# FOURTEENTH ANNUAL REPORT


STATE OF NEW JERSEY

COMMISSION OF INVESTIGATION

The Commission shall make an annual report to the Governor and Legislature . . .*

* *Excerpt from S.C.I. Law*

# FOURTEENTH ANNUAL REPORT

*of the*

# STATE OF NEW JERSEY

# COMMISSION OF INVESTIGATION

*to the*

# GOVERNOR AND LEGISLATURE

**STATE OF NEW JERSEY**
**COMMISSION OF INVESTIGATION**




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TO: *The Governor and the Members of the Senate and the General Assembly of the State of New Jersey*

The New Jersey State Commission of Investigation is pleased to submit for the year 1982 its fourteenth annual report and recommendations pursuant to Section 10 of P. L. 1979, Chapter 254 (N.J.S.A. 52:9M–10), the Act establishing the Commission of Investigation.

Respectfully submitted,

Arthur S. Lane, *Chairman*
Henry S. Patterson, II
Robert J. Del Tufo
William S. Greenberg

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## TABLE OF CONTENTS

52:9M-1. There is hereby created a State Commission of Investigation. The Commission shall consist of four members, to be known as commissioners. Two members of the Commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of 3 years and until the appointment and qualification of his successor. The Governor shall designate one of the members to serve as Chairman of the Commission.

The members of the Commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the Commission shall hold any other public office or public employment. Not more than two of the members shall belong to the same political party . . .*

** Excerpt from S.C.I. Law*

## THE COMMISSION

- **Origin and Scope**
- **Biographies**

## *ORIGIN AND SCOPE OF THE COMMISSION*

*Despite the range of the Commission's achievements, inquiries continue to be made about its jurisdiction, the way it functions and its importance to a better New Jersey. The Commission believes this information should be conveniently available. Accordingly, the pertinent facts are summarized below.*

The New Jersey State Commission of Investigation (S.C.I.) was an outgrowth of extensive research and public hearings conducted in 1968 by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey. That Committee was under direction from the Legislature to find ways to correct what was a serious and intensifying crime problem in New Jersey.

Indeed, by the late 1960s New Jersey had the unattractive image of being a corrupt haven for flourishing organized crime operations. William F. Hyland, who was Attorney General from 1974-1978, vividly recalled that unfortunate era in testimony before the Governor's Committee to Evaluate the S.C.I. He said in part:

> ". . . our state quickly developed a national reputation as a governmental cesspool, a bedroom for hired killers and a dumping ground for their victims. Whether this was a deserved reputation was not necessarily material. The significant thing was that this became an accepted fact that seriously undermined confidence in state law enforcement."

The Joint Legislative Committee in its report issued in the Spring of 1968 found that a crisis in crime control did exist in New Jersey. The Committee attributed the expanding activities of organized crime to "failure to some considerable degree in the system itself, official corruption, or both" and offered a series of sweeping recommendations for improving various areas of the criminal justice system in the state.

The two highest priority recommendations were for a new State Criminal Justice unit in the executive branch of state government and an independent State Commission of Investigation, patterned after the New York State Commission of Investigation, now in its

25th year of probing crime, official corruption and other governmental abuses.

The Committee envisioned the proposed Criminal Justice unit and the Commission of Investigation as complementary agencies in the fight against crime and corruption. The Criminal Justice unit was to be a large organization with extensive manpower and authority to coordinate and conduct criminal investigations and prosecutions throughout the state. The Commission of Investigation was to be a relatively small but expert body which would conduct fact-finding investigations, bring the facts to the public's attention, and make recommendations to the Governor and the Legislature for improvements in laws and the operations of government.

The Joint Legislative Committee's recommendations prompted immediate supportive legislative and executive action. New Jersey now has a Criminal Justice Division in the State Department of Law and Public Safety and an independent State Commission of Investigation* which is structured as a commission of the Legislature. The new laws were designed to prevent any conflict between the functions of this purely investigative, fact-finding Commission and the prosecutorial authorities of the state. The latter have the responsibility of pressing indictments and other charges of violations of law and bringing the wrongdoers to punishment. The Commission has the responsibility of publicly exposing evil by fact-finding investigations and of recommending new laws and other remedies to protect the integrity of the political process.

The complementary role of the S.C.I. was emphasized anew by the Governor's Committee to Evaluate the S.C.I.**, which conducted in 1975 a comprehensive and impartial analysis of the Commission's record and function. The Committee's members consisted of the late Chief Justice Joseph Weintraub of the New Jersey

* The bill creating the New Jersey State Commission of Investigation was introduced April 29, 1968, in the Senate. Legislative approval of that measure was completed September 4, 1968. The bill created the Commission for an initial term beginning January 1, 1969, and ending December 31, 1974. It is cited as Public Law, 1968, Chapter 266, N. J. S. A. 52:9M-1 et seq. The Legislature on November 12, 1973, completed enactment of a bill, cited as Public Law, 1973, Chapter 238, which renewed the Commission for another term ending December 31, 1979. A bill granting the S.C.I. an extension of its tenure for another five years until December 31, 1984, gained final approval by the Legislature and the Governor in December, 1979. The full text of Chapter 254, L. 1979, appears in Appendix on P. 45.

** The Governor's Committee to Evaluate the S.C.I. was created in April, 1975, by executive order of the Governor after the introduction in the Senate of a bill to terminate the S.C.I. touched off a backlash of public criticism. The measure was subsequently withdrawn.

Supreme Court, former Associate Justice Nathan L. Jacobs of that same Court, and former Judge Edward F. Broderick of the New Jersey Superior Court.

That Committee in its October 6, 1975, public report rejected summarily any suggestion that the S.C.I. duplicates work of other agencies. Indeed, the Committee said the record demonstrated convincingly that the Commission performs a valuable function and that there is continuing need for the S.C.I.'s contributions to both the legislative process and the executive branch.

The Committee concluded that it saw no likelihood that the need for the S.C.I. will abate, and recommended amendment of the S.C.I.'s statute to make the Commission a permanent rather than a temporary agency. In support of this statement, the Committee declared:

> "Our evaluation of the work of the S.C.I. convinces us that the agency has performed a very valuable function . . . The current public skepticism of government performance emphasizes the continuing need for a credible agency to delve into the problems that plague our institutions, an agency which can provide truthful information and sound recommendations. There must be constant public awareness if we are to retain a healthy and vibrant system of government. Indeed we see no likelihood that the need for the S.C.I. will abate . . ."

To insure the integrity and impartiality of the Commission, no more than two of the four Commissioners may be of the same political party. Two Commissioners are appointed by the Governor and one each by the President of the Senate and the Speaker of the Assembly. It thus may be said the Commission by law is bipartisan and by concern and action is nonpartisan.

The paramount statutory responsibilities vested in the Commission are set forth in Section 2 of its statute. This section provides:

> 2. The Commission shall have the duty and power to conduct investigations in connection with:

(a) The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering.

(b) The conduct of public officers and public employees, and of officers and employees of public corporations and authorities.

(c) Any matter concerning the public peace, public safety and public justice.

The statute provides further that the Commission shall conduct investigations by direction of the Governor and by concurrent resolution of the Legislature. The Commission also shall conduct investigations of the affairs of any state department or agency at the request of the head of a department or agency.

Thus, the enabling statute assigned to the Commission, as an investigative, fact-finding body,* a wide range of responsibilities. It is highly mobile, may compel testimony and production of other evidence by subpœna, and has authority to grant immunity to witnesses. Although the Commission does not have and cannot exercise any prosecutorial functions, the statute does provide for the Commission to refer information to prosecutorial authorities.

One of the Commission's prime responsibilities, when it uncovers irregularities, improprieties, misconduct or corruption, is to bring the facts to the attention of the public. The objective is to insure corrective action. The importance of public exposure was put most succinctly by a New York Times analysis of the nature of such a Commission:

> Some people would put the whole business in the lap of a District Attorney (prosecutor), arguing that if he does not bring indictments, there is not much the people can do.
>
> But this misses the primary purpose of the State Investigation Commission. It is not to probe outright criminal acts by those in public employment. That is the job of the regular investigation arms of the law.

* As a legislative, investigative agency, the S.C.I. is not unique, since investigative agencies of the legislative branch of government are almost as old as the Republic. The first full-fledged Congressional investigating committee was established in 1792 to "inquire into the causes of the failure of the last expedition of Major General St. Clair." (3 Annal of Congress 493—1792).

Instead, the Commission has been charged by the Legislature to check on, and to expose, lapses in the faithful and effective performance of duty by public employees.

Is sheer non-criminality to be the only standard of behavior to which a public official is to be held? Or does the public have a right to know of laxity, inefficiency, incompetence, waste and other failures in the work for which it pays?

The exact format for public action by the S.C.I. is subject in each instance to a formal determination by the Commission which takes into consideration factors of complexity of subject matter and of conciseness, accuracy and thoroughness in presentation of the facts. The Commission may proceed by way of a public hearing or a public report, or both.

In the course of its conduct, the Commission adheres to the New Jersey Code of Fair Procedure, the requirements for which were incorporated in the Commission's enabling law as amended and re-enacted in 1979. These provisions satisfy the protections which the Legislature by statute and the Judiciary by interpretation have provided for witnesses called at private and public hearings and for individuals mentioned in the Commission's public proceedings. Such procedural obligations include a requirement that any individual who feels adversely affected by the testimony or other evidence presented in a public action by the Commission shall be afforded an opportunity to make a statement under oath relevant to the testimony or other evidence complained of. The statements, subject to determination of relevancy, are incorporated in the records of the Commission's public proceedings. Before resolving to proceed to a public action, the Commission analyzes and evaluates investigative data in private in keeping with its obligation to avoid unnecessary stigma and embarrassment to individuals but, at the same time, to fulfill its statutory obligation to keep the public informed with specifics necessary to give credibility to the S.C.I.'s findings and recommendations.

