisions themselves have some bearing on the answer to the query phrased above.

As is customary, the statute began with a general statement of intent, followed by a series of definitions indicating what was to be regulated. Included were:

(a) all elections held to nominate a candidate for any public office, or to elect delegates to a nominating convention;

(b) nominating conventions of such delegates;

(c) caucuses of members of the General Assembly.

Some confusion presumably existed with regard to the necessity of differentiation between public office and party office, and this confusion had to be remedied by the 1912 legislature following the decision of the Maryland Court of Appeals in Usilton v. Bramble.

The second section was concerned with definitions of "political committee," "political agent," and "treasurer." The political agent apparently was to be a kind of campaign assistant who could spend money, while the treasurer would handle money. From the very beginning, these individuals were required to be citizens and residents of Maryland. Their appointment as treasurer or agent could be verified only by the Secretary of State, who was to receive notification of such appointment in writing. It can readily be seen that this was a necessary clause, since a political enemy could establish an ad hoc committee under his own name with an announced aim completely contrary to the real purpose for collecting moneys.

Logically, the treasurer for each candidate or committee would then be the only official designated to handle campaign funds. Delegation of this power was possible in the case of party committees, however, wherein sub-treasurers could be appointed for each precinct. This particular sec-

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8 Ibid., §161 (162) [211].
9 Ibid., §161 (162) [211]. Note that §(c) was eliminated in 1957.
10 117 Md. 10, 82 A. 661 (1911).
11 Md. Laws 1908. §162 (163) [212].
12 Ibid., §162 (163) [212].
13 Ibid., §162 (163) [212].
tion was interpreted by the Court of Appeals in Healy v. State.14 A 1912 amendment made it illegal for any candidate to appoint himself as his own treasurer.15

"Political Committee" was defined as "every committee or combination of two or more persons to aid or promote the success or defeat of any political party or principle in any election, or any proposition submitted to vote at a public election, or to aid or take part in the nomination or election of any candidate for public office."16 This all-inclusive language led many committees formed on one side or the other of various political issues to remain unaware of the precise application of this particular section. Interpreted strictly, every precinct organization could be termed a political committee, particularly if they were not affiliated with a regular party organization. Every political committee had to appoint a treasurer.17

A subsequent section provided that any candidate might make contributions to his own campaign or that of others, but persons other than candidates could make contributions or spend money on a political issue only through a duly appointed treasurer, within six months prior to the election.18

An important, but confounding part of the law of 1908, and the heart of the statute, was the two sections concerning legal expenses of elections, the limits imposed upon campaign expenditures, and the exemptions from the established limits.19 In other words, a treasurer was to be appointed through whose hands "all money or other valuable things collected," would pass. This certainly seems clear enough, "except that a candidate may pay personally, . . ., his own expenses for postage, telegrams, telephoning, stationery, printing, advertising, publishing, expressage, traveling and board, . . . ."20

The question immediately arises, especially in the case of statewide candidates, how can they separate what is spent for them and what is spent on behalf of the ticket with which their candidacy is related?

Furthermore, if the candidate chose, could he not say that all expenses of the campaign were his expenses, and include practically all of them under one of the categories

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14 115 Md. 377, 80 A. 1074 (1911).
15 Md. Laws 1912, Ch. 228, amending §162 (163) [213].
16 Md. Laws 1908, §162 (163) [212].
17 Ibid., 163 (164) [214].
18 Ibid., §164 (165) [219].
19 Ibid., §165-166 (166-167) [218, 220].
20 Ibid., §165 (166) [218(b)].
enumerate in the law? This seems eminently reasonable, without unnecessarily stretching the context of the statute. Under this interpretation, even the dispensation of ballots on election day can be an advertising expense.

In effect, however, the limitation section leaves the political treasurer with election day expenses, such as the hiring of workers at the polls, and expenses at headquarters for clerks and other personnel. The fact is that examination of the hundreds of reports filed by candidates for federal and statewide office in six elections resulted in the discovery of only three candidates who attempted to itemize expenditures according to the law.21

If, then, a great variety of expenditures could be made by the candidate himself, the maximum limits set by the statute would not seem so low. And, indeed, the original limits, over and above the exempted classes of expenditures, were quite liberal, since candidates could spend twenty-five dollars ($25.00) for each one thousand, up to fifty thousand, and ten dollars ($10.00) for each one thousand in excess of fifty thousand, of the registered voters qualified to vote for the office in question at the next preceding election.22 Thus the provision tied the maximum expenditures possible under the law to the total number eligible to vote at the last election, and would have resulted, in the case of a general election for governor in 1910, in a total legal expenditure of approximately $3,750. This does not include the exempted classes of expenditures.23

However, in 1912 the General Assembly amended this provision to lower the ceiling, and the candidates from that time forward could spend only ten dollars ($10.00) per thousand for the first fifty thousand, and five dollars ($5.00) per thousand in excess of fifty thousand.24 As before, this was over and above money spent on exempted items. With the same basic number of qualified voters, our gubernatorial candidate in a general election could then spend a maximum of slightly more than $1,750.00.25


22 Md. Laws 1908, §165 (166) [changed in §218 (c), infra, n. 90].

23 Computed on a base of 300,000 eligible voters.

24 Md. Laws 1912, §165 (166) [changed in §218 (c), infra, n. 90].

25 Computed on a base of 300,000 eligible voters.
No information exists on which to make a judgment as to the reason or reasons for lowering the maximum limits of permissible expenditures. Obviously, the legislature felt the limit to be too high, but one questions such reasoning, since the cost of election day workers alone, even at a minimum of two dollars per person, would have been many times more than the permissible limit. And, more broadly, even a nominal inflationary tendency, which has been a part of the total economic growth pattern in this country, would soon result in extreme impracticality as far as concerns the realities of campaigning.

Rather shortsightedly, it seems, the legislature took pains to include any and all kinds of political committees in the regulatory sections of the 1908 law, but completely overlooked the imposition of expenditure limits on them. For example, it often happens that a referendum will arouse much more interest than a candidate in a given election, and for committees on behalf of or opposed to such questions of great political moment there are no limits whatsoever! Thus, presumably, a committee in favor of sitting judges, or one pledged against a sales tax, or any other committee campaigning sans candidate, would face no legal limit such as was applied to candidates. For that matter, consider the situation with regard to presidential and vice-presidential candidates. Their committees could not, under the law, be required to observe maximum limits of expenditures, either.

