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## Michigan Standards of Conduct and Ethics Act of 1973

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# LEGISLATIVE NOTES

## MICHIGAN STANDARDS OF CONDUCT AND ETHICS ACT OF 1973

The vitality of our democratic form of government in which the people select representatives to enact and administer the laws that govern our affairs depends upon steadfast public confidence in the integrity of those representatives.<sup>1</sup> Whenever the public perceives a conflict between the private interests and public duties of a governmental officer or employee, that confidence is threatened.<sup>2</sup> Michigan lawmakers, in an attempt to insure the integrity of state government personnel and thereby increase public confidence,<sup>3</sup> have recently enacted the Standards of Conduct and Ethics Act of 1973.<sup>4</sup>

Michigan's new law incorporates two complementary steps designed to help governmental personnel avoid conflicts of interest in public office and promote faith in the integrity of state government.<sup>5</sup> First, acknowledging that the complexities of mod-

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<sup>1</sup> See ARK. STAT. ANN. § 12-3001 *et seq.* (Supp. 1973).

<sup>2</sup> See ALA. CODE tit. 55, § 327(8) (Cum. Supp. 1973).

<sup>3</sup> See Mich. Exec. Order No. 1973-4, Declaration of Policy (January 25, 1973). This order laid the groundwork for the Standards of Conduct and Ethics Act of 1973, MICH. COMP. LAWS ANN. § 15.341 *et seq.* (Supp. 1973). See note 4 *infra*.

<sup>4</sup> MICH. COMP. LAWS ANN. § 15.341 *et seq.* (Supp. 1973). The process which led to the enactment of this statute was set in motion by the Governor, who, on January 25, 1973, proclaimed a Code of Ethics for public officials and employees. Mich. Exec. Order No. 1973-4 (January 24, 1973). The state Attorney General, after reviewing the Executive Order, indicated that it presented constitutional problems which would have to be resolved. Mich. Att'y. Gen. Letter Opinion (July 31, 1973). The Attorney General cited three problems with the Executive Order. The first concern was that the Executive Order encroached upon the power of the legislature delineated in MICH. CONST. art. 4, § 10. The second concern was that the Governor appeared to have established an administrative body, the State Board of Ethics, and vested it with certain powers and duties without benefit of authorizing legislation and without any appropriation. The final concern was whether the Executive Order encroached upon the power of the Civil Service Commission insofar as the Order purported to cover the conduct of the civil service employees. As a result, legislation establishing the State Board of Ethics as a permanent statutory body was introduced. MICH. S. JOUR. No. 111, 1856 (November 13, 1973). With only minor amendments, this bill was given overwhelming support by the Senate. MICH. S. JOUR. No. 121, 2029 (December 6, 1973). One week later the House concurred. MICH. H. R. JOUR. 124, 3081, 3085 (December 13, 1973). On January 8, 1974, not quite one year after his Executive Order proclaiming a Code of Ethics for public officers and employees, the Governor signed and gave immediate effect to the Standards of Conduct and Ethics Act of 1973.

<sup>5</sup> See part II *infra*.

ern society and the diverse interests of our highly complex economic system necessitate the establishment of guidelines for public officials,<sup>6</sup> standards of conduct for public officers and employees are prescribed in the statute.<sup>7</sup> Secondly, recognizing the need for a disciplinary mechanism to ensure the uniform maintenance of those standards,<sup>8</sup> a state board of ethics has been created and its powers and duties prescribed.<sup>9</sup>

This article undertakes an analysis of the Standards of Conduct and Ethics Act. After a discussion of the factors prompting enactment, the statutory framework of the Act is presented. Finally, the Michigan legislation is contrasted with and evaluated in light of similar statutory efforts in other states.

### I. PROBLEMS ANTEDATING THE ENACTMENT OF PUBLIC ACT 196 OF 1973

Prior to the enactment of the Standards of Conduct and Ethics Act of 1973, the methods used to insure the integrity of those having duties and responsibilities in the state government of Michigan were largely ineffective.<sup>10</sup> Previous Michigan provisions were limited in scope. The two major statutes in the area<sup>11</sup> were aimed at eliminating conflicts of interest on the part of legislators, state officers, and other public servants but only with respect to contracts with public entities.<sup>12</sup> By Executive Order,<sup>13</sup> Michigan's Governor had established standards of conduct for state employees, but the provisions of this Order were also limited in both scope and applicability. This Order, which applied only to state employees, addressed the conflict of interest issue in the specific areas of disclosure of confidential information, gifts and favors, representation of private interests, supplementary employment,

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<sup>6</sup> See ARK. STAT. ANN. § 12-3001 *et seq.* (Supp. 1973).