The Commission emphasizes that indictments which may result from referral of matters to other agencies are not the only test of the efficacy of its public actions. Even more important are the corrective legislative and regulatory actions spurred by arousing public and legislative interest. The Commission takes particular pride in all such actions which have resulted in improved governmental operations and laws.

## *MEMBERS OF THE COMMISSION*

The Commission's activities have been under the leadership of Arthur S. Lane since February, 1979, when he was designated as Chairman by then Governor Brendan T. Byrne after his appointment to a second term as Commissioner. The other Commissioners are Henry S. Patterson II, Robert J. Del Tufo, and William S. Greenberg, who succeeded Commissioner John J. Francis in August, 1982.

Mr. Lane, of Harbourton, was appointed to the Commission in May, 1977, by the Speaker of the General Assembly and was reappointed by Senate President Joseph P. Merlino of Mercer. As Chairman, he succeeded Joseph H. Rodriguez of Cherry Hill. He has been a member of the Princeton law firm of Smith, Stratton, Wise and Heher since his retirement in 1976 as a vice president and general counsel for Johnson and Johnson of New Brunswick. A graduate of Princeton University, he was admitted to the New Jersey Bar in 1939 after gaining his law degree at Harvard Law School. He served in the Navy during World War II. He became assistant Mercer County prosecutor in 1947, Mercer County judge in 1956 and U. S. District Court judge in 1960 by appointment of the late President Eisenhower. He is Chairman of the National Council on Crime and Delinquency.

Mr. Patterson, of Princeton, is president and a director of the Elizabethtown Water Co., chairman of the board of the First National Bank of Princeton and a director of the Mount Holly Water Co. and of United Jersey Banks. He is a former mayor of Princeton Borough. He was graduated from Princeton University. He served during World War II in the U. S. Army and received his discharge as a first lieutenant in 1946. He was appointed to the Commission in February, 1979 by Governor Byrne and has been reappointed to a new three-year term.

Mr. Del Tufo, who was United States Attorney for New Jersey from 1977 to 1980, was appointed to the Commission in March, 1981, by Governor Byrne and was reappointed in December, 1981, to a full three-year term. A resident of Morristown, he is a member of the law firm of Stryker, Tams and Dill of Newark and Morristown. He was First Assistant State Attorney General from 1974

to 1977, during which he served two years as the Director of the Division of Criminal Justice. His previous government service included Assistant Prosecutor (1963-65) and First Assistant Prosecutor (1965-67) of Morris County. He was graduated from Princeton University in 1955 and from Yale Law School in 1958. He was admitted to the New Jersey Bar in 1959. He is a fellow of the American Bar Foundation, and a professor at the Rutgers University School of Criminal Justice.

Mr. Greenberg, of Princeton, a partner in the Trenton law firm of Greenberg, Kelley and Prior, was appointed to the Commission, effective August 1, 1982, by Alan J. Karcher, Speaker of the General Assembly. A graduate of Johns Hopkins University (1964) and Rutgers Law School (1967), he was admitted to the New Jersey Bar in 1967 and the District of Columbia Bar in 1972. He served as Assistant Counsel to former Governor Richard J. Hughes (1969-1970) and as Special Counsel to the New Jersey Chancellor of Higher Education (1968-1969). He is a Certified Civil Trial Attorney.

Mr. Francis, of Bedminster, who completed his term on the Commission on August 1, 1982, is a partner in the Newark and Morristown law firm of Shanley and Fisher. From 1961 to 1963 he was an assistant U. S. attorney and from 1963 to 1965 he was an assistant Essex County prosecutor. A graduate of Williams College and the University of Pennsylvania Law School, he was admitted to the New Jersey State Bar in 1960. Mr. Francis is the son of former Associate Justice John J. Francis of the New Jersey Supreme Court. He is a Fellow of the American College of Trial Lawyers and of the American Bar Foundation. He is Chairman of the Board of the Hospital Center of the Oranges and has also served as the President of the Village of South Orange. He was appointed to the Commission in February, 1979.

52:9M-2. The Commission shall have the duty and power to conduct investigations in connection with:

> . . . The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering . . .*

** Excerpt from S.C.I. Law*

**ORGANIZED CRIME PROGRAM**

**• 1982 Update**

## 1982 Update

### *Introduction*

While winding up several major inquiries, including misconduct by certain local authorities in the operation of their facilities and by casinos in the disbursement of gambing credit, the Commission continued its surveillance of currently active organized crime members and associates. During 1982 certain New Jersey mobsters who were involved in the Commission's confrontation program met with judicial and law enforcement reverses, as noted below.

### *Nicodemo (Little Nicky) Scarfo*

Scarfo, of Atlantic City, one of the original subjects of the S.C.I.'s program of confronting organized crime members, was found guilty in 1981 of illegal possession of a handgun in Federal Court, Camden, and was sentenced to a maximum two years in Federal Prison and fined $5,000. During a pre-sentence hearing, Scarfo was publicly identified by the FBI as head of the Philadelphia-South Jersey organized crime family that was controlled by Angelo Bruno until he was murdered in March, 1980. Scarfo was freed on $50,000 bail pending appeal. He and two associates had been acquitted in 1980 of charges of murdering a Margate cement contractor.

An S.C.I. special agent, Dennis McGuigan, was credited with deciphering a coded telephone list found in Scarfo's house in 1979, during the investigation that led to Scarfo's murder trial. McGuigan was an investigator for the Atlantic County Prosecutor at the time that coded list was found. It was not until after McGuigan joined the S.C.I. staff in the Spring of 1981 that he finally broke the code and thus identified a number of Scarfo's closest gangland contacts. McGuigan's work was part of a joint effort by a number of law enforcement personnel who cooperated with the Camden office of the U. S. Justice Department's Organized Crime and Racketeering Section in the successful prosecution of Scarfo.

Scarfo finally was imprisoned last August despite his pending appeal because he had violated conditions for his temporary freedom by associating with ex-convicts. The S.C.I. also played a role in the successful bail revocation proceedings instituted against Scarfo by W. Hunt Dumont, U. S. Attorney for New Jersey, and Robert C. Stewart, Attorney in Charge of the Federal Organized Crime Strike Force.

U. S. District Court Judge Stanley Brotman ruled that Scarfo had violated his bail conditions and ordered that he immediately begin serving the sentence imposed on him the year before. Scarfo was incarcerated at the Federal Correctional Institution in La Tuna, Texas.

Mr. Stewart subsequently sent the S.C.I. a letter commending the efforts of Special Agent McGuigan in the prosecution of the Scarfo bail revocation case. This letter stated in part:

> *Both personally and on behalf of this office, I wish to commend Special Agent Dennis McGuigan for his exceptionally fine contribution to this effort. In particular, Special Agent Dennis McGuigan provided extremely important testimony and handled himself superbly under cross-examination. Without such a splendid display of initiative and commitment to professional excellence, Mr. Scarfo would still be at liberty.*

Scarfo was among the organized crime figures subpoenaed for questioning by the S.C.I. in the early 1970s. He was held in contempt for refusing to answer questions and served 31 months in jail before finally agreeing to testify before the Commission. He made a number of appearances at the S.C.I. after his release from prison in 1973.

### *John DiGilio*

DiGilio, of Paramus, who also had been subpoenaed to appear for executive session testimony at the S.C.I., suffered a setback in New Jersey Superior Court in December.

DiGilio, 50, was ruled as mentally and physically competent to stand trial on a loansharking indictment that had been pending in Morris County since 1978. DiGilio was among a number of underworld figures who fled the state in the early 1970s to avoid an S.C.I. subpoena.

April 1979?

### *Raymond (Long John) Martorano*

Martorano, a longtime ally of the murdered Philadelphia crime boss Angelo Bruno, was found guilty in Federal District Court in May of conspiracy and possession with intent to distribute drugs. Martorano, who is 54 and a resident of Cherry Hill, had been indicted with 36 other individuals. He was sentenced to 10 years in prison. He had hardly begun that incarceration when he was formally charged, in November, with murder and conspiracy in the death of John McCullough, leader of the Roofers Union. Albert Daidone, 40, of Pennsauken, a bartenders union leader, also was charged with murder and conspiracy in that slaying.

In June, 1982, Martorano was indicted by a State Grand Jury in Trenton for failing to appear before the S.C.I. He was charged with two counts of criminal contempt for ignoring a subpoena for interrogation at the Commission's office on various organized crime activities. He had previously testified in executive session and at S.C.I. public hearings, in 1977 on criminal incursion of legitimate business in Atlantic City and in 1980—along with Daidone—on organized crime infiltration of dental health care plans.

### *Robert (Bobby Basile) Occhipinti*

Occhipinti, a cousin of the semi-retired organized crime boss Simone (Sam the Plumber) DeCavalcante, suffered a setback in Superior Court's Appellate Division in March. The appeals court re-instated a three count perjury indictment against Occhipinti. He allegedly lied when he told a State Grand Jury in 1977 that he never discussed the Mafia with the late seashore rackets boss Anthony (Little Pussy) Russo. Occhipinti fled from New Jersey years ago to avoid an S.C.I. subpoena requiring his appearance before the Commission to testify about organized crime activities.

**52:9M-2.** The Commission shall have the duty and power to conduct investigations in connection with:

> . . . The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> . . . Any matter concerning the public peace, public safety and public justice . . .*

** Excerpt from S.C.I. Law*

## THE S.C.I.'s PUBLIC ACTIVITIES

- **Introduction/1982 Update**
- **State Legislative Liaison**
- **Federal Legislative Liaison**
- **SCI Review Committee**

## *THE COMMISSION'S PUBLIC ACTIVITIES*

### INTRODUTION/1982 UPDATE

The Commission's public activities in 1982 included:

- Publication in May of a report on its inquiry into the history and impact of organized crime on labor relations at certain housing construction sites.*

- A four-day public hearing in July that exposed widespread mismanagement and misconduct in the operation of regional, county and municipal sewerage and utility authorities.

