

Academics in New York and California Fight Disclosure Policies

In the aftermath of Watergate, government in the sunshine looks like a movement whose time has come. Policy-making committees are being forced to open their meetings to public scrutiny. Government officials are being required to expose their finances to public inspection. It is happening in Washington—and it is happening in state government too. The bywords are openness and financial disclosure.

On the face of it, it would seem that there is no better way to curtail self-seeking and conflict of interest on the part of individuals who are supposed to be the “employees of the people.” President Carter got a lot of political mileage out of his requirement that cabinet members reveal their net worth (and everyone got a kick out of learning that Health, Education, and Welfare Secretary Joseph A. Califano, Jr., earned a cool half-million last year practicing law); state governments have been scoring points with financial disclosure policies as well. However, there are those who think the whole thing is getting out of hand. In New York and California, where financial disclosure requirements are being imposed on academics on grounds that they are also state employees, it has become a burning issue. What some persons see as disclosure in the public interest, others see as an unconstitutional invasion of privacy or a threat to academic freedom. One man involved in a lawsuit against New York Governor Hugh Carey goes so far as to say that the state’s disclosure requirement “has become a form of tyranny.”

The situations in New York and California, each currently before the courts, are slightly different in detail, but in principle they have much in common.

New York

As part of a campaign promise of government in the sunshine, Carey told the voters he would ask state employees to disclose their financial assets. On 22 May 1975, Carey took a step toward keeping that promise when he issued “Executive order No. 10.” It covers state employees (but not legislators) who earn \$30,000 a year or more or who hold policy-making positions. Under the order, those employees must reveal their assets, liabilities, and sources of income. And they

must restrict their activities to their principal state jobs. Thus, they are not allowed to hold any other public office or accept any other public employment; they cannot serve on the board of directors of any profit-making corporation or serve in any official capacity in any political party.

The scope of the order is broad, but it seemed to make a certain amount of sense until it became apparent just whom it covers and whom it does not. It leaves a lot of people out—politicians and judges, for example. Also exempt are faculty of the state university system, because the universities are run by a board of regents rather than the governor. But the order does apply to individuals working for a state agency whose head is appointed by the governor. Therefore, the disclosure order applies to scientists at the Roswell Park Memorial Institute, the state’s prestigious cancer research center in Buffalo. And researchers there do not like it, even though it has the endorsement of institute director Gerald P. Murphy, who was named to his job by former governor Nelson Rockefeller. “I don’t have any problem publishing my assets,” Murphy told *Science*. “The public is asking for reassurance that nothing is going on that’s wrong in state institutions. We’re going to see more of this kind of thing, not less.”

Sixteen of the chiefs of Roswell’s departments, which are roughly equivalent to a department in a university although there are no students, do not see things Murphy’s way. So, at considerable personal expense, they have hired a Buffalo attorney named J. Edmund de Castro, Jr., to sue the governor on their behalf. In a conversation with *Science*, de Castro said the disclosure issue represents a “conflict between the right to privacy and the public’s right to know,” but that “it makes no sense to apply it to physicians and scientists. The people who are fighting the governor’s order are not politicians or public office holders,” he pointed out. “These researchers do not owe their jobs to patronage.”

The men whom de Castro represents object to the governor’s order on two counts. One is that it is an invasion of privacy because of the nature of the disclosure it requires. Says de Castro, “My clients do not oppose ‘reasonable’ dis-

closure—their salaries and any investments that might bear on their work.” But the disclosure forms that have been drawn up by the new state Board of Public Disclosure stop at nothing. Disclosure applies not only to the state employee but also to his or her spouse and children. The wife of one of the scientists at Roswell, a professional woman who does not work for the state, told her husband that as far as she was concerned “Governor Carey can go to hell with his executive order.” But it is the little things that really got to some of the Roswell protestors. Under the order, they would have to reveal the mortgage on the house, the amount of money they spend on children’s tuitions, and what they owe on BankAmericard. “I don’t see why I have to tell the governor how much I owe on my color television,” one man said. Another commented that he did not want to reveal what few stockholdings he had because “it would show what a poor investor I am.” But what they really object to is the principle of it all. As physicians and researchers they do not see themselves as state employees with any real control over public policy or public money.

The other provision of executive order 10 that provokes criticism is the one limiting employment. In general, the researchers do not see why they should not be on the board of directors of a bank (though they concede it unlikely they would be asked), but in particular they object to the prohibition on their having any other state employment, because it can be interpreted to mean that they cannot hold appointments at the state medical school at Buffalo.

At the present time things are in limbo for the Roswell researchers. The 16 plaintiffs got a court order enjoining the state from forcing them to comply with the executive order until validity is determined, so they have not had to reveal all there is to tell about their money as yet, but the waiting is not easy, and some fear for their jobs if they lose in the end.

They believe they have good reason, if a letter from institute director Murphy is any indication of what state officials are thinking. “The Committee [a state group that administers review of the executive order] has reviewed the failure of those individuals such as yourself in not completing this form and has recommended to the Governor that, in their opinion, this is grounds for dismissal. Because of the serious nature of this recommendation and because of the circumstances in which it arises, I wish to alert you to this fact in order that you might consider whether you are still willing to complete this document. . . . Naturally in these times when all of the staff are seek-

ing additional salary assistance, circumstances such as these have a direct bearing and perhaps unfortunately complicate matters further."