Comprehensive was the section listing the legal expenditures to be made by a campaign treasurer. They included the following expenses:

“(a) of hiring halls and music for the convention, public meetings and public primaries and for advertising the same; (b) of printing and circulating political articles, circulars, pamphlets and books; (c) of printing and distributing sample or specimen ballots and instructions to voters; [subject, however, to such prohibitions or restrictions as may be imposed by this Article upon the publication and distribution of such sample or specimen ballots or instructions]; (d) of renting rooms and headquarters to be used by political committees; (e) of compensating clerks, stenographers, typewriters and other assistants employed in the committee-rooms, and also of challengers, watchers and messengers employed in the registration rooms, in the voting-rooms and at the polls; (f) the traveling and
other legitimate expenses of political agents, committees and public speakers; (g) of necessary postage, telegrams, telephoning, printing expenses and conveyance charges for carrying persons to and from the polls, or to and from the office of registration; (h) the cost and expenses of messengers sent by direction of the chairman of the State Central Committee of any political party in connection with party matters or interest, and also the cost and expenses of any person or persons summoned by or at the instance of the chairman of the State Central Committee of any political party to the committee's headquarters or offices in connection with party matters or interests and also for the accommodation and entertainment of such persons; (i) all expenses incurred by or under the authority of the chairman of the State Central Committee of any political party in providing accommodation and entertainment for the members of the State Central Committee or for the transportation of such members, when assembling for any meeting of said committee or visiting the headquarters of said committee in connection with party matters or interests." 26

The reporting injunction was explicit and clear. 27 Treasurers and political agents were to file, within twenty days following the election:

"[A] full, true and detailed account and statement, . . . , which statement shall include the amount of money or property in each case received or promised, the name of the person from whom it was received, or by whom it was promised, the amount of every expenditure made or promised, or valuable thing given or promised, or liability of any sort incurred, . . . ." 28

All treasurers were to keep books — this provision was mandatory — but for no precisely defined period.

In the next section, candidates were constrained to enter a similar statement which, like the statements of treasurers, was to be submitted to the clerk of the Circuit Court of the county in which they resided, or, if in Baltimore City, with the Clerk of the Circuit Court of that city. 29

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26 Md. Laws 1908, §166 (167) [220 (a)]. The bracketed material was added by Md. Laws 1912, ch. 228, §166.
27 Ibid., §§167-168 (168, 169) [223, 224].
28 Ibid., §167 (168) [223].
29 Ibid., §168 (169) [223].
statements were due thirty days following the election. Furthermore, no candidate would be declared elected until such statement was filed. A 1945 amendment required anonymous contributions to be forwarded to the Secretary of State.

It is not necessary to point out the extreme decentralization possible under the law as written in 1908. When each candidate files in his home county, and the same holds true for each treasurer, interested persons might be required to travel many miles for a look at a particular report. For example, in 1956 the report of the statewide committee for Senator Tydings, who is a resident of Harford County, was filed in Anne Arundel County because the committee's treasurer lived there. The committee which financed Senator Butler's two campaigns in 1956 filed its reports in Frederick County, where the treasurer lived.

In addition, if both candidate and treasurer or agent were to file statements, would they of necessity be duplicates, or not? The treasurer who leaned over backward to observe the letter of the law would find himself completing totally unnecessary forms in order to escape the rather stiff penalties involved for non-compliance. To the extent that entirely different financial statements were filed by both candidates and treasurers, the law was honored much more in the breach than in the observance.

A long section described the punishments for those guilty of corrupt practices, listing the more orthodox types of corrupt practices, drawn in the most comprehensive fashion possible.

The succeeding two sections, one added by a 1920 amendment, expanded a provision requiring identification of the candidate or committee subsidizing printing costs or advertising costs to include any organization or corporation involved in or relating to any candidacy or issue. The prohibition against activity in political financing by corporations had been a part of the Act since its inception, but some twenty-six years after the passage of the new section it was interpreted by the Court of Appeals follow-

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29 Ibid., §168 (169) [224 (c)].
30 Md. Laws (1945) Ch. 934, §151 (§168, 1951) [222 (b)].
31 The writer examined 478 financial statements filed by Congressional, Senatorial, and Gubernatorial candidates and committees in support of such candidacies in the period from 1952 through 1956. Statements for primary and general election campaigns were analyzed.
32 Md. Laws 1920, Ch. 697, §173A (173) [228].
33 Ibid.
34 Ibid.
35 Md. Laws 1908, §172 (174) [229].
ing an internecine quarrel in the Bar Association of Baltimore City. A group of officers in that organization had promoted the nomination of certain individual judicial candidates through the use of funds solicited by Bar Association officers. The Court held that since no money came from the Association treasury — all funds were raised by private contributions — the 1920 amendment was not violated. Further, the action of Bar Association officials did not violate the prohibition on activity by corporations, said the Court. A committee of the Bar Association established to conduct fund-raising for the judicial candidates would be required to file a report, however, even though the money was used only for “educational” purposes.

Recognizing that in some cases the same persons who administered or enforced the law might themselves violate provisions of the Act, the legislature framed an extremely precise procedural section in order to provide opportunity for redress by private citizens. Thus, whenever ten voters filed a petition charging violation of the Act by the winning candidate or party, trial in the Circuit Court of the county involved, or the Superior Court of Baltimore City, would be mandatory. The judge could not void the election, but was required to certify a transcript of the evidence to the Governor or certain other officials, depending on which office was involved in the election. Apparently the Governor, in the case of a finding of guilt, was to void the election, in which case the office would be filled as provided by law in the case of death. Notwithstanding this clear mandate in pursuit of justice, it might also be ascertained that:

“(a) no corrupt practice was committed by the candidate personally and the offense was committed contrary to his order and without his sanction or connivance; (b) the offense was of a trivial, unimportant and limited character; (c) in all other respects such election was free from corrupt practice on the part of such candidate and of his political agent, then the election of such candidate shall not be void, . . . .”

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87 Md. Laws 1908, §173 (175) [230].
88 Ibid.
89 Ibid.
90 Ibid.
41 Ibid., (175) [230 (g)].
So far as can be determined, no group of voters has ever been successful in causing an election to be voided through this method.

Two final sections also were concerned with enforcement. The first authorized any court in which violations of corrupt practices were being tried to subpoena papers or other material, while the second provided for mandatory prosecution by the State's Attorney of the county or Baltimore City.

Other than the insignificant changes which have been discussed, early legislation deemed it necessary to require duplicate filing of certain reports, a provision which was later repealed. A 1912 amendment required the Board of Supervisors of Election in each county and in Baltimore City to certify lists of candidates to the Clerk of the Circuit Court in each jurisdiction. Previously, no such certification seems to have been required.

It seems, however, that the lack of significant change in the Maryland Corrupt Practices Act resulted not so much from general effectiveness, or from the fact that the law was such a "good" one, but rather because its enforcement was almost completely disregarded. Many charges and potential charges were dropped through the years, as the lower courts consistently failed to take prosecution seriously.

After one councilmanic election in Baltimore City, several candidates who had failed to file on time were arraigned before Judge Michael J. Manley. This jurist made the following observation: "I don't think that's a bad percentage. Eight out of 133 — I bet that's better than many of the previous elections we have had. The verdict is not guilty in all cases. * * Why pick on these?" Charges against two Worcester County legislators and twelve other Democratic candidates were similarly dropped in 1954. When a newspaper reporter called attention to an unidentified contribution in a report by State Senator Louis N. Phipps in the 1954 general election, the Senator was per-

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42 Ibid., §174 (176) [231].
43 Ibid., §175 (177) [232].
44 Ibid., §168. Note that while the requirement of a duplicate is eliminated in the first part of the 1951 Code, §169, a duplicate is referred to later on in the same section.
45 Md. Laws 1912, Ch. 228, §168.
46 Ibid., (169) [224 (b)].
47 Md. Laws 1908.
49 Baltimore Sun, August 24, 1954. Interview with Department of Legislative Reference.
mitted to alter the report by the Clerk. Mr. Hopkins, the Clerk in the Anne Arundel Circuit Court, expressed the opinion that he did not know whether it was legal to add to a notarized statement.