- Submission in September to Governor Thomas H. Kean and to Senate President Carmen A. Orechio, Assembly Speaker Alan J. Karcher and other members of the Legislature the Commission's recommendations for requiring more accountability to the public by local authorities, for improving the administration and operation of authority facilities and for assuring the future integrity and credibility of such entities. A summary of these recommendations appears later in this section.

- Publication in August of a report on an investigation of the conduct of the Lakewood Industrial Commission.** Although the inquiry found no evidence of criminality or corruption, it confirmed certain inappropriate activities and omissions on the part of the Industrial Commission. A summary of the S.C.I. recommendations resulting from this inquiry follows later in this section.

- Conclusion of the S.C.I.'s inquiry into the New Jersey Housing Finance Agency. The Commission's second and final report on this inquiry is summarized on Pp. 29-34 of this report.

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* See S.C.I. Thirteenth Annual Report.

** Copies of the Report on Lakewood Industrial Commission are available at the S.C.I. office in Trenton.

*Recommendations on County and Local Authorities*

The Commission submitted its recommendations to the Governor and the Legislature on September 22, 1982, well within the statutory time limit of 60 days after the close of its public hearing on local sewerage and utility authorities. This deadline, however, did not allow sufficient time for the recommendations to be buttressed by the formal S.C.I. report on the hearing itself. Therefore the recommendations were accompanied by a summary of the Commission's investigative findings and concerns.

The Commission's formal investigation began after preliminary inquiries indicated a prevalence of bribes and kickbacks in the buying and selling of so-called sewage treatment chemicals at some authority facilties. (Evidence of kickbacks and other fraudulent practices was referred to the Attorney General's office by the Commission during its investigation and public hearing). These practices led to a broadened investigation of the management and operations of local and regional authorities. The widened inquiry demonstrated that a number of these authorities, shielded from public scrutiny by a tradition of autonomy, were condoning incompetent administrative practices that invited fraud and other misconduct. The Commission was particularly dismayed by the absence of any public or official monitoring of local authority activities—no review of either temporary or long-term financing, no requirements for uniform audit reports, no enforceable proscriptions against conflicts of interest or other unethical behavior, no standards for appointment of authority commissioners and key executives, and no safeguards against inappropriate or illegal operations and procedures.

These findings, confirmed by public hearing testimony, led to the drafting of recommendations designed to make authorities more accountable to their county or municipal government sponsors and to the captive clientele whose health and welfare depend upon the proper conduct of their facilities. In proposing its recommendations, the Commission reiterated its belief that no properly functioning authority need fear any requirements for more accountability. The recommendations included:

- State Supervision

  The Commission in its proposal for authority reforms urged enactment of Senate Bill No. 1517 or Assembly Bill No. 144, except that it opposed a

provision empowering the State Division of Local Government Services' Local Finance Board to dissolve an authority. The Commission endorsed the declarations of legislative intent in these bills that State approval of project financing by authorities and of their internal financing conduct is necessary "in order to assure their financial stability and integrity." These bills would carry out such legislative intent by requiring State approval of the creation of an authority, project financing, annual budgets, and financial audits and other fiscal reports to be submitted with prescribed uniformity. The Commission felt that such requirements would enable the State to exercise the same successfully tested supervision over local authorities as it has had over the financial conduct of counties and municipalities since the 1930s. The Commission also subscribed to other legislative provisions that would empower the State to take effective remedial action to resolve local authority financial emergencies.

- Authority Bond Financing

The Commission recommended that local authorities be required to adhere to the competitive public bid procedures laid down by the Local Bond Law, except that the State Local Government Services Division could at its discretion permit an authority to *negotiate* the sale of bonds. The Commission urged that State supervision of authority financing be supplemented by additional regulatory requirements for negotiated bond transactions. The Commission further recommended 1) a statutory prohibition against a financial advisor or any other advisor to an authority from serving in any capacity as an underwriter, or vice versa; 2) a State proscription against the payment of fees on a per-bond basis or any other basis that could provide incentives for promoting a larger bond transaction than might be necessary, and 3) a requirement for State approval before an authority can renew any temporary financing instrument.

• State Assistance to Authorities

The Commission recommended that the State Division of Local Government Services provide assistance to local authorities relevant to their particular needs, problems and obligations, including:

—Promulgation of a Code of Ethics to which all Authority members and officers must subscribe under oath, with provisions for hearings of alleged violations and penalties for noncompliance, including fines, suspensions and dismissals.

—Development of a Standard Audit Guide to enable authorities to comply with State requirements for uniform accounting and financial reporting that will also provide an early warning system for detection of impending financial or operational crises of authorities.

—Provision for technical assistance and training of appropriate authority members and administrative and operational staff executives in connection with new statutory requirements for uniform accounting and financial reporting as well as with related existing laws such as the Local Public Contracts Act.

—Establishment of an official Registry of Authorities, which would include their type, the extent of short-term and long-term indebtedness, user fees or charges, the most recent annual budget estimates of revenues and expenditures, the number of employees by title or job classification, and the most recent annual salaries of executive directors and licensed plant operators. A registry filing fee of $50 should be assessed and applied against the cost of establishing and maintaining it.

—Financial advisory assistance to authority members and staff executives, including but not limited to the preparation and distribution of guidelines explaining all facets of debt financing.

—Periodic distribution of a continuously updated list of pertinent technical publications, including those of the New Jersey Municipal Finance Officers Association.

- Upgrading Authority Membership Standards

The Commission was appalled by public hearing testimony that demonstrated the inferior quality of appointments by certain local or county governmental entities to the authorities these entities created. The hearings demonstrated that an appointive process based too often on political connections rather than merit generated sorely inadequate upper-level policy guidance, ineffective managerial controls and blind reliance on often incompetent staff. Therefore the Commission recommended that, in the event the State assumes responsibility for the creation of authorities, any new authority's membership be required to include a professionally accredited engineer and at least one other member who is 1) a lawyer with an acknowledged professional background in governmental, corporate or bond law, or 2) a fully qualified representative of the financial community, or 3) an individual with proven academic credentials and experience in business administration. In addition, the Commission recommended a statutory requirement that authority members submit personal financial disclosures designed to prevent conflicts of interest at a time and in a form prescribed by the State Division of Local Government Services and that violations be subject to mandatory fines of a substantial nature against both the affected member and the authority itself.

- Upgrading Authority Executive Staff

The Commission recommended that the quality of key administrative, professional and technical staff be upgraded by the following Division actions:

—Minimal but nonetheless exacting qualifications should be mandated by the Division for appointment of executive directors or others with similar responsibilities for overall administrative supervision of an authority plant. A college education, with an emphasis on business administration or engineering should be necessary, as well as a specified amount of previous working experience in sewerage and/or utility operations. A proven

career background with a facility should be acceptable as an alternative to the requirement for a specialized educational background but only after a detailed assessment of a prospect's previous career in facility management has confirmed his or her claim to adequate alternative credentials.

—Licensed plant operators should be required by the Division to periodically requalify for licensure.

—Presently inadequate programs for training and qualifying sewerage and utility employees for licensure as plant operators should be expanded and should emphasize continuing education for already licensed operators who must requalify at stated intervals.

—All authority employees with responsibility for purchasing materials essential to the operation of sewerage or utility plants must be required to subject all such purchases to competitive public bids. The Division should establish a list of pre-qualified vendors of chemicals deemed essential for the adequate operation of treatment and purification facilities.

—The Division should establish training seminars for authority purchasing agents to assist them in determining the actual effectiveness of chemicals currently being marketed for waste water treatment.

- Construction Monitoring

The Commission recommended the immediate restoration of the State Department of Environmental Protection's former construction inspection service and the resumption of this unit's responsibility for monitoring publicly funded projects on an unannounced, daily basis. The Commission pointed out that since this service was curtailed in 1980, according to testimony at its public hearing, there were only 381 construction inspections during 1981, compared to 18,600 construction inspections and more

than 2,700 environmental inspections during 1979, the last full year of the department's former inspection service.

- Penalties for Noncompliance

The Commission recommended that fines of $100 daily be assessed against authority members if they delay, without just cause, the filing of annual audits beyond the prescribed four months following the close of a fiscal year. These fines would be a personal liability of the individual authority members affected. The Commission also recommended that fines of $100 daily be assessed against any authority auditor who fails, without just cause, to comply with the Division's annual audit filing deadline. Such fines would be a personal liability. In addition, the facts of such noncompliance should be referred to the Board of Certified Public Accountants for hearing action and possible sanctions by it.

- Funding State Oversight

The Commission recommended that a portion of every State grant, loan or bond issue allocation for the construction or rehabilitation of a local sewerage or utility facility be earmarked to finance inspections and other monitoring of such construction activity. The Commission particularly hopes that sufficient funds can be realized from this program to finance a resumption of the effective construction inspection system that was in operation under the supervision of the DEP's Bureau of Construction Control prior to 1980.

The inclusion of bond issues for construction or rebuilding of sewerage and utility plants in the above recommendation would increase the credibility of such bond issues when they are submitted for a public vote. The Commission emphasized in its statement concluding the public hearing that legislation was pending which would allocate millions of dollars of state bond issue proceeds to the same local sewerage and utility authorities that were cited during the hearings for mismanagement, misconduct and other aberrations.

The Commission heard public hearing testimony which indicated it would cost upwards of $250,000 a year to fund the legislative proposals requiring Division supervision of the financial affairs of authorities. Since these proposals would require the state to provide valuable professional guidance (financial advice, technical assistance and training programs) that would improve the stability and protect the integrity of *all* authorities, the Commission urged that a fee system be enacted that would enable authorities to share in the cost of funding such services to them with minimal financial dislocation. The Commission recommended as the most reasonable method of developing self-sustaining financing of its reforms the levying of yearly fees against individual authorities on a graduated basis according to a schedule that reflects an authority's size, its need for various State services and other considerations.

