



State of New Jersey

COMMISSION OF INVESTIGATION

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November 15, 1995

Hon. John A. Lynch
100 Bayard Street
New Brunswick, NJ 08901

Dear Senator Lynch:

At your request, the Commission conducted a review of the trust funds created for county clerks and registers of deeds by N.J.S.A. 22A:4-17.1. The review consisted of an audit of 26 such funds (those of all county clerks, as well as of the register of deeds in the five counties where that office continues to exist) for 1992 and 1993, and concentrated on disbursements, although procedures were followed to ensure the integrity of receipts recognized to the funds. Attachment A shows receipts, disbursements and year-end balances for each trust fund in the two years audited, as well as the balance for each fund at the end of 1994.

* * *

In 1986, Title 22A of the New Jersey Statutes was amended to increase by approximately 50% the fees charged for filing documents with the clerk of the Superior Court, county clerks and county registers of deeds. At the same time, a new statute was enacted, requiring that "\$1.00 of each fee received for the recording, filing or cancelling of a document in the office of a county clerk or register" be returned to that officer by the county treasurer within 10 days. The new statute also provided that the funds returned to the clerks and registers "shall be used to upgrade and modernize the services provided by their offices."

Under the original enactment, the trust fund

provision was due to expire in five years. In 1989, however, the sunset provision was repealed and the portion of each filing fee to be applied to the trust funds was doubled, to \$2.00.

In order to be able to assess the propriety of trust fund disbursements, the Commission attempted to determine if any guidance, beyond the language of the statute itself, had been given to the clerks and registers regarding permitted uses. None was found.

Legislative staff members recounted to the Commission recollections that creation of the trust funds was prompted by anticipated costs of "motor voter registration" systems. They were unable to produce any evidence to support those recollections, however, and no mention of motor voter registration can be found in the meager legislative history that exists for the 1985 or 1989 enactment. Furthermore, at least in 1985 motor voter registration was not so clearly on the horizon that the state would have been looking for a mechanism to help the counties pay for it.

Representatives of the clerks and registers told the Commission staff that the trust funds were created at their urging. They also asserted that the trust funds became necessary as the result of the officers' difficulty in obtaining adequate appropriations from county government to automate their offices and to meet the demands placed on them by rapid development and other factors.

While the Commission was engaged in this review, the Sussex County Clerk sued the freeholders of that county to compel payment, from the trust fund, for expenses incurred in connection with an out-of-state conference. Ruling in favor of the clerk, the Superior Court held that a county clerk has broad discretion to determine whether expenditures are in furtherance of the statutory purposes.

Attachment B summarizes major expense categories for each trust fund, including: (1) computer equipment and software, (2) reproduction or recreation services and signature verification projects, (3) office renovation and furniture, (4) personnel (including temporary services), (5) consulting, (6) training, (7) conferences and membership dues, and (8) other equipment. Some miscellaneous expenses could not be classified in any of these categories.

The Commission has concluded that, although significant amounts have been spent for purposes clearly calculated to "upgrade" or "modernize" offices, the trust funds appear to be regarded, and in many instances used, as a resource to support the ongoing work of the offices when adequate appropriations for that purpose have not been made available by county government. In fact, representatives of the clerks and registers asserted to the Commission that county governments often regard the trust funds as available sources of revenue to cover the officers' operating expenses when evaluating their budget requests. And, in one instance, a county clerk sued the board of freeholders, alleging that it had unilaterally expended \$50,000 from her trust for an ongoing service contract. The board, while claiming that the expenditure was done in reliance on past practice established under the clerk's predecessor, stipulated that no future expenditures would be made from the trust fund without the clerk's express approval.

Given the very general language of the trust fund statute, the decision in the Sussex County lawsuit, and the political-economic tensions between county officers and freeholder boards or county executives, the Commission cannot label as inappropriate any trust fund expenditure that was made for a purpose directly related to maintaining and operating a clerk's or register's office. Nevertheless, it must be noted that the Commission's review identified a number of disbursements which, in its view, could be justified only under a very strained interpretation of the statute. These included such things as renovations, expensive decorations and furnishing in personal offices; the purchase of "specialty advertising," including tee-shirts, pens, calendars and other items; the payment of service club dues; the purchase, in one office, of 19 "official blazers" for staff members, and arguably excessive travel expenses to conferences in resort cities. Fairness dictates, however, emphasizing that these represented less than one-half of one percent of the total expended during the two-year period which was the subject of the Commission's review.

There is one substantial disbursement that bears special mention, and which the Commission concludes was unauthorized. In 1993, the Mercer County Clerk authorized the transfer of \$250,000 from his trust fund to the county's general fund to help the county administration cover a budget deficit. The clerk, who by the time of the Commission's review was no longer in office, and legal counsel for the county

argued that, since the clerk had determined he had no need at the time to use the funds for a purpose defined by the statute, he was free to transfer any portion of it to the county. The Commission believes that this result is unsupported by any reasonable reading of the statute.