The most important decision by the Court of Appeals was in *Healy v. State*, brought from a decision of the Criminal Court of Baltimore City respecting a violation of Section 163, wherein Healy, a Democratic sub-treasurer for the Fifth Ward of Baltimore, had failed to list detailed disbursements and was subsequently convicted. The judge in the court below had levied a total fine of ten cents! This is the sole opinion by an appellate court in Maryland to express a judicial attitude concerning corrupt practices legislation. Judge Burke said:

"The act was passed to limit the expenditure of money by candidates for public office, and to minimize the corrupt use of money in politics. It is a salutary measure, and, if rigidly enforced, would vastly improve political conditions; but if the construction contended by the appellant were adopted, the main purpose of the act, which contains the promise and assurance of better things in the political life of the State, might be in large measure defeated by the practice of the very acts which it was enacted to prohibit."

Healy had filed a statement in the proper manner with the treasurer concerned, but he had neglected to include the names of those persons to whom the three hundred dollars entrusted to his care was disbursed. It was held that sub-treasurers must include the names of workers in every case.

So far as can be determined, one conviction of major significance resulted from enforcement of the Corrupt Practices Act of 1908 in its forty-nine year tenure. Reference is made to the prosecution and conviction of Jon Jonkel, treasurer of a committee formed to finance the campaign of Senator John Marshall Butler for the general election in 1950. In the Criminal Court of Baltimore City, Mr. Jonkel was convicted on four counts of violating the Act, and was fined a total of $5,000.

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50 Baltimore Sun, December 3, 1954.
51 115 Md. 377, 80 A. 1074 (1911).
52 Md. Laws 1908 (1G4) [214].
53 Supra, n. 51, 378.
54 Ibid., 385. Italics added.
55 Ibid.
56 Baltimore Sun, June 5, 1951.
The point was that evidence for Mr. Jonkel's prosecution and eventual conviction was initially gathered by the United States Department of Justice, with the certified record of testimony at the Senate hearings before the Committee on Rules and Administration furnishing a basis. One is much inclined to doubt whether, in view of such a long history of prosecuting inactivity with respect to the statute, such a proceeding would have been brought without the existence of the abnormal series of events which characterized this incident.

There is no intention to imply that the test of a criminal statute should inhere in the number of convictions based thereon. When, however, the number of convictions is placed against the number of known violations, some index of a law's effectiveness may be ascertained. This conclusion was reached on the basis of an examination of several hundred reports studied and analyzed in the period 1952-1956.

For example, the treasurers of Harford County Democratic and Republican groups simply did not see fit to itemize receipts or expenditures of campaign funds until 1956, and even in that year the Republican State Central Committee statement was filed two weeks late. No enforcement action was undertaken in any of these cases by the state's attorneys concerned. It is, in fact, the rare exception for treasurers to cite complete information regarding expenditures in their financial statements — such items usually appear only as for advertising, or radio programs, or newspaper expense. Some two dozen statements of the 478 examined, were found to have been filed late, and

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67 U. S. Congress, Senate, Maryland Senatorial Election of 1950. Hearings before the Subcommittee on Privileges and Elections, 82nd Congress, 1st Session.
69 Reports of: Republican State Central Committee for Harford County, filed Nov. 18, 1952; Democratic Campaign Committee for Harford County, filed Dec. 4, 1952; Republican State Central Committee for Harford County, filed Nov. 12, 1954; Democratic State Central Committee for Harford County, filed Dec. 7, 1954; Republican State Central Committee for Harford County, filed Dec. 17, 1956.
70 Reports of: Citizens for Eisenhower-Sherwood, filed Dec. 8, 1954; Democratic State Central Committee for Carroll County, filed Dec. 7, 1956; Democratic State Central Committee for Cecil County (no filing date); Republican State Central Committee for Dorchester County, filed July 16, 1954; Democratic County Committee for Garrett County, filed Mar. 3, 1953; Democratic Organization for Kent County, filed Nov. 12, 1953; Eisenhower Committee of Montgomery County, filed Jan. 16, 1953; Volunteers for Stevenson of Prince George's County, filed Dec. 10, 1956; Republican State Central Committee for Washington County, filed Dec. 9, 1954; Democratic
one each from Cecil County, Kent County, and Baltimore City were not notarized as required in the law. Anonymous contributions, though infrequent, were nevertheless present. None was reported to have been forwarded to the Secretary of State as required in the law.

Now let us return briefly to the two principal reasons for the original enactment of these sections of the Maryland Code. In what way has this two pronged attack on the prevailing habits of candidates and campaign committees been a success, and to what extent?

With regard to the prohibition of excessive spending, the conclusion must be that the 1908 law failed completely. Compliance with the bare letter of the law, and certainly not with the spirit, led candidates to evade specific prohibitions by the creation of additional committees to administer their campaign funds. The parties themselves, under the law, were not limited in the amounts which might be spent. Neither were limits placed on the amounts which could be contributed by a specific individual or family. This situation was fostered in part by negligence on the part of elected state's attorneys, practically none of whom showed concern for enforcement in any consistent fashion.

Furthermore, a decided lack of inclination by lower court judges to uphold evidence of non-compliance eventually meant that the law in its totality would come to be regarded as a dead letter. Healy v. State set the pattern three years after passage of the initial legislation. Who worries about a possible ten-cent fine? Finally, the limitation on campaign spending is set, in practice, only by the maximum amounts which can be raised, and not by statutory regulations.

The effectiveness of the publicity features of the Maryland Corrupt Practices Act was largely mitigated by the requirement that financial statements should be filed after the election. One of the peculiarities of elections in the United States is the sudden lack of interest after election day. When reports were filed, three or four weeks follow-

State Central Committee for Anne Arundel County, filed Aug. 3, 1954; Baltimore Democratic Voters Association, filed June 9, 1956; Thomas Hankinson, Jr., candidate for U. S. Senate nomination, filed Aug. 20, 1952.
Report of Republican State Central Committee of Cecil County, Charles R. Brown, Treasurer, filed after the general election, 1954.
Report of Democratic Organization for Kent County, Clarence M. Melvin, Jr., Treasurer, filed after the general election, 1952.

Md. Laws 1908, Ch. 122, §165 (166) [219].
115 Md. 377, 385, 80 A. 1074 (1911).
ing the balloting, only the most cursory investigations resulted. On numerous occasions, when clerks were asked to produce the statements in various courthouses throughout the State, they were so unfamiliar with them and with the law regulating public inspection that confusion and delay resulted. Several times the writer was asked to produce identification — not to prove he was a citizen of Maryland, as the law provides, but for moral justification of his reasons for examining the reports. In some instances, it was necessary to wait until the Clerk had returned from meetings or errands to verify the right of examination. Such a reception clearly indicated that the financial statements were not being subjected to intensive interest on the part of the general public. The complete set of reports filed in Worcester County for 1954 and 1956 have apparently been irretrievably misplaced. A Talbot County newspaper editor averred that he had never seen the reports filed in the County courthouse in Easton, and that his readers would not be interested in an analysis of them by his reporters.

