

Comment: Subsection (c) describes the manner of enforcing subpoenas through independent judicial examination of the matter. The procedure here proposed is derived from California Government Code § 11525. In all probability, the need to enforce subpoenas will not in fact arise. Information already in the possession of an administrative agency will be freely accessible to the Ombudsman. Information in a complainant's possession will of course be gladly supplied. Occasions on which data must be dragged from reluctant third parties are not likely to occur.

SEC. 19. OBSTRUCTION.—A person who willfully obstructs or hinders the proper exercise of the Ombudsman's functions, or who willfully misleads or attempts to mislead the Ombudsman in his inquiries, shall be fined not more than \$1,000.

Comment: If the enactment be by a municipality, counsel should determine whether the local legislature has power under state law to create an offence punishable by a heavy fine. Counsel must determine in each state whether necessity exists for indicating the court in which proceedings are to be brought, and upon whose initiative.

SEC. 20. RELATION TO OTHER LAWS.—The provisions of this Act are in addition to and do not in any manner limit or affect the provisions of any other enactment under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision in any enactment to the effect that any administrative action shall be final or unappealable.

SEC. 21. APPROPRIATION.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Comment: The appropriations section must be shaped in accord with local practice and fiscal regulations. In some jurisdictions it need not be included in an organic statute like the one now proposed. In other jurisdictions a specific amount may have to be shown as the appropriation. If inclusion of an appropriation section is not absolutely necessary, its omission is recommended.

SEC. 22. EFFECTIVE DATE.—This Act shall take effect immediately.

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THE OMBUDSMAN'S RELEVANCE TO AMERICAN MUNICIPAL AFFAIRS

The ombudsman has been portrayed by some persons as a white knight who can eliminate municipal corruption and bring about near-miraculous solutions to persistent problems. Best forget about these ideas, Professor Gellhorn warns. But he declares that there are several possible advantages that might flow from the use of municipal ombudsman, and he specifies what they are.

(By Walter Gellhorn—Betts Professor of Law, Columbia University)

Creation of an ombudsman's office has been proposed in forty-seven of the fifty state legislatures and in numerous cities and counties. So widespread has the legislative discussion become that the National Conference of Commissioners on Uniform State Laws has begun consideration of a model law. Until now, only Hawaii has in fact adopted a statutory plan for an ombudsman (though even there the plan has not yet become operative). Still, the present extraordinarily broad and spontaneous interest in the ombudsman idea reflects a growing belief that this country needs some added means of handling citizens' dissatisfactions with official acts or failures to act. This belief gained fresh support in October of 1967 when the prestigious American Assembly concluded after intensive study that Americans should be able to ask "an independent high-level officer" to receive complaints, pursue inquiries into the matters involved and recommend suitable action.

Other countries—notably the Scandinavian—have successfully utilized just such a high-level officer, wholly independent of other officials and agencies, to serve as an external critic of public administrators. Functioning informally, expeditiously and without cost to the aggrieved citizen, the ombudsmen in those countries have used their impartial expertness to correct injustice, improve administrative practices and heighten confidence in the probity and good will of public servants.