*Recommendations on Municipal Industrial Commissions*

The S.C.I.'s investigation of citizen complaints against the Lakewood Industrial Commission was authorized not only to assess the validity of the allegations but also to determine whether the statute governing municipal industrial commissions—N.J.S.A. 40:55B–1 et seq.—should be strengthened.

Although the investigation revealed no evidence of criminal or corrupt activities by the Lakewood commission it did confirm "certain inappropriate actions or omissions in the conduct of the Commission." As a result the S.C.I. proposed revisions of the industrial commission law to require 1) that all municipal industrial commissions be structured and operated on a bipartisan basis; 2) that all policy, financial and other decisions and transactions be a matter of public record open and available to public inspection at all times within the business hours of a municipality, and 3) that all members and prospective members of industrial commissions make a public disclosure of all sources of personal income and all personal real estate holdings.

The S.C.I. recommended these specific changes in N.J.S.A. 40:55B–1 et seq:

40:55B–3. Body corporate; number of members:

Amend 1st paragraph to read: "Any Commission so created shall consist of *five members in municipalities of fewer than 50,000 population and of seven members in municipalities of 50,000 population or more . . .*"

The S.C.I. report suggested that Lakewood with its (1980 census) population of 38,000 either did not or could not assemble an Industrial Commission of seven members representative—"unless local conditions shall otherwise require"—of the seven statutorially enumerated categories of membership. A subsequent recommendation by the S.C. I. would reduce these membership qualification categories to at least three categories that can be made mandatory in even the smallest municipality whose local characteristics otherwise would warrant an industrial commission. Such a reduction in membership categories would then be more relevant in municipalities eligible for only 5-member commissions under the revision proposed above.

40:55B–5. Members and officers:

In line with the S.C.I.'s proposed change in the definitions section 40:55B–1, change the appointing authority in the first paragraph of this section from the mayor to the elected members of the municipal governing body by a majority vote of such body, with vacancies also to be filled in the same manner.

In Lakewood, changing the appointing authority from the mayor to the elected governing body would legitimize a current unofficial practice. In so doing, however, the quality of appointees under such a procedural change would be enhanced by additional safeguards outlined in other proposed law revisions.

Also require in this section that no more than 3 members of a 5-member commission or 4 members of a 7-member commission be of same political party.

This proposed revision would assure bipartisan operation of an industrial commission.

The first paragraph of this section also should be extended to prohibit from regular voting membership on an industrial commission any member of the local elected governing body.

The statute is silent on such a dual role, with the exception of the ex officio membership of the mayor. This proposed revision would make clear that the only commission membership role of a governing regime be the mayor's ex officio position. A commission could hardly be classified as quasi-autonomous entity with a membership that included members of its appointing authority. In addition, this change would further reduce the dominant influence of the elected governing regime that the statute now permits and which was the target of some of the complaints against the Lakewood commission.

> Revise the third paragraph of this section to mandate that at least three members of an industrial commission be representative of industry or commerce, labor and the legal profession. Eliminate the requirement that the membership require "at least one thoroughly competent representative of mill owners and operators of mill properties," but retain the remaining categories of representation subject to the clause "unless local conditions shall otherwise require."

The mandatory recommendation for three of the presently enumerated categories of membership should be enforceable in any municipality, whatever its population, that otherwise enjoys the characteristics of a locality where an industrial commission would be advantageous. This change also would safeguard the quality of appointees whether the appointing authority be the mayor or elected governing body. The specification for a mill owner or operator representative is too narrow, arbitrary and archaic to be included in the enumerated categories but certainly would not be excluded under either the S.C.I.'s mandated categories or the suggested representations that would remain in the statute. In fact, so predominant are the industry and business categories that the S.C.I. suggests consideration be given to mandating at least two labor representatives in municipalities with 7-member commissions.

> Amend the fourth paragraph of this section to include a requirement that each appointee to a commission file with the municipal clerk a public disclosure of all of sources (not amounts) of earned and unearned income as well as an enumeration of all real estate holdings.

This paragraph is intended to prohibit conflicts of interest from developing during the course of an industrial commission's operation. A personal financial disclosure as recommended above would strengthen this provision.

> The next to the last paragraph of this section stipulates that a majority of the members would constitute a quorum. The S.C.I. recommended that a quorum must consist of four members of a 5-member commission and five members of a 7-member commission. If the present provision is retained, however, it should be required that at least one of the majority present and voting be a minority member of the Commission.

This proposal for increasing the size of a duly constituted quorum would assure bipartisan operation of a commission affected by a previous recommendation limiting the representation of one political party to no more than three on a 5-member commission and no more than four on a 7-member commission. The revised quorum requirements proposed above would compel the presence of at least one member of a political minority on a commission in order for it to conduct its business.

> 40:55B–6. Employees; offices:
>
> The final paragraph of this section refers to a commission's office and assorted documents, which are subject to public inspection under regulations determined by the commission. This provision should be amended to require that the only condition that may be imposed on the availability of such public records is that they can be inspected during regular office hours of the municipal government.
>
> 40:55B–9. Study of Tax Structure:
>
> The Lakewood Industrial Commission has never made a study of the Township's tax structure, as mandated by this law.

This inaction, which was the subject of one of the allegations, is a blatant violation of the law that should subject present and past members of the commission to criticism in view of the stated purpose of the study. The statute states the such a study shall be conducted "with a view to reducing the tax burden of the Municipality." The S.C.I. called on the Lakewood Industrial Commission to undertake such a tax structure study forthwith.

40:55B–10. Limitations on powers; appropriations, records and reports:

The fourth paragraph requires each commission to make an annual report "to the municipality by which it was created . . ." Such a report should also be required to be a public report that should be submitted to the governing body of the municipality and specifically filed with the municipal clerk, where it shall be open to public inspection during the regular business hours of the municipality. This section requires that a commission's annual report shall set forth in detail "its operations and transactions for the proceeding 12 months." This provision should specify that the contents of the report must include its expenditures and disbursements—all of its cash transactions, in fact.

The concluding paragraph of this section covers appropriations, expenditures, annual budgets, financial records, etc. There is no requirement that the commission make its budget requests public, and this should be corrected. Also, the budget appropriations authorized for the commission by the governing body, which are incorporated within the annual municipal budgets, should be made public by the industrial commission immediately upon authorization. Further, the requirement that each commission keep complete and accurate records of its accounts should be coupled with a requirement that such fiscal records be available for public inspection at any time during the municipality's regular business hours.

A portion of the complaints against the Lakewood Commission related to annual reports, audits and to various financial transactions that were lost, not easily available, or not filed at an office where the citizenry would know of their availability for public inspection. The proposed revision of this section would stipulate the right of public access to all such reports and records and would designate the particular office where they can be located and inspected. The S.C.I. report faulted the Lakewood Industrial Commission for the loss, absence or limited availability of its records in the past.

The Industrial Commission statute is silent on whether a commission is required to comply with State bidding laws. Some of the complaints included the issue of public bids. The Lakewood Industrial Commission at least in recent years has required the

purchase of certificates of deposit to be based on competitive bidding, an appropriate process. However, to subject property transactions to competitive bidding might be impractical, even self-defeating. The S.C.I. recommended, instead, that the Industrial Commission Statute be amended to require that all contracts for the sale, lease, option or other transfer of property rights be subject to public notices and public reviews for a period of at least 30 days prior to any final closing of such transactions. The S.C.I. also recommended that industrial commissions be required to set a time limit on options to purchase any industrial commission lands. It was further recommended that the enabling law should be amended to either prohibit or regulate the payment of commissions or fees to real estate agents and to prohibit dealings with speculators who without any enhancement of the property then resell land to companies for industrial development.

## State Legislative Liaison

### *S.C.I. Spurs Dental Care Law Revision*

In its Report and Recommendations on Organized Crime Infiltration of Dental Care Plan Organizations, in June, 1981, the Commission made two reform proposals. One proposal urged enactment of a pending bill to create a New Jersey State law modeled after the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act. This bill was enacted in June, 1981, as the Commission's report was being processed for public distribution. The Legislative findings that prefaced this statute—that organized crime annually drains millions of dollars from this state's economy by use of force, fraud and corruption and that organized crime type activity has infiltrated legitimate businesses—were confirmed by the Commission's investigation and public hearings.

The Commission's second proposal included more than a dozen recommended amendments to strengthen an existing law requiring the State Insurance Commissioner to regulate dental plan organizations. This law became effective in June, 1980, but had not been materially implemented. The changes proposed by the Commission would require more adequate disclosure and closer inspection of financial transactions of dental plan organizations than is presently required by the statute.

Assemblyman Anthony M. Villane Jr. of District 11 in Monmouth County incorporated the S.C.I.'s recommendations in As-

sembly Bill No. 557, which he introduced for action in the 1982-83 Legislature. This bill's purpose was specified in an attached statement, as follows:

> This bill regulates finders and consultant's relationships with dental plan organizations. The bill's provisions are based on the Report and Recommendations of the State of New Jersey Commission of Investigation on Organized Crime Infiltration of Dental Care Plan Organizations. The purpose of these provisions as stated in the Report is to prohibit "practices bared by the S.C.I.'s probe . . . by setting more stringent standards of professional conduct for dental plan organizations and removing the veil of secrecy that has cloaked the financial operations of such groups." The report goes on to note that "these recommendations require full disclosure and close inspection of financial transactions of dental plan organizations and also address their alliances with consultants, finders and other entities and individuals."

This bill was passed by the Assembly on May 24 and by the Senate on December 6 and was signed into law by Governor Kean in January, 1983.

## Federal Legislative Liaison

The Commission during 1982 responded to requests for investigative data and other assistance from the Federal legislature, including particularly the U. S. Senate Permanent Subcommittee on Investigation and the House Select Committee on Aging.