LEGISLATIVE COUNCIL PROPOSALS — 1955

Thus little was accomplished by way of revising the Maryland Corrupt Practices Act in the first forty-nine years of its existence. In fact, activity toward this very necessary end did not begin until well after World War II. Before this, however, other responsible persons were advocating comprehensive changes. Perhaps the most important of these suggestions was made by a young attorney of the day Richard W. Emory, who later served as an Assistant Attorney General.

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[2] Two letters to the Clerk of the Worcester County Circuit Court, plus two visits to the Snow Hill Courthouse in 1957, failed to yield any sign of the reports. On one of these occasions, a huge attic in the Courthouse was searched for two hours with negative results. In the Clerk's office were reports dating back to 1916, however.
[4] Emory, A Corrupt Practices Act for Maryland, 4 Md. L. Rev. 248 (1940). Mr. Emory discussed under the topic headings of publicity, contributions, expenditures, miscellaneous and sanctions, the advisability of revising the statute. Requirements that all contributions and expenditures be publicized through means of bank deposit slips and drafts, that a system of uniform reporting be used, that only contributions in excess of twenty-five dollars be listed in financial statements, and that pre-election statements be filed, featured the study. Expenditure limitations by candidates as suggested by Mr. Emory were based on a percentage of the salary for...
As we shall subsequently show, many of the provisions set forth in Mr. Emory's clearly-written article were later adopted by the Legislative Council in the proposed revision submitted to the General Assembly in 1955. More validity would have been possible, however, if some survey of reporting procedures had been undertaken. Nonetheless, this lack of information was partially mitigated by an unusually lucid discussion of corrupt practices acts in other states, although in no case did the author indicate the effectiveness of any existing legislation.

In our discussion of Maryland Corrupt Practices legislation, we will now turn to a consideration of the first general revision in the Act proposed since its original passage in 1908. Over the years, Article 33, dealing with election laws, had been built section by section, with a helter-skelter series of amendments and additions finally resulting in a veritable legislative hodge-podge. Space does not permit an extended analysis of the entire Article here, but sufficient evidence has been amassed to indicate that some contradictory amendments had appeared in the corrupt practices sections.

Rather than list one by one the entire twenty-five sections of the proposed 1955 revision, it seems more worthwhile to make a comparison of the salient sections in that overly optimistic document with the 1908 statute as it originally stood, with indications of the strong and weak points. In general, the two are similar in outline, except for the differences to be noted.

A significant departure from tradition was manifested in the limitations on campaign expenditures. Ceilings under the proposed bill would be $10,000 in the aggregate for candidates for statewide offices or U. S. Senator; $5,000 for candidates for the House of Representatives in Congress, and citywide offices in Baltimore City; and $2,500 for all other candidates. Except for candidates, no one would pay for campaign expenses except treasurers or political

the office sought. Finally, in his overall recommendations, Mr. Emory made a strong statement in favor of more information on money used in campaigns and a more adequately drafted statutory regulation.

Mr. Emory is now Chairman of the Baltimore City Equal Employment Opportunities Commission.

72 Supra n. 70, §216(c).
73 Ibid.
agents. The exempted items in the former law would still apply, but since the limitations in the revised version would be in the aggregate, apparently the supposition was that one committee would be established for each candidate. Also, a limit of $2,500, including both primary and general election, would be placed on contributions to "any candidate, or for the success or defeat of any party or proposition."

Proposed Section 219 outlined some drastic changes in the regulation of election day expenses. On primary election day, for example, each candidate would legally employ no more than two persons in each precinct, and they could receive no more than $15 each. For general or special elections, each party would legally employ no more than six persons at each polling place, again at a limit of $15 each. Compared with current practice in polling places, such a limitation would make election day very quiet indeed. One needs only to observe the ten or twelve paid election day workers surrounding voters as they go to vote to realize that some changes would certainly ensue. Perhaps the long ballot would save the day in primary elections, because properly distributed workers could run the total to over a hundred in some polling places, but the general election would be much different. In Baltimore City's Fourth Legislative District, for example, one now finds as many as twenty-five or thirty workers in each precinct on general election day.

The treasurer, according to another section of the proposed revision, would appoint a bank as depository, and all items would be paid by "check, draft or order upon the account with such depository." This was a step in a direction suggested by Mr. Emory some fifteen years before.

Requirement of pre-election reports, to be filed on the Friday before election day, was an important feature appearing in the revision. Both treasurers and candidates for all statewide and General Assembly offices as well as

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74 Supra, n. 70, §§217(a), 217(b).
75 I.e., postage, telegrams, telephoning, stationery, printing, advertising, publishing, expressage, travel and board. Ibid., 216(b). Cf. Md. Laws 1908, Ch. 122, §165 (166) [218(a), (b)].
76 Supra, n. 70, §217(c).
77 Ibid., §219.
78 Ibid.
79 Supra, n. 70, 220.
80 Emory, A Corrupt Practices Act for Maryland, supra n. 69, 253.
81 Supra, n. 70, §223.
citywide candidates in Baltimore City would be required to file such reports, provided they received or spent more than $1,000. Post-election reporting requirements would remain substantially the same as before.

Certain other changes were present in the 1955 revision as drawn by the Legislative Council, dealing in the main with a clarification of language and general integration of the sanctions and enforcement procedures. The sections discussed above, however, constituted a departure from the previous law, and most of these were dropped from the 1957 revision.

In retrospect, it might be noted that for those who had wished for more regulated elections, and also for those who were convinced that the use of more than a nominal sum is unnecessary in modern campaigning, the 1955 revision, if adopted, would have represented a long step in the right direction.

This writer is convinced that the limitation of election day workers, and the expenditure ceilings as proposed in the bill might well have resulted in driving campaign finance "underground" even more than it is now.

A positive good proceeds from the centralization of campaign finance through reporting procedures, and it is also good to maintain satisfactory and standardized reporting of funds. Nevertheless, it can be argued that most candidates for public office will find a way to influence elections with money, whether the law is explicit or not. This is particularly true if evasion of legal stipulations is tacitly approved by the public. Consequently, the realities of the situation demand recognition of such a tendency.

Present Legislation

Senator Winship Wheatley (Democrat, Prince George's County), Chairman of the Judicial Proceedings Committee of the Maryland Senate, was also chairman of the Legislative Council group which redrafted Article 33 in 1956. Known to his colleagues as a thorough workman, Mr. Wheatley's judgment prevailed in many sections of the 1957 version of the Corrupt Practices Act because of his penchant for realistic provisions. Other members of the
committees, although they did not have sufficient time to consider laws of other states in detail, were instrumental in eliminating provisions from the 1955 draft. It was against this background that the 1957 revision of Article 33, in which the Corrupt Practices Act appears, became a part of the Maryland Code.

