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March 15, 1983

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

The New Jersey State Commission of Investigation herewith submits its Report and Recommendations on its investigation of Sewerage and Utility Authorities in this state. This transmittal is made under Section 10 of L. 1979, Chapter 254 (N.J.S.A. 52:9M-10), of the Act creating the Commission.

Respectfully Submitted,

Arthur S. Lane, Chairman
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* Commissioner Francis completed his term with the Commission on August 1, 1982, and was succeeded by Commissioner William S. Greenberg.



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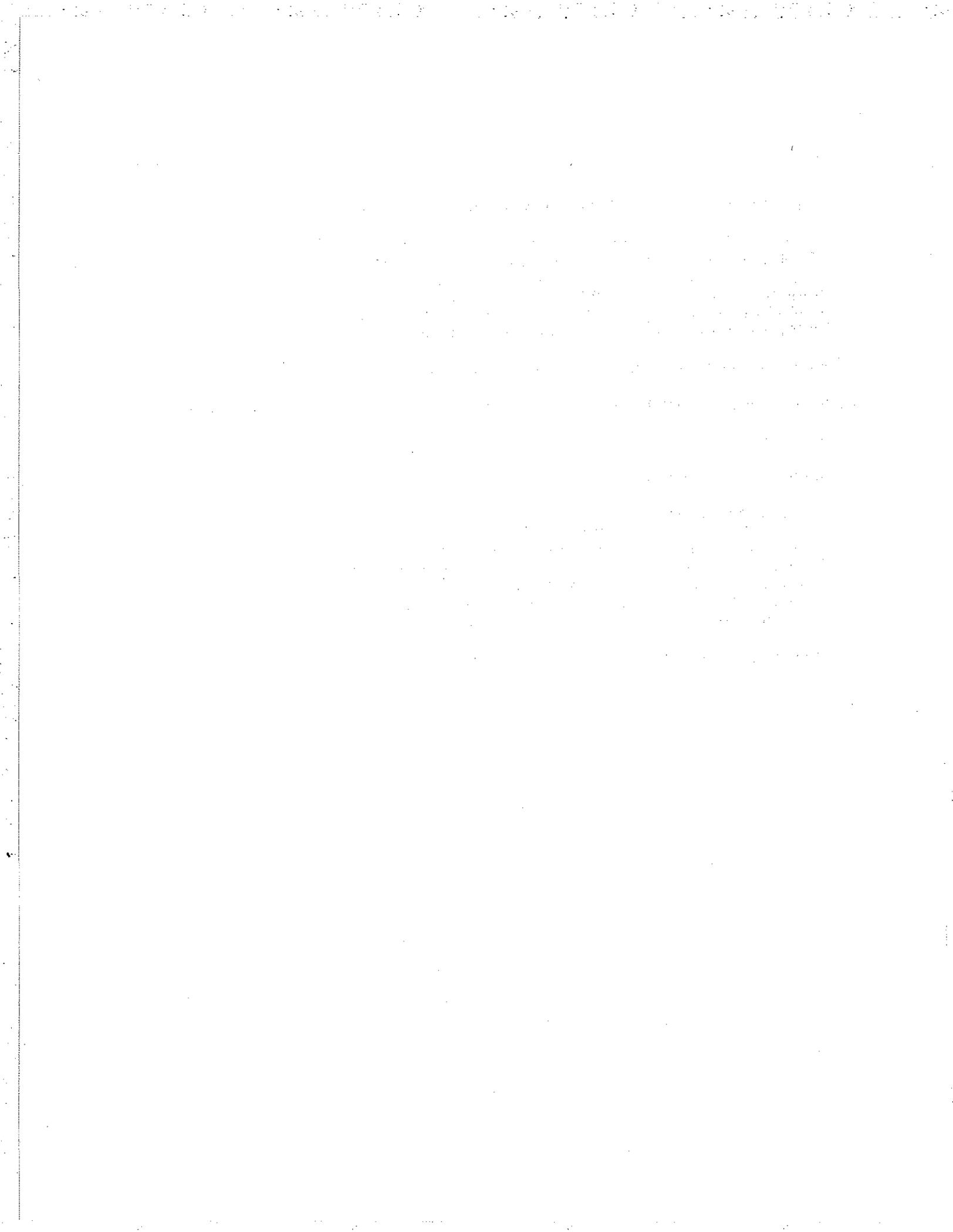
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INVESTIGATION OF LOCAL SEWERAGE AND UTILITY AUTHORITIES