<sup>7</sup> MICH. COMP. LAWS ANN. § 15.342 (Supp. 1973).

<sup>8</sup> See N. J. STAT. ANN. § 52:13D-12(b) (Supp. 1974-75).

<sup>9</sup> MICH. COMP. LAWS ANN. §§ 15.343-.346 (Supp. 1973).

<sup>10</sup> See notes 11-17 and accompanying text *infra*.

<sup>11</sup> MICH. COMP. LAWS ANN. § 15.301 *et seq.* (Supp. 1973); MICH. COMP. LAWS ANN. § 15.321 *et seq.* (Supp. 1973).

<sup>12</sup> See MICH. COMP. LAWS ANN. § 15.301 *et seq.* (Supp. 1973). (The statute implements the provisions of section 10 of article 4 of the Michigan constitution, relating to substantial conflicts of interest on the part of members of the legislature and state officers with respect to contracts with the state and the political subdivisions thereof and provides for penalties for the violations thereof.). MICH. COMP. LAWS ANN. § 15.321 *et seq.* (Supp. 1973). (This provision relates to the conduct of public servants in respect to contracts with public entities and provides penalties for the violation of its terms.).

<sup>13</sup> Mich. Exec. Order No. 1966-3 (May 13, 1966).

and investments in conflict with public responsibilities. The Michigan Civil Service Commission had also formulated standards of conduct<sup>14</sup> but these were, by and large, repetitive of the standards established by the Governor's order.<sup>15</sup>

Before the 1973 Act, there was no single, central body which could receive complaints concerning alleged unethical conduct. In attempts to file and receive action upon their complaints, citizens petitioned any of a number of entities.<sup>16</sup> The resulting confusion seriously impaired the effectiveness of provisions which were already of limited utility.<sup>17</sup>

## II. THE STANDARDS OF CONDUCT AND ETHICS ACT OF 1973

### *A. Standards*

The title of this Act reflects one of its central objectives: to provide standards of conduct for public officers and employees.<sup>18</sup> These standards are designed to: (a) apprise those who are subject to the Act of the behavior which is expected of them in the course of their public duties; and (b) provide the public with a gauge by which it can measure the behavior of its state employees and officials.<sup>19</sup> To this end, the Act specifically prohibits seven types of improper activity:<sup>20</sup> violating government confidences;<sup>21</sup> engaging in transactions in which one may benefit from his or her official position or confidences obtained as a result of that position;<sup>22</sup> using

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<sup>14</sup> MICH. DEPT. OF CIVIL SERVICE, STATE EMPLOYEE RELATIONS POLICY (April 26, 1966); MICHIGAN CIVIL SERVICE COMMISSION RULES § 7 (Nov. 1973). (This particular provision addresses the issue of political activities of state employees).

<sup>15</sup> See *id.*

<sup>16</sup> Prior to the enactment of the Standards of Conduct and Ethics Act of 1973 various parties, *e.g.*, the Governor, the Attorney General, the Auditor General, the Director of the State Civil Service Commission, and the heads of various state agencies were contacted by citizens who sought to initiate action against state personnel for behavior alleged to be in violation of their public trust. Interview with Donald J. Willis, Executive Director of the State of Michigan Board of Ethics, in Lansing, Michigan, Sept. 27, 1974.

<sup>17</sup> *Id.*

<sup>18</sup> The Standards of Conduct and Ethics Act, MICH. COMP. LAWS ANN. § 15.341 *et seq.* (Supp. 1973).

<sup>19</sup> See Mich. Exec. Order No. 1973-4 (January 25, 1973). This order, which laid the groundwork for the Standards of Conduct and Ethics Act, declares,

The purpose of these standards is to provide each state employee and appointed official with a clear understanding of the behavior expected of them in the performance of their public responsibilities and to give the citizens of Michigan a standard by which they may be assured that these responsibilities are being faithfully performed.