The pendulum of restriction swung toward a slackening of limitations in the 1957 revision, as compared with the 1955 proposals. Whether the new law will be more effective than the previous legislation is a question which cannot be answered until it has been subjected to the test of experience. With the exceptions to be noted, none of the strengthening requirements which featured the 1955 proposed revision survived the acid test of reconsideration in 1957. This was certainly the case with the strict limitations regarding the use of election day workers and the pre-election reports. In a sense, however, what emerged in the 1957 session of the General Assembly is a compromise, the nature of which will now become the subject of our scrutiny.

As was mentioned previously, one looks in vain for a pre-election reporting provision or limitation of election day workers in the present law and gone, too, is the section requiring that all drafts be drawn on one bank. The Legislative Council doubted the workability of the section limiting election day workers, and felt that requiring pre-election reports would only result in misleading the public, since treasurers would hold back information until the post-election filing. Pressed for time, the Council did not see fit to consider refinements which have become a part of legislation seeking to accomplish the same end in other states, such as limiting pre-election statements to committees handling large sums.

It is heartening, however, to find that centralization of reporting responsibility has been tentatively established. Section 217 states:

“All contributions, money or other valuable things collected, received or disbursed by any political committee, or by any member or members thereof, for any purposes, shall be paid over to and made to pass through the hands of the treasurer of such committee and shall be disbursed by him; and it shall be unlaw-

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86 Ibid.
87 Md. Laws 1957, Ch. 739.
88 Benson interview, supra, n. 85.
ful and a violation of this Article for any political committee, or for any member or members of a political committee, to make any expenditure, to disburse or expend money or any other valuable things, for any purposes until the money or other valuable things, so disbursed or expended shall have passed through the hands of the treasurer of such committee."

The customary exemptions for the expenses of candidates follow in sub-section 218(b), but the language in the next sub-section seems to be quite explicit.

"It is unlawful for a candidate for nomination or a candidate for public office, directly or indirectly, during any calendar year or for any political campaign (which shall include both the primary and general election), to make any payment, contribution, expenditure or promise, or incur any liability to pay, contribute or expend any money or thing of value in excess of $10,000 in the aggregate in the case of a candidate for a Statewide office or United States Senator or Representative in Congress, and for a candidate for a citywide office in Baltimore City, or $2,500 in the aggregate in the case of a candidate for any other public or party office. This limitation shall not be applicable to the payment of the personal expenses provided for in sub-section (b) hereinafore. Any payment, expenditure, contribution, promise or liability which may be made or incurred, directly or indirectly, by the spouse of any candidate for nomination or public office shall be charged against the candidate as if made by the candidate himself."

The key words are "in the aggregate." If it is possible for enforcement officials to separate from the expenditures by a statewide treasurer the expenditures for different candidates on the same ticket throughout the state, it may actually result in some limitation. This eventuality is very much doubted.

Some of the problems alluded to might be mentioned in passing. A not untypical situation would occur if candidate A, running for Governor in the Democratic primary, were to have a treasurer for his statewide financing committee who would file a report following the election. This much

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89 "Ibid. (Italics added.) [218(c)] (166)."
seems clear enough. Consider also, however, that A, in order to receive backing from local county organizations and insure victory, furnishes the local organizations, through his treasurer and the statewide committee, sums ranging from a few hundred to $2,000. This maneuver places candidate A on at least some local tickets. In the meantime, the local treasurers are also required to file post-election statements. For the enforcement official to conclude that the money spent by candidate A’s state-wide committee is the only expenditure would obviously be a mistake, since the local committees have probably been collecting their own money as well, all of which is applied to the campaign in favor of the ticket! The question still remains, how does an enforcement official, or anyone else, ascertain how much was spent in favor of one candidate? And the answer must be arrived at by a process more reliable than divination.

It is also interesting to note an amendment to the section providing as yet an unknown degree of centralized reporting responsibility. Sub-section 219(a) states generally that all contributions must be made to the treasurers within six months of the election, but this is followed by an extremely broad qualification.

"Nothing contained in this sub-title shall limit or affect the right of any person to volunteer his time or personal vehicle for transportation incident to any election or to expend money for proper legal expenses in maintaining or contesting the results of any such elections. However, nothing in this sub-section shall preclude any person from expressing his own personal views on any subject, hiring halls, buying newspaper space and radio or television time, provided that co-incident with such statement or advertising notice shall be given that the views so expressed are his own."

In sum, then, the law as enacted in 1957 would seem to bespeak no great advance in the degree of financial regulation of candidates for public office. The paraphernalia of the 1908 law remain substantially the same in the new statute, with treasurers, reports, offenses, certain express prohibitions and relatively little-changed provisions governing limitations. A small step toward centralization has been taken, it is true, but this is a far, far cry from the

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"Md. Laws 1957, Ch. 739 [219(a)] (165)."
placing of responsibility on the candidate for all expenditures in his behalf, as called for in British law.\textsuperscript{62}

There is some indication, nonetheless, that a strengthening of the law has taken place with regard to overall enforcement. It is now mandatory that the Clerks of the Circuit Courts, after the election, must report non-filing candidates to the prosecuting official within ten days after the end of the period for filing.\textsuperscript{63} This provision had been a part of the more stringent requirements in the 1955 proposed revision and was retained in the present law. Previously, no enforcement coordination was called for at all, as one official received notification of the treasurer's appointment (Secretary of State), another received the reports (Clerk of Circuit Court), while still a third was responsible for prosecution (State's Attorney). Provision for coordination of information among these officials was inadequate.

In Maryland, it should be remembered, clerks of the various Circuit Courts, as well as the State's Attorneys themselves, are subject to election. For that reason, it does not behoove them to publicize accusations of the violation of criminal statutes by other candidates, because to do so would be impolitic. Few clerks are sufficiently well known to win as independent candidates in primary elections, which means they must attach themselves to an organization to succeed. Thus, the problem of proper notification is a complex one, and will not occur automatically as a result of a stipulation in the law. All the coordination now existing in the 1957 Maryland statute is mandatory, and not discretionary.

According to a recent news release,\textsuperscript{64} however, a letter was mailed by J. Harold Grady, State's Attorney for Baltimore City, to some eighty-five candidates, treasurers and political agents who failed to file a financial statement following the 1958 primary. Of the seventy-six candidates, sixty were Democrats and sixteen Republicans. Three treasurers were included in the list, as well as six political agents. The following letter was mailed to all those who did not file:

"Mr. Henry J. Ripperger, clerk of the Circuit Court of Baltimore City, has reported to me that you were

\textsuperscript{62} Supra, n. 1.

\textsuperscript{63} Md. Laws 1957, Ch. 739, §224(d) [224(d)] (169).

\textsuperscript{64} Baltimore Evening Sun, June 24, 1958.
a candidate for election (or political agent or treasurer) in the primary election held May 20, 1958, and that you have failed to file the report required by the provisions of Article 33, Section 223.

Under the provisions of Article 33, Section 224 D, I am required to prosecute anyone who fails to file such report within fifteen days of the time that I am notified of his delinquency. In addition, under the provisions of Article 33, Section 224 E, this time limit is mandatory and allows me no discretion in this matter.

Consequently, in the event that your report is not filed with Mr. Ripperger on or before July 3, 1958, this office must proceed with prosecution.

