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MINNESOTA CORRUPT PRACTICES ACT: A CRITIQUE OF THE FIXED CAMPAIGN EXPENDITURE LIMITATIONS

Most states, and the Federal Government, have established fixed statutory limits on the amount a candidate or political party may spend during a political campaign. The present system of fixed limitations was incorporated into the Minnesota Corrupt Practices Act in 1912 and remains substantially unchanged. This type of legislation has been widely criticized.

The purposes of this Note are to examine the effectiveness of existing state legislation, and, further, to consider the advisability of retaining fixed campaign expenditure limitations in the Minnesota Corrupt Practices Act in the light of the purposes underlying such legislation and the practical and legal obstacles which arise in attempting to achieve enforceable ceilings.

PROVISIONS AND PURPOSES OF THE MINNESOTA CORRUPT PRACTICES ACT

Provisions

The Minnesota Corrupt Practices Act incorporates most of the campaign fund regulations found in the Minnesota statutes. The provision with which this Note is primarily concerned is § 211.06 which sets a fixed limit on the total expenditures that can be made “by or on behalf” of a candidate during primary and general elections. The candidate may select a personal campaign committee.


4. Minn. Stat. § 211.06 (1953) reads as follows “No disbursement shall be made and no obligation, express or implied, to make such disbursement, shall be incurred by or on behalf of any candidate for any office under the constitution or laws of this state, or under the ordinance of any town or municipality of this state in his campaign for nomination and election, which shall be in the aggregate in excess of the amounts herein specified: (1) For governor, $7,000; (2) For other state officers, $3,500; (3) For state senator, $800; (4) For member of house of representatives, $600; (5) For presidential elector-at-large, $500, and for presidential elector for any congressional district, $100.” (6) (this section provides that any candidate not mentioned above shall be limited to an amount equaling one-third of the annual salary of the office to which he aspires. If the office is non-salaried, $100 is the expenditure limit)

5. Minn. Stat. § 211.17 (1953).
which may spend any amount he authorizes up to the expenditure limit assigned to the candidate.\(^6\) Also, the state central committee of each political party is limited to expenditures of $10,000 in any election.\(^7\) Certain types of expenditures are prohibited,\(^8\) and, in addition, a list of permissible expenditures is set out for the candidates\(^9\) and for the candidate's personal campaign committee or party committee.\(^10\) Corporations may not contribute to "promote or defeat the candidacy of any person."\(^11\)

Public disclosure regulations require that candidates, personal committees, and party committees file a statement itemizing contributions and expenditures before and after each primary and general election. Other "political committees" are required to file statements with the local county auditor but once after each primary and general election, and this report is required to show only total receipts and expenditures.\(^12\)

The county attorney is principally responsible for enforcing the criminal provisions of the act.\(^13\) Violation of the Corrupt Practices Act may result in a fine, imprisonment, or both.\(^14\) Further, if the person convicted is an elected official, the court shall issue a supplemental order declaring such person to have forfeited the office which is then deemed vacant.\(^15\)

In addition to these criminal sanctions, any 25 voters, or the defeated candidate, may file a petition in the district court to contest the election of the successful candidate. If a violation of the act is proven, the nomination or election is annulled.\(^16\)

**Purposes**

The strongest reason supporting limits on campaign expenditures would seem to be that a candidate with resources in excess of reasonable needs may, by spending this additional amount, gain

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\(^6\) Minn. Stat. § 211.25 (1953).

\(^7\) Minn. Stat. § 211.26(2) (1953).

\(^8\) Minn. Stat. §§ 210.16, 211.11 (1953) (treating by candidates prohibited); Minn. Stat. §§ 210.03, 210.04 (1953) (bribery prohibited); Minn. Stat. § 211.14 (1953) (certain election day expenses prohibited).

\(^9\) Minn. Stat. § 211.02 (1953).

\(^10\) Minn. Stat. § 211.18 (1953).

\(^11\) Minn. Stat. § 211.27 (1953).

\(^12\) Minn. Stat. § 211.20 (1953).

\(^13\) Minn. Stat. § 211.33 (1953).