## The S.C.I. Review Committee

Section 9M–19 of the Commission's enabling law, as amended in 1979, states:

> Commencing in 1982 and every 4 years thereafter, at the first annual session of a 2-year Legislature, within 30 days after the organization of the Legislature, a joint committee shall be established to review the activities of the State Commission of Investigation for the purpose of: (a) determining whether or not P. L. 1968, c. 266 (C. 52:9M–1 et seq.) should

be repealed, or modified, and (b) reporting thereon to the Legislature within 6 months unless the time for reporting is otherwise extended by statute. The joint committee shall be composed of seven members, two members to be appointed by the President of the Senate, no more than one of whom is to be of the same political party, two members to be appointed by the Speaker of the General Assembly, no more than one of whom is to be of the same political party, and three members to be appointed by the Governor, no more than two of whom shall be of the same political party.

Seven citizens, all members of the New Jersey Bar, were named to this committee after the organization of the 1982-83 Legislature, as follows:

William L. Brach of Roseland and James M. Piro of Nutley, by Senate President Carmen A. Orechio; Albert Burstein of Jersey City and Carl Valore of Northfield, by Assembly Speaker Alan J. Karcher, and Mercer County Executive Wilbur H. Mathesius of Princeton, Thomas R. Farley of East Orange and William B. McGuire of Newark, by Governor Thomas H. Kean. Burstein, a former member of the New Jersey General Assembly, was named as chairman and Farley, a former Superior Court Judge and also a former S.C.I. Commissioner, was chosen as vice chairman. John J. Tumulty, who is the legislative aide to the Senate Judiciary Committee, was chosen as the Review Committee's secretary.

The Commission has provided the Committee members with voluminous background materials, responded to all requests for reports and other documents, made present and past commissioners and officers available for questioning and consultation, and has kept the Committee informed on the Commission's activities during the review process.

52:9M-3. At the direction of the Governor or by concurrent resolution of the Legislature the Commission shall conduct investigations and otherwise assist in connection with:

> . . . The making of recommendations by the Governor to the Legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law;
>
> . . . The Legislature's consideration of changes in or additions to existing provisions of law required for the more effective administration and enforcement of the law . . .*

52:9M-4. At the direction or request of the Legislature, of the Governor or of the head of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, the Commission shall investigate the management or affairs of any such department, board, bureau, commission, authority or other agency . . .*

** Excerpts from S.C.I. Law*

**THE GOVERNOR'S REQUESTS**

- **Final HFA Report**

## HFA Investigation and Final Report

One requirement of the Commission's enabling statute is that, at the direction of the Governor, it shall conduct investigations into the "management or affairs" of any department or other agency of government. As requested by then-Governor Brendan T. Byrne, the Commission conducted an inquiry into the operation of the New Jersey Housing Finance Agency and issued in April, 1981, the first of two public reports on its findings. In December, 1982, the Commission authorized the issuance of a second and final public report on its HFA investigation.*

The Commission's investigation disclosed overall that certain aggressive, politically connected housing entrepreneurs were able to have their projects aided through a combination of loose Agency procedures, an authoritarian executive director in the person of William J. Johnston and, for the most part, a malleable staff. The susceptability of the Agency to influence peddling became rampant during Johnston's leadership from the mid-1970s to the Spring of 1979. The S.C.I. 's initial report reviewed the cause and effect of Johnston's misconduct and of the reaction of certain Agency personnel to his activities. Even as the Commission's inquiry progressed, the Agency under the direction of Bruce G. Coe, who succeeded Johnston as Executive Director in 1979, began to improve its regulatory policies and procedures. The S.C.I.'s final report concentrated on the complex facets of HFA project financing, as demonstrated by the Agency's practices and procedures in connection with the processing of five projects between 1973 and 1979. The Commission questioned some of these activities as improper or inappropriate but, as in its first report, noted that the events in question had taken place prior to the institution of a number of internal reforms in 1979. Nonetheless, the S.C.I. commented in its final report that its criticisms "remain valid since they identify past weaknesses in the HFA's operations that should not be countenanced in its future performance."

* A copy of the Commission's Final HFA Report is available upon request at the S.C.I. in Trenton.

As noted, the S.C.I. chose for examination five projects that were closed at the HFA during the mid-1970s. These exemplars demonstrated either inappropriate activities by the Agency or the sponsor or inadaquacies in the procedures by which HFA processed projects. The five projects were: two Essex County projects known as Grace and Nevada, which received special treatment at the Agency because of apparent personal influences and pressures; Maplewood, also in Essex County, which illustrated weaknesses in Agency policy that allowed cut-rate project investments; and Community Haven in Atlantic City and Battery View in Jersey City, in which questionable transactions were authorized by the HFA in 1978. The report's extensive review of these projects led to the following final recommendations—and related comments—by the Commission:

- Promote Supervised Conversions

  The Commission recommends that the HFA actively promote the conversion of nonprofit housing projects into more financially stable limited dividend projects. To implement this recommendation, the Commission suggests that the Agency's innovative "Criteria for Project Selection" be amended to include actual or prospective conversion among such criteria and to provide for the assignment of special point values to projects which agree to convert under Agency rules and regulations applying to the conversion process.

In 1979, in an effort to proscribe favoritism and influence peddling in the selection and processing of housing projects, and to make this process as objective as possible, the HFA instituted a system in which point values were attached to the numerous factors that affected a project's consideration. The Commission felt that this point valuation method of establishing objective priorities for processing projects could be expanded to encourage nonprofits to convert to for-profits under the Agency's regulatory guidance.

- Apply Guidelines To All Conversions

  The Commission recommends that the Agency conversion rules and requirements, that have applied to projects which convert to for-profit status *after* mortgage closings as nonprofits, be extended to projects which convert *prior* to closings.

In conjunction with its recommendation that the HFA actively promote nonprofit housing conversions to for-profit status, the Commission said the HFA should refuse to provide mortgage funds to projects which do not follow Agency rules and regulations for conversions. In the case of projects which have received nonprofit mortgage commitments and then seek to convert, the HFA should refuse to grant a mortgage recommitment if its conversion requirements have been ignored or violated. The Commission recognized that exceptions regarding the distribution of syndication proceeds may be in order when a conversion is necessary to establish a project's feasibility. Nonetheless, it recommended that even under such circumstances all other conversion regulations—including those prohibiting a nonprofit project's attorney from representing any other party in the transaction and preventing hidden agreements under which syndication proceeds are to be paid to members of the nonprofit sponsor, its loan consultant or attorney—should remain in effect.

- Construction Contracts Must Be Bid

  The Commission recommends that the Agency require all sponsors seeking project financing via the HFA processing pipeline to award construction contracts on the basis of competitive bidding.

Supporting its proposal that the HFA utilize the same competitive bid procedures mandated for all public contracts, the Commission noted that Agency projects are financed by mortgage loans funded by proceeds of tax-exempt bonds sold for this special public purpose. Taxpayers provide the federal rent subsidies that guarantee a project will generate sufficient revenues to ultimately permit repayment of these loans. The State also provides "seed money" loans from its public funds to initiate certain types of HFA public housing. The Commission also noted that the Agency has already required competitive bidding in connection with the supplemental funding of special or emergency construction activities.

In addition to requiring a sponsor to seek qualified contractors willing to compete for a contract, the Commission sought to reduce a particular burden on general contractors in limited dividend projects. The Commission suggested in connection with its competitive bid recommendation that in limited dividend projects the entire construction contract, including the contractor's profit and overhead fee, be recognized by the Agency as a mortgageable

cost and that the developer's fee be reduced accordingly. Currently, the contractor's profit and overhead fee is paid by the limited dividend sponsor and the timing of those payments is normally fixed to allow for payment with syndication proceeds. Contractors should not be expected to make such accommodations if they are selected on the basis of a competitive bid proposal.

- Discontinue Fee Pledges

The Commission recommends that, except for the developer's fee, the agency discontinue its policy of allowing fee pledges toward a sponsor's equity requirement.

Elimination of fee pledging should convert the requirement for interim equity funding by a project developer into an important cost-saving incentive. The Commission contended that this has not been true under fee pledging, since a developer has not had to utilize personal resources. Under the Commission's proposal, the only fee that could be pledged would be the developer's own fee but the size of this fee would be sharply reduced since it no longer would include the contractor's profit and overhead fee.

- No Equity Return From Mortgage Advances

The Commission recommends that the Agency not allow payment of return on equity from funds made available by mortgage money advances.

In instances where funds are available in project operating accounts at final mortgage closings and those funds are the result of mortgage money advances (as was the case with Battery View and Community Haven) the Agency should take control of its 90 percent portion of such funds and utilize it as specified in Agency regulations and in accordance with bond covenants covering unused mortgage money. Further, the Agency should restrict the availability of funds for return on equity to the net cash flow from project operations, exclusive of any mortgage money advances which may be applied toward normal non-capital operating expenditures. If the Agency had advanced mortgage money directly to the Battery View and Community Haven sponsor for return on equity, it would have violated its statutory limit of 90 percent funding for limited dividend projects. Furthermore, all future return on equity payments based upon the original equity amount, unadjusted to reflect the return, would be in violation of the statutory limit of 8 percent return on equity. In the opinion

of the Commission, the mere fact that the Battery View and Community Haven mortgage money advances happened to pass through the project operating accounts prior to use as return on equity did not change the improper nature of this transaction.

