

Summary of Ideas and Suggestions
December 10, 2013, Round Table Discussion
HJR 1 Study of Office of Commissioner of Political Practices

Prepared for the State Administration and Veterans' Affairs Interim Committee
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Staff Note: This bullet-point list was requested by the Committee at the December 10, 2013, meeting. The ideas presented are grouped under general topic headings and include ideas presented by committee members.

Structure and funding of office

- Examine alternate structures for the Office of the Commissioner of Political Practices (CPP) to separate the power of investigation, decisions, and penalties.
- Have the investigation done independently of the Commissioner's office, so the Commissioner does not talk directly to the complainant. An independent contractor or Attorney Generals' Office should do the investigation. The Commissioner would then see that case after the investigation. Statute should mandate this. This would require additional funding for another attorney.
- Keep office as is, which is a problem solving office to help keep people out of trouble in the first place.
- The office needs more funding to do what it is supposed to do now. All suggestions are meaningless if we don't fund the office adequately.
- Office desperately needs a support person, another attorney (so there would be one attorney to write decisions and one to do enforcement), and a litigation fund.
- Look at the Tax Appeal Board process for holding hearings without having to comply with all the requirements of MAPA. Tax Appeal Board members get training in the legal process of conducting hearings. Take a two-tiered approach so the less complex issues could be handled through this hearing process. A person making a complaint would know that they would have to appear at a hearing and couldn't just drop the complaint on the Commissioner's desk and leave town. The Tax Appeal Board had three members. Perhaps you could have a panel of three Commissioners and ensure that no more than two of the Commissioner could have the same political party background. This would also allow for a Commissioner to write a dissent, which would bring a level of transparency to the process.

Appointment and qualifications

- Don't allow interim appointee to make decisions. If an interim appointment is made, the committee responsible for the hearing on the appointment (Senate State Administration) should schedule a hearing, swear witnesses, including the Commissioner appointee, and ask the questions that need to be asked. If it requires issuing a subpoena to the Governor to discuss what was discussed in the appointment process, then that needs to be done. After that very public hearing where facts are gathered (rather than just circulating perceptions), the committee would make a recommendation to the full Legislature and send the confirmation question to the full Legislature for a vote by a mail ballot. (NOTE: SAVA requested its legal staff to prepare a memorandum concerning this idea for SAVA's meeting Feb. 6.)
- Have the Judicial Nomination Commission do the screening on appointments of the Commissioner. That Commission would pass candidates to the Governor, then the Senate should do the confirmation.
- Add a qualification requirement so the Commissioner has to have a law degree.
- Don't require the Commissioner to be an attorney.
- Eliminate the appointee process we have been cycling through this last 6-year period. They are partisan appointees. As long as the Governor alone is responsible for the appointment, the perception of partisanship will be there. Require the Legislature to confirm by having a super-majority vote. The Governor should at least have to appoint from the list submitted by the nomination committee. Statute needs to be followed and have meaning that a majority of the nominating committee must agree on the list of candidates submitted to the Governor.
- Have the Chief Justice appoint the Commissioner. (Other comments were made that this could run afoul of Separation of Powers doctrine.)
- Might have to consider a constitutional amendment concerning the appointment of the Commissioner.
- Leave appointment process as is.

Campaign reporting requirements

- Simplify campaign reporting process and laws so that CPP can be freed up to focus on what's really important. For example, the CPP doesn't need to be spending so much time following up on things that are inconsequential, such as if the employer occupation is missing or if the disclaimer is missing the treasurer's name.
- The paper reporting we have to do is way too much. Pre-primary reports being due 10 days before the primary and then another report 5 days before that. Just make us do one pre-primary report rather than two. The occupation requirement is out of hand. Public disclosure is good, but some of the information required to be disclosed is not necessary -- very time consuming. There is one too many reports for pre-primary.
- Don't want to see any decline in the reporting, which is the way the public and opposing candidates stay informed. That's what keeps campaigns honest and fair. There is no overlap in the reports.
- Reporting the employer occupation is important to identify trends. One example is about how employees of one company each made a \$500 contribution, then the employer reimbursed them.
- Ask staff of CPP where they spend most of their time and ask if where they are spending their time is the most important thing they could be spending their time on. There should be a compelling interest underlying the campaign reporting requirement. That's the constitutional requirement for restricting free speech. There is not a compelling interest in allowing a candidate to check up on their opponent. (NOTE: SAVA requested CPP provide a report to SAVA for the Feb. meeting on how much time is being spent in these different areas.)
- Reduce number of reports by half.
- Eliminate 24-hour and 72-hour reporting.
- Eliminate prohibitions on corporate contributions to candidates; have the same limits as for individuals.
- Prohibit cash contributions.
- Adopt FEC-style disclaimers.
- Put a minimum threshold on what expenditures need disclaimers.

- Increase the minimum on contributions that need to be reported from \$35 to \$100.
- Need to keep reporting as is. These disclosure may seem like small potatoes but they are needed to see trends and the big picture if you are ever going to be serious about catching the big violators. We are dealing with things that may not just be mistakes but may be actual campaign strategies to buy or steal elections.
- Eliminate the reports and information on the reports that are not read by anyone.

Making complaints and timing of decisions

- The statute of limitations for making a complaint and keep records needs to be examined -- could be shorter.
- If a respondent doesn't cooperate and litigates every request for records, decision could take many years and you would be up against the statute of limitations, especially if CPP doesn't have adequate funding.
- Disallow complaints to be decided upon prior to the election because these complaints are used to influence the outcome of the election rather than allowing the election to be decided on the merits of the candidate's ideas. This would reduce the number of complaints and the number of frivolous complaints. Most of the complaints are related to honest mistakes or sloppy paperwork. Free up CPP to focus on nefarious activities and corruption, not to help people check up on their opponents. After the election you can punish those that cheated.
- Require the complaint to be filed in the election cycle during which the alleged violation occurred.
- Need to keep an eye on the presumption of innocence.
- Need to protect the rights of those who are complained against...we don't have a lot of professional politicians in this state.

Lobbying and ethics

- Examine Lobbying Act and Ethics Act statutes. The CPP's duties in these areas are equally important. Legislation is needed to clarify and clean up these codes.