\(^14\) Minn. Stat. § 211.40 (1953).

\(^15\) Minn. Stat. § 211.38 (1953). Under this section, conviction of an elected federal or state legislator does not result in forfeiture of the election by court order, but the court's adjudication of guilt is forwarded in certificate form to the presiding officer of the appropriate legislative body. Legislative bodies are the exclusive judges of the elections of their members.

\(^16\) Minn. Stat. § 208.01 (1953). The period is limited within which contest proceedings may be brought. Minn. Stat. § 211.35 (1953).
an advantage over the opposing candidate who has only enough for minimum expenditures but whose resources are not completely inadequate. The poorer candidate is then faced with the alternatives of either suffering the disadvantage, or attempting to raise additional funds, the solicitation of which tends to involve commitments against the public interest.

A few other reasons advanced for limits on campaign spending seem to have less merit. It has been suggested that limitations encourage less wealthy persons to become candidates; however, candidates lacking the large amount of money needed to carry on a modern campaign are seriously handicapped whether expenditure limits exist or not. Another reason offered in support of political spending limitations is that campaign resources exceeding legitimate needs tend to be spent corruptly. But large expenditures are not necessarily corrupt. For example, it is probable that any surplus would be spent on mass media advertising. In any event, the most direct way to prevent corrupt expenditures is by explicit prohibition.

Effectiveness of Existing Legislation

There is general agreement that existing legislation has failed to limit campaign expenditures. One of the reasons for this failure is the inadequacy of the law enforcement machinery. Elected law enforcement officials have not enthusiastically enforced this legislation, nor have defeated candidates or private citizens often...
brought proceedings contesting the election of successful candidates. Moreover, legislation providing the defeated candidate with an incentive for bringing an election contest by permitting him to replace the winning candidate if the contest is successful has been held unconstitutional. For these reasons, contest proceedings or criminal prosecutions for corrupt practices act violations are rare.

But perhaps a more fundamental reason for the failure of existing legislation to limit campaign expenditures is that a candidate may easily avoid complying with campaign expense ceilings by merely establishing “independent” committees which ostensibly operate without his direct authorization. In some states this result follows from statutes designed to limit only what the candidate himself spends, but several states, including Minnesota, have established limits applicable to all expenditures “by or on behalf” of a candidate. However this type of statute has been generally construed so that it also limits only those expenditures authorized by the candidate. On an appeal from proceedings in which the election of a county commissioner had been successfully contested, this narrow construction of the Minnesota statute was adopted in Mariette v. Murray. The trial court had declared the election forfeited on the basis of a finding that a “voluntary political committee,” which had incurred expenditures substantially in excess of the legal limits assigned to the candidate, was a subterfuge to avoid the Corrupt Practices Act, being in fact the candidate's reluctant to prosecute a candidate from his own party. See Sait, op. cit. supra note 20, at 567. Failure to prosecute may also result from a sense of camaraderie among elected politicians. See Bottomly, supra note 1, at 378.

27. The losing candidate has little to gain from contesting an election and runs the risk of being branded a “poor loser.” See Overacker, Money in Elections 353 (1932). Private citizens are unwilling to go to the expense or incur the publicity attendant upon contest proceedings. See Young, op. cit. supra note 19, at 12.


30. See note 43 infra and text thereto.


32. See note 4 supra.


34. 185 Minn. 620, 242 N. W. 331 (1932).
personal committee. Even though there was substantial evidence of collusion between the candidate and the committee, the supreme court reversed this finding, asserting that a candidate may be charged only with expenditures which he has directly authorized and that knowledge and approval of a committee's expenditures is insufficient to charge the candidate with its disbursements.

The Minnesota court has restricted the application of spending limits in other ways. In construing the Minnesota statute fixing disbursement ceilings at a percentage of the salary of the office to which a candidate aspires, the court defined "salary" to include "fees" earned by a sheriff. In another Minnesota case, it was held that a person is not a candidate before officially filing his affidavit of intention to run for political office, and therefore cannot be charged with expenditures made prior to that time.

As a result of inadequate enforcement machinery and narrow court interpretation, existing legislation has failed to limit expenditures and thus to achieve any of the purposes for which legislation was enacted.

