

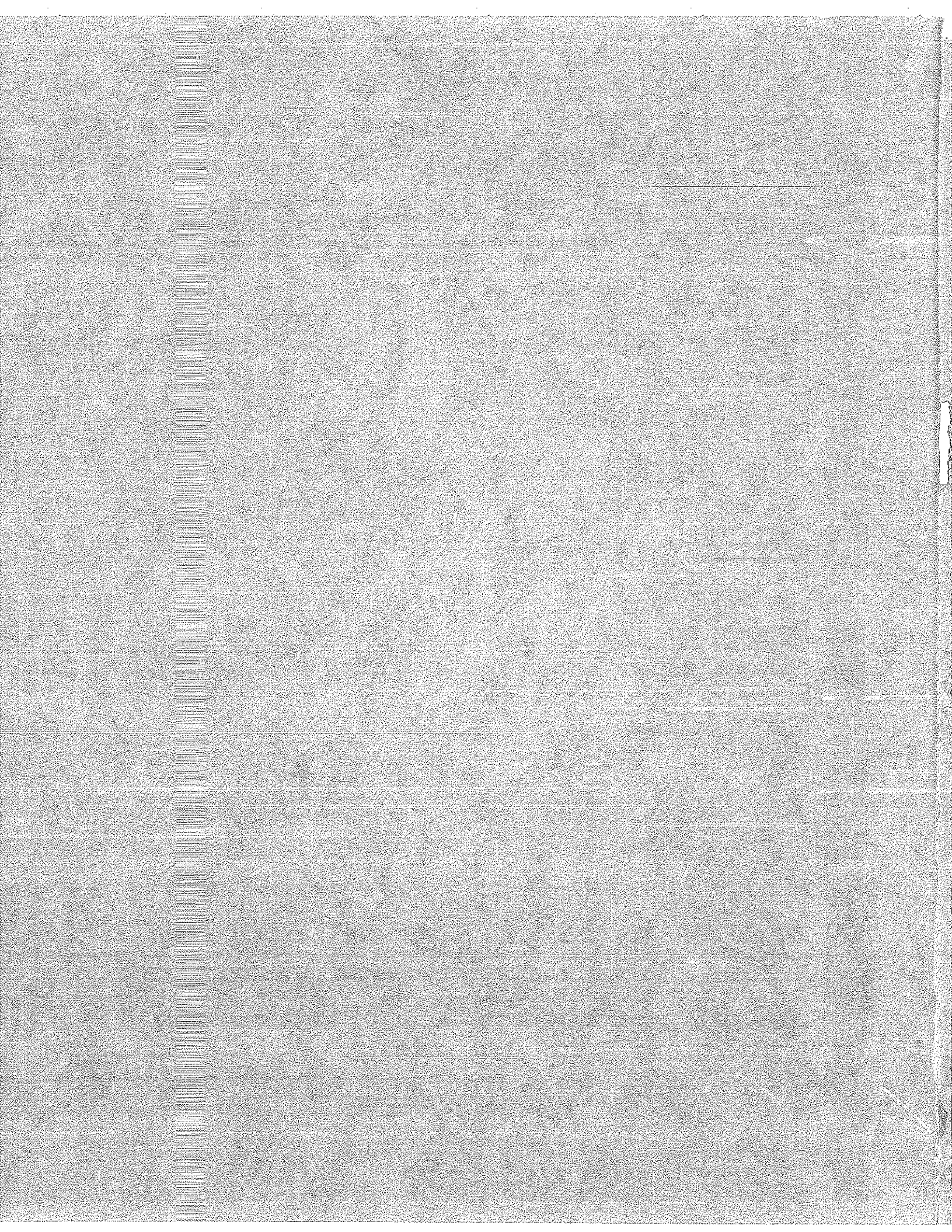


**Interim
Report
and
Recommendations
of the**

**STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION**

On

**INCORRECT INJURY LEAVE PRACTICES
in the
COUNTIES**





State of New Jersey
COMMISSION OF INVESTIGATION

COMMISSIONERS

JOSEPH H. RODRIGUEZ
CHAIRMAN

LEWIS B. KADEN
ARTHUR S. LANE

28 WEST STATE STREET
TRENTON, N.J. 08608
TELEPHONE (609) 292-6767

MICHAEL R. SIAVAGE
EXECUTIVE DIRECTOR

EXECUTIVE ASSISTANT
JOHN O. DAVIES

COUNSEL
NEIL J. CASEY, III
DAVID L. RHOADS
PETER M. SCHIRMER
ROBERT M. TOSTI

January, 1979

*TO: The Governor and the Members of the Legislature
of the State of New Jersey:*

The New Jersey State Commission of Investigation
herewith submits an Interim Report and Recommendations
on its Investigation of Incorrect Injury Leave Practices
in the Counties. This transmittal is made under Section
10 of P.L. 1968, Chapter 266 (N.J.S.A. 52:9M-10), the
Act creating the Commission.