* * *

The Commission endorses the provisions of Senate Bill 1325, which would amend the trust fund statute to require that clerks and registers submit capital plans demonstrating "the need for continuation of equipment modernization efforts" if their trust funds are to continue to receive a portion of the fees paid in connection with filings in their offices.

The Commission notes that, at least as of the end of 1993, substantial balances have accumulated in many trust funds. It recommends, therefore, that the Legislature consider specifying an alternative use for such balances. Otherwise, they may simply present a continuing opportunity for county governments to avoid their responsibility to provide adequate funding for the clerks' and registers' constitutional and statutory duties. In determining appropriate alternative uses, if the Legislature deems funding of the costs of "motor-voter registration" an important interest it should consider the demands placed thereby on Commissioners of Registration and Superintendents of Elections in the various counties.

As has been noted above, there is a natural fiscal tension between, on the one hand, officials like county clerks and registers who perform duties mandated by the New Jersey Constitution or state law and, on the other hand, freeholder boards and county executives, who have a substantial interest in minimizing county expenditures. Because of this, the Commission has reservations about the requirement in S-1325 that capital plans for use of trust funds be approved by county governing bodies. The Legislature should consider designating an alternative approval authority or providing an appellate forum for clerks or registers whose plans are not approved at the county level. Either the Secretary of State or the Commissioner of Community Affairs may be appropriate for either alternative.

Lastly, the Commission notes that its review determined that interest on trust fund balances is not credited to the fund in all counties. One county

fiscal official justified retention of the interest for the general fund as an "administrative fee." The Commission recommends that the trust fund statute be amended to expressly require that all interest be applied to the fund, or to establish a reasonable standard for any administrative fee.

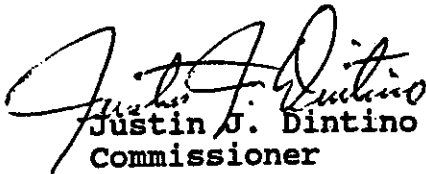
Very truly yours,



Leslie Z. Celentano
Chair



Louis H. Miller
Commissioner



Justin J. Dintino
Commissioner



M. Karen Thompson
Commissioner

cc: Hon. Christine Todd Whitman,
Governor
Hon. Donald T. DiFrancesco,
President of the Senate
Hon. Garabed (Chuck) Haytaian,
Speaker of the General Assembly

FILING FEES STATISTICS - AUDITED

COUNTY	12/31/91 BALANCE	RECEIPTS	DISBURSED OR ENCUMBERED	12/31/92 BALANCE	RECEIPTS	DISBURSED OR ENCUMBERED	12/31/93 BALANCE	12/31/94 BALANCE
ATLANTIC	316,459	136,243	301,056	151,646	148,982	125,870	174,758	98,828
BERGEN	177,331	435,687	361,469	251,549	559,248	468,539	342,258	287,596
BURLINGTON	179,579	176,780	157,010	199,349	210,528	176,236	233,641	96,811
CAMDEN	61,756	82,450	28,907	115,299	33,739	37,750	111,288	117,728
CAMDEN REGISTER	172,855	249,124	136,256	285,723	225,037	98,369	412,391	500,172
CAPE MAY ***	58,789	89,894	79,800	68,883	95,365	128,199	36,049	25,132
CUMBERLAND	53,130	65,555	100,446	18,239	75,955	6,063	88,131	93,472
ESSEX CLERK	107,176	143,923	202,822	48,277	176,126	158,985	65,418	206,609
ESSEX REGISTER	133,203	239,487	152,972	219,718	250,930	183,114	287,534	299,520
GLOUCESTER	179,761	140,700	115,855	204,606	153,828	145,581	212,853	139,008
HUDSON CLERK	240,316	118,947	20,730	338,533	127,197	44,719	421,011	524,568
HUDSON REGISTER	264,412	131,242	12,405	383,249	136,577	226,474	293,352	349,595
HUNTERDON *	121,565	92,711	122,088	95,898	107,486	76,718	126,666	119,377
MERCER	505,361	316,421	226,016	595,786	360,053	543,803	412,036	496,636
MIDDLESEX	986,962	415,146	262,551	1,139,557	499,817	304,636	1,334,738	1,683,181
MONMOUTH	593,041	356,850	96,052	853,839	426,880	188,296	1,092,423	1,239,192
MORRIS **	619,742	382,888	269,859	732,771	428,877	214,237	947,411	1,151,103
OCEAN	37,896	295,121	321,157	11,860	326,040	277,580	60,320	38,873
PASSAIC CLERK	37,630	43,148	40,015	40,763	57,061	72,882	24,942	34,054
PASSAIC REGISTER	196,606	153,209	115,512	234,303	165,871	87,962	312,212	388,831
SALEM *	30,592	40,591	34,315	36,934	40,167	39,800	36,766	20,016
SOMERSET	390,961	183,891	332,681	242,171	407,657	334,525	315,303	360,507
SUSSEX	163,945	108,785	63,468	209,262	119,979	161,057	168,184	177,092
UNION CLERK	6,492	171,314	69,517	108,289	105,049	112,600	100,738	52,614
UNION REGISTER	326,326	162,929	203,900	285,355	219,724	119,298	385,781	414,825
WARREN	31,309	58,925	31,196	59,038	82,897	94,408	47,527	31,950
TOTALS	5,993,195	4,791,961	3,858,055	6,930,897	5,541,070	4,427,701	8,043,731	8,947,290

* The audit reports filed with the Department of Community Affairs by these counties provided the year-end balance only. Receipts recognized and disbursements were determined by audits by the Commission.