* * * * *

As with the Commission's first report on the HFA, most of the questionable activities cited in its final report occurred during the 1973-79 period. The first report concluded with a number of recommendations which targeted official misconduct as their primary objective. The Commission conceded that honesty and integrity could not be legislated but contended that certain steps could be taken to at least reduce the danger of a revival of the mismanagement that once marked the Agency. For this reason the Commission restated in its final report certain recommendations proposed in its initial report, as follows:

- Legislative Oversight

  The Commission recommends that a provision be added to the law governing the HFA to require an inspection and review of the operations of the agency at least once during each two-year session of the Legislature by a bipartisan Legislative Oversight Committee, augmented by the Governor's chief counsel or a lawyer or certified public accountant designated by him. Such a review of the agency shall be required to begin prior to the conclusion of the first year of the Legislature's two-year session and shall be concluded within six months of the authorization of such a study, unless an extension of time is granted by both legislative houses.

As illustrated by both of the Commission's reports, internal misconduct at the HFA continued undetected for a prolonged period of time. A factor in the failure to more quickly expose numerous incidents of favoritism to certain project promoters, influence peddling pressures on behalf of a number of projects, and even acts of criminality or near-criminality, was the illusion of respectability the HFA enjoyed because of its public image as an aggressive producer of needed housing. To prevent a recurrence of the HFA's adverse experience, the Commission endorsed the trend in recent years toward legislative oversight of the programs lawmakers enact and urged that such oversight be extended to the HFA. A role for the Executive Branch of State government in this

watchdog mechanism was urged because it shares a responsibility for the HFA's proper performance through appointive and administrative control over the HFA's governing board.

- Fraud Audits

The Commission recommends that spot audits of various projects be required by law with the additional proviso that such audits be required to include among their objectives the identification of fraud and that such findings be immediately reported to the Executive Director and the governing board for appropriate immediate resolution.

The HFA's internal audits of agency and project financial transactions have not made the identification of fraud a specific objective. Fraud audits are typically an expensive undertaking and performing them on all projects would not be justified. In the Commission's opinion, however, utilizing fraud audits on a spot basis, performed either by agency staff or an independent contractor, would add an important fiscal control mechanism to present HFA auditing capability.

52:9M-5. Upon request of the Attorney General, a county prosecutor or any other law enforcement official, the Commission shall cooperate with, advise and assist them in the performance of their official . . . duties.*

52:9M-6. The Commission shall cooperate with departments and officers of the United States Government in the investigation of violations of the Federal laws within this state.*

52:9M-7. The Commission shall examine into matters relating to law enforcement extending across the boundaries of the state into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern . . .*

52:9M-8. Whenever the Commission or any employee obtains any information or evidence of a reasonable possibility of criminal wrongdoing . . . the information or evidence of such crime or misconduct shall be called to the attention of the Attorney General as soon as practicable, unless the Commission shall . . . determine that special circumstances exist which require the delay in transmittal of the information or evidence . . .*

** Excerpts from S.C.I. Law*

## LAW ENFORCEMENT LIAISON

- **U.S. Attorney**
- **Attorney General**
- **County Prosecutors**
- **Interstate Cooperation**

## *LAW ENFORCEMENT LIAISON*

### INTRODUCTION

The Commission last year was contacted by telephone or mail 90 times for various types of assistance from federal, state, county and local law enforcement agencies and from such agencies in the states of Arizona, Connecticut, Florida, Georgia, New York, Pennsylvania and Texas. Additionally, the Commissioners adopted at least 31 resolutions in response to formal requests for information by federal, state and county law enforcement agencies, regulatory agencies and legislative committees. A number of referrals of evidence of criminal activities were also made by the Commission pursuant to Section 9M–8 of its enabling law.

### LIAISON WITH THE U.S. ATTORNEY FOR NEW JERSEY

Continuing close contact was maintained throughout 1982 with the office of the United States Attorney for New Jersey, W. Hunt Dumont. Investigative data, hearing transcripts and other information were submitted to his staff, particularly in connection with the Commission's inquiries into the New Jersey Housing Finance Agency and the problem of organized crime incursion into certain dental care plans. In addition, agents of the S.C.I. actively joined with Mr. Dumont's staff in several investigations involving members of organized crime. An example of this type of cooperation is cited on Page 10 of this report.

### LIAISON WITH THE ATTORNEY GENERAL

During 1982 the Commission continued its liaison with the Office of the Attorney General and various components of the Department of Law and Public Safety. This liaison was carried out through high-level meetings by the Commissioners with the Attorney General. Additionally, Commission supervisory and legal personnel and the staff of the Attorney General's office, particularly the Division of Criminal Justice, met on scores of occasions during the course of the year with regard to day-to-day activities.

A primary purpose of this close liaison is the maintenance of a dialogue with the chief prosecutorial office in the state so that the

Commission can address more effectively broad-based problems in the area of criminal justice reform and promote development and support of legislation resulting from the Commission's public hearings and reports. The effectiveness of this coordination was demonstrated in 1982 during the S.C.I.'s investigation of misconduct at certain local and county authorities and its public hearings about that probe. Evidence of criminal activity in the sale or purchase of sewage treatment chemicals was referred to Attorney General Irwin Kimmelman's staff, as a result of which one witness testified at the Commission's hearing as part of a plea bargain and several other witnesses testified under grants of immunity.

The S.C.I. joined with Attorney General Kimmelman in June to host a delegation of key Australian law enforcement officials at the Commission's office. The delegation was led by Australia's Attorney General Peter D. Durack. S.C.I. Chairman Arthur S. Lane presided at the conference, which was also attended by Colonel Clinton Pagano, Superintendent of the New Jersey State Police.

## Liaison With County Prosecutors

The Commission takes pride in its increasingly close relationship with all of New Jersey's 21 county prosecutors and their staffs that began with active investigative associations some years ago in Atlantic, Burlington, Camden, Essex, Hudson, Passaic and Union Counties. This linkage between prosecutors and the S.C.I. has been extended to every county and is being constantly reaffirmed as prosecutorial changes occur. Liaison between the Commission and prosecutorial offices was further cemented during 1982 when Executive Director James T. O'Halloran proposed that the S.C.I. conduct a seminar for county prosecutor staffs on the background and procedures of the Commission's investigation of county and local sewerage authorities. Such a seminar was arranged through the office of Essex County Prosecutor George L. Schneider and was hosted by the office of Monmouth County Prosecutor Alexander D. Lehrer at the Monmouth County Police Academy on November 30. Special Agent Richard S. Hutchinson and Investigative Accountant Helen K. Gardiner conducted the two-hour seminar as well as an extensive question-and-answer period. They outlined the investigative techniques utilized to identify those involved in kickbacks and other misconduct and to

trace the movement of cash and gifts in these transactions. They also suggested areas of concern in connection with authority operations in various counties. More than 50 representatives from 19 of the 21 county prosecutor's offices attended the seminar.

## Interstate Cooperation

The Commission continued its membership in various interstate organizations of a formal and informal nature which relate to its work. Additionally, the Commission received numerous requests for assistance on investigations from various law enforcement agencies throughout the nation. The Commission, in fulfillment of its statutory duty and in recognition of the importance of cooperation among the states in areas such as organized crime, responded to every such request. The Commission itself also obtained assistance from various other states on matters of mutual concern with particular relevance to organized crime and racketeering.

52:9M-9. The Commission shall be authorized to appoint and employ and at pleasure remove an Executive Director, Counsel, Investigators, Accountants, and such other persons as it may deem necessary, without regard to Civil Service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the Commission shall be and have all the powers of peace officers.*

** Excerpt from S.C.I. Law*

## COMMISSION STAFF

- **Performance, Self-improvement**

## STAFF PERFORMANCE

As in past years, various officers and employees of the Commission participated in conferences, seminars and workshops conducted by federal or state law enforcement agencies or associations.

Executive Director James T. O'Halloran, a former Prosecutor of Hudson County, attended the annual Prosecutors Convention in Spring Lake on June 26 and on September 10 he reviewed the history and functions of the S.C.I. at a County Prosecutors' management training seminar at the Rutgers University Continuing Education Center, New Brunswick. He also addressed the New Jersey Narcotics Enforcement Officer's Association on June 2 and conferred on organized crime problems in Philadelphia on October 4 with members of the Senate Permanent Subcommittee on Investigations.

On October 18, the Commission announced the appointment of James J. Morley of Moorestown as Deputy Director. He also has a prosecutorial background, having served as Assistant Prosecutor of Burlington County (1976-78) and, during two of the four years he subsequently served as a Deputy Attorney General, he was responsible for providing liaison between the Attorney General's Prosecutors Supervisory Section and the County prosecutors and the State Medical Examiner. When he came to the S.C.I., he was the Deputy Attorney General assigned to the Criminal Justice Division's Legislative Services Section.

In addition to Messrs. O'Halloran and Morley, the Commission's staff included four other lawyers. One of these, James A. Hart, III, a former assistant prosecutor in Union County, participated in a panel discussion on search and seizure law at the annual meeting in June of the New Jersey Narcotics Enforcement Officers Association. He is associate counsel and a member of the Board of Directors of the Association. Counsel Michael V. Coppola, a former Assistant Prosecutor of Hudson County and who was admitted to the Bar of New York State in March, attended a seminar on casino law sponsored by the New Jersey Institute for Continuing Legal Education. Mr. Coppola subsequently became chief counsel for the Commission's inquiry into casino credit abuses. Counsel

Gerard P. Lynch in May was elected a Vice Chairman of the Magloclen Association, the Middle Atlantic—Great Lakes Organized Crime Law Enforcement Network. A former assistant district attorney in New York, he had been secretary of this association since its founding in 1981. The New Jersey State Police and the S.C.I. are among the charter members. Paul D. Amitrani, the Commission's newest counsel, had been an assistant prosecutor in Union, Hudson and Somerset counties and was serving his second term as the president of the Assistant Prosecutors Association of New Jersey when he came to the S.C.I.

The Commission's staff in 1982 consisted of 44 individuals including 6 accountants and 14 special agents.