Respectfully Submitted,

Joseph H. Rodriguez, *Chairman*

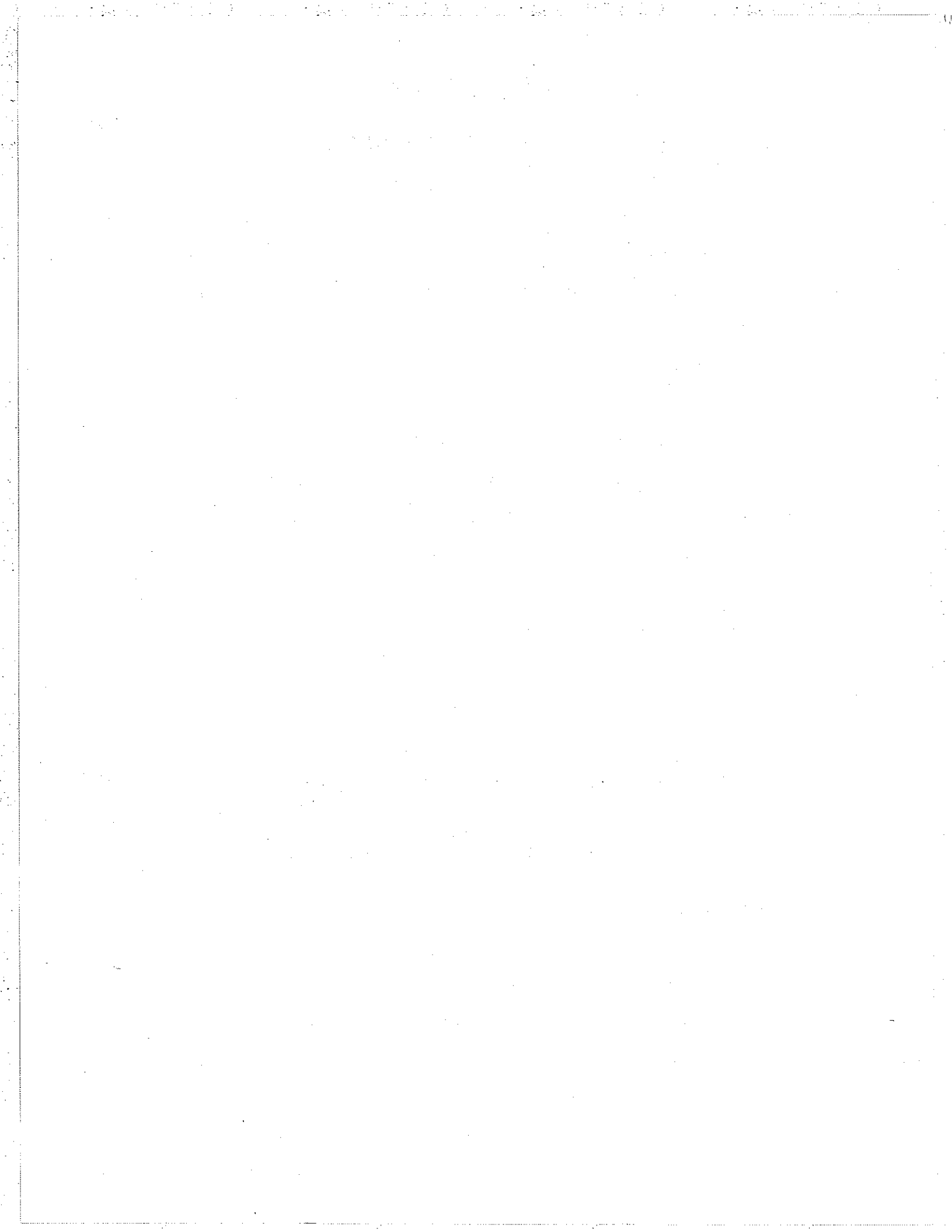
Lewis B. Kaden, *Commissioner*

Arthur S. Lane, *Commissioner*



TABLE OF CONTENTS

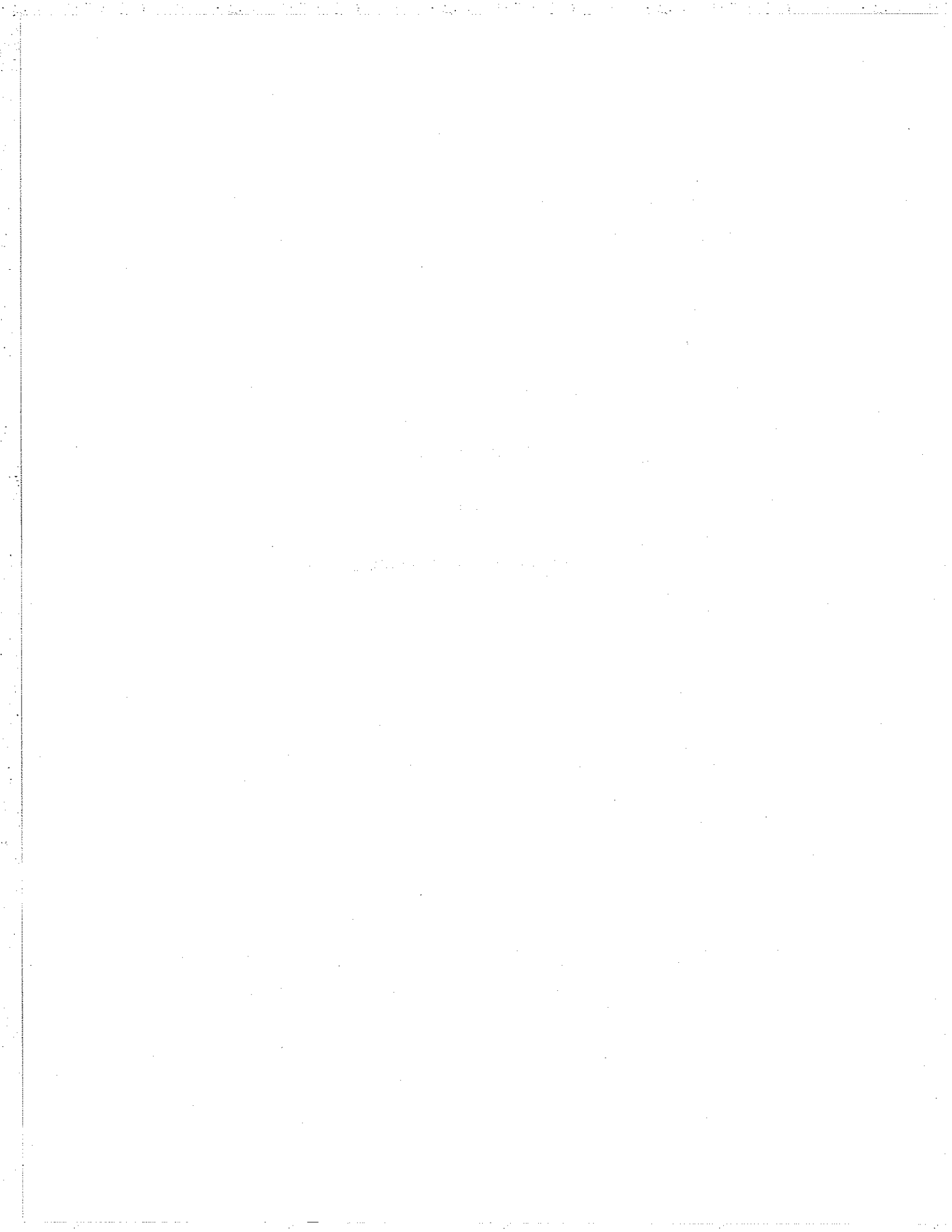
	<u>Page</u>
<u>Introduction and Summary of Recommendations</u>	
1. Preface	1
2. Background	6
3. Findings.	7
4. Summary of Recommendations.	8
<u>Discussion and Review</u>	
1. Taxation of Injury Leave Wages.	11
a. Withholding for Social Security Tax Purposes	11
b. Withholding for Income Tax Purposes	13
c. Calculation of Incorrect Withholdings	15
d. Lack of Injury Leave Data	20
2. Excessive Administrative Expense.	21
3. Excessive Wages	24
<u>Recommendations in Detail</u>	
1. Introduction.	25
2. Detailed Recommendations.	25
A. Withholding	25
B. Administrative Double-Check Expense	26
C. Excess Wages.	28
D. Governmental Entities in General.	28
<u>Appendices</u>	
1. Questionnaire	29
2. Injury Leave Policies	33
3. Letter to Social Security Administration (SSA).	49
4. SSA Ruling on taxability of injury leave wages.	51
5. IRS ruling on taxability of injury leave wages.	56
6. Request to IRS on taxability of injury leave.	58
7. Compensation Rating/Inspection Bureau examples.	60



INTRODUCTION

and

SUMMARY OF RECOMMENDATIONS



1. Preface

Under the Workers' Compensation Law of New Jersey, an employer has two principal obligations. The first is to provide compensatory payments to employees who are disabled due to job-related accidents or illness. The second obligation is to make provision to guarantee these same payments to disabled employees either through commercial workers' compensation insurance or by means of a self-insurance program.¹ Self-insurance is a program whereby the employer pays all losses, except for catastrophic losses above a predetermined level for which excess commercial insurance is obtained.²

As employers, the state, counties, municipalities and school districts, although obligated to provide compensation to disabled employees, are specifically exempted from the second obligation of purchasing workers' compensation insurance or establishing a self-insurance program. However, in fact, all counties meet their first obligation by purchasing commercial insurance or establishing a self-insurance program.

Workers' compensation benefits can be divided into three types: Medical benefits; temporary disability benefits which represent a continuation of weekly wages while a

1. N.J.S.A. 34:15-1 et seq; 34:15-71; 34:15-72

2. For example, a corporation is self-insured for any single loss up to \$1,000,000. If a loss is more than \$1,000,000, the commercial carrier pays the excess.

disabled employee is absent from work, and permanent disability benefits. Workers' compensation in the form of temporary disability benefits, which is a subject of this report, pays two-thirds of an employee's wages up to a maximum of \$146 per week. A disabled employee may not receive workers' compensation in the form of temporary disability benefits for more than 300 weeks.³

In addition to the obligations placed on counties by the Workers' Compensation Law, civil service law requires the freeholders of each county to establish regulations which authorize granting leaves of absence with full or partial pay to civil service employees who suffer job-related disabilities.⁴ When the county grants an employee full pay under this provision, what is known as an "injury leave" program is established. State law also allows counties to establish such injury leave programs for non-civil service employees.⁵

All counties have injury leave programs in conjunction with workers' compensation except Burlington, Hudson and Atlantic. In these three counties, employees receive only workers' compensation or two-thirds of their salary for work-related disabilities. In the 18 counties granting injury leave, the time an individual can be on injury leave

3. N.J.S.A. 34:15-12

4. N.J.S.A. 11:24 A-4

5. N.J.S.A. 40A:9-7

varies widely. The range is from unlimited leave in Cape May and Passaic to a five-day limitation in Sussex. The majority of the counties allow an employee to receive injury leave benefits for a year or more.⁶ Injury leave time limits by county are shown on Table I on Page 4.

During the period when an employee is receiving full pay under an injury leave policy, state civil service law requires that the employee's salary be reduced by any amount received by the employee as temporary disability benefits pursuant to the Workers' Compensation Law.⁷ Generally, this reduction is accomplished by the employee signing over the workers' compensation check to the county and in turn receiving a regular weekly pay check. Once an individual has been absent from work the maximum time allowed by the particular injury leave policy, the full injury leave pay stops and the worker only receives, but does not return, the workers' compensation checks.

To be distinguished from injury leave is another county program commonly known as "sick leave." Sick leave is defined as an employee's absence from work because of illness or accident that need not necessarily be job-related.⁸ Civil service law entitles each employee to 15 such sick days in each calendar year no matter in what jurisdiction an

6. Copies of or summaries of injury leave programs are included in the appendices in alphabetical order.

7. N.J.S.A. 11:24A-4

8. N.J.S.A. 11:24A-5

TABLE I

<u>COUNTY</u>	<u>MAXIMUM TIME ON INJURY LEAVE</u>
Atlantic	<u>no injury leave</u>
Bergen	90 days
Burlington	<u>no injury leave</u>
Camden	45 days
Cape May	indefinite
Cumberland	30 days
Essex	260 working days
Gloucester	300 weeks
Hudson	<u>no injury leave</u>
Hunterdon	26 weeks
Mercer	1 year
Middlesex	1 year
Monmouth	1 year
Morris	1 year
Ocean	60 days
Passaic	indefinite
Salem	1 year
Somerset	1 year
Sussex	5 days
Union	90 days
Warren	1 year
State	1 year

individual is employed.⁹ Hence, sick leave is distinguished from injury leave under law not only because it need not be job-related but also because its maximum allowable time duration is specific and uniform throughout the state.

Some counties allow an employee to collect full salary after the time period allowed for injury leave has expired. This is accomplished by apportioning any sick leave time an employee has accrued to supplement workers' compensation checks to bring the employee up to full pay. For example, if a disabled employee is receiving two-thirds salary from workers' compensation and has five sick days remaining, the sick days will be apportioned so that the employee will receive full pay for 15 additional days after the period allowed by the injury leave program has expired.

As with injury leave, however, state law does not allow an employee to collect more than full salary under a combination of sick leave and workers' compensation.¹⁰ An employee's salary under law must be reduced by whatever amount the employee received under the Workers' Compensation Law.

9. N.J.S.A. 11:24A-3

10. N.J.S.A. 11:24A-4

2. Background

The Commission's examination of county injury leave policies developed during its broader investigation of county and local insurance practices, which came about as a result of the Commission receiving a complaint. The Commission authorized an evaluative inquiry to determine whether it would be in the public interest to conduct a full-scale probe. In order to provide a basis for the inquiry, a survey questionnaire was prepared and sent to all 21 counties for completion.

The survey required the counties to supply the Commission with detailed information concerning their insurance coverage and the manner in which insurance contracts are awarded.¹¹ In all, each questionnaire in the survey called for nearly 100 answers as well as copies of numerous documents.

After compiling and analyzing the survey data, the Commission passed a resolution on February 16, 1978, which authorized a fullscale investigation into county and municipal insurance coverage and placement practices. The Commission by this action stipulated that the scope of the investigation was to be as follows:

11. Copy of questionnaire is included in appendices.

Whether the laws of New Jersey are being faithfully executed and effectively enforced with particular reference to the practices and procedures of New Jersey county and municipal insurance coverage; whether public officers and employees are properly discharging their duties with respect to practices and procedures relating to county and municipal insurance coverage; and whether the present statutory and administrative regulations of the State of New Jersey and of counties and municipalities are adequate to comport with the interests of the people of the State of New Jersey.

3. Findings

During this investigation, the Commission made the following three findings relative to county injury leave policies:

1. All counties having injury leave policies were incorrectly deducting social security and income taxes from wages paid to employees pursuant to these policies. These same counties, furthermore, were and are contributing social security taxes on injury leave wages as employers even though they are not obligated to do so.

For the years 1975 through 1977, at least \$397,000 in social security and income taxes have been incorrectly deducted from employees' wages. Counties, as employers, have incorrectly contributed at least \$132,000 in social security taxes. Although 1978 figures are not available, it is projected that, as the practice continues, a total of \$226,000 more will have been incorrectly deducted and

contributed. If this practice continues in 1979, an additional \$272,000 will have been incorrectly deducted and contributed. Thus for the five-year period of 1975 through 1979, a grand total of \$1,027,000 will have been mis-spent.

2. The government of Burlington County and the Essex County Welfare Board allow disabled workers to receive both workers' compensation checks and full pay under their sick leave policies. This practice is illegal.

3. Counties incurred during 1975-1977 an administrative expense of approximately \$293,000 when employees received full pay pursuant to injury leave policies and at the same time obtained from an insurance company workers' compensation checks which the employees subsequently turned over to the counties. The administrative expense is the cost to the insurance company of issuing a workers' compensation check which is included in the insurance premium charged to the county each year. This administrative expense can be eliminated.

4. Summary of Recommendations

As will be demonstrated, these practices are needlessly costing the counties, the employees and the New Jersey taxpayers hundreds of thousands of dollars each year. To eliminate such practices, the Commission recommends that:

1. Counties immediately cease making incorrect deductions from wages paid to employees under injury leave policies.

2. Counties cease contributing employer social security taxes on injury leave wages.

3. Counties should immediately file to recoup social security taxes incorrectly paid as employers.

4. Employees should immediately file to recoup social security and income taxes incorrectly withheld, and the counties must assist these employees in filing for the recovery of these incorrectly paid taxes.

5. The administration of Burlington County and the Essex County Welfare Board must cease the illegal practice of allowing employees to receive both workers' compensation and sick leave.

6. State law should be amended so that the costly and duplicitous administrative process of issuing both a workers' compensation check and an injury leave check is eliminated.