THIS MATTER REQUIRES YOUR IMMEDIATE ATTENTION.

Very truly yours,

(signed) J. HAROLD GRADY.\textsuperscript{95}

Subsequent developments in the State’s Attorney’s office did not result in any prosecutions, however. According to Saul A. Harris, Deputy State’s Attorney for Baltimore City, “all candidates or others required to file the reports had complied with the law.”\textsuperscript{96} Apparently some confusion had resulted from candidates who had withdrawn within the specified time or who had been struck from the ballot by the courts.\textsuperscript{97} A ruling of the Maryland Attorney General exempted candidates for the State Central Committee from the filing requirement.\textsuperscript{98}

Quite possibly, some changes will result from that section of the new Maryland Corrupt Practices Act which prohibits contributions in excess of $2,500 “in the aggregate”\textsuperscript{99} during a primary or general election. For some labor unions, and for the larger givers in both parties, this limitation may result in “hardship.” Then, too, one is inclined to wonder if the stipulation is designed to cover transfers among political committees, since many of these organizations certainly have exceeded $2,500 in the past.\textsuperscript{100}

\textsuperscript{95} Ibid.
\textsuperscript{96} Baltimore Sun, July 9, 1958.
\textsuperscript{97} Ibid.
\textsuperscript{98} Ibid.
\textsuperscript{99} Md. Laws 1957, Ch. 739, §219(b) [219(b)] (165).
\textsuperscript{100} $3,500 from (National) Citizens for Eisenhower to Citizens for Eisenhower-Dukehart, filed in Baltimore City, November 22, 1954; $3,882.50 from Democratic Congressional Campaign Committee to Ryan for Congress Com-
A sizable challenge faced by any legislature attempting to regulate campaign financing, and one which has not been met to date by the Maryland General Assembly, concerns the drafting of conditions under which political committees may function. The lawmakers seem to think only in terms of candidates, whereas the largest amounts of money are now handled by the ubiquitous ad hoc committees. It is one thing to state that such organizations must appoint treasurers and file reports, but it is quite another matter to subsume expenses incurred by the committees under the limitations imposed on candidates. If the limitations are to be realistically enforced, some solution to this problem must be found. No basis exists for making a judgment of the effectiveness of practices in other states as to the regulation of committees, as will be done regarding the law of agency and effectiveness of publicity in the concluding section, but the evidence in Maryland points toward an incomprehensible picture of overall financing.

As examples of what happens with respect to these committees and organizations, it has been discovered that a practicable enforcement procedure would be extremely difficult. A reasonably safe assumption is that the county state central committees will be involved in campaign finance, but in many instances even these organizations now have finance committees operating within the mother group. In addition, the hundreds of political clubs remain almost completely unregulated, most of them in a position to violate the law concerning expenditures as well as contributions.101 And what of the committees outside the state?

101 The writer belongs to two such groups, neither of which files reports.
If relevance is to be a feature of corrupt practices regulation, some way should logically be found to include the various dinner committees, which administer large sums of money, as well as the labor unions. Furthermore, the National Republican Congressional Committee habitually advances up to three thousand dollars to each Republican candidate for Congress in need. Is this national group subject to the contributions limitation?

When the present Maryland law is viewed from the vantage point enjoyed as the result of studying the many hundreds of reports filed in recent years, the conclusion must be that the law has been at least partially clarified, but it does not necessarily represent a step in the direction of increased regulation.

Comparisons, Conclusions, and Prospects

More than twenty-five years ago, Professor Louise Overacker spoke knowingly of the limits placed on the effectiveness of corrupt practices acts by the electorate and by the mechanics of regulation. No one would deny that Miss Overacker's outstanding contribution to knowledge in a difficult field for research implicitly incorporated a moral position. Basically, however, the position Miss Overacker took was determined by the limits of public morality. We now wish to reiterate this point of view as valid for the regulation of campaign finance in the 1950's. Until and unless Maryland public opinion and morality reaches a level at which corrupt practices will be contrary to the concept of law inherent in the people, no devices will accomplish the moral reforms so obviously built into most existing legislation.

This is not to deny the possibility of changing mores, nor to detract from the force of positive law. It just seems to be an indisputable fact of our jurisprudential life that enforcement of such regulations as now limit campaign spending in Maryland depends much more on public morality for their effectiveness than any of the numerous legal sanctions.

Once this is said, and it should be borne in mind that the theoretical position outlined above forms an underlying assumption of the present section, there still remains the distinct possibility of improving the administration and general effectiveness of corrupt practices acts. Well-written,
clear, explicit, and simplified legislation will go far toward eradicating the sloppy procedures now existing in the drafting of financial statements. There is, in addition, no substitute for tailoring the written law to the actual practices to be regulated. For example, provisions in the act which cover no known circumstance, or a similar lack of attention to reality, will almost certainly nullify the law ab initio. And, to put it more bluntly, this writer is convinced that, until the Maryland legislature sees fit to adopt a corrupt practices act embodying clear-cut "candidate-centered" responsibility, the proliferation of committees will result in sidestepping or evading of many express limitations.

The two aims of initial Reform League corrupt practices legislation were referred to previously. For various reasons, neither aim was met in that legislation. It hardly seems justified objectively, however, to summarize the prospects of the present Maryland corrupt practices act without some comparison with the laws of other states. Significance will attach to such comparisons by reason of tentative judgments regarding their effectiveness. In the remaining pages, therefore, a few remarks on the implications of our own explicit theoretical assumptions will be followed by brief glances at Florida and Maine experiences with legislating the evils out of corrupt practices in elections.

If what has been said of the relationship between law and public morality contains a germ of truth, what conclusions may be drawn from such a jurisprudential notion regarding the policing of campaign spending? Clearly, from what we have seen of Maryland electoral habits, local state's attorneys cannot be depended upon to initiate prosecution of violators. The lower court judges, also, have not exactly distinguished themselves in upholding the law in most instances.

First, then, the efficacy of the policing function probably should come to rest in the public itself. All that has been learned of regulating campaign finance indicates the inherent validity of this conclusion. The State's Attorneys and prosecutors, in nearly every instance, are themselves elected and therefore subject to the stipulations in the legislation, and should the public not take the initiative in policing the act, the local prosecutors cannot be expected to do so.

Second, the kind of self-policing referred to depends in turn on other devices, which must appear in the law
for effectiveness to result. In order to take advantage of
the public’s interest level when the highest point is reached,
and for publicity to have any real effect, a system of pre-
election reporting is absolutely necessary. Almost no one
has an interest in campaign finance after the election ex-
cept perhaps a treasurer whose committee has gone into
debt. The only way public morality regarding campaign
spending can be injected into a campaign is during the
campaign—not three weeks afterward.

Third, the crux of the whole issue is this: will the
public, given a clear opportunity, bring its overwhelming
influence to bear on campaign spending by appropriate
punishments exercised through the franchise? If the public
is afforded the chance, before the election, to know the
whys and wherefores of a candidate’s financial activities,
will this knowledge make any difference at the polls? It
has been popularly assumed that elections can be literally
“bought.” What is required is a closer approximation of
public feeling achieved on the basis of fore-knowledge.