But the objection to present legislation goes beyond failure to achieve its purposes. Extremely low expenditure limits provided by state and federal statutes present candidates and political parties with alternatives of either conducting a feeble campaign or evading the law. Therefore, to avoid these limits candidates and party organizations conspire to organize independent committees which are not limited in the amount they may spend. This reverses

35. The evidence established, inter alia, that (1) the committee had been formed in the courthouse in which the contestee had his office, (2) the secretary of the committee and most of the members were county employees directly under the candidate's control, and, (3) that the ads and literature paid for by the committee consisted largely of letters and statements which carried the candidate's name. Id. at 623, 242 N. W. at 332.

36. The election was voided on other grounds.

37. Spokely v. Haaven, 183 Minn. 467, 237 N. W. 11 (1931)

38. State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W 1026 (1907)

39. If the cases are excluded in which the courts have found excessive expenditures but where the main ground of ouster was vote buying or treating, see Charles v. Flanary, 192 Ky. 511, 233 S. W 904 (1921), Konners v. Palagi, 111 Mont. 293, 108 P 2d 208 (1940), State ex rel. Stafford v. Good, 15 Ohio Cir. Rep. 386, 8 Ohio Cir. Dec. 401 (5th Cir. 1898), with the possible exception of a case appealed on other grounds, Ross v. Crane, 291 Mass. 28, 193 N. E. 884 (1935), no cases were found where excessive expenditure was the main ground of contest proceedings and the contest was successful.

40. See Key, op. cit. supra note 3, at 561, Young, op. cit. supra note 19, at 2. For ceilings set by Minnesota statute see note 4 supra.

41. See Lederle, supra note 41, at 298.

42. See Key, op. cit. supra note 3, at 561.

43. Cf. Douglas, supra note 7 at 75 Young, supra note 19, at 2 Lederle, supra note 41, at 298.
the normal practice, for, in the absence of ceilings on campaign spending, the formation of independent committees is discouraged because they are hard to control and may compete with the candidate or party in the quest for funds.\textsuperscript{44} The establishment of these independent committees results in dispersion of campaign financing which adversely affects public disclosure regulations in several ways.\textsuperscript{45} Independent committees are apt to maintain less accurate financial records than established party committees and often fail to file financial statements.\textsuperscript{46} Further, the reports of these numerous spending agencies require extensive analysis if their significance is to be understood,\textsuperscript{47} and absent such an analysis, the many reports filed by the various committees confuse the voters and may lead to inaccurate conclusions.\textsuperscript{48}

Existing legislation has caused other undesirable results. The authority and responsibility of political parties has been weakened through the establishment of independent committees formed to avoid limits placed on party committee expenditures;\textsuperscript{49} scrupulous candidates are placed at a disadvantage by adhering to the established spending limits;\textsuperscript{50} the spectacle of continual evasion leads to disrespect of the law;\textsuperscript{51} and it would seem that progress toward meaningful campaign fund regulation is deterred because gullible persons believe that the total amount spent in a campaign is actually limited.

\textbf{The Problem of Establishing Effective Expenditure Limitations}

Many scholars have urged that existing legislation be revised to achieve effective limits on campaign spending.\textsuperscript{52} In addition to pro-

\begin{itemize}
\item \textsuperscript{44} See Sen. Rep. No. 101, 79th Cong., 1st Sess. 7 (1945). Normally one principal independent committee, to which expenditure limits do not apply, raises and spends the bulk of a candidate's money. See Douglas, \textit{op. cit. supra} note 17, at 75. This evidences the tendency to centralize in the absence of spending ceilings.
\item \textsuperscript{45} Virtually all states require some form of public disclosure of campaign financing. Council of State Governments, \textit{The Book of the States} 1952-1953 80-81 (1952).
\item \textsuperscript{46} See Lederle, \textit{supra} note 41, at 298.
\item \textsuperscript{47} See ibid.
\item \textsuperscript{48} See Young, \textit{op. cit. supra} note 19, at 14.
\item \textsuperscript{50} See Overacker, Money in Elections 348 (1932).
\item \textsuperscript{51} See Young, \textit{op. cit. supra} note 19, at 13.
\end{itemize}
viding for adequate enforcement machinery, such legislation must fulfill two essential requirements (1) limits must be set at a reasonable level, and (2) authority for all expenditures in a candidate's behalf must be centralized in the candidate and political party.