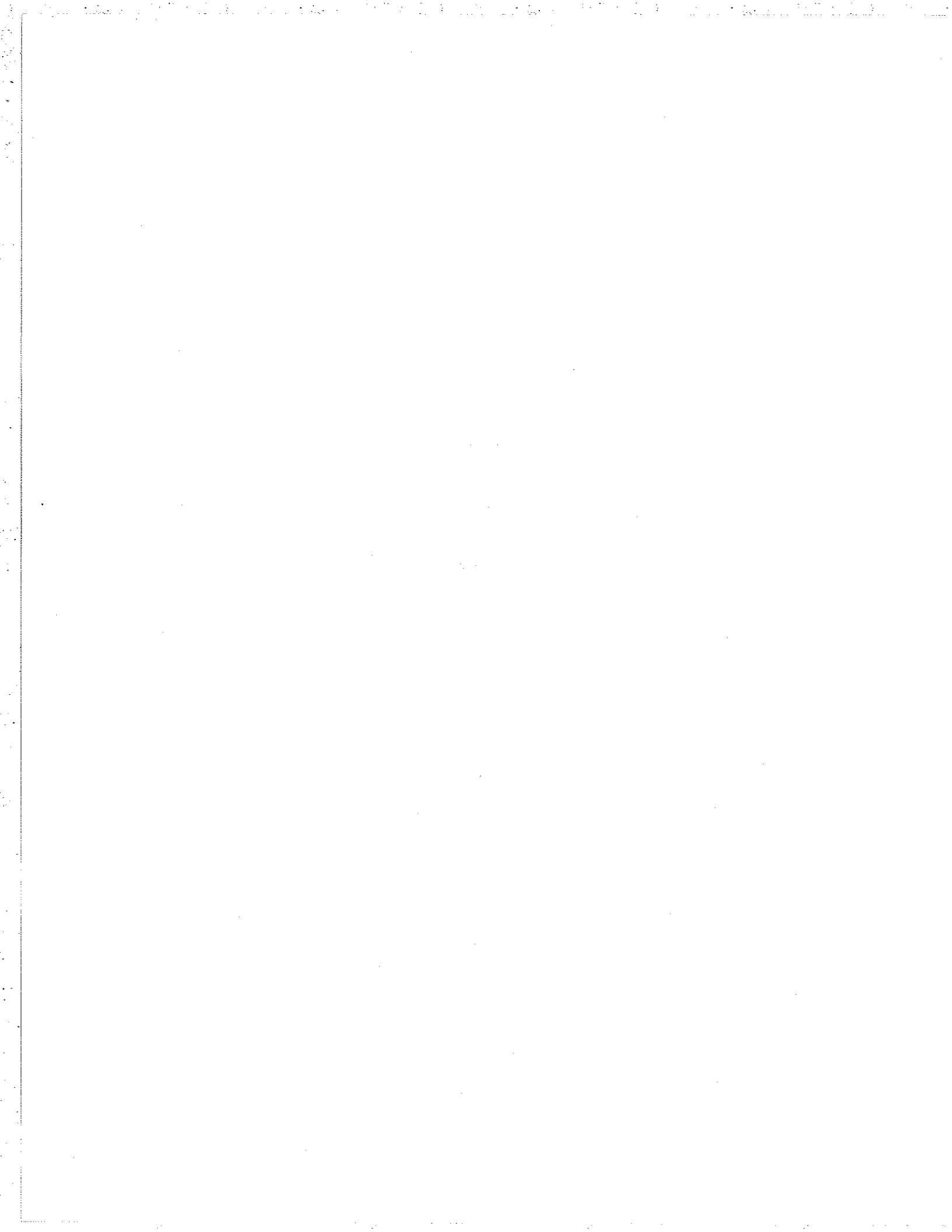
Note:

It is imperative that the counties and their affected employees file for the incorrectly paid taxes as quickly as possible due to a three-year statute of limitations. This statute presently bars the recovery of any incorrectly paid taxes prior to 1975. Unless the county and affected employees file for refunds for incorrectly paid taxes paid in the year 1975 by April 15, 1979, the three-year statute of limitations will bar recovery of these taxes.

DISCUSSION

and

REVIEW



1. Taxation of Injury Leave Wages

a. Withholding for Social Security Tax Purposes

The county as an employer is obligated to withhold from an employee's wages social security taxes which are imposed on wages received by an employee.¹² Further, the county must itself pay social security taxes on wages paid to its employees.¹³

However, wages paid to an employee on account of a job-related injury or illness are not considered taxable wages for social security purposes.¹⁴ These wages, therefore, are not subject to social security tax withholding by the employer. Neither does an employer have to pay social security taxes on these wages. Wages paid pursuant to an injury leave policy are wages paid on account of a job-related disability. Hence, these wages are not subject to social security taxes.

The Commission asked the United States Social Security Administration (SSA) for a formal opinion on the non-taxability of injury leave wages, but as of this date has not received this opinion.¹⁵ A formal private ruling issued

12. I.R.C. §3102: Although the state and its political subdivisions are not obligated to participate in the social security system, they do so under an agreement with federal government. N.J.S.A. 43:15A-1 et seq.; N.J.S.A. 43:22-1 et seq.; 42 USCA §418.

13. I.R.C. §3111

14. I.R.C. §3121(a)(2)(B)

15. A copy of letter of request is in the appendices

by SSA in 1968 regarding injury leave wages and recent communications between SSA and the Commission support the position that injury leave wages as paid by the counties are, in fact, non-taxable.¹⁶

The Commission has found that all counties with injury leave programs have been incorrectly withholding social security taxes from injury leave wages, and that these counties are also incorrectly contributing social security taxes on injury leave wages. As disclosed in Table III (P.19) for the period 1975 through 1977, at least \$132,000 in social security taxes have been incorrectly deducted by the counties from employees' wages and a like amount has been contributed by the counties as employers.

Naturally the question arises as to why have the counties been withholding and contributing social security taxes on injury leave wages. The Commission's investigation had disclosed that, in fact, the counties have been informed by the State Division of Pensions, which administers the social security program, to subject injury leave wages to social security taxes. The Division has advised counties that social security taxes should be paid on the difference between the injury leave wages and the amount an employee has received under the Workers' Compensation Law. Under

16. Copy of the ruling is in the appendices.

this guideline, an employee who received \$150 in wages pursuant to an injury leave policy would have received \$100 from workers' compensation. Thus, the Division of Pensions has directed that the counties pay social security taxes on the difference between these two amounts, or \$50.

However, Mr. William J. Joseph, Director of the Division of Pensions, has recently, in executive session testimony, supported the Commission's position that wages paid pursuant to a county injury leave policy are not subject to social security taxes.

b. Withholding for Income Tax Purposes

Similar to its obligation to withhold social security taxes, a county is obligated to withhold federal and state income taxes on wages received by its employees.¹⁷

However, wages paid to an employee on account of a workers' compensation statute are not considered taxable wages for federal and state income tax purposes.¹⁸ These wages, therefore, are not subject to income tax withholding by an employer.

That portion of an employee's injury leave wages which represents what an employee would have received under the Workers' Compensation Law is non-taxable. As in the previously cited example, for instance, if an employee

17. I.R.C. §3402, N.J.S.A. 54A:7-1

18. I.R.C. §104; I.R.C. Reg. §1.104-1(b); 54:6-6(a)

received \$150 in injury leave wages, \$100 of this amount represent what the employee would have received under the Workers' Compensation Law and only the difference, or \$50, is subject to withholding for income tax purposes. The Commission requested and received an opinion from the Internal Revenue Service which confirms this position.¹⁹ All counties with the exception of Monmouth, Middlesex, and Camden have been incorrectly withholding income tax from the entire amount of injury leave wages. As will be illustrated in the next section, \$265,000 in federal and state income taxes have been incorrectly withheld from the wages of disabled employees during the years 1975 through 1977.

Monmouth, Middlesex, and Camden only impose social security and federal and state income taxes on the amount of injury leave wages which is in excess of the amount employees would receive under workers' compensation.

The income tax treatment of injury leave wages by these three counties led the Commission to consider the question of whether any portion of injury leave wages are subject to income taxation. The regulations of the Internal Revenue Code state that, in addition to the non-taxability of wages paid pursuant to the Workers' Compensation Law, wages paid pursuant to an act in the

¹⁹. Copy of correspondence in appendices.

nature of a workers' compensation act are non-taxable.²⁰

There is a strong argument that, since injury leave wages are wages paid pursuant to an act in the nature of a workers' compensation act, the entire amount of injury leave wages should be exempt from income taxation. The Commission awaits a response to its request, on December 15, 1978, for a formal ruling on this issue from the Internal Revenue Service.²¹

c. Calculation of Incorrect Withholdings

In order to determine how much money was incorrectly withheld and contributed by the counties, information regarding total expenditures for injury leave wages was gathered. Since, as previously noted, the statute of limitations restricts recovery only back through 1975, the years 1975, 1976 and 1977 were examined. Table II on the following pages depicts injury leave wages paid by each county in 1975, 1976, and 1977.

20. I.R.C. Reg. §1.104-1(b)

21. Copy of letter in appendices.

TABLE II

<u>COUNTY</u>	<u>YEAR</u>	<u>MONIES SPENT FOR INJURY LEAVE</u>
Atlantic	1975	\$ 19,587
	1976	27,772
	1977	Discontinued 11/1/76
Bergen	1975	\$ 101,687
	1976	123,109
	1977	148,603
Camden	1975	\$ 102,758
	1976	134,879
	1977	136,530
Cape May	1975	No data available
	1976	No data available
	1977	No data available
Cumberland	1975	No data available
	1976	No data available
	1977	No data available
Essex	1975	\$ 222,192
	1976	206,502
	1977	189,152
Gloucester	1975	No data available
	1976	No data available
	1977	No data available
Hunterdon	1975	\$ 3,419
	1976	671
	1977	4,684
Mercer	1975	\$ 55,253
	1976	91,164
	1977	109,531
Middlesex	1975	No data available
	1976	\$ 79,285
	1977	46,221
Monmouth	1975	\$ 113,859
	1976	80,983
	1977	70,487

TABLE II (continued)

<u>COUNTY</u>	<u>YEAR</u>	<u>MONIES SPENT FOR INJURY LEAVE</u>
Morris	1975	\$ 120,000
	1976	78,000
	1977	87,000
Ocean	1975	\$ 26,143
	1976	37,976
	1977	58,562
Passaic	1975	No data available
	1976	\$ 43,422
	1977	96,466
Salem	1975	\$ 4,752
	1976	7,966
	1977	1,852
Somerset	1975	\$ 2,590
	1976	8,849
	1977	20,136
Sussex	1975	\$ 3,853
	1976	2,636
	1977	4,637
Union	1975	\$ 11,518
	1976	18,725
	1977	43,960
Warren	1975	\$ 4,786
	1976	5,356
	1977	479

Based on the total money spent on injury leave with certain adjustments and the applicable tax rates,²² at least \$529,000 in taxes was incorrectly paid during the period 1975 through 1977. A breakdown of these incorrectly paid taxes is included in Table III on the following page. Since several counties were not able to provide the amount of injury leave wages paid, the estimate of these incorrectly paid taxes can be significantly increased.