Florida, in 1951, became the first state to enact a cor-
rupt practices act explicitly incorporating the requirements
as outlined above for the infusion of public opinion into
elections. Initially, enactment was a direct consequence
of extremely distasteful revelations to the public concern-
ing contributions to statewide candidates by disreputable
individuals, giving rise to a wave of opinion demanding, in
the best traditions of American political life, “a law.”
When the 1951 legislature had completed its mission, a
remarkably clear and forthright statute had been written
and adopted.

Furthermore, the law has apparently been an unquali-
fied success, so much so that recent action in other juris-
dictions has been applied toward the same end. To a
considerable extent, the 1955 proposed revision to the Mary-
land law constituted an adaptation of the Florida “Who
Gave It—Who Got It?” law. That its reception in the
Maryland General Assembly was so lukewarm perhaps
meant that Marylanders as a whole were less concerned
about the details of campaign giving and spending than
were their neighbors to the south.

Discussion of early legal struggles validating Florida’s
corrupt practices legislation will be postponed for the pres-

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103 LAWS OF FLORIDA (1951), Ch. 28519 [FLA. STAT. (1955) §99.161].
104 Roady, Florida’s New Campaign Expense Law and the 1952 Demo-
ent while emphasis is directed toward the publicity provisions. To a certain extent, it is true, these areas overlap, but court decisions had to do with the constitutionality of the law itself, rather than the specific provisions.

And the publicity provisions were most comprehensive. Not only were complete and accurate accounts to be kept of every contribution, and a limit of $1,000 placed on contributions from any single individual, but reports were to include names and addresses.

Most unusual was the requirement of weekly reports to be filed with the office of the Secretary of State for the weeks preceding the election. Gubernatorial and Senatorial candidates were included in this provision, while all other candidates reported only once a month. It was said that the weekly reporting device served to sharpen and enhance interest in the statewide campaigns in particular, as newspaper reporters gathered for the periodic accounting by the various treasurers. In addition, the candidates kept a watchful eye on each other's reports, thus resulting in a sort of dual system of surveillance as the public watched the candidates and the candidates watched each other. No treasurer could accept contributions within five days of the election.

A variety of other provisions characterized the Florida law of 1951 from the publicity point of view. Forbidden to contribute in any way were persons "holding a horse or dog racing permit," those persons "holding a license for the sale of intoxicating beverages" or anyone involved in public utility franchises. The point was that addresses furnished to the opposition candidates and the public through the medium of the weekly reports could be immediately checked for violations of this provision as well as for the limit on individual gifts.

Finally, the Florida law embodied a series of stipulations requiring that all monies be handled by a treasurer, be deposited in a designated bank, and be accounted for by the treasurer within twenty-four hours time after re-

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105 Supra, n. 103, §99.161 (4) (a), (7).
106 Ibid., §99.161 (2).
107 Ibid., §99.161 (8).
108 Ibid.
110 Supra, n. 103, §99.161 (4) (b).
111 Ibid., §99.161 (1).
112 Ibid.
113 Ibid.
Expenditures were likewise to be strictly accounted for by the treasurers, since no debts could be incurred. Interestingly enough, no upper limits were placed on expenditures, as the Florida legislature went all the way in the direction of self-policing backed up by public opinion.

In a valuable summary listing reasons for the success of Florida's new corrupt practices act, Professor Roady has said:

"The underlying premise of the new Florida election law is that if the people are informed as to the exact nature of the financing of a candidate's campaign they are capable of making a sound decision when casting their votes. This premise is based on two assumptions: (1) 'too much' money reported by any candidate would contribute to his defeat, and (2) if the names of persons appearing on his contributions lists were obviously 'wrong people' in the eyes of the general public, his candidacy would be adversely affected.

One of the best features of the present law is its self-policing effect. * * * The publicity which was necessary if the law was to be meaningful was provided by a conscientious corps of political reporters. . . ."

This has been the experience of one state in recent regulation of campaign finance through public opinion. A different approach is the case in Maine, where apparent effectiveness is gained by even more complex devices than those undertaken by Florida politicians. Here, in striking contrast to the "publicity limitation" of the Florida statute, Maine law since 1933 has required, every two years:

"... the president of the senate to name 2 members on the part of the senate, and of the speaker of the house to name 3 members on the part of the house, to serve as a special committee to investigate the expenditures made and liabilities incurred by and on behalf of candidates seeking nomination to elective office and such committee shall meet in Augusta on the Thursday preceding the primary election, at which time they shall

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114 Ibid., §99.161 (5).
115 Ibid., §99.161 (6).
116 Roady, Florida's New Campaign Expense Law and the 1952 Democratic Gubernatorial Primaries, supra n. 104, 475-76.
make a preliminary investigation of all returns of expenditures and within 10 days after the primary election, the committee shall again meet in Augusta, at which time they shall examine the final returns of expenditures made under the provisions of this chapter. * * *

"The committee may on its own motion and shall at the request of any candidate make a complete investigation into the expenditures made by or on behalf of any candidate and for that purpose shall have full authority to summon and require the attendance of witnesses and the production of records, books and papers and to take evidence pertaining to the matters under investigation.

"The attorney-general shall act as counsel for the committee and conduct the examination of witnesses called before it and in the event of any infraction of the election laws or any omissions on the part of candidates, their duly authorized political agents or other persons to account for all expenditures made or liabilities incurred in the conduct of elections, shall cause appropriate proceedings for the punishment of such offenders to be instituted."  

Contributions are not included in primary election reports made by the recipient, under the terms of the present law.115  

Maine is one state where the primary and the general elections are regulated by separate parts of the election law.110 Provisions governing the conduct of general elections from a financial point of view coincide closely with the Maryland statute.120 However, no maximum limits are set forth for expenses in either primary or general elections, and no "person, firm, or corporation" may aid any candidate in any primary election without the consent of the candidate.121 Another stipulation adopted by the Maine legislature concerns the reporting of contributions by the contributor.122 There are, as well, complex conditions established for publicizing the financial activities of candidates before the election, and in a recent primary campaign in-

\[\text{References:}\]
115 1 REV. STAT. ME. (1954), Ch. 4, §44.
118 Ibid.
119 Ibid., of. Ch. 9.
120 Ibid., Ch. 9.
121 Ibid., Ch. 4, §37.
122 Ibid., §38.
volving Senator Margaret Chase Smith concern for the Maine corrupt practices act may have acted to influence the result.\footnote{Portland Press Herald, April-May, 1954. One Jones, itinerant Congressional staff member and former assistant to Senator Potter of Michigan, explicitly attempted to campaign on the issue of McCarthyism and to goad Mrs. Smith into an "Americanism" campaign, with a distinct lack of success. He polled about twenty per cent of the total vote.}

Brief comparisons of the Maryland Corrupt Practices Act with similar statutes in these two other states have been presented to indicate the variety of possible approaches to the regulation of campaign finance and to lay the basis for concluding paragraphs in which relevant generalizations will be examined. For example, it would seem to be a justifiable conclusion at this point that corrupt practices legislation can operate, at most, in two rather diverse but potentially effective directions. One direction which has already been the subject of some analysis is that of providing publicity. We may assume that a very little or a great deal of publicity and information can result from legal requirements of various kinds. And to the extent that the public is adequately informed, in time, of financial campaign activities, the publicity will operate as a regulatory measure.