**Reasonable Limits**

One of the basic objections to establishing limits on campaign spending is the absence of scientific criteria for determining what is a reasonable ceiling on expenditures. If set too high, limits serve no purpose, and if too low, candidates will attempt to avoid the law. If the law is sufficiently pervasive so that such avoidance is prevented, limits set at too low a level will prevent the electorate from becoming adequately informed, and such limits may be invalidated as a violation of free speech.

Proponents of fixed limitations suggest that reasonable limits be fixed at a ceiling determined by information obtained by removing statutory ceilings on campaign spending but requiring disclosure of all campaign financing. But levels set on the basis of past campaigns are objectionable for several reasons. They do not reflect a substantial advantage one candidate may have over his opponent by virtue of newspaper support, incumbency, or support by newspaper:

53. Most proposals for improving enforcement of finance regulations provide for an agency with power to investigate the accuracy of filed financial statements. See Overacker, Money in Elections 391, 393 (1932), Young, op. cit. supra note 19, at 15, Emory, supra note 3, at 254. The same type of agency has been proposed as an aid to enforcement of the Federal Corrupt Practices Act. See Hearings before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, on Proposed Amendments to the Federal Corrupt Practices Act, 82d Cong., 1st & 2d Sess. 12 (1952).

54. These are generally recognized requirements. Cf. Douglas, op. cit. supra note 17, at 76, Overacker, Presidential Campaign Funds 64-65 (1946), Sait, op. cit. supra note 20, at 564.

55. There is no scientific measure of what a reasonable or "fair" campaign costs, Emory, supra note 3, at 258, therefore this determination is essentially a moral judgment. See Lederle, supra note 41, at 297.

56. One of the reasons given by the Wisconsin court in upholding limitations was that other persons could spend any amount in the candidate's behalf. See State ex rel. La Follette v. Kohler, 200 Wis. 518, 566-572, 228 N. W. 895, 912-914 (1930).


58. Newspaper support is generally considered an important factor in a political campaign. See. See Douglas, op. cit. supra note 17, at 71, Overacker, Presidential Campaign Funds 18 (1946).

59. An incumbent may enjoy several important advantages. Patronage may be used to obtain personal services from government employees. See Douglas, op. cit. supra note 17, at 71. Congressmen may use the franking privilege and extend remarks in the Congressional Record. See Key, op. cit. supra note 3 at 542.
port from a political party or non-party organization, nor are limits easily adjusted to accommodate fluctuations in campaign expenses. Thus, limits lag behind constantly increasing campaign costs, and are not responsive to the increased expenditures of an especially hard fought campaign. In the same manner, limits fixed on the basis of the cost of a typical campaign are set too high to serve any purpose when a campaign is substantially less expensive, as during a depression or a low-interest campaign. Finally, since legislatures have failed to revise present limits to conform to realistic campaign costs, newly-determined limitations may likewise be permitted to become obsolete.

Centralized Authority

As the candidate may avoid responsibility for all expenditures he has not authorized, an over-all expenditure limit is unenforceable unless authority is centralized in the candidate for all sums spent in his behalf. This is achieved by subjecting to a fine or imprisonment or both anyone who spends any money in a candidate's behalf without first receiving his approval. Centralizing authority in the candidates for all expenditures in support of his candidacy also aids enforcement of other campaign finance regulations, and prevents dispersion of spending among several independent committees which hinders efforts to provide voters with meaningful campaign finance information.