Additionally, although the total 1978 wages paid by the counties for injury leave were not available at the time this report was prepared, based on the available data for total injury leave wages paid in 1975 through 1977, the Commission estimates that at least \$226,000 was withheld in 1978.

The Commission notes that its concentration on injury leave practices in counties is determined by the scope prescribed in its formal resolution authorizing the investigation. The fact that all counties with injury leave programs were found to be incorrectly withholding suggested that these same practices would be in effect in other governmental entities, ranging from many of the 600 school districts and 567 municipalities to State government itself. Since this interim report is being

22. Social security tax on the employer is 5.85%; social security tax on the employee of 5.85%; income tax withholding was based on a family of two with an average weekly salary in 1975 of \$180; in 1976 of \$192, and in 1977 of \$207. These salary figures are based on New Jersey Department of Labor statistics.

Table III

YEAR	(1) TOTAL INJURY LEAVE WAGES	(2) EMPLOYEE FEDERAL INCOME TAX	(3) EMPLOYEE STATE INCOME TAX	(4) EMPLOYEE S.S. TAX	(5) TOTAL EMPLOYEE DEDUCTIONS	(6) EMPLOYER S.S. TAX
1975	\$648,000	\$ 73,000	-0-	\$ 38,000	\$111,000	\$ 38,000
1976	751,000	87,000	\$ 8,000	44,000	139,000	44,000
1977	850,000	80,000	17,000	50,000	147,000	50,000
TOTAL	\$2,249,000	\$240,000	\$ 25,000	\$132,000	\$397,000	\$132,000

TOTAL EMPLOYER TAXES PAID (Column 6) - - - - - \$132,000

GRAND TOTAL - - - - - \$529,000

issued in time for the initiation of appropriate recovery and reimbursement actions retroactive through 1975, the Commission believes that such a report on county procedure should serve as a guideline to the State and other governmental subdivisions for both the elimination of these practices and the restitution of incorrect injury leave tax deductions and contributions. This counsel particularly applies to State government, which directly and indirectly sets a pattern for most administrative policies and procedures by other governmental bodies.

d. Lack of Injury Leave Data

As depicted in Table II (Pp. 16-17), several counties were not able to supply any data on wages paid under injury leave policies because they did not compile such data. Many other counties were able to supply this data only after a time-consuming search through individual employee records. Very few counties had this information readily available.

Injury leave data should be compiled during the regular payroll process as a standard practice. Counties must be aware of how much they are spending on the injury leave program as a fiscal control mechanism. If expenditures are too high, measures can be taken to make the program less costly. Additionally, counties must know exactly the amount of money spent on injury leave wages since this amount is excluded from the gross wages on which the counties, as employers, must contribute social security

taxes. In any event, injury leave data is necessary for evaluation of the program. This is simply efficient and knowledgeable management.

2. Excessive Administrative Expense

Employees receiving full pay via injury leave checks issued by a county are also receiving workers' compensation checks from the county's insurance company. In order to receive full pay, employees must endorse workers' compensation checks over to the county. This requirement assures that employees receive no more than full pay on account of the same disability. Insurance companies maintain that state law requires them to issue such workers' compensation checks even while an employee is receiving full wages due to injury leave.²³ The practice whereby both the county and the insurance company issue compensation checks to the same employee is duplicitous and results in a costly administrative expense.

The cost impact of this administrative expense upon the counties can best be illustrated by means of a simple example. Assume County X has had no workers' compensation losses for the last three years. Further assume an employee who receives a salary of \$150 per week is disabled on the job and is absent for 10 weeks. Finally assume that this

23. N.J.S.A. 34:15-70 et seq.

is County X's only disabled employee in 1978. Under the county's injury leave program, the employee received his full salary of \$150 per week for 10 weeks. At the same time, the employee received a workers' compensation check for two-thirds salary, or \$100, which was turned over to the county for each week of the 10-week absence from work. At the end of the year the county paid out \$1,500 in injury leave wages and was reimbursed \$1,000 through workers' compensation checks which the employee endorsed over to the county. Thus, County X paid out a net amount of \$500 through its injury leave program.

In order to see where the expense occurs, the effect of the insurance company paying out the total of \$1,000 in workers' compensation checks, also known as the county's "loss experience," must be traced. In formulating the workers' compensation premium for any year, an insurance company takes into account the loss experience of the county for the previous year. Thus, in the above example, County X will be charged \$1,000 in premium in 1979 based on the previous year's loss experience. Furthermore, in addition to the \$1,000 loss experience assessment, an administrative expense of approximately 25 percent²⁴ of the loss experience will be included in the premium, thus, putting the total premium charged for 1979 at \$1,250.

24. The Compensation Rating and Inspection Bureau, which is supervised by the New Jersey Department of Insurance and regulates and sets policy rates for insurance companies writing workers' compensation insurance, has provided the Commission with three technical illustrations which demonstrate how the charge for administrative expense could be eliminated. These illustrations demonstrate that the charge for administrative expense is approximately 25% of the prior year's loss experience and supports the Commission's position that these charges can be eliminated. (See appendices).

Adding the dollar amounts paid by County X from its injury leave program to the increase in premium on account of the loss experience disability shows, in the example cited, a net cost to the county of \$1,750 when two checks are issued:

\$ 1,500	Injury leave pay by county
<u>-1,000</u>	Less workers' compensation to county
500	Net wages paid by county
<u>+1,250</u>	Premium based on loss experience plus administrative expense
\$ 1,750	Net cost of paying for injury

Continuing with the basic example, if the insurance company did not pay the workers' compensation checks, there would be no administrative expense assessment. Eliminating the step of issuing workers' compensation checks, and hence the commercial company's charge for administrative expense, a summary of the total dollars spent by County X indicates that the net cost would be only \$1,500, or a cost reduction of \$250:

\$ 1,500	Wages paid
<u>- 0</u>	Less reimbursement
\$ 1,500	Net wages paid by county
<u>+ 0</u>	Plus additional premium
\$ 1,500	Net cost to county

Based on the total wages paid for injury leave by the counties where both workers' compensation and injury leave checks were issued in the years 1975 through 1977, at least \$293,000 would have been eliminated if workers' compensation checks had not been issued.

3. Excessive Wages

The Burlington County administration and the Essex County Welfare Board²⁵ allow employees who are absent from work due to job-related disabilities to collect both workers' compensation checks and full salary under a sick leave policy. Pursuant to this practice, employees receive regular salary plus an additional two-thirds of salary until all remaining sick leave expires. As previously noted, this practice is clearly illegal. State law provides that any wages an employee receives pursuant to sick leave must be reduced by the amount the employee receives from workers' compensation.²⁶

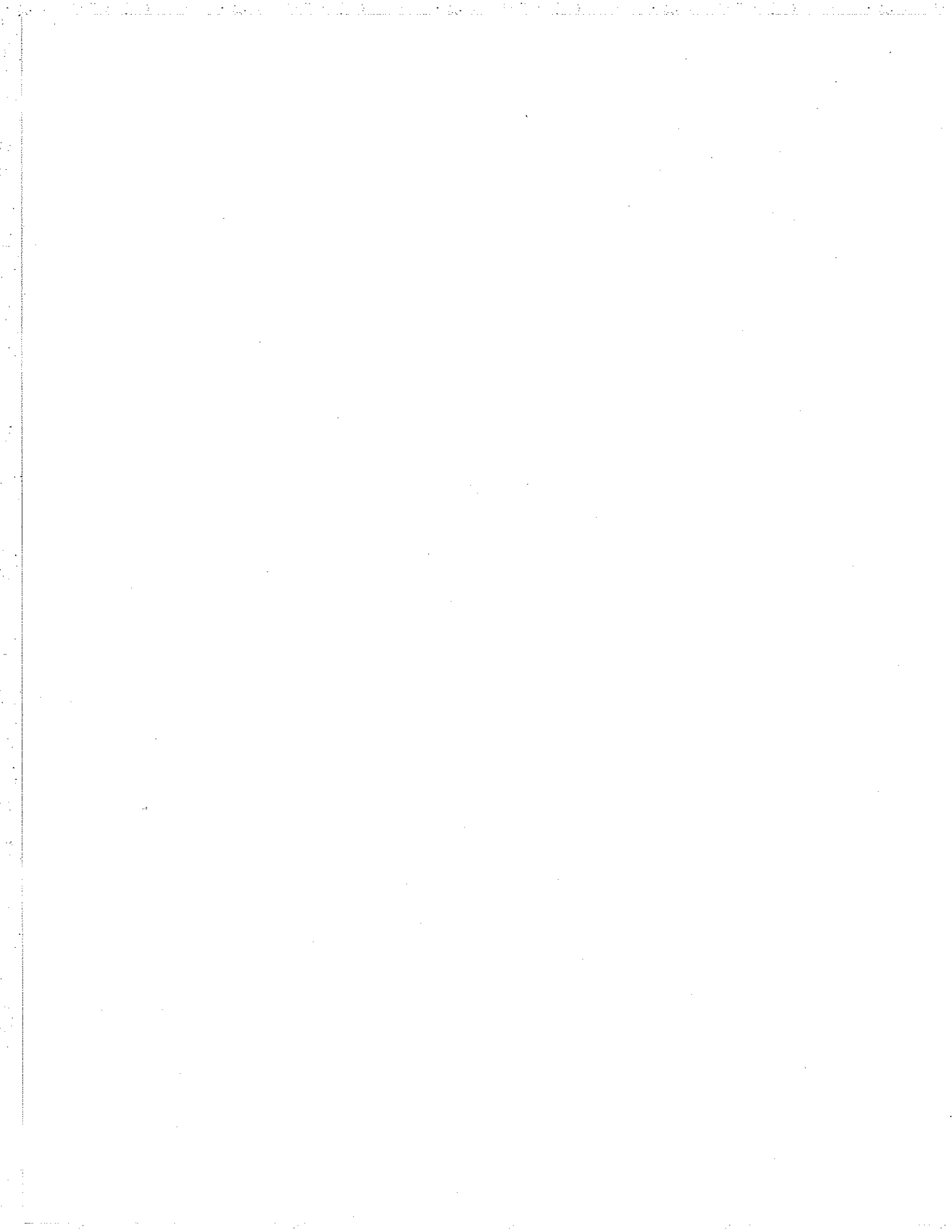
25. The Essex County Welfare Board policy is included in the appendices.

26. N.J.S.A. 11:24A-4

RECOMMENDATIONS

IN

DETAIL



1. Introduction

The Commission's interim report has disclosed three areas -- incorrect withholding, unnecessary administrative expense and excessive wages -- where counties are needlessly spending large sums of money. The causes of these problems arise from confusion and a lack of information in the first case, an illegal practice in the second and the constraints of state law in the third.