<sup>20</sup> MICH. COMP. LAWS ANN. § 15.342 (Supp. 1973).

<sup>21</sup> *Id.* § 15.342(1).

<sup>22</sup> *Id.* § 15.342(5).

resources under one's official control for personal benefit;<sup>23</sup> accepting gifts or favors tending to influence performance of official duties;<sup>24</sup> engaging oneself in employment which may tend to impair one's objectivity in the performance of one's official duties;<sup>25</sup> participating in official actions relating to any business entity in which one has even an indirect interest;<sup>26</sup> and representing one's personal opinion as that of the government agency in which he or she works.<sup>27</sup>

### B. Implementation

The state board of ethics created by the Act<sup>28</sup> is designed to oversee the implementation of the standards of conduct established by the new legislation. As suggested above,<sup>29</sup> the board filled a void for citizens seeking a central entity to which they could submit complaints concerning the improper behavior of state officials or employees.

Under the Act, the board is charged with three major responsibilities. First, it investigates all citizen complaints alleging unethical conduct by any person subject to the Act, and, if necessary, makes recommendations to the party with supervisory responsibility for the person who was the subject of the investigation.<sup>30</sup> Secondly, the board can, on its own initiative, undertake investigations of practices which could affect the ethical conduct of a public officer or employee.<sup>31</sup> Finally, the board can issue and publish advisory opinions relating to matters affecting the ethical conduct of particular state officials or employees who are subject to the Act.<sup>32</sup> However, such opinions are issued only when requested by a public officer or employee or by one who appointed such an individual or who is his or her supervisor.<sup>33</sup>

The board is empowered to promulgate its own procedures.<sup>34</sup>

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<sup>23</sup> *Id.* § 15.342(3).

<sup>24</sup> *Id.* § 15.342(4).

<sup>25</sup> *Id.* § 15.342(6).

<sup>26</sup> *Id.* § 15.342(7).

<sup>27</sup> *Id.* § 15.342(2).

<sup>28</sup> MICH. COMP. LAWS ANN. §§ 15.343, -.345 (Supp. 1973).

<sup>29</sup> See notes 16-17 and accompanying text *supra*.

<sup>30</sup> MICH. COMP. LAWS ANN. § 15.345(1)(a) (Supp. 1973).

<sup>31</sup> *Id.* § 15.345(1)(b). The Board of Ethics could initiate an investigation pursuant to the power granted it in this subsection, if, for example, it were aware of the giving of Christmas gifts by a certain entity to an agency responsible for regulating that entity. See MICH. COMP. LAWS ANN. § 15.342(4) (Supp. 1973).

<sup>32</sup> *Id.* § 15.345(1)(e).

<sup>33</sup> *Id.*

<sup>34</sup> MICH. COMP. LAWS ANN. § 15.346 (Supp. 1973).

However, the Act requires that certain procedures must be included in the board's rules. For example, the board's rules must provide that the board can request the attendance of witnesses who it decides will aid in the conduct of a particular investigation.<sup>35</sup> Furthermore, the rules must empower the board to compel any witness appearing before it to submit sworn testimony, at the board's option.<sup>36</sup> Finally, the rules must provide for open meetings except in those situations in which the board deems it necessary to meet in private for the protection of individual rights.<sup>37</sup>

All departments of state government are obliged to cooperate with the board in the conduct of its investigations.<sup>38</sup> In addition, all authorities to whom the board makes post-investigatory recommendations are required to take appropriate action in accordance with such recommendations.<sup>39</sup>

### III. COMPARATIVE ANALYSIS OF LEGISLATIVE EFFORTS IN OTHER STATES

The Standards of Conduct and Ethics Act of 1973 is designed to increase public confidence in the integrity of government. The provisions of the Act are clearly oriented toward that goal. In order to assess its potential for achieving its purpose, it is instructive to compare it with ethics legislation in other states.

#### *A. Standards*

*1. Applicability* — Executive branch appointees and employees are the only persons subject to the standards of conduct imposed by the Michigan statute.<sup>40</sup> Several other states have enacted ethics legislation applicable to a broader range of government personnel. For example, the standards of a number of these laws are applied to elected as well as appointed officers.<sup>41</sup> Some statutes prescribe

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<sup>35</sup> *Id.* § 15.346(a).