However, as a person failing to receive the candidate's approval is prohibited from making any expenditures to aid the candidate of his choice, the validity of vesting a candidate with such

60. Candidates with political party support have the advantage of party workers and financial support, see Douglas, op. cit. supra note 17, at 66-68, and savings are made by candidates who campaign jointly on a party ticket. See Key, op. cit. supra note 3, at 532.
61. Costs of traditional forms of campaigning are increasing, but politicians are also finding it necessary to purchase more mass media advertising. See Young, op. cit. supra note 19, at 2.
62. Campaign expenditures can be expected to drop substantially during a depression. See Overacker, Campaign Funds in a Depression Year, 27 Am. Pol. Sci. Rev. 769, 770-771 (1933).
63. See notes 40 and 41 supra and text thereto.
64. The courts have refused to hold the candidate responsible except for expenditures which he has authorized. See note 33 supra.
65. Cf. Douglas, op. cit. supra note 17, at 76; Overacker, Money in Elections 346 (1932); Bottomly, supra note 1, at 366-367
67. Cf. Young op. cit. supra note 19, at 14. Contributions from illegal sources are more easily controlled by centralizing authority. See Smith v. Ervin, 64 So. 2d 165, 170 (Fla. 1953).
authority raises a constitutional issue of free speech. The argument that prohibiting expenditures not authorized by the candidate violates freedoms protected by the Fourteenth Amendment is based on several cases invalidating statutes or ordinances vesting public officials with discretionary power to prohibit distribution of literature, solicitation of funds for religious purposes, or use of public streets, buildings, or parks for meetings, or the right to use loudspeakers. But these cases seem dissimilar in that the ordinances and statutes invalidated were designed to cope with fairly limited police problems, which would not appear to justify the broad power to prohibit basic freedoms which these laws vested in the officials. Hence, legislation designed to meet like problems has been upheld when narrowly construed by the state courts.

On the other hand, the object of legal regulation of campaign funds is to preserve popular control of government which the courts have considered sufficiently important to justify limitations on campaign spending, and prohibitions against political contributions by labor unions and corporations.

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68. See Note, 66 Harv. L. Rev. 1259, 1267 (1953), 67 Harv. L. Rev. 887 (1954). This type of control was held unconstitutional in Finlay v. Ervin, 1 Fla. Supp. 198 (Cir. Ct. 1952), rev'd, 64 So. 2d 175 (Fla. 1953).

69. Freedoms protected by the First Amendment are secured to all persons by the Fourteenth Amendment. See Cantwell v. Connecticut, 310 U. S. 296, 303 (1940).


75. See Poulos v. New Hampshire, 345 U. S. 395 (1953), Cox v. New Hampshire, 312 U. S. 569 (1941). With respect to the laws invalided as violating free speech, the Court seemed primarily concerned with the "overbreadth" of discretion vested in the public official which empowered him to deprive of their First Amendment freedoms persons whose activities may have little relation to the evil which the law sought to prevent. See Bernard, Avoidance of Constitutional Issues in the United States Supreme Court: Liberties of the First Amendment, 50 Mich. L. Rev. 261, 277-282 (1951).

76. Adams v. Lansdon, 18 Idaho 483, 110 Pac. 280 (1910), State ex rel. La Follette v. Kohler, 200 Wis. 518, 228 N. W. 895 (1930).


As centralizing authority in the candidate is necessary for effective control of campaign funds, it would seem that a court would be justified in holding that the critical need to protect elections from the dangerous influence of uncontrolled campaign spending warranted vesting the candidate with authority to prohibit expenditures in his behalf. This contention is strengthened by *Smith v. Ervin*, in which the Florida Supreme Court upheld a statute requiring approval of the candidate's agent before an expenditure could be made in his behalf. The supreme court accepted the trial court's reasoning that the importance of regulating campaign funds justified this restriction on the right to spend money in a candidate's behalf and therefore was not a violation of free speech protections found in the state constitution.

However, such a statute must be narrowly drawn so that its restrictions affect only political contributions in the narrow sense of expenditures explicitly in support of a candidate. As the right of persons effectively to present their views on community issues is fundamental to free speech, a statute empowering the candidate to prohibit expenditures made for defending or opposing public policies would probably be unconstitutional. This issue was raised in *State v. Pierce* under a Wisconsin statute which required that all expenditures for "political purposes" be spent through established political parties and candidates. The court held that the statute violated free speech protections found in the state constitution after construing the act as empowering candidates or political parties with authority to prevent independent persons from spending money to urge their views on governmental policy.