If reforms proposed by the Commission are adopted to eliminate the problems depicted in this report, the counties and their employees will save hundreds of thousands of dollars yearly. The required corrective actions are simple and straightforward. To accomplish this, the Commission makes the following proposals:

2. Detailed Recommendations

A. Withholding

a. Counties must adjust injury leave payroll procedures so that social security and income tax withholding fully comports with Federal and State laws and regulatory rulings.

b. Counties, as employers, must file for recovery from the Social Security Administration for any incorrectly contributed social security taxes on previously paid injury leave wages.

c. Counties must notify all employees who received injury leave wages during 1975 through 1978 that social security taxes and Federal and State income taxes were improperly withheld and, through their accounting departments, must assist employees in recovering incorrect withholdings. Such assistance must be made available in time to meet the April 15, 1979, deadline after which reimbursements for calendar year 1975 would be disallowed.

d. Counties must establish procedures for the compilation of data concerning wages paid pursuant to injury leave policies.

B. Administrative Expense Due to Double Checks

a. The Workers' Compensation Law must be amended to allow insurance companies, when writing workers' compensation insurance for governmental bodies, to suspend paying workers' compensation checks to employees during the period when the employees are receiving full pay pursuant to injury leave policies. Specifically, the following amendment should be added to Article 5 of the Workers' Compensation Law (N.J.S.A. 34:15-71):

The state, counties, municipalities, and school districts may negotiate for deductible insurance with their insurer.

Comment:

When a county agrees with its insurance company that the company is not obligated to pay workers' compensation to a disabled employee while the employee is receiving full pay under an injury leave policy, this, in effect, is providing for a deductible. This deductible is the same as an automobile insurer providing a driver with an insurance policy under which the driver is liable for the first \$200 in damages.

It is unclear whether state law actually prevents workers' compensation insurance companies from negotiating such deductible insurance with governmental bodies. Article 5 of the Workers' Compensation Law, which is the basis upon which the insurance companies claim that state law requires them to pay benefits while an employee is on full pay, clearly exempts governmental bodies from providing complete payment to disabled employees. Thus, it can be argued that governmental bodies, not being obligated to provide for complete payment of disabled employees, actually can negotiate for deductible workers' compensation insurance under present law. However, since there is a question, the above statutory change is recommended.

C. Excess Wages

a. *The Burlington County administration and Essex County Welfare Board must stop the illegal practice of allowing employees to collect both sick pay and workers' compensation contrary to law. (N.J.S.A. 11:24A-4)*

D. Governmental Entities in General

a. *All governmental bodies must examine injury leave policies and practices connected with these policies in order to determine if they can benefit from the Commission's recommendations.*

Comment:

Since information was developed by the Commission that governmental bodies other than counties have injury leave programs, it follows that each entity should examine its programs to determine if it is incorrectly withholding and contributing for tax purposes, illegally paying excess wages, or, where appropriate, can eliminate the administrative expense caused by double check-issuing by negotiating for deductible insurance clauses.

APPENDICES



QUESTIONNAIRE

Instructions Regarding Placed Insurance

Use a separate form for each policy, for each year (and designate the year) and set forth answers for each question for each year from 1973 through 1976.

One set of forms for one policy for one year is enclosed herein. Please make sufficient copies to comply with these instructions.

Insurance Survey

1. Name of entity submitting data
2. Address
3. Name and title of person submitting requested data
4. Date
5. List all insurance coverages for which you were self insured for years 1973 through 1976
6. With respect to self insured coverages, indicate by coverages:
 - a) Name and address of self insurance service representatives and manner of compensation, including dollar amount by year. (Attach copy of contract, and/or letter agreement and resolution).

- b) Names and addresses of claims adjusters and manner of compensation, including dollar amount by year. (Attach copy of contract, and/or letter agreement and resolution).
 - c) Names and addresses of safety engineers and manner of compensation, including dollar amount by year. (Attach copy of contract, and/or letter agreement and resolution).
7. Set forth names and addresses of all independent insurance consultants and manner of compensation, including dollar amounts paid in each year for years 1973 through 1976. (Attach copy of contract, and/or letter agreement and resolution).
8. Set forth names and addresses of any physicians, clinics, medical groups or associations that perform contract services with respect to any self insurance coverage and indicate the amount of compensation paid in each year for the years 1973 through 1976. (Attach copy of contract, and/or letter agreement and resolution).
9. Type Coverage
10. Policy limits or amount of coverage
11. Insurance Company
12. Agent or broker a) firm name and address
b) names and addresses of principals
Submit copy of resolution awarding this contract or designating the firm.
- a)
 - b)

13. Policy number
14. Policy period
15. Initial annual premium
16. Names and addresses of any subagents or participating sub-brokers. Submit copy of resolution awarding this contract or designating the firm.
17. Subagents or brokers percentage or dollar participation in commissions.
18.
 - a) Additional premiums and audit premiums charged.
 - b) Return premiums and audit premiums credited.
19. Specify any special additional premium endorsements for additional coverage and the amount of additional premiums.
20. Indicate any special rating plans applicable (e.g., experience rating, Retrospective Rating Plans A through D, etc.).
21. Was this policy a) bid, b) negotiated with selected agents or brokers or c) negotiated with an exclusive agent or broker?

22. Were quotes solicited or received prior to designation or award of contract? (Attach copies of solicitations and/or quotes).

23. Was an independent insurance consultant utilized? If so, set forth name and address and indicate what arrangement was made for compensation and amount paid. (Attach copy of contract or letter agreement and resolution).

24. Name, title and address of person(s) or committee which negotiated contract on behalf of the governmental entity or recommended adoption to the governing body.

25. Name, title and address of person(s) who approved acceptance of the policy.

INJURY LEAVE POLICIES

Atlantic County

Injury Leave

After November 1, 1976, Atlantic County abolished injury leave. From this date employees injured on the job can only receive Workers' Compensation.

NOTE: This information is based on data gathered by the Commission's agents during their interview with county personnel.

Bergen County

Injury Leave

- a. Injury leave, as distinguished from sick leave, shall mean paid leave given to an employee due to absence from duty caused by an accident, illness or injury which occurred while the employee was performing duties and which is covered by workers' compensation insurance.
- b. All payments which shall be made concerning injury leave are subject to the same rules and regulations as workers' compensation insurance and shall not be made if the accident is proved to have been due to intoxication or willful misconduct on the part of the employee. If an employee, absent from work due to an accident, illness or injury covered by workers' compensation insurance, willfully fails to fulfill all of the conditions necessary to receive compensation benefits, the employee shall not

- be entitled to payment of any injury leave benefits from the County until such conditions have been fulfilled.
- c. The payments enumerated above will be made for a period not in excess of ninety (90) working days for each new and separate injury. After all injury leave is used, the employee may be granted additional injury leave only upon approval of the Board of Chosen Freeholders. After all injury leave is used, the employee may elect to use any sick leave, vacation or compensatory time due at the time of the injury.

Burlington County

Workers' Compensation, Safety and Health

When an employee is injured on duty, he shall notify his Department Head immediately so that a report may be prepared. He will be placed on a leave of absence without pay unless he desires to use sick or vacation leave during this period of disability. If his case is approved he shall receive Worker's Compensation. The County shall not be responsible for the difference in salary.

NOTE: The policy is set forth in Bargaining Agreement between Burlington County and New Jersey Civil Service Association, Burlington Council #16 and authorized by County Freeholder's Resolution #484 - October 26, 1977.

Camden County

A County employee injured in the line of duty receives a Workmen's Compensation check equal to 2/3 of his wages. The County issues a supplemental check to make up the difference in the injured employee's full salary.

The employee is eligible for full salary as described above for a maximum period of 45 days.

NOTE: The above description of Camden County's Injury Leave Policy was acquired by Commission agents during interviews of County Officials. There is no formalized policy set forth by Board of Freeholder's Resolution or Employees' Manual.

Cape May County

After an employee is out seven (7) working days, the employee is eligible for worker's compensation payments. When that 7th day is reached, an appointment is made with the County's own staff doctor to examine the employee and determine the extent of any injury and to give a judgment on the validity of injury leave.

If the injury requires time off of work to heal, the employee continues to see the doctor until a final determination. If the employee returns to work, the Freeholders pass a resolution granting special leave of absence from the date of the injury until the date the employee came back to work.

If the injury is permanent, additional discussions and negotiations on the case are involved to determine an equitable arrangement and settlement. The insurance company pays two-thirds (2/3rds) of the employee's salary while the county pays the balance through the normal payroll procedures. Both the County, through the office of County Detectives in the Prosecutor's office and the payroll investigator in the Treasurer's office, and the insurance company are empowered to make appropriate inquiries into extraordinary claims for injury leave.

NOTE: The above was taken from a letter received from the County Insurance Manager, Fred Coldren.

Cumberland County

Disability Leave: Occupational Injury:

When an employee is incapacitated and unable to work because of any occupational injury or disease, as evidenced by certificate of a County designated physician or other doctor acceptable to the County, he shall be granted in addition to his annual sick leave with pay for a period of thirty (30) days or so much thereof as may be required, as evidenced by certificate of the County designated or accepted physician, but not longer than a period of which workmen's compensation payments are allowed.

During the thirty (30) day disability leave period in which the full salary or wages of any employee is paid by the County of Cumberland, any compensation payments made to or received by or on behalf of such employee shall be deducted from the amount carried on the payroll for such employee or shall be assigned to the County of Cumberland by the insurance carrier or the employee.

Essex County

By Board of Freeholders:

RESOLVED, that in accordance with the provisions of N.J.S.A. 11:24A-3, et seq., the following regulations are established and adopted, effective January 1, 1973:

If any such employee, however, is disabled through injury as a result of or arising from his employment, such employee shall not be required to utilize the sick leave allowable under Paragraphs 1 and 2 hereof during said period of disability.

Any employee who is disabled through injury as a result of or arising from his employment shall be entitled to special leave of absence with full pay, provided, however, that such special leave of absence with full pay shall not exceed 260 working days in connection with any one disability.

Any amount of salary or wages or pay or part pay or compensation paid or payable to any employee because of special leave of absence under these regulations shall be reduced by the amount of any Workmen's Compensation Award under Chapter 15 of Title 34 of the Revised Statutes made for temporary disability because of the same injury requiring such sick leave or special leave of absence.

ESSEX COUNTY WELFARE BOARD

Workers' Compensation

All employees are covered by Workmen's Compensation purchased and paid for by the Essex County Welfare Board. It provides for his medical care and weekly benefits if he is disabled due to a job connected injury.

An employee so disabled may be granted a special leave of absence with full pay for that period of which he receives temporary disability payments. This special leave may not exceed 260 working days in connection with any one disability.

Any amount of salary or wages paid in accord with the foregoing will be reduced by the amount awarded for his temporary disability.

The employee may elect to utilize all or part of his accumulated sick leave before taking the above mentioned special leave of absence. To do this, he must so notify his Field Officer Supervisor, in writing, within 10 days after injury.