Introduction

The Commission's investigation of local sewerage and utility authorities began after an evaluative inquiry produced evidence of bribes and kickbacks in the sales and purchases of chemicals to and by certain authorities. A formal probe was authorized by the Commission by adoption of a resolution of purpose, a copy of which was served on all witnesses who subsequently appeared for questioning at executive sessions of the Commission and at the public hearings on the subject conducted by the SCI in July, 1982, at the State House. This resolution declared the scope of the inquiry to be:

Whether the laws of the State of New Jersey are being faithfully executed and effectively enforced with particular reference to the staffing, funding, operations, and expenditures of municipal and regional authorities and commissions including but not limited to municipal and regional utilities authorities, sewerage authorities, and industrial commissions; whether present laws and regulations governing municipal and regional authorities and commissions are adequate; and into all instances in which there is evidence, arising from the aforementioned investigation, of a violation of the laws of the State of New Jersey involving governmental or public bodies.

As the investigation unfolded, the Commission accumulated additional evidence of fraud in the purchasing practices of local authorities. These findings indicated that peddlers of enzymes and other so-called wastewater treatment chemicals had established numerous "paper companies" through which sales were channelled to circumvent state bidding laws and to enable the generation of cash for questionable purposes and that certain authority officials and employees were making excessive purchases of chemicals. The Commission also had learned that some chemical products for which authorities were spending thousands of dollars were virtually useless. These findings caused the Commission's investigators to investigate the conduct of these authorities in the handling of their overall internal affairs. The SCI's broadened inquiry disclosed 1) inadequate monitoring of grant funds, 2) widespread lack of oversight of plant construction, 3) a serious potential for collusion in bond financing, 4) costly overuse of bond anticipation notes, 5) questionable practices in the appraisals and acquisitions of treatment plant sites, 6) shoddy management of facilities by authority members and employees, 7) numerous incidents of conflicts of interest, 8) political influence in the appointments of authority members and executives, and 9) a serious lack of specialized expertise among authority members and plant personnel.

A principle finding of the Commission's investigation was a lack of accountability by New Jersey's county and local authorities to the governmental agencies whose grant funds enable their facilities to be financed and to the public such facilities were designed to serve. Shielded by an autonomy which insulated them from public scrutiny, many authorities were found in violation of a state law requiring submission of annual fiscal audits to the state. Although there may be more than 250 county and local authorities in New Jersey, no state official was found who could provide a precise count of them. No single state agency had any statutorily definitive oversight over county and local authority financing, budgets, operational and maintenance expenditures, or reserves -- if any -- for future expansion or replacement. In fact, the Commission's inquiry determined that most authorities were beholden only to themselves as -- behind closed doors -- they made extremely costly contractual commitments for plant design, engineering and construction plans, for raising required cash in the bond market, for selecting personnel to operate and maintain facilities, for establishing rate charges that are supposed to put their sewerage systems on a self-supporting basis. Nobody -- including the taxpaying citizens who are an authority's captive customers -- was sharing in these actions in any substantial manner. Little or no opportunity was made available for community access or reaction to matters so vital to its wellbeing. The SCI probe also revealed the absence of any consistent pattern of oversight of the various complex phases of a sewerage plant development -- no adequate review of plant design, no viable inspection of plant construction, no external review of bond financing, no controls over rollover interim financing, no monitoring of performance of plant management or staff, no enforcement of the statutory bidding process (even abuses of the so-called state vendor contract number procedure were uncovered).

This Commission's concern about the lack of accountability of authorities was heightened by a new trend in Federal-State relationships. The Commission realized that the so-called Federalism policies of the Reagan Administration will confront county and local governments in New Jersey and other states with vastly increased responsibilities and obligations in connection with the financing, construction and operation of local and regional authorities and their multimillion-dollar facilities.