** Only the Morris County reports filed with the Department of Community Affairs does not provide any detail of this fund. It is accumulated in the other trust fund balances.

*** 1994 Balance is not audited.

Attachment A

COUNTY CLERKS TRUST FUND EXPENDITURES

COUNTY	OFFICE	YEAR	TOTAL DISBURSEMENTS PER AUDIT	COMPUTER EQUIPMENT AND SOFTWARE	SIGNATURE VERIFICATION AND REPRODUCTION	RENOVATIONS AND FURNITURE	PERSONNEL	CONSULTING	TRAINING	CONFERENCES AND DUES	OTHER EQUIPMENT
ATLANTIC	CLERK	1992	301,056	154,600	87,000	31,000	5,900		1,300	1,200	8,800
		1993	125,870	98,800	48,200	32,100	2,300			1,200	2,100
BERGEN	CLERK	1992	361,469	1,200		50,100	247,300				27,700
		1993	468,539			33,200	395,100				8,500
BURLINGTON	CLERK	1992	157,010	1,400	156,200						15,100
		1993	176,236	800	122,500						8,100
CAMDEN	CLERK	1992	28,907	15,600		7,100			800		8,100
		1993	37,750	20,700		13,500			1,000		19,400
CAPE MAY	REGISTER	1992	136,256	2,100	44,400		2,500			800	19,200
		1993	98,369			35,200	56,700				9,400
CAPE MAY	CLERK	1992	79,800	6,600	49,600			1,900	100		9,400
		1993	128,199	400	78,600			9,400	100		16,300
CUMBERLAND	CLERK	1992	100,446		100,000						
		1993	6,063								
ESSEX	CLERK	1992	202,822	62,400	56,200	1,800					5,300
		1993	158,985	59,400	45,700	55,700					400
	REGISTER	1992	152,972	19,600	47,400	21,400	50,000	32,600			79,800
		1993	183,114	17,800	43,900	4,200			800		62,600
GLOUCESTER	CLERK	1992	115,855	9,800	68,500	13,400	23,200				12,400
		1993	145,581	12,300	59,800	24,800	20,100			500	26,300
HUDSON	CLERK	1992	20,730	17,000		3,100					200
		1993	44,719	20,900		12,400			300		16,700
	REGISTER	1992	12,405								
		1993	226,474	226,500							
HUNTERDON *	CLERK	1992	122,088	2,300	74,200	4,300					29,200
		1993	76,718	4,600	54,500	4,000					5,100
MERCER	CLERK	1992	272,144	34,500	161,000	13,000			800		12,000
		1993	369,668	9,800	240,100	9,800	800	700			15,200
MIDDLESEX	CLERK	1992	282,551	99,100	74,000	17,600		2,800	900	1,200	47,000
		1993	304,636	15,200	17,700	78,800	800		2,000	1,900	35,500
MONMOUTH	CLERK	1992	96,052	38,600	3,700	19,300					16,500
		1993	188,296	4,800	70,000	39,700	17,500				51,600
MORRIS *	CLERK	1992	269,869	64,400	69,600	29,600					106,300
		1993	214,237	65,400	41,500	23,000	59,000				22,000
OCEAN	CLERK	1992	321,157	17,600	49,100	88,800		13,800		500	15,000
		1993	277,580	151,100	165,600	21,500		9,500		300	11,000
PASSAIC	CLERK	1992	40,015								300
		1993	72,882	6,900		200	29,000				11,500
	REGISTER	1992	115,512	63,100	8,800	8,800	42,100				700
		1993	87,962	35,300	2,800	2,800	25,000				8,700
SALEM *	CLERK	1992	34,315	700	100	3,300			7,700		9,500
		1993	39,800	1,500	7,800	400					5,100
SOMERSET	CLERK	1992	332,681	292,000	53,100	12,500		4,500			
		1993	334,525	96,200	14,500	11,200					11,500
SUSSEX	CLERK	1992	63,468								
		1993	161,057			23,900	10,900			1,400	
UNION	CLERK	1992	69,517	5,700	11,700	400	21,300			2,500	1,300
		1993	112,600	86,400	9,000	3,000	41,500				6,400
	REGISTER	1992	203,900	67,300	87,700	1,900	19,200				900
		1993	119,298	10,500	22,600	1,900	53,200		100	3,100	8,500
WARREN	CLERK	1992	31,196	400							
		1993	94,408	18,400		34,300		3,800		2,300	13,800
			8,157,759	1,929,900	2,235,500	801,900	1,213,800	84,500	15,100	23,600	749,900

* The audit reports filed with the Department of Community Affairs by these counties did not provide total disbursements from the fund. Disbursements were determined by audits done by the Commission.