Gloucester County

Disability Leave

Whenever an officer or employee in the classified civil service is disabled, either through injury or illness as a result of or arising from his employment as evidenced by certificate of a reputable physician or of the departmental physician, he shall be granted, in addition to his annual sick leave with pay or any accumulations thereof, leave of absence with pay for a period of thirty days or so much thereof as may be required, as evidence by certificate of the attending or departmental physician. If at the end of such thirty day period, the officer or employee is unable to return to duty, a certificate from either the attending or departmental physician shall be presented, certifying to this fact, and the departmental authority may extend such disability leave for additional like period with full or part pay, but not longer than the period for which workmen's compensation payments are allowed, provided however that further extension of disability leave with full or part pay may be granted by resolution of the Board of Freeholders for additional like period after compensation payments cease. Certificates of continuing disability shall be filed at the

end of each thirty day period as to the condition of the employee claiming disability leave. If at the end of any period the certificate of the physician certifying to the condition of the employee is not filed as provided, herein, disability leave shall be discontinued forthwith, and no further payments shall be made.

During the period in which the full salary of an employee on disability leave is paid by the County of Gloucester, any compensation payments made to or received by on behalf of such employee shall be deducted from the amount carried on the payroll of such employee or assigned to the County of Gloucester by the insurance carrier or the employee. During the period in which a part of the salary of an employee on disability leave is paid by the County of Gloucester and compensation payments are received by or on behalf of such employee, he shall, if the combined total thereof exceeds the total of his full salary, pay or assign to the County of Gloucester such part as may be in excess of the full salary. Whenever the physician shall report in writing that the employee is fit for duty such disability leave shall terminate and such officer or employee shall forthwith report for duty.

Hudson County

Payment While Absent Due to Workers' Compensation Injury

The employee injured will receive an amount equal to two-thirds pay from the day of the injury for a period that the County would be liable for statutory obligation of workmen's compensation temporary disability. Said two-thirds payment is

subject to the maximum payments set forth by the workmen's compensation law as follows:

Any accidents occurring on or after 1/1/75 - 2/3 of wages to a maximum as set by law.

These payments are not to be charged against sick time due.

Employee may elect to use sick leave in place of workmen's compensation temporary disability.

Employee must elect either workman's compensation payments or sick leave and may not use both or a combination thereof.

Employees election to use one-third of a day of accrued sick leave in combination with workmen's compensation temporary disability payments of two-thirds is hereby abolished.

Hunterdon County

Each employee shall receive for on the job injuries a leave of absence with full pay for up to twenty-six (26) weeks, with no loss in sick leave credit or any other leave time. Any monies received by the employee from Workmen's Compensation during the leave of absence which is for regular maintenance shall be reimbursed to the County.

Mercer County

Occupational Injury Leave

Any employee who is disabled because of occupational injury or illness shall be charged with loss of time up to and including the fifth (5th) consecutive working day from the day after the date of injury or illness.

Any full time permanent employee who is disable for a period of more than five (5) consecutive working days as a result of occupational injury or illness shall be granted a leave of absence with full pay for the entire period of disability; such leave to be limited to a maximum period of one (1) year from date of injury or illness.

NOTE: Injury Leave for most County employees is set forth in Bargaining Agreement between County of Mercer and AFSCME Local 2320 and approved by Board of Freeholders Resolution of October 25, 1977.

Separate Bargaining Agreements between Mercer County and Correction Officers and Sheriff's Officers differ slightly. The maximum time permitted for either officer injured as a result of an assault and battery by someone in his custody, is extended to a maximum of 18 months.

Middlesex County

Injury Leave

Pursuant to R.S. 40:11-8, whenever an employee is injured or disabled as a result of or arising out of his employment so as to be physically unfit for his duty, the Board of Freeholders may adopt a resolution granting up to one year's leave of absence

with pay. Such leave shall not be chargeable to sick leave. Prior to the passage of such resolution, the Board of Freeholders shall be satisfied by a certificate of a physician as to the degree of injury or disability, and shall enter a contract with the employee to reimburse the county out of the monies he may receive as workmen's compensation, temporary benefits or legal settlement arising out of his injuries.

Monmouth County

Injury Leave

It is the current personnel practice of Monmouth to continue persons receiving Workmen's Compensation disability benefits at full salary. When the Workmen's Compensation check is received, it is endorsed back to the County. Full pay is granted the injured employer for a maximum time of one year.

NOTE: Injury Leave Policy is set forth in Bargaining Agreement between Monmouth County and all County Police, Fire and Jail employers dated March 3, 1978 and subsequently extended to all County employers.

Morris County

The present policy, which is in accordance with N.J.S.A. 11:24A-4 and N.J.S.A. 40A:9-7, provides that at the discretion of the County an employee on work-connected disability may receive differential pay between normal salary and temporary disability benefits received from worker's compensation for a period of up to one year.

NOTE: The County Injury Leave Policy was set forth in a petition filed by the County of Morris with the New Jersey Public Employment Relations Commission on May 31, 1978.

Ocean County

NOW THEREFORE, BE IT RESOLVED BY THE OCEAN COUNTY BOARD OF CHOSEN FREEHOLDERS, AS FOLLOWS:

1. Any County employee who is disabled either through injury or illness as a result of, or arising from, his employment shall be entitled to special leave of absence with full pay for the period during which such employee is paid temporary compensation payments under the provisions of Chapter 15 of Title 34 of the Revised Statutes, provided, however, that such special leave of absence with full pay shall not exceed sixty (60) working days in connection with any one disability.

2. Any such employee disabled either through injury or illness as a result of, or arising from, his employment shall not be required to utilize sick leave or annual leave during said period of disability.

3. In the event such an employee so desires, he may elect to so utilize his accumulated sick leave and annual leave after utilizing the aforementioned special leave of absence. Such election shall be made by the employee upon ten (10) day's written notice prior to the expiration of said special leave to the County Personnel Officer.

4. Any amount of salary, or wages, or pay, or part pay, or compensation paid or payable, to any employee because of special leave of absence as a result of injury or illness arising from his employment shall be reduced by the amount of any Workmens Compensation award under

Chapter 15 of Title 34 of the Revised Statutes made for temporary disability because of the same injury or illness requiring such special leave of absence.

Passaic County

Director of Personnel - Resolution

BE IT RESOLVED by the Passaic County Board of Chosen Freeholders that, effective, immediately, all Passaic County employees incurring compensable injury or illness as a result of, or arising from an accident while in the performance of their duty shall receive an amount equivalent to their base salary for such period of temporary disability as determined by the attending Workmen's Compensation physician. The said base salary received for such temporary disability shall be paid to said employees upon endorsement and execution, delivery and surrender to the County Treasurer's Office of all Workmen's Compensation checks as received under any Workmen's Compensation award made for said temporary disability by the court.

Salem County

Workers' Compensation Safety and Health

A. When an employee is injured in the course of his employment and qualifies for Workmen's Compensation:

1. He will be paid the difference between the amount received as compensation and his salary during the period he is unable to work, as determined by a physician designated by the

insurance carriers.

2. Time lost will not be charged against accumulated sick leave.

NOTE: One year limitation stated to Commission agents verbally.

Somerset County

Personnel Policies - Injury Leave

If an injury or illness has been determined to be work related and compensable under Workmen's Compensation, a permanent, provisional, probationary, or non-classified employee may be placed on an injury leave for up to one year from the date of the injury or illness and would continue to receive full pay during the leave; however, any monies received under the salary compensation portion of Workmen's Compensation benefits shall be assigned by the employee to the County. Temporary employees shall not be eligible for injury leave, and they shall not be paid for any time lost from work due to an injury or illness arising out of and in the course of their employment.

Sussex County

Employees entitled to receive Workmen's Compensation Insurance shall be paid their regular salary for the first five days after injury on the job without charges against their sick leave, vacation time or personal leave, but thereafter the employee shall be paid his/her Workmen's Compensation Insurance payment as determined by the proper authorities. However, the time that the employee

shall be paid for Workmen's Compensation Insurance payments shall not be charged against his/her sick leave, vacation time or personal leave, but said employee shall be paid for any holidays which may occur during the time that he/she is receiving compensation.

NOTE: Sussex County's Injury Leave Policy is described in the County Work Agreement between the Board of Freeholders and Sussex County Council #20 - effective January 1, 1977.

Union County

Accidents, On The Job Injury

If an employee is injured or becomes ill, arising out of and during the course of his employment, and if the County's Workmen Compensation Insurance carrier does not dispute the casual relationship between the employment and the injury or illness, the employee shall be paid his full pay for the first ninety (90) calendar days following the date of the injury or illness and no charge shall be made to the employee's sick leave accumulation provided the employee turns over to the County any checks received for temporary disability benefits.

Warren County

Workmen's Compensation Insurance and Sick Leave Injury Insurance

The Employer agrees to purchase and maintain in force sick leave injury insurance to cover all employees for work loss due to injuries received on the job.

The employee shall receive full pay from the first day for an on-the-job injury. Sick leave injury will not be charged to

the employee's sick leave. Workmen's Compensation and insurance accident reports must be filed with the Employers Office within 48 hours of the accident or within 48 hours after the first day of time taken off due to an on-the-job accident.

The Employer shall pay 100% of the employee's salary to the employee, less normal deductions. Any compensation thus received by the employee for work loss due to injury from sick leave insurance or from Workmen's Compensation insurance shall be returned to the Employer as reimbursement for salary paid by the Employer.

The Employer or the sick leave insurance carrier at their discretion may, at any time, require the employee on sick leave injury time to submit to a physical examination by a physician of the Employer or insurance carriers choice.

If the sick leave injury leave is not approved by the Employer and/or sick leave insurance carrier after examining all evidence submitted by the employee, witnesses, if requested, and required to substantiate the claim and the examining physician, the time involved during which the employee was absent shall be charged to his sick leave credit, if any, and/or his vacation credit, if any, otherwise the employee shall suffer loss of pay for such time loss.

A total amount of up to one year's compensation shall be paid by the sick leave injury insurance for work loss caused by an injury received on the job, provided the aforesaid requirements are complied with.

A doctor's certificate authorizing an employee to return to work shall be required upon returning to work from Sick Leave Injury or after receiving Workmen's Compensation.

STATE OF NEW JERSEY

Disability Leave: Sick Leave Injury

(a) In State service, any employee who is disabled because of occupational injury or disease may on the recommendation of the appointing authority and approval of the Civil Service Department, be granted a leave of absence with full pay, with reduced pay or with full pay for a certain period and reduced pay thereafter, contingent upon the availability of departmental funds legally usable for this purpose. Any amount of salary or wages paid or payable to an employee for disability leave shall be reduced by the amount of workmen's compensation award under the New Jersey Workmen's Compensation Act for temporary disability:

1. Such leave shall not be granted beyond one year from the date of injury or illness;

2. The appointing authority shall furnish the Department of Civil Service with such medical or other proof relating to the injury or illness and the continued disability of the employee.