In line with its enabling statute's mandate that the SCI bring its investigative findings to the attention of the public and the Legislature of New Jersey, the Commission conducted public hearings in the Senate chamber of the State House on July 27, 28, 29 and 30. The purpose of these hearings was to publicly illustrate the wrongdoing the Commission's investigation had revealed and to generate public and governmental support for expeditious statutory and regulatory reforms.

The Commission realizes that there are numerous local authorities which are functioning in a proper, businesslike manner. It emphasized this point repeatedly during the course of

its public forums and adds further emphasis here. In compiling its public hearing record, as well as the recommendations based on the public proceedings, the Commission reiterates its belief that its proposed reforms will benefit all authorities. The implementation of these reform proposals can only increase the public credibility of such entities while at the same time assuring a more receptive market for their public financing efforts. The Commission is convinced that its investigation and hearings have amply demonstrated the inefficacy of the concept of total autonomy for authorities. Many billions of dollars have been -- and will be in the future -- transferred by loans and grants to these agencies. Public monies should never be spent without public scrutiny of the disbursements. The only manner in which taxpayers who provide the funds allocated to authorities can be assured that their dollars are being efficiently, honestly and appropriately expended is to require public accountability. Such accountability is the primary objective of the Commission's reform proposals, which are outlined at length at the conclusion of this report's abridgement of testimony recorded at its public hearings. These detailed recommendations are summarized below.

Recommendations in Brief

The Commission recommends the enactment of Senate Bill #1517 or Assembly Bill #144, except that it is opposed to a provision empowering the State Division of Local Government Services' Local Finance Board to dissolve an authority. These bills would require: State approval of the creation of an authority; State approval of project financing; State approval of annual authority budgets; State approval of financial audits and other fiscal reports to be submitted with prescribed uniformity, and effective remedial action by the State to resolve local authority financial emergencies.

Authority Bond Financing

The Commission recommends that local authorities be required to adhere to all of the competitive public bid procedures laid down by the Local Bond Law (N.J.S.A. 40A-1 et seq), except that the State Local Government Services Division may at its discretion permit an authority to negotiate the sale of bonds. The Commission believes that State supervision of authority financing should be supplemented by additional regulatory requirements for negotiated bond transactions.

State Assistance to Authorities

The State Division of Local Government Services should provide assistance to local authorities of a form and nature relevant to their particular needs, problems and obligations, including: a Code of Ethics; a Standard Audit Guide; technical and professional

training for authority members and staff; a Registry of Authorities; bond financing advisory assistance; and expanded technical debt management assistance currently available to local governments.

The Commission recommends that, in the event the State assumes responsibility for the creation of authorities, any new authority's membership be required to include a professionally accredited engineer and at least one other member who is 1) a lawyer with an acknowledged professional background in governmental, corporate or bond law, or 2) a fully qualified representative of the financial community, or 3) an individual with proven academic credentials and experience in business administration.

Upgrading Authority Executive Staff

The Commission recommends that the quality of employment of authority executive directors, plant operators and other key administrative, professional and technical staff be upgraded by the following requirements: Minimal but nonetheless exacting qualifications for appointment of executive directors or others with similar responsibilities; periodic requalification of licensed plant operators; and expansion of presently inadequate programs for training and qualifying sewerage and utility employees for licensure as plant operators.

State DEP Construction Monitoring

The Commission recommends the immediate restoration of the DEP's former construction inspection service and the resumption of this unit's responsibility for monitoring publicly funded projects on an unannounced daily basis.

Penalties for Noncompliance

The Commission recommends that fines of \$100 daily be assessed against authority members if they delay, without just cause, the filing of annual audits beyond the prescribed four months following the close of a fiscal year, and that fines of \$100 daily be assessed against any authority auditor who fails, without just cause to comply with the Division's annual audit filing deadline.

Funding State Oversight of Authorities

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

The Commission also recommends as a reasonable method of developing a self-sustaining financing of its reforms the levying of yearly fees against individual authorities on a graduated basis according to a schedule that reflects an authority's size, its need for various State services and other considerations.