<sup>36</sup> *Id.* § 15.346(b).

<sup>37</sup> *Id.* § 15.346(d).

<sup>38</sup> MICH. COMP. LAWS ANN. § 15.345(1)(a) (Supp. 1973).

<sup>39</sup> *Id.* §§ 15.345(3) and (4).

<sup>40</sup> The heading of the Standards of Conduct and Ethics Act of 1973, MICH. COMP. LAWS ANN. § 15.341 *et seq.* (Supp. 1973), provides that the Act is to prescribe standards of conduct for public officers and employees. MICH. COMP. LAWS ANN. § 15.341(c) (Supp. 1973) states, "'Public officer' means a person appointed by the governor or another executive department official." *Id.* § 15.341(b) reads, "'Employee' means an employee, classified or unclassified, of the executive branch of the state."

<sup>41</sup> *See, e.g.,* FLA. STAT. ANN. § 112.311 *et seq.* (Supp. 1973-74).

standards of conduct applicable to members of the legislative<sup>42</sup> and judicial<sup>43</sup> branches of government. Finally, some states address the issue by applying their code of ethics not only on the state level but also to officials of political subdivisions of the state.<sup>44</sup>

Several issues must be addressed when considering the wisdom of applying standards of conduct to a broader group. For instance, the propriety of broadening coverage so as to encompass a particular group must be considered. In Michigan, there appears to be no real need to subject the judicial branch of government to the provisions of this Act as it is under the jurisdiction of the Judicial Tenure Commission which has the power to recommend reprimand, suspension, or removal of a judge. Moreover, the constitutional propriety of applying this statute to the judiciary is quite dubious. Another issue which must be considered is the suitability of the state administrative machinery for the competent application of these standards to a broader range of persons. The standards of the Michigan Act appear to be drawn in a manner which would enable the board to apply them to elected state officials and members of the legislative branch of government. It is not clear that the board, with its present resources, could handle the increased caseload which could reasonably be expected to follow an expansion of its jurisdiction, but if such a problem were to arise, it seems likely that the appropriate administrative adjustments could be made. The cost of such adjustments would be well worth the added effectiveness which could be achieved by applying uniform standards to as many persons as possible throughout the state who, in the eyes of the public, are associated with the government.

Moreover, while it is too early to reach firm conclusions about the performance of the Michigan Board of Ethics, experience to date indicates the need for broader jurisdiction. Of four "Ethical Decisions" which the Board has handed down, two have been dismissals of complaints for failure to fall within the Board's jurisdiction.<sup>45</sup> To the extent that citizens such as the complainants

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<sup>42</sup> See, e.g., N.J. STAT. ANN. § 52:13D-12 *et seq.* (Supp. 1974-75).

<sup>43</sup> See, e.g., VA. CODE ANN. § 2.1-347 *et seq.* (1973).

<sup>44</sup> See, e.g., UTAH CODE ANN. § 67-16-1 *et seq.* (Supp. 1973).

<sup>45</sup> See State of Michigan Board of Ethics, No. 74-ED3, No. 74-ED4. The Smeekens-Hillsdale Foundry Affair is a classic example of a legislative "conflict-of-interest" which turned into a scandal of state-wide proportions. See *Detroit Free Press*, June 6, 1974, at 1-A, col. 8; *id.* July 5, 1974, at 3-A, col. 3; *id.* July 10, 1974, at 3-A, col. 2, at 6-A, col. 1; *id.* July 11, 1974, at 3-A, col. 2, at 10-A, col. 1; *id.* July 12, 1974, at 5-A, col. 1; *id.* July 13, 1974, at 3-A, col. 2; *id.* July 14, 1974, at 3-A, col. 4; *id.* July 18, 1974, at 1-A, col. 5; *id.* July 21, 1974, at 2-D, col. 1; *id.* July 23, 1974, at 4-B, col. 1, at 3-C, col. 5; *id.* July 24, 1974, at 2-A, col. 1; *id.* August 4, 1974, at 3-A, col. 1; *id.* August 8, 1974, at 13-A, col. 1; *id.* September 23, 1974, at 6-A, col. 1.

in these cases are frustrated in their attempts to hold government personnel accountable for their acts, the goal of increased public confidence in the integrity of government is thwarted.