The Commission's accountants not only kept abreast of advances in their field but also shared their knowledge and experience with other law enforcement agencies, particularly in the area of white collar crime and as lecturers at the New Jersey State Police Academy. The S.C.I. chief accountant, Julius Cayson, lectured at the State Police training school for investigators assigned to the Attorney General's Gaming Enforcement Division and submitted a paper for use at the new State Police Intelligence Analysts' School at Sea Girt. Two accountants are Certified Public Accountants. One accountant holds a Master of Business Administration graduate degree and another is a candidate for such a degree. Two S.C.I. accountants are former veteran investigators for the U.S. Internal Revenue Service. One of the latter, Frank Zanino, retired after serving the S.C.I. for more than 10 years, during which his investigative accounting efforts formed the basis for a number of major inquiries by the Commission.

Special courses and seminars on white collar crime, government corruption, organized crime and other law enforcement problems were attended by the Commission's special agents. The Commission received a letter from the U.S. Justice Department's Organized Crime and Racketeering Section, Camden office, expressing appreciation for S.C.I. staff "cooperation and assistance"—particularly that of Chief Accountant Cayson, Special Agents Richard Hutchinson and Joseph Corrigan and Investigative Accountant Chris Klagholz—in a major organized crime judicial proceeding. In addition, the Commission's special agents assisted the U.S. Attorney's office in Newark in obtaining an embezzlement indictment to which the defendant pled guilty. The Commission also received a letter from the Middlesex County Prosecutor's Police Training Director, Matthew G. Zaleski, expressing appreciation for the

S.C.I.'s assistance to its 38th basic training class and to the S.C.I.'s Special Agent William Rooney for serving as an instructor during the 16-week session. The wide-ranging background of the Commission's special agents has been particularly helpful in the successful completion of the agency's unusually varied investigations. Collectively, this background includes previous careers or tours of duty with the U.S. Justice Department, the U.S. Senate's organized crime investigations, the Federal Bureau of Investigation, the State Police, various county prosecutor's offices, the Pennsylvania Crime Commission, many municipal police departments, the NY-NJ Waterfront Commission, a county sheriff's department, and the Military Police. One or another of the special agents periodically presides at regularly scheduled meetings of delegates from approximately 40 federal, state, county and municipal law enforcement agencies from a five-state area. These meetings are designed to develop closer investigative liaison and to review law enforcement matters of mutual concern.

52:9M-10. The Commission shall make an annual report to the Governor and Legislature which shall include its recommendations. The Commission shall make such further interim reports to the Governor and Legislature, or either thereof, as it shall deem advisable, or as shall be required by the Governor or by concurrent resolution of the Legislature.*

52:9M-11. By such means and to such extent as it shall deem appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of law enforcement . . . and other activities of the Commission.*

** Excerpts from S.C.I. Law*

## LIAISON WITH THE PUBLIC

- **Introduction**
- **Public Hearings, Reports**
- **Citizen Assistance**

## *LIAISON WITH THE PUBLIC*

### INTRODUCTION

Since its inception the Commission has sponsored a total of 66 public actions, including 23 public hearings, 26 public reports based on those hearings, and 17 public reports which were not preceded by public hearings. These public actions are mandated by various provisions of the S.C.I.'s enabling law as supplemented by revisions enacted since 1968. For example, annual and interim reports to the Governor and Legislature have been required from the outset. Such reports have helped to fulfill another requirement that the Commission keep the public informed as to the operations of organized crime, law enforcement problems and other agency activities "by such means and to such extent as it shall deem appropriate." An original statutory provision that the Commission assist in "the making of recommendations by the Governor" to the Legislature has been augmented by also requiring the S.C.I. to conduct investigations and otherwise assist in "the Legislature's consideration of changes in or additions to existing provisions of law required for the more effective administration and enforcement of the law." In line with these expanded reporting responsibilities, revisions have also mandated that the S.C.I. 1) submit to the Governor and Legislature "within 60 days of holding a public hearing" and recommendations which result from such a hearing, and 2) if a recommendation concerns pending legislation to advise the sponsor and appropriate committee chairman prior to issuing the recommendation.

### PUBLIC HEARINGS, REPORTS

A brief listing of the S.C.I.'s 66 public actions illustrates the wide-ranging variety of allegations and complaints that, by formal authorization of the Commission, were subjected to its traditional process of probes, hearings and public reports. In the organized crime field, the Commission's continuing confrontation of high-ranking mob figures was highlighted by public hearings and reports on organized crime influence in Long Branch and Monmouth County (1970), criminal activities in Ocean County (1972), narcotics trafficking (1973), infiltration of legitimate businesses in

Atlantic City (1977), incursions into the dental health care industry (1980-81) and into labor relations profiteering at housing projects (1981-82). In addition, investigations in other law enforcement areas that were subjected to both public hearings and reports included: state cleaning services abuses and state building service contractual irregularities (1970), Hudson County Mosquito Commission corruption (1970), Jersey City waterfront land frauds (1971), workers compensation misconduct (1973), misuse of surplus federal property (1973), pseudo-charity solicitations (1974), Lindenwold borough corruption (1974), medicaid-clinical labs (1975), Middlesex land deals (1976), prison furlough abuses (1976), medicaid nursing home schemes (1976-77), improper conduct by private schools for handicapped children (1978), boarding home abuses (1978), absentee ballot law transgressions (1978), mishandling of public insurance programs (1979), and misconduct by certain county and local sewerage authorities (1982). Further, although no public hearings ensued, critical public reports and corrective recommendations followed the Commission's investigations of the garbage industry (1970), an Atlantic County embezzlement (1971), Stockton College land deals (1972), the Attorney General's office (1973), Middlesex bank fraud (1973), conflicts of interest on the Delaware River Port Authority (1974), medicaid nursing home cost reimbursements (1975), medicaid "mills" (1976), casino control law problems (1977), medicaid hospital problems (1977), wrongful tax deductions from public employees' injury leave wages (1979), mishandled sudden deaths (1979), truck unloading complaints (1980), inappropriate HFA conduct (1981 and 1982), and industrial commission law reforms (1982).

## Citizens Assistance

As in past years, hardly a week passed in 1982 that the Commission did not receive requests for investigative action, assistance or advice from citizens of New Jersey. Commission records include more than 80 such contacts by citizens, mostly for the purpose of filing complaints about law enforcement and other problems affecting them or their communities. The Commission staff's discussions and reviews of these citizen complaints required almost an hour per contact.

## APPENDIX

- S. C. I. Statute

## *S.C.I. STATUTE*

*New Jersey Statutes Annotated 52:9M-1, Et Seq.*
L. 1968, C. 266, as amended by L. 1969, C. 67,
L. 1970, C. 263, L. 1973, C. 238, and L. 1979, C. 254.

*52:9M-1. Creation; members; appointment; chairman; terms; salaries; vacancies.* There is hereby created a temporary State Commission of Investigation. The Commission shall consist of four members, to be known as Commissioners.

Two members of the Commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of 3 years and until the appointment and qualification of his successor. The Governor shall designate one of the members to serve as Chairman of the Commission.

The members of the Commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the Commission shall hold any other public office or public employment. Not more than two of the members shall belong to the same political party.

Each member of the Commission shall receive an annual salary of $15,000.00 until January 1, 1980, when each member of the Commission shall receive an annual salary of $18,000.00. Each member shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside of the State.

Vacancies in the Commission shall be filled for the unexpired term in the same manner as original appointments. Vacancies in the Commission shall be filled by the appropriate appointing authority within 90 days. If the appropriate appointing authority does not fill a vacancy within that time period, the vacancy shall be filled by the Chief Justice of the Supreme Court within 60 days.

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission.

Any determination made by the Commission shall be by majority vote. "Majority vote" means the affirmative vote of at least three members of the Commission if there are no vacancies on the Commission or the affirmative vote of at least two members of the Commission if there is a vacancy.

Notwithstanding the provisions of section 1 of this act (C. 52:9M-1) and in order to effect the staggering of terms of members of the Commission notwithstanding the term for which they were originally appointed, the terms of the members appointed after December 1, 1978 shall be as follows: the first member appointed by the Governor, 36 months; the second member appointed by the Governor, 18 months; the member appointed by the President of the Senate, 30 months; the member appointed by the Speaker of the General Assembly, 24 months. Thereafter, the terms of the members shall be as provided in P.L. 1968, C. 266, S. 1 (C. 52:9M-1).

*52:9M-2. Duties and powers.* The Commission shall have the duty and power to conduct investigations in connection with:

a. The faithful execution and effective enforcement of the laws of the State, with particular reference but not limited to organized crime and racketeering;

b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;

c. Any matter concerning the public peace, public safety and public justice.

*52:9M-3. Additional duties.* At the direction of the Governor or by concurrent resolution of the Legislature the Commission shall conduct investigations and otherwise assist in connection with:

a. The removal of public officers by the Governor;

b. The making of recommendations by the Governor to any other person or body, with respect to the removal of public officers;

c. The making of recommendations by the Governor to the Legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law;

d. The Legislature's consideration of changes in or additions to existing provisions of law required for the more effective administration and enforcement of the law.

*52:9M-4. Investigation of management or affairs of state department or agency.* At the direction or request of the Legislature by concurrent resolution or of the Governor or of the head of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, the Commission shall investigate the management or affairs of any such department, board, bureau, commission, authority or other agency; provided, however, that if the Commission determines that the requests for investigations from the Legislature, the Governor or the head of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, exceed the Commission's capacity to perform such investigations, they may, by resolution, ask the Governor or the Attorney General or the Legislature in the case of a Legislative request, to review those requests upon which it finds itself unable to proceed.

Within 5 days after the adoption of a resolution authorizing a public hearing and not less than 7 days prior to that public hearing, the Commission shall advise the President of the Senate and the Speaker of the General Assembly that such public hearing has been scheduled. The President and the Speaker shall, after reviewing the subject matter of the hearing, refer such notice to the appropriate standing committee of each House.