In view of this constitutional restriction narrowly limiting a candidate's authority to the prohibition of expenditures made ex-

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79. See note 65 supra and text thereto.
81. *64 So. 2d 166* (Fla. 1953).
84. *163 Wis. 615, 158 N. W. 696* (1916).
plicitly in his behalf, it is improbable that legislation could be drawn which effectively prevents circuitous avoidance of established limits. When spending limits have been reached, interest groups may indirectly aid the candidate by making expenditures advocating the general policies which the candidate favors. Independent or non-party groups can be established for the same purpose. Also, unions and corporations can probably make large expenditures advising their union membership or stockholders of the danger or advantage of particular candidates.

In addition two factors combine to suggest that new loopholes may be found in a revised system of statutory limits (1) the keen competition between candidates forces them to look for means of avoiding the spending ceilings, and (2) the courts, as with previous statutory attempts to limit or prohibit expenditures for political purposes, may narrowly construe revised limits to permit avoidance of campaign expenditure ceilings.

CONCLUSION

It is clear that existing legislation has failed to limit expenditures. Moreover, efforts to revise such legislation so as to achieve enforceable ceilings on campaign spending would seem unadvisable because of the improbability that reasonable limits could be determined or maintained, or that legislation could be drawn which could not be avoided. Unless these obstacles can be overcome, expenditure ceilings are unfair to the scrupulous candidate, weaken

85. Large sums are now spent for such “institutional” advertising. See Note, 66 Harv. L. Rev. 1259, 1273 (1953). As to the variety of ways “public education” can be carried on to aid a particular candidate see Key, op. cit. supra note 3, at 555.

86. The defendant charged with having spent funds for “political purposes” in the Pierce case was a member of the Home Rule and Taxpayers League. See Overacker, Money in Elections 332 (1932).


89. For a discussion of the narrow interpretation placed on statutes limiting expenditures, see text at notes 30-38 supra. Limitations under the English statute controlling election funds have recently been construed to include only expenditures “supporting a particular candidate or candidates in a particular constituency.” R v. Tronoh Mines, Ltd., [1952] 1 All E. R. 697, 700 (Central Crim. Ct.). Thus an expenditure openly urging election of all Conservatives was not chargeable to a particular Conservative candidate. The federal prohibition against union political contributions has been construed to permit substantial political spending. See United States v. Congress of Industrial Organizations, 335 U. S. 106 (1948) (union newspapers may be used to support partisan political candidates), United States v. Painters Local No. 481, 172 F. 2d 854 (2d Cir. 1949) (support of candidate by purchase of radio and newspaper advertising upheld), United States v. Construction & General Laborers Local Union No. 264, 101 F. Supp. 869 (W.D. Mo. 1951) (hiring workers for general campaigning upheld).
party responsibility, and, by obscuring information on campaign financing, prevent voters from knowing how much a candidate has spent and from whom he has accepted financial support.

For many years scholars have urged that limits be removed and that primary emphasis be placed on public disclosure of the facts of campaign financing. The results of a Florida statute—one of the first attempts to remove legal limits and establish centralized authority—seems to vindicate this position. Upheld by the Florida Supreme Court, this new law has resulted in accurate and comprehensive financial information. Candidates closely watched their opponents' financial reports to uncover violations of the law; thus, a type of "self-policing" has resulted from this statute which forces disclosure of pertinent financial information. But perhaps the most important achievement is that "[f]or the first time in the history of Florida politics, the electorate was given a comprehensive picture of money in a[n]... election." The Minnesota Legislature might well re-examine the efficacy of retaining existing campaign fund regulations in the light of Florida's experience.

90. Overacker, Money in Elections 348 (1932); Bottomly, supra note 1, at 369-370; Emory, supra note 3, at 232, 258-259; McHenry, supra note 3, at 126.
93. Smith v. Ervin, 64 So. 2d 166 (Fla. 1953).
95. Id. at 475.
96. Id. at 476. Full publicity coverage of the filed financial reports was given by the press agencies. Id. at 475-476.