2. *Scope* — Another requisite for success of a statutory scheme enacted to bolster public confidence is an ability to deal with all appearances of impropriety in government. The Michigan Act proscribes seven manifestations of impropriety.<sup>46</sup> Unlike several comparable statutes, it does not, however, contain a general catch-all proscription.<sup>47</sup> For instance, the Massachusetts statute provides:

No officer or employee . . . shall pursue a course of conduct which will raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.<sup>48</sup>

The value of providing such a catchall phrase in legislation of this nature cannot be understated. To begin with, a statute which merely catalogues proscribed conduct does not have the flexibility needed to cope with the immense varieties of conduct that society deems to be unethical. The limited utility of exclusive cataloguing has been demonstrated repeatedly.<sup>49</sup> Furthermore, public confidence in government is susceptible to being undermined not only when unethical behavior is manifested but also when suspicion arises that an officer or employee of the government is likely to be engaged in activities which violate his or her public trust. Standing alone, the proscriptions of the Michigan statute are not sufficient to achieve the goal of avoiding all appearances of impropriety. A catchall provision prohibiting any conduct which could raise public suspicion is much more likely than an exclusive catalogue to ensure confidence in the government.

3. *Specific standards—Disclosure*. Public disclosure of economic interests can be a most effective way to strengthen public confidence in the integrity of government. It is not necessarily improper for government personnel to have private interests related to their public positions; however, it is important that such interests be revealed in order that the public can judge for itself the integrity of its government officials and employees.

An overwhelming number of states have written disclosure provisions into their ethics legislation.<sup>50</sup> The Michigan statute does

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<sup>46</sup> See text accompanying notes 21-27 *supra*.

<sup>47</sup> See, e.g., MASS. GEN. LAWS ANN. ch. 268A, § 23(f) (1968).

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., Perkins, *The New Federal Conflict-of-Interest Law*, 76 HARV. L. REV. 1113 (1963).

<sup>50</sup> See, e.g., ARK. STAT. ANN. § 12-3001 *et seq.* (Supp. 1973).

not contain a disclosure provision. While a disclosure requirement would, to a certain degree, impinge on individual privacy, such an infringement would be a reasonable price to exact from those who choose to serve in government. Requiring disclosure would help to eliminate suspicions of impropriety and approach the goal of increased public confidence in government.

*Confidential information.* As noted earlier,<sup>51</sup> one of the purposes underlying the Michigan Act is to provide notice as to the behavior which is expected of government officials and employees. Yet the Act fails, in at least one respect, to achieve that purpose. It provides that a public officer or employee shall not divulge, or engage in a business transaction in which he or she may benefit from, "confidential information" acquired or obtainable in the course of employment.<sup>52</sup> But, in view of the fact that the state government has no established procedure for determining the confidentiality of information, those subject to the Act have no sure way of ascertaining the behavior that is expected of them in this respect. The Michigan statute would be strengthened if it incorporated the approach which other jurisdictions have used to solve this problem.<sup>53</sup> For example, the Ohio statute provides,

. . . no public official or employee shall disclose or use for his personal profit, without appropriate authorization, any information acquired by him in the course of his official duties which has been clearly designated to him as confidential  
 . . . .<sup>54</sup>

*Unauthorized use of resources.* The Michigan statute prohibits the use of personnel, resources, property, and funds under one's official control "for personal gain or benefit."<sup>55</sup> It is possible that a situation would arise in which the board, desiring to take action against a state officer or employee for the unauthorized use of such resources, would be unable to proceed because of the restrictive wording, "for personal gain or benefit."<sup>56</sup> In order to avoid this possibility, it would be useful to substitute for the objectionable phrase such wording as that in parallel sections of comparable state provisions. Instructive in this regard is the Alabama statute, which provides,

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<sup>51</sup> See note 19 and accompanying text *supra*.

<sup>52</sup> MICH. COMP. LAWS ANN. §§ 15.342(1), (5) (Supp. 1973).

<sup>53</sup> See, e.g., OHIO REV. CODE ANN. § 102.03(B) (Page Supp. 1973).

<sup>54</sup> *Id.* (emphasis added).