The other direction is that which has been termed "vertical" control,\footnote{Mitau, \textit{Selected Aspects of Centralized and Decentralized Control Over Campaign Finance: A Commentary on S. 636}, 23 Univ. of Chi. L. Rev. 620, 627 (1956).} which devolves initially upon the question of centralized responsibility for campaign expenditures, and ultimately upon a determination of the law of agency in campaign finance. Simply put, this is a matter of making the candidate himself, or the treasurer, responsible for all money spent on his behalf during the campaign, thus leaving the door open for direct regulation through maximum limits of expenditures. Eliminated would be the decentralized committees which now feature any important campaign on the state level. Florida, insofar as this direction can be implemented in a statute, has gone farthest to achieve centralization of this kind. It is submitted, however, that no state can be completely successful in applying centralized responsibility until decisions toward this end have been reached by federal courts.

It might be said, in other words, that corrupt practices acts may do one of two things: ideally, they may provide information for the enlightenment of the electorate — a
matter which is difficult to analyze, at best — or they may constrict the financial activities of candidates and parties, which depends upon judicial interpretation. So far, no branch of the federal government has undertaken to proclaim a stand on the issue of centralized responsibility.

At this point it is obvious that something must be said of the federal system and the way its functioning relates to corrupt practices, especially in view of recent Supreme Court decisions concerning Congressional power over primary elections.\textsuperscript{125} Elections, it now seems, and all matters bearing upon the conduct of elections, have become irrevocably integrated, in spite of a still viable federalism.

Practically speaking, of course, it must be realized that we are dealing, not with two levels of a federal government, but three — national, state, and local. In terms of the concept of state sovereignty, there can be at most a two-level federalism in the United States, yet at every turn in the regulation of campaign finance the researcher finds himself separating tri-level items. Prominent among the reason for this state of affairs is the amount of money necessary in order to campaign on the three levels. The differences in total expenditures for candidates at the national, state and local levels of government are so great as to demand significantly different criteria. In Maryland, for example, a guess could be hazarded that all the money spent by all local candidates in the state would not equal the sums raised on behalf of one "serious" candidate for Governor or Senator. Doubtless the same situation prevails in other states.

It follows, then, that the regulation and/or limitation of campaign spending on one level will necessarily be inadequate if the other levels are not likewise regulated. This is not true for local spending, except indirectly, but many points have been raised in the discussion so far indicating lacunae in the law resulting from a lack of jurisdiction. By the same token, since local spending is not as extensive as on the other two levels, publicity regarding such spending would seem to be at least in part, a waste of time and effort. Thus state legislators, and here we speak primarily of the Maryland General Assembly, have not recognized the great need for differentiation in the degree of regulation imposed on campaign finance.

And we may further postulate that, as with many other facets of our national political life, regulation must be forthcoming from the one source of sovereign power in the country as a whole — from the national government. This is why, for reasons to be explained shortly, ultimate enforcement of limitations on political party finance will stand or fall upon the future actions of the national government.

Still, federal statutes limiting and regulating the financial activities of candidates for federal offices have been on the statute books for almost thirty-five years. To hold that regulation should be consistent from top to bottom demands at least a brief look at the federal corrupt practices act and a proper explanation of the inadequacies existing in the act.

It should occasion no surprise that the federal legislation very much resembles that in force in the various states. Here appear the customary mandates for appointment of treasurers for political committees, records of contributions and expenditures, the filing of reports, prohibitions against certain groups and organizational activity, limitations on total expenditures, limitations on overall contributions by individuals and so on.

With persuasive eloquence, able students of the federal corrupt practices act have pointed out the many, many loopholes which, in the words of one famous publicist, "are big enough to drive a truck through." Generally speaking, specific results of federal attempts to regulate campaign finance have been: (1) circumvention of ceilings on contributions; (2) proliferation of national finance committees in order to evade the $3,000,000 limit, a very simple matter of organization; (3) prohibitions against contributions by labor and corporations have been evaded through contributions by individual officers and by labor committees; and (4) extreme decentralization of national elections.

Many attempted revisions of the federal law have been stymied by the complexities of the problem, and by an apparent belief that limitation of campaign spending cannot be subjected to regulatory measures. In a 1956 article written to extol the virtues of a bill introduced in the 84th Congress, Professor G. Theodore Mitau has called attention to the need for a united front in the field of campaign

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127 See KEY, POLITICS, PARTIES AND PRESSURE GROUPS (4th ed. 1958), 531-65, Ch. 18, for one of the best studies of national party finance in brief.
The principal problem, according to Professor Mitau, who brings an overwhelming weight of evidence against the unenforced, and probably unenforceable, federal statute, is that "[j]udicial interpretations . . . have construed the principal-agent relationship to require evidence of direct and specific authority before it is possible to charge the principal (candidate) with any violation of . . . legal limits." The burden of the argument in favor of and against tightening corrupt practices acts seems to place the blame at the door of the courts. Up to now the state courts are blamed for unenforceability, the difficulty being that legislators will not presume to enact a measure they know will not be upheld by the judiciary.

Until 1953, many decisions in state courts had resulted in the establishment of a pattern which tended to divide responsibility for expenditures during the campaign between the candidate on the one hand and the political committee on the other hand. As a case in point, the Maryland law was written in part to conform to such a pattern. But a decision of the Florida Supreme Court in 1953 seems to represent a break-through in the long line of judicial opinions. After an owner of a local Florida radio station had brought suit claiming that the Florida "Who Got It? Who Gave It?" law violated freedom of the press and freedom of speech and the claim was denied by the Circuit Court, some doubt was raised as to whether the inability of the court to grant an early hearing would nullify the newly enacted law. But the 1952 campaign was conducted under the conditions of the revised law.

In spite of arguments claiming unconstitutionality based on the hypothesis that the new law would not permit the very necessary activities of individuals exercising their rights to take part in elections, and that the new law amounted to a censorship, the Florida Supreme Court held, on March 17, 1953, that in substance the law represented a legitimate exercise of the state's police power. It seems rather difficult to uphold the thesis that individuals are being denied constitutional rights if in fact they need only to obtain prior permission of the candidate or his treasurer before making expenditures on his behalf. This is not a

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128 Mitau, Selected Aspects of Centralized and Decentralized Control over Campaign Finance: A Commentary on S. 636, supra n. 124.
129 Ibid., 627.
130 Ibid., fn. 44.
131 Smith v. Ervin, 64 So. 2d 166 (Fla. 1953).
132 Ibid.
denial of liberty, but only a slight detour in the propagandizing process.

So, it is on an optimistic note that we conclude this study of one state's political party finance. Many years will pass before Congress enacts the sort of candidate-centered law deemed so necessary before adequate national regulation of campaign expenses can be expected to occur, but perhaps the states, laboratories of government since the formation of the union, will again perform the age-old function of acting as heralds for a new era of "open financing."