State of New Jersey
COMMISSION OF INVESTIGATION

COMMISSIONERS

JOSEPH H. RODRIGUEZ
CHAIRMAN

LEWIS B. KADEN
ARTHUR S. LANE

28 WEST STATE STREET
TRENTON, N.J. 08608
TELEPHONE (609) 292-6767

MICHAEL R. SIIVAGE
EXECUTIVE DIRECTOR

EXECUTIVE ASSISTANT
JOHN O. DAVIES

COUNSEL
NEIL J. CASEY, III
DAVID L. RHOADS
PETER M. SCHIRMER
ROBERT M. TOSTI

December 15, 1978

Mr. Paul A. Schuette
Director
Office of Information
Department of Health, Education, and Welfare
Social Security Building
Baltimore, Maryland 21235

Dear Mr. Schuette:

On July 17, 1978, a letter was addressed to you from the State Commission of Investigation under my signature regarding the taxability of injury leave payments.

On August 17, 1978, you replied to that inquiry and stated:

"Worker's compensation payments and payments made by an employing entity in lieu of worker's compensation are excluded from wages which have to be reported for social security purposes. Any supplement that is paid in addition to those benefits, however, generally is considered wages and must be reported."

It has now come to our attention that the injury leave program by which an employee of a county or municipality receives his full pay on account of a job-related injury is a program established by the counties and municipalities under state enabling statutes: N.J.S.A. 11:24-4 and N.J.S.A. 40A:9-7 which require the counties to establish injury leave programs for Civil Service employees. State enabling statutes also allow the counties and municipalities to establish injury leave programs for non-civil service employees. The freeholders of the counties are obligated under the state law to establish regulations governing the injury leave program for Civil Service employees. By the same token, municipality officials are obligated to establish regulations governing injury leave for their Civil Service employees.

December 15, 1978

It is our opinion that payments made under such injury leave programs are non-taxable for social security purposes. Internal Revenue Code §104; 26 CFR 1.104; Revenue Ruling 56-83; Revenue Ruling 68-10; IRC §3121(a)(2)(B).

The State Commission of Investigation is about to issue a report to the counties and municipalities which will state that counties and municipalities have been improperly deducting social security from income received by employees pursuant to injury leave programs.

It is respectfully requested that your office advise the State Commission of Investigation whether the entire payment received pursuant to an injury leave policy is considered taxable wages for social security purposes.

The State Commission of Investigation is aware of the statutes of limitations for the recovery of improperly paid taxes, and for this reason requests that your office expedite this matter. If you have any questions, please call Peter M. Schirmer, Counsel, at this office. Your kind assistance in this matter is greatly appreciated.

Very truly yours,

Michael R. Siavage
Executive Director

C O P Y

Mr. Joseph J. Kelly
Regional Assistant Commissioner, SSA

June 17, 1968

Esther G. Schiff
Regional Attorney

In reply refer to:
CC:RA:II:AMB:DAR

STATE & FEDERAL QUESTION
Do Not Circulate

Status of "Pay or Part Pay" to Employees on Disability
Leave of Absence Because of Injury or Illness as a Result
of or Arising From Their State or Local Employment -

SYLLABUS

Where a municipality continues to pay a wage earner's full salary during a period in which he is absent from work because of a severe, permanent disability which precludes his return to work and such payments are made pursuant to a State statute providing that disabled municipal employee may be granted special leaves of absence with pay, to be offset by the amount of any workmen's compensation payment received, such payments are considered to be made "on account of sickness or disability" within the meaning of section 209(d) of the Act and hence excluded from wages.

C, SSA,

PB 3022

C O P Y

Mr. Joseph J. Kelly
Regional Assistant Commissioner, SSA

June 17, 1968

Esther G. Schiff
Regional Attorney

In reply refer to:
CC:RA:II:AMB:DAR

STATE & FEDERAL QUESTIONS
Do Not Circulate

Status of "Pay or Part Pay" to Employees on Disability
Leave of Absence Because of Injury or Illness as a Result
of or Arising From Their State or Local Employment -

You have requested our opinion as to whether payments made to the above-named claimant during the course of his employment by the City of Elizabeth are excludable from wages as payments made "on account of sickness or accident disability."

The wage earner was employed by the City of Elizabeth as a laborer in the Department of Public Works from 1941 until June 13, 1966. However, he did not perform any services for the City after August 22, 1961, when he stopped working because of the cumulative effect of injuries he had suffered in several accidents which had occurred in his employment from 1948 on. It was subsequently determined, on the basis of an application for social security disability insurance benefits which he filed on May 18, 1966, that he was permanently and totally disabled as of August 23, 1961. Despite the wage earner's inability to work, he continued to receive full salary from the time of his cessation of work until termination of his employment and it is the status of these payments which is in question herein. In November of 1966 the City granted the wage earner, effective June 14, 1966, a "non-contributory disability retirement benefit", pursuant to N.J.S.A. 43:8B. The payments which he had previously received from August 23, 1961 to June 13, 1977 had been reported as wages and were so credited to his earnings record.

It has been held that where a municipal employee continues to receive salary payments during a period when he is absent from work and unable to perform the normal duties thereof because of disability, and the evidence establishes that such payments were made, pursuant to statutory or regulatory authorization, in lieu of workmen's compensation and in recognition of the fact that the individual suffered from a long-continuing, serious disability which would probably prevent him from returning to work, such payments are payments "on account of sickness or accident disability" within the meaning of section 209 of the Act and therefore

C O P Y

excluded from wages. GC opinions re (omission) ; Wages - Service-Connected Disability Payments in Lieu of Workmen's Compensation Paid by City of Philadelphia, 2/1/65. This conclusion follows from the clear showing in such a case that the remuneration was continued for the reason that the wage earner was disabled, and it is applicable even though the payments were made out of a salary account and classified as such for State law purposes.

In this regard, the Assistant Director of the Division of Pensions, New Jersey Department of the Treasury, (the agency responsible for administration of the State's section 218 agreement) has indicated that since the City of Elizabeth is authorized to make payment to employees for salary purposes only, the payments made to the instant wage earner through June 13, 1966 must be considered continuation of salary and not payments on account of sickness or disability. As was pointed out in the above-cited Gore and City of Philadelphia memoranda, the opinion of State officers as to the classification of such payments for State law purposes, while it is relevant to decision of the question presented under section 209, is not and could not be determinative of this question which is a matter of federal law to be determined by application of appropriate federal criteria, i.e., State law classifications are significant only as they are relevant to the federal test. We note however, that the Assistant Director's apparent assumption that payment from a salary account requires a determination that the payments are not made on account of sickness or disability within the meaning of section 209(b) or (d) of the Act may result from the discussion of this matter in sections 442.5 and 443(b) of the Handbook for State Old-Age and Survivors' Insurance Administration. We would suggest therefore that it is important, in order to avoid any further confusion herein, to clearly indicate in any future discussion of the matter with him that the fact that the payments are continuation of salary under State law does not preclude a finding that they are payments on account of sickness or disability within the meaning of the Act.

With respect to the question of the character of the instant payments for social security purposes, it would appear from the facts herein that the wage earner's employer know at the time the payments were being made that his disability was permanent and severe and that he would not be able to return to work. It has further been established that the wage earner did not have any sick leave acquired under State Civil Service Regulations to his credit at this time, and that payments were made from the annual budget appropriation, the expenditure

C O P Y

of which is restricted to salary purposes. While the State has not indicated the statutory basis for such payments, as it considered this unnecessary in view of its conclusion as to the classification of the payments, it would appear that N.J.S.A. 11:24A-4 is the sole provision of New Jersey law under which the payments could have been authorized. The section in question appears in subtitle 3 of Title II of the New Jersey statutes, which governs the terms of employment by counties, municipalities and school districts, and provides that:

"The appointing authority shall establish regulations which authorize the granting of special leaves of absence with pay or part pay to employees disabled either through injury or illness as a result of, or arising from, their respective employment. During such period of disability, employees may elect, if they so desire, to first utilize all or any part of the sick leave accumulated under section 3 of the act of which this act is amendatory. In the absence of such election, leaves of absence provided by this section shall not affect in any manner whatsoever the accumulated sick leave provided under section 3 of the act of which this act is amendatory. Any amount of salary or wages paid or payable to employees because of leave granted pursuant to sections 3 or 4 of the act of which this act is amendatory shall be reduced by the amount of any workmen's compensation award under chapter 15 of Title 34 of the Revised Statutes made for temporary disability because of the same injury or illness requiring such leave."

There is clearly no substantive difference with respect to the nature of the payments provided for, between this provision and N.J.S.A. 11:14-2 which relates to continuation of salary payments in the case of disabled State employees. That section provides in pertinent part:

".... The commission shall establish regulations extending leaves of absence with pay or with part pay for longer periods [than regular sick leaves which are separately provided for] to employees disabled either through injury or illness as a result of, or arising from, their respective employment."

C O P Y

The effect of the latter section was previously considered in our memorandum re Status of "Pay or Part Pay" to Employees on Special Leaves of Absence, etc. (omission) 3/28/65 in which we concluded that payments made pursuant thereto were "on account of sickness or accident disability" since it appeared in view of the applicable provisions of the New Jersey Workmen's Compensation Law that payments made pursuant thereto were in lieu of workmen's compensation. In addition, it appeared that the disability of the individual in question like that of the instant wage earner precluded his return to work. Under such circumstances it seemed clear that the wage earner continued to receive remuneration because of his disablement and that it followed "that the payments constituted compensation on account of his illness or injury, not compensation for past services or services to be performed in the future."

As section 11:24A-4 specifically requires that the continued salary payments be reduced by the amount of any compensation award based upon the same sickness or injury, it appears equally clear that these payments are an alternative to workmen's compensation which is available to all New Jersey public employees by virtue of N.J.S.A. 34:15-43. Accordingly, assuming that the payments made to the instant wage earner were made pursuant to section 11:24A-4 in recognition of the fact that the severity and permanence of his disability would prevent him from returning to work, it would appear that they are payments "on account of sickness or disability" within the meaning of section 209.

We have not considered the question of whether the payments were made under "a plan or system" as defined in section 209(b) of the Act, since a determination on this point would only affect the classification of amounts paid for the first six months after the wage earner ceased to perform services and the statute of limitations apparently would preclude the Administration from taking any action with respect to the wages credited to the wage earner's account for such period.

cc: GC-SRS

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

State of New Jersey
Commission on Investigation
28 West State Street
Trenton, NJ 08608

Person to Contact:
Mrs. Mary L. Spates
Telephone Number:
(202) 566-3292
Refer Reply to:
T:I:WEA:2:2
Date:

Attn: Mr. Peter Schirmer

31 AUG 1978

Dear Sir or Madam:

This is in reply to your letter of March 1, 1978, requesting information as to the status of certain "Injury Leave" payments for purposes of the social security taxes and income tax withholding.

According to the information in your letter various counties in New Jersey use different methods to make injury leave payments (as distinguished from annual, sick, personal or compensatory). In some counties, a worker incapacitated as a result of a work-related injury receives 100 percent of his regular pay while on injury leave. Any insurance company workmen's compensation checks are turned over to the county treasurer. In other counties, the county insists that an employee on work-related injury leave apply for regular workmen's compensation benefits and then supplements the compensation check up to 100 percent of his regular salary for the duration of his injury leave.