<sup>55</sup> MICH. COMP. LAWS ANN. § 15.342(3) (Supp. 1973).

<sup>56</sup> *Id.*

No state official or employee shall use an official position or office to obtain financial gain for himself, or his family, or any business with which he or a member of his family is associated unless such use and gain are specifically authorized by law.<sup>57</sup>

Language of another portion of the Michigan Act itself which could be beneficially employed in this context reads, "for the benefit of any person or organization, other than the state."<sup>58</sup>

*Solicitation or acceptance of things of value.* Solicitation or acceptance of a thing of value "which tends to influence" the manner in which one performs his official duties is explicitly proscribed by the Standards of Conduct and Ethics Act of 1973.<sup>59</sup> Several comparable statutes employ a more objective standard in this respect.<sup>60</sup> For instance, the Florida statute provides,

No officer or employee . . . shall accept any gift, favor, or service, of value to the recipient, that would cause a reasonably prudent person to be influenced in the discharge of official duties.<sup>61</sup>

Such a standard is superior to the subjective standard of the Michigan standard in two respects. First, it is much easier to apply. For example, a gift which tends to influence an individual of weak moral fibre might not tend to influence a stronger person. Under the Michigan statute the moral fibre of individuals would have to be determined before it could be decided whether they violated the standard. The difficulties involved in attempting to make such determinations are readily apparent. On the other hand, if the more objective standard is applied, it is necessary to ask only whether such a gift would tend to influence a reasonable person. Moreover, since the more objective standard forbids behavior which appears improper (in that it would influence a reasonable man), it is more effective in maintaining public confidence.

## B. Implementation

1. *Attendance of witnesses*—The Michigan Act declares that the temporary and permanent rules of the board of ethics shall provide that the board may "request" the attendance of witnesses.<sup>62</sup> In

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<sup>57</sup> ALA. CODE tit. 55, § 327(10) (Cum. Supp. 1973).

<sup>58</sup> MICH. COMP. LAWS ANN. § 15.342(4) (Supp. 1973).

<sup>59</sup> *Id.*

<sup>60</sup> *See, e.g.*, FLA. STAT. ANN. § 112.313(1) (Supp. 1973-74).

<sup>61</sup> *Id.*

<sup>62</sup> MICH. COMP. LAWS ANN. §15.346(a) (Supp. 1973).

contrast, many comparable statutes authorize state boards of ethics to compel the attendance of witnesses by subpoena.<sup>63</sup> It seems likely that if a board can only request the attendance of witnesses, an uncooperative party could seriously impair its ability to conduct an effective investigation. Although the experience of the Michigan board has been that witnesses have respected its requests,<sup>64</sup> the potential for an uncooperative witness limiting the effectiveness of the board and, to that extent, thwarting the goals of the statute could be greatly minimized if the board were authorized to compel the attendance of witnesses and the production of documents it deems relevant to its investigations.

2. *Action pursuant to board recommendations* — As pointed out above,<sup>65</sup> the board of ethics is empowered to make recommendations to the appointing authority with supervisory responsibility for any person whose activities have been investigated. Although the statute declares that an appointing authority shall take appropriate action upon receipt of such a recommendation from the board,<sup>66</sup> there is no mechanism for enforcing the board's recommendations. Thus, an authority who chose to ignore the board's recommendations could nullify the efforts of the board and frustrate the purposes underlying the Act.

Comparable state statutes suggest alternatives which would help avoid such an undesirable situation. For instance, some statutes provide sanctions against authorities who fail to comply with the instructions of ethics boards.<sup>67</sup> Other statutes provide that certain parties other than the appointing authority can take action on the board's recommendations. Chief among such parties are the

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<sup>63</sup> See, e.g., NEB. REV. STAT. § 49-1111(3) (1974) which provides,

In connection with any hearing, the board or committee shall have the power by subpoena to compel the appearance of witnesses and the production of any relevant evidence. Any witness compelled to attend or to produce evidence shall be entitled to the fees and expenses allowed in district court. Any failure to respond to any such subpoena shall be certified by the chairman to the district court for Lancaster County for enforcement or for punishment as for contempt of the district court.

<sup>64</sup> Interview with Donald J. Willis, Executive Director of the State of Michigan Board of Ethics, in Lansing, Michigan, Sept. 27, 1974.