The Commission shall, within 60 days of holding a public hearing, advise the Governor and the Legislature of any recommendations for administrative or Legislative action which they have developed as a result of the public hearing.

Prior to making any recommendations concerning a bill or resolution pending in either House of the Legislature, the Commission shall advise the sponsor of such bill or resolution and the chairman of any standing Legislative Committee to which such bill or resolution has been referred of such recommendations.

*52:9M-5. Cooperation with law enforcement officials.* Upon request of the Attorney General, a county prosecutor or any other law enforcement official, the Commission shall cooperate with, advise and assist them in the performance of their official powers and duties.

*52:9M-6. Cooperation with Federal Government.* The Commission shall cooperate with departments and officers of the United States Government in the investigation of violations of the Federal Laws within this State.

*52:9M-7. Examination into law enforcement affecting other states.* The Commission shall examine into matters relating to law enforcement extending across the boundaries of the State into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern to this and other states.

*52:9M-8. Reference of evidence to other officials.* Whenever the Commission or any employee of the Commission obtains any information or evidence of a reasonable possibility of criminal wrongdoing, or it shall appear to the Commission that there is cause for the prosecution for a crime, or for the removal of a public officer for misconduct, the information or evidence of such crime or misconduct shall be called to the attention of the Attorney General as soon as practicable by the Commission, unless the Commission shall, by majority vote, determine that special circumstances exist which require the delay in transmittal of the information or evidence. However, if the Commission or any employee of the Commission obtains any information or evidence indicating a reasonable possibility of an unauthorized disclosure of information or a violation of any provision of this act, such information or evidence shall be immediately brought by the Commission to the attention of the Attorney General.

*52:9M-9. Executive director; counsel; employees.* The Commission shall be authorized to appoint and employ and at pleasure remove an Executive Director, Counsel, Investigators, Accountants, and such other persons as it may deem necessary, without regard to Civil Service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the Commission shall be and have all the powers of peace officers.

*52:9M-10. Annual report; recommendations; other reports.* The Commission shall make an annual report to the Governor and Legislature which shall include its recommendations. The Commission shall make such further interim reports to the Governor and Legislature, or either thereof, as it shall deem advisable, or as shall be required by the Governor or by concurrent resolution of the Legislature.

*52:9M-11. Information to public.* By such means and to such extent as it shall deem appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the State and other activities of the Commission.

*52:9M-12. Additional powers; warrant for arrest; contempt of court.* With respect to the performance of its functions, duties and powers and subject to the limitation contained in paragraph d. of this section, the Commission shall be authorized as follows:

a. To conduct any investigation authorized by this act at any place within the State; and to maintain offices, hold meetings and function at any place within the State as it may deem necessary;

b. To conduct private and public hearings, and to designate a member of the Commission to preside over any such hearing; no public hearing shall be held except after adoption of a resolution by majority vote, and no public hearing shall be held by the Commission until after the Attorney General and the appropriate county prosecutor or prosecutors shall have been given at least 7 days written notice of the Commission's intention to hold such a public hearing and afforded an opportunity to be heard in respect to any objections they or either of them may have to the Commission's holding such a hearing;

c. To administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation; and the Commission may designate any of its members or any member of its staff to exercise any such powers;

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the Commission, every witness attending before the Commission shall be examined privately and the Commission shall not make public the particulars of such examination. The Commission shall not have the power to take testimony at a private hearing or at a public hearing unless at least two of its members are present at such hearing, except that the Commission shall have the power to conduct private hearings, on an investigation previously undertaken by a majority of the members of the Commission, with one Commissioner present, when so designated by resolution;

e. Witnesses summoned to appear before the Commission shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If any person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, any judge of the Superior Court or of a county court or any Municipal Magistrate may, on proof by affidavit of service of the subpoena, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of P. L. 1968, C. 266 as amended and supplemented, and a general statement of the subject of the investigation. A copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the Commission upon request therefor by the person summoned.

A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the Commission shall ask the witness such of the questions as it may deem appropriate to its inquiry.

A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record.

The Commission shall notify any person whose name the Commission believes will be mentioned at a public hearing. Any person whose name is mentioned or will be mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the Commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either in private or in public or both at a reasonably convenient time to be set by the Commission, to appear personally before the Commission, and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record.

Nothing in this section shall be construed to prevent the Commission from granting to witnesses appearing before it, or to persons who claim to be adversely affected by testimony or other evidence adduced before it, such further rights and privileges as it may determine.

*52:9M-13. Powers and duties unaffected.* Nothing contained in Sections 2 through 12 of this act [chapter] shall be construed to supersede, repeal or limit any power, duty or function of the Governor or any department or agency of the State, or any political subdivision thereof, as prescribed or defined by law.

*52:9M-14. Request and receipt of assistance.* The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

*52:9M-15. Disclosure forbidden; statements absolutely privileged.* a. Any person conducting or participating in any examination or investigation who shall disclose or any person who, coming into possession of or knowledge of the substance of any examination or investigation, shall disclose, or any person who shall cause, encourage or induce a person, including any witness or informant, to disclose, other than as authorized or required by law, to any person other than the Commission or an officer having the power to appoint one or more of the Commissioners the name of any witness examined, or any information obtained or given upon such examina-

tion or investigation, except as directed by the Governor or Commission, or any person other than a member or employee of the Commission or any person entitled to assert a legal privilege who, coming into possession of or knowledge of the substance of any pending examination or investigation who fails to advise the Attorney General and the Commission of such possession or knowledge and to deliver to the Attorney General and the Commission any documents or materials containing such information, shall be guilty of a misdemeanor until September 1, 1979 when such person shall be guilty of a crime of the third degree. Any member or employee of the Commission who shall violate this section shall be dismissed from his office or discharged from his employment.

b. Any statement made by a member of the Commission or an employee thereof relevant to any proceeding before or investigative activities of the Commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

c. Nothing contained in this section shall in any way prevent the Commission from furnishing information or making reports, as required by this act, or from furnishing information to the Legislature, or to a standing reference committee thereof, pursuant to a resolution duly adopted by a standing reference committee or pursuant to a duly authorized subpoena or subpoena duces tecum, provided, however, that nothing herein shall be deemed to preclude the Commission from seeking from a court of competent jurisdiction a protective order to avoid compliance with such subpoena or duces tecum.

*52:9M-16. Impounding exhibits; action by Superior Court.* Upon the application of the Commission, or a duly authorized member of its staff, the Superior Court or a judge thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the Commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the Commission. When so impounded such exhibits shall not be taken from the custody of the Commission, except upon further order of the court made upon 5 days notice to the Commission or upon its application or with its consent.

*52:9M-17. Immunity; order; notice; effect of immunity.* a. If, in the course of any investigation or hearing conducted by the Commission pursuant to this act, a person refuses to answer a question

or questions or produces evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the Commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. No order to answer or produce evidence with immunity shall be made except by majority vote and after the Attorney General and the appropriate county prosecutor shall have been given at least 7 days written notice of the Commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity.

b. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence be prosecuted for willful refusal to give an answer or produce evidence in accordance with an order of the Commission pursuant to Section 13, or held in contempt for failing to give an answer or produce evidence in accordance with the order of the Commission pursuant to Section 11; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt or willful refusal to give an answer or produce evidence in accordance with an order of the Commission.

c. If the Commission proceeds against any witness for contempt of court for refusal to answer, subsequent to a grant of immunity, said witness may be incarcerated at the descretion of the Superior Court; provided, however, that (1) no incarceration for Civil Contempt shall exceed a period of 5 years of actual incarceration exclusive of releases for whatever reason; (2) the Commission may seek the release of a witness for good cause on appropriate motion to the Superior Court; and (3) nothing contained herein shall be deemed to limit any of the vested constitutional rights of any witness before the Commission.

Any person who shall willfully refuse to answer a question or questions or produce evidence after being ordered to do so by the State Commission of Investigation in accordance with the act to

which this act is a supplement P. L. 1968, C. 266 (C. 52:9M-1 et seq.) is guilty of a high misdemeanor until September 1, 1979, when such person shall be guilty of a crime of the second degree. Notwithstanding any other provision of law, no person imprisoned pursuant to this section shall be eligible for parole or reconsideration of sentence upon a showing that after imposition of the sentence he testified or furnished the required evidence at a time when the Commission's needs were substantially met. Action against such person shall ensue upon a complaint signed by the chairman upon resolution of the Commission. Such complaint shall be referred for prosecution to the Attorney General.

The trial of a defendant for an indictment made pursuant to this act shall be stayed pending the disposition of any review on appeal of the Commission's order to testify and the indictment shall be dismissed if the order to testify is set aside on appeal or if, within 30 days after the order to testify is sustained on appeal, the defendant notifies the Commission that he will comply with the order and does so promptly upon being afforded an opportunity to do so.

Any period of incarceration for contempt of an order of the Commission shall be credited against any period of imprisonment to which a defendant is sentenced pursuant to subsection a. of this section.

*52:9M-18. Severability; effect of partial invalidity.* If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

*52:9M-19. Joint committee of legislature to review activities.* Commencing in 1982 and every 4 years thereafter, at the first annual session of a 2-year Legislature, within 30 days after the organization of the Legislature, a joint committee shall be established to review the activities of the State Commission of Investigation for the purpose of: (a) determining whether or not P. L. 1968, C. 266 (C. 52:9M-1 et seq.) should be repealed, or modified, and (b) reporting thereon to the Legislature within 6 months unless the time for reporting is otherwise extended by statute. The joint committee shall be composed of seven members, two members to be appointed by the President of the Senate, no more than one of

whom is to be of the same political party, two members to be appointed by the Speaker of the General Assembly, no more than one of whom is to be of the same political party, and three members to be appointed by the Governor, no more than two of whom shall be of the same political party.

*52:9M-20.* This act shall take effect immediately and remain in effect until December 31, 1984.