Our reply as to the status of the payments under the two above-described methods is based on the assumption that the employee receiving the "Injury Leave" payment is not permanently or totally disabled within the meaning of section 105(d) of the Internal Revenue Code.

In example one, if the employee turns over the workmen's compensation payment to the county treasurer and continues to receive his regular wages, the excess of the wage payments over the amount of the workmen's compensation payments are wages subject to Federal income tax withholding.

In example two, the workmen compensation benefits are not wages subject to income tax withholding, but the supplemental wages paid by the employer to bring the employee's payments up to 100 percent of his regular wages are wages subject to Federal income tax withholding.

RECEIVED

1979 SEP -5 PM 1:46


STATE COMMISSION OF INVESTIGATION
TRENTON, NJ

State of New Jersey

Under section 3121(b)(7) of the Federal Insurance Contributions Act (FICA), service performed in the employ of a State or on any political subdivision of a State is not employment covered by the FICA; instead, employees of a State or a political subdivision are covered under direct agreements with the Social Security Administration. If you need information or a ruling as to the status of these payments for purposes of the social security contributions, you should contact the Social Security Administrator for the State of New Jersey.

We hope the above information answers your questions about the injury leave payments. If you need additional information you may contact this office or you may request a specific ruling under the provisions of Revenue Procedure 72-3, 1972-1 C.B. 698 (copy enclosed).

Sincerely yours,


Richard L. Crain
Chief, Wage, Excise and
Administrative Provisions
Branch

Enclosure 1
Rev. Proc. 72-3



State of New Jersey
COMMISSION OF INVESTIGATION

COMMISSIONERS

JOSEPH H. RODRIGUEZ
CHAIRMAN

LEWIS B. KADEN
ARTHUR S. LANE

28 WEST STATE STREET
TRENTON, N.J. 08608
TELEPHONE (609) 292-6767

December 15, 1978

MICHAEL R. SIIVAGE
EXECUTIVE DIRECTOR

EXECUTIVE ASSISTANT
JOHN O. DAVIES

COUNSEL
NEIL J. CASEY, III
DAVID L. RHOADS
PETER M. SCHIRMER
ROBERT M. TOSTI

Mr. Richard L. Crain
Chief, Wage, Excise and
Administrative Provisions Branch
Internal Revenue Service
Department of the Treasury
Washington, D. C. 20224

Dear Mr. Crain:

On March 1, 1978, a letter was addressed to you from the State Commission of Investigation under my signature regarding the taxability of injury leave payments.

On August 31, 1978, you replied to that inquiry and the substance of your opinion was that the amount received by an employee in excess of workmen's compensation payment was subject to federal income tax withholding.

It has now come to our attention that the injury leave program by which an employee of a county or municipality receives his full pay on account of a job-related injury is a program established by the counties and municipalities under state enabling statutes: N.J.S.A. 11:24-4 and N.J.S.A. 40A:9-7 which require the counties to establish injury leave programs for Civil Service employees. State enabling statutes also allow the counties and municipalities to establish injury leave programs for non-civil service employees. The freeholders of the counties are obligated under the state law to establish regulations governing the injury leave program for Civil Service employees. By the same token, municipality officials are obligated to establish regulations governing injury leave for their Civil Service employees.

It is our opinion that payments made under such injury leave programs are non-taxable for income tax purposes. IRC §104; 26 CFR 1.104; Revenue Ruling 56-83; Revenue Ruling 68-10; IRC §3121 (a) (2) (B).

The State Commission of Investigation is about to issue a report to the counties and municipalities which will state that counties and municipalities have been improperly deducting income tax from income received by employees pursuant to injury leave programs.

It is respectfully requested that your office advise the State Commission of Investigation whether the entire payment received pursuant to an injury leave policy is considered taxable wages for income tax purposes.

The State Commission of Investigation is aware of the statutes of limitations for the recovery of improperly paid taxes, and for this reason requests that your office expedite this matter. If you have any questions, please call Peter M. Schirmer, Counsel, at this office. Your kind assistance in this matter is greatly appreciated.

Very truly yours,

Michael R. Siavage
Executive Director

COMPENSATION RATING AND INSPECTION BUREAU

DEPARTMENT OF INSURANCE
60 PARK PLACE • NEWARK, N. J. 07102

Telephone (Area 201) 622-6014

Chairman
ROBERT R. HECKMAN
Special Deputy Commissioner

In reply please refer to Bureau File No.

December 28, 1978

State Commission of Investigation
Mr. Peter Schirmer, Esq.,

28 West State Street,
Trenton, N. J. 08608

Dear Mr. Schirmer:

In accordance with our telephone conversation of December 20 I am attaching a County listing showing the experience rating excess and normal credibilities. As I indicated during our discussion "excess" is a measure of severity of loss and "normal" is a measure of frequency of loss. At the present time the first \$2,800 of each indemnity loss is included as "normal" loss and the first \$350 of each medical loss is regarded as "normal" loss. The amounts in excess of these "normal" values are included as "excess" loss.

As noted during our discussion it is difficult to speculate what effect the proposed legislation will have on a given County in terms of premium saving. The premium size of the County, caliber of experience, size of the claim - from a "normal-excess" relationship, and the extent, if any, to which the proposed practice may already be present, will effect the net result. In an attempt to forecast the effect of the proposal it is probably best to use an actual experience rating calculation along with several reasonable assumptions. The assumptions may be adjusted to suit the forecaster. Along these lines there are attached three sample calculations. When reviewing the examples it should be noted that an experience rating includes three policy years of past experience.

I trust the above and the attached will be of assistance to you.
Best regards,

Very truly yours,



Joseph Di Martino
Vice Chairman

JDM:MVS

STATE COMMISSION OF INVESTIGATION
TRENTON OFFICE
RECEIVED
JAN - 2 - 1979
3:23 PM

EXPERIENCE RATING CREDIBILITIES

-61-

<u>County</u>	<u>Bureau File</u>	<u>Credibility</u>	
		<u>Excess</u>	<u>Normal</u>
Atlantic	127568	.795	.983
Bergen	121598	.961	.998
Burlington	121525	.814	.984
Camden	121910	.881	.991
Cape May	123047	.760	.976
Cumberland	172509	.722	.973
Essex	Non Insured		
Gloucester	120099	.644	.963
Hudson	Non Insured		
Hunterdon	120482	.696	.965
Mercer	Non Insured		
Middlesex	Non Insured		
Monmouth	121278	.838	.987
Morris	121063	.539	.961
Ocean	123159	File presently unavailable	
Passaic	Non Insured		
Salem	123567	.632	.960
Somerset	120919	.707	.972
Sussex	123866	.753	.975
Union	120102	.905	.993
Warren	120048	.630	.958

EXAMPLE A

Present Rating	Total Exp. Loss <u>176,357</u>	Excess Cred. <u>.539</u>	Normal Cred. <u>.961</u>	Risk Loss <u>248,823</u>	Class Loss <u>51,589</u>	Total Loss <u>300,412</u>	Modif. <u>1.703</u>
----------------	-----------------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------	------------------------------	------------------------

Assume that \$60,000 in loss dollars over the three year experience period would be eliminated under the proposed legislation. Then the "Risk Loss" would be reduced by a maximum of (.961) x (60,000) or \$57,660. The formula then becomes:

Proposed Rating	176,357	.539	.961	191,163	51,589	242,752	1.376
-----------------	---------	------	------	---------	--------	---------	-------

Assuming the manual premium is constant then the annual manual premium is:

$$\frac{\text{Total Exp. Loss}}{\text{Exp. Loss Factor}} \times \frac{1}{3 \text{ yrs.}} = \frac{176,357}{.549} \times \frac{1}{3} = \$107,078$$

The resultant saving may then be expressed as follows:

	Present	Proposed
W. C. Annual Std. Insurance Premium	(107,078 x 1.703) = + 182,354	(107,078 x 1.376) = + 147,339
Carrier annual payroll "reimbursement"	(60,000 ÷ 3) = - 20,000	0
Total	\$162,354	\$147,339
Annual Saving	\$15,015 *	

*Excluding premium discount and policyholder dividends, if any. When included the annual saving would be reduced.

EXAMPLE B

Present Rating	Total Exp. Loss <u>309,005</u>	Excess Cred. <u>.722</u>	Normal Cred. <u>.973</u>	Risk Loss <u>264,034</u>	Class Loss <u>60,794</u>	Total Loss <u>324,828</u>	Modif. <u>1.051</u>
----------------	--------------------------------------	--------------------------------	--------------------------------	-----------------------------	-----------------------------	------------------------------	------------------------

Assume that \$75,000 in loss dollars over the three year experience period would be eliminated under the proposed legislation. Then the "Risk Loss" would be reduced by a maximum of (.973) x (75,000) or \$72,975. The formula then becomes:

Proposed Rating	309,005	.722	.973	191,059	60,794	251,853	.815
-----------------	---------	------	------	---------	--------	---------	------

Assuming the manual premium is constant then the annual manual premium is:

$$\frac{\text{Total Exp. Loss}}{\text{Exp. Loss Factor}} \times \frac{1}{3 \text{ yrs.}} = \frac{309,005}{.549} \times \frac{1}{3} = \$187,617$$

The resultant saving may then be expressed as follows:

	Present	Proposed
W. C. Annual Std. Insurance Premium	(187,617 x 1.051) = + 197,185	(187,617 x .815) = + 152,908
Carrier annual payroll "reimbursement"	(75,000 ÷ 3) = - 25,000	0
Total	\$172,185	\$152,908
Annual Saving	\$19,277 *	

*Excluding premium discount and policyholder dividends, if any. When included the annual saving would be reduced.

EXAMPLE C

	Total	Excess	Normal	Risk Loss	Class Loss	Total Loss	Modif.
Present Rating	Exp. Loss 234,263	Cred. .644	Cred. .963	42,559	59,716	102,275	.437

Assume that \$12,000 in loss dollars over the three year experience period would be eliminated under the proposed legislation. Then the "Risk Loss" would be reduced by a maximum of (.963) x (12,000) or \$11,556. The formula then becomes:

Proposed Rating	234,263	.644	.963	31,003	59,716	90,719	.387
-----------------	---------	------	------	--------	--------	--------	------

Assuming the manual premium is constant then the annual manual premium is:

$$\frac{\text{Total Exp. Loss}}{\text{Exp. Loss Factor}} \times \frac{1}{3 \text{ yrs.}} = \frac{234,263}{.549} \times \frac{1}{3} = \$142,236$$

The resultant saving may then be expressed as follows:

	Present	Proposed
W. C. Annual Std. Insurance Premium	(142,236 x .437) = + 62,157	(142,236 x .387) = + 55,045
Carrier annual payroll "reimbursement"	(12,000 ÷ 3) = - 4,000	0
Total	\$58,157	\$55,045
Annual Saving	\$3,112 *	

*Excluding premium discount and policyholder dividends, if any. When included the annual saving would be reduced.