<sup>65</sup> See text accompanying note 30 *supra*.

<sup>66</sup> MICH. COMP. LAWS ANN. §§ 15.345(3), (4) (Supp. 1973).

<sup>67</sup> See, e.g., ALA. CODE tit. 55, § 327(23)(d) (Cum. Supp. 1973) which declares, Failure on the part of any agency head who is not an elected official to comply promptly with any lawful directive, order or instruction received from the commission shall subject him to all penalties provided for elsewhere in this chapter and shall cause the immediate suspension of all salary and other benefits which he otherwise would be entitled to receive. Such suspension shall remain in effect during the period in which he fails or refuses to comply . . . .

governor,<sup>68</sup> the attorney general,<sup>69</sup> and the district attorney.<sup>70</sup> The effectiveness of the Michigan statute would be greatly enhanced if it incorporated these or other alternatives.<sup>71</sup>

3. *Amendment of complaints by the board* — It is conceivable that, in the conduct of an investigation, a board could discover violations other than those cited in the complaint under consideration. In such a situation, the board would need the power to take action with regard to those violations. As the statute stands, however, the Michigan board is not clearly empowered to amend a complaint and make recommendations based on newly discovered violations. In contrast, the Connecticut ethics statute provides,

If the committee, during the course of its investigation, has probable cause to believe that violations of this chapter, other than those contained in the complaint, have been committed, it may upon its own motion amend the complaint to include such violations. If the complaint is so amended by the committee, a copy of the amendment shall be sent to the person complained against within forty-eight hours. Any action by the committee on such amendment shall be made part of the committee's findings.<sup>72</sup>

The board's ability to effectively administer the standards of conduct established by the Act would be greatly enhanced if it possessed the flexible power assigned to the Connecticut board. With such a power at its disposal, the board would be better equipped to deal with all manifestations of impropriety regardless of when or how they come to light.

4. *Filing of a periodic report* — The advisability of a periodical evaluation of the operations of an ethics board should not be underestimated. A comprehensive review of the experiences of a board would enhance the discovery of problems which limit its

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<sup>68</sup> See, e.g., HAWAII REV. STAT. § 84-32(b) (Supp. 1973).

<sup>69</sup> See, e.g., ALA. CODE tit. 55, § 327(34)(b) (Cum. Supp. 1973).

<sup>70</sup> *Id.*

<sup>71</sup> One attractive alternative would involve the board sending its recommendations not only to the appointing authority but also to the attorney general. If the appointing authority failed to take action on the recommendations within a reasonable period of time, the attorney general would then be empowered to take action not only against the party who is the subject of the board's recommendations but also against the defaulting authority. Such a procedure would go a long way towards improving the follow up stage which is vital to the success of this effort to promote public confidence in the integrity of government.

<sup>72</sup> CONN. GEN. STAT. ANN. § 1-72 (Supp. 1974-75).

effectiveness and encourage remedial legislation. The Michigan Act, unlike comparable statutes,<sup>73</sup> does not provide a mechanism for such review. The filing of a periodic summary of operations with the legislature and governor could lead to adaptations which would enable the board to overcome obstacles to the fulfillment of its mission.

#### IV. CONCLUSION

The Standards of Conduct and Ethics Act of 1973, insofar as it mitigates problems of limited scope and applicability and provides a board of ethics to ensure uniform adherence to its standards, represents an improvement in Michigan's approach to the issue of ethics in government. This improvement can not, however, diminish the fact that the Michigan legislature fell far short of the optimum legislation when it enacted this statute. The Act suffers from numerous statutory inadequacies and implementation deficiencies, the most notable of which is the failure to subject elected state officials and members of the legislative branch of government to its standards. The elimination of these defects can move Michigan closer to the goal of increased public confidence in the integrity of government.

—Roger Alan Petzke

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<sup>73</sup> See, e.g., WIS. STAT. ANN. § 11.07(5) (Supp. 1974-75) which provides, No later than September 1 of each year, the board shall report to the legislature and the governor concerning its actions in the preceeding fiscal year, including a summary of its determinations; the names and duties of all persons employed by the board; and shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as it deems desirable. The report shall contain the current and complete text of all guidelines issued by the board.