The letter went to Lucius Sinks, a pediatric oncologist who recently left Roswell Park after 10 years to take a position at Georgetown University. Says Sinks, "When the director of your institute tells you that by standing up for what you believe to be your rights you are jeopardizing the salaries of all your colleagues, you begin to see how the so-called public interest requirement of disclosure becomes a form of tyranny."

The Roswell researchers are not the only group of state employees to challenge Governor Carey's order. Several others have too, among them civil servants in Albany who have challenged the governor's authority to issue such an order. They contend that, if there is to be disclosure, it must be mandated by state law. The civil servants' case is expected to go to court relatively soon and, if they win, the matter is likely to end there. The consensus of opinion seems to be that disclosure will not become a matter of law because politically, there is no way the state legislature could require state employees to disclose their finances unless state legislators and judges did the same. There seems to be little enthusiasm for the latter on the part of the lawmakers. If the suit in Albany fails, the Roswell scientists will proceed with theirs, in which case the uncertainty will drag on for a couple of years more. But while everyone waits, morale at Roswell declines.

California

The disclosure debate in California centers around a conflict of interest statute which some legal experts see as a potential threat to academic freedom and the autonomy of universities within the state system. At issue is the interpretation of the meaning of the term "state agency" in the Political Reform Act of 1974 which was adopted as an initiative measure. Unlike the case in New York where the governor's authority to require financial disclosure by executive order is in doubt, there is no question about the validity of the California law. The issue, rather, is whether the University of California is or is not a "state agency." If it is, the university system must adopt a conflict of interest code that requires financial disclosure and prohibits any university employee—it would include all faculty members—from doing anything that constitutes a conflict of interest. Stretched to the limit, faculty members could be barred from assigning text books they authored or receiving grants for which they applied. Although

Frank Press Nominated

It's now official. On 18 March, President Carter announced that he will nominate Frank Press, chairman of the department of earth and planetary sciences at the Massachusetts Institute of Technology, as director of the White House Office of Science and Technology Policy and presidential science adviser. Press, who emerged as the leading candidate for the job in early February (*Science*, 25 February, p. 763), has actually been working at the post for several weeks now while the paperwork involved in his nomination passed the appropriate clearance hurdles. Confirmation hearings were to be held before the Senate Committee on Commerce, Science and Transportation within a few weeks.—P.M.B.

such consequences admittedly are extreme, some faculty think that, given the appropriate political climate, they certainly could be invoked. Consequently, these faculty members believe, the issues must be defined clearly now.

The focal point of the California debate is at the Berkeley campus. Donald L. Reidhaar, general counsel to the regents of the University of California, is of the opinion that the university is, indeed, a "state agency" within the meaning of the law and must, therefore, submit a conflict of interest code to the state's Fair Political Practices Commission for its approval. Reidhaar has a proposed code ready to go by the filing deadline of 11 April.

However, a group of 12 professors, led by Stephen R. Barnett, a professor of law and chairman of the university-wide committee on academic freedom of the academic senate, have gone to court to challenge Reidhaar's interpretation of the law. Barnett told *Science* that he expects there will be a hearing before 11 April.

Reidhaar and Barnett agree that the basic question is whether the university is a state agency. Reidhaar admits it is "not an open and shut case," even though he has concluded that the university *is* a state agency. Barnett figures there is a 50 percent chance that the court will rule that the university is not an agency of the state but an independent authority governed by the regents.

Proceeding on the assumption that the university will have to comply with the Political Reform Act, Reidhaar has drafted a conflict of interest code that carefully defines those individuals who, in his opinion, can be said to be in policy-making positions and who, therefore, should be required to make financial dis-

closure. Generally speaking, the proposed code puts university administrators—chancellors, deans, provosts—into this category, along with business managers and others who regularly purchase supplies or services. In addition to defining who would be required to file disclosure statements, the code Reidhaar drafted also spells out just what kind of information would have to be reported and an attempt is made to limit it to information that could somehow be related to the individual's job. Unlike the New York disclosure form, people are not asked to list literally every debt—Reidhaar would not, for instance, want to ask how much you owe BankAmericard.

As presently written, the university conflict of interest code does not apply to ordinary faculty members although there is a dispute about whether it should or whether it could be extended to do so. One group of Berkeley faculty and students are lobbying for financial disclosure from every member of the faculty regardless of rank. Barnett does not take that position but he is afraid that a strict application of the law, stretched to include all faculty, could have disastrous consequences. "The law," he points out, "does not just require that agencies write conflict of interest codes and ask for disclosure. It says that no employee may *have* a conflict of interest. A faculty member seeking a grant, for instance, certainly has an interest in the outcome of the application which he is making, in effect, as an employee of the university. It would be possible to conclude that a faculty member seeking a grant has a conflict of interest."

What concerns Barnett most is the possibility that if the university is judged to be a state agency, it will end up having to relinquish some of its autonomy to the Fair Political Practices Commission which has authority for administering the new law. And he sees a threat to the university's autonomy from the state as a threat to academic freedom. Barnett and the colleagues who joined him in bringing suit have no quarrel with the idea of a conflict of interest code. In fact, he says, he thinks the one Reidhaar has drafted is just fine. It's just that he wants it adopted by and enforced by the university itself, not the state government.

It is ironic that our current enthusiasm for government in the sunshine—for openness and financial disclosure—may create a new and unanticipated set of issues, but the possibility is there. The situations in New York and California are only illustrative of the problem that is likely to grow more perplexing before it is resolved.—BARBARA J. CULLITON