THE TESTIMONY -- FIRST DAY
TUESDAY, JULY 27, 1982

Opening Statement

The Commission's public hearings began with a statement by Chairman Lane explaining the complex nature of authorities, their origin and development and the problems that have ensued because of their autonomous structure. He stated in part:

Public authorities began emerging in the United States in the early 1900s after widespread public debt defaults led to the enactment of constitutional and statutory borrowing and spending restraints on state and local governments. (New Jersey's so-called "cap law" which limits the extent to which local governments can spend their tax revenues is a most recent example of such governmental restraints). Such limitations, old and new, have been the primary incentives for developing government corporations that could undertake costly, large-scale public projects which governments themselves had neither the technical or financial capability to organize and implement. The easy access to and acceptability in the revenue bond markets of public authorities led to an enormous growth in the number of such entities during the past 40 years. The Institute of Public Administration of New York, in a report compiled for the State of Alaska in January of 1982, pointed out that

public authorities are the only type of independent public institutions that have proliferated in the United States since 1960. They build and run public works of monumental proportions -- bridges, tunnels, parkways, great dams, seaports, airports, public buildings, railroads and industrial and recreational parks. They provide such essential services as water, gas electric power, transportation...

By late 1970s, this report noted, at least 6,000 local and regional authorities and 1,000 state and interstate authorities were operating. By 1981 the revenue bond market in this country was raising almost twice as

much capital funds as all State and local governments combined.

In New Jersey, as elsewhere in the nation, public authorities have mushroomed at the municipal and regional, or county, levels of government as a means of providing certain essential but highly expensive public services unfettered by the debt limits and cap laws that the state vigorously enforces on its subdivisions. These services include parking facilities, community improvement projects, low and moderate income housing -- and, as will be covered in these hearings, wastewater collection and treatment systems. Such municipal and regional authorities have been the recipients of vast amounts of federal and state grants and have accumulated huge debt obligations to launch their facilities on a pay-as-you-go basis by the imposition of user charges.

In our investigative assessment of sewerage authorities, we have been primarily concerned about their lack of accountability to sponsoring governments and to their largely captive taxpayer clientele. Closely related to this concern is the absence of fiscal controls over such agencies. Although their revenue bonds are not guaranteed as legal liabilities of the local governments that have created them, historically, as the Public Administration Institute and other observers have cautioned, such governments have been held morally responsible for the integrity of their authority debt amortization obligations. So great are the debts of local and regional sewerage and utilities authorities in this state -- estimated to be in excess of one billion dollars -- that any default could have a disastrous impact not only on local and county governmental credit but on the credit standing of the state itself.

The high cost of financing public authority projects is particularly acute in the field of wastewater treatment. In few other public enterprises are the facilities that are required to safeguard the health of our citizens and the quality of our environment so complicated to design, construct, operate and maintain. Our inquiry has satisfied us that there is an absolute need to temper the autonomy of local and regional authorities operating expensive and complex sewerage

systems with statutory requirements for more accountability. We have asked many questions about this. Has the jealously guarded autonomy of these local public authorities kept them as free from partisan political pressures as autonomy was intended to accomplish? Has autonomy without oversight led to irresponsible financing? Are authorities designing and constructing facilities adequate to meet public needs? Is autonomy shielding defective management from public view?

Without more accountability these questions can't be fully resolved. That was -- and still is -- this Commission's chief concern when it authorized its inquiry into local and regional authorities early last year. Our concentration on wastewater treatment systems also reflected the facts that the conduct of a number of sewerage authorities had become targets of official probes and deficient management and operational malfunctions had become critical public issues.

Indeed, only several months before this Commission began its inquiry, in November of 1980, the Comptroller General of the United States issued a report that was extremely censorious of wastewater treatment systems throughout our country. Its findings, as compiled by the Comptroller General's General Accounting Office, are so relevant to our hearings that I want to summarize them briefly.

The report began by citing the magnitude of the taxpayer investment in wastewater treatment systems. It estimated that more than 25 billion dollars in federal grants and at least several billion dollars in state and local funds have been spent to construct new wastewater treatment plants and to repair, expand or otherwise modify existing systems. Coupled with these estimates was the Comptroller General's projection of an additional federal outlay for such facilities of more than 36 billion dollars by the year 2000. In New Jersey alone, as a result of sharing requirements attached to federal grant contracts, the distribution of an estimated \$150 million dollars in grants since the early 1970s indicates the magnitude of this state's role

in helping to fund these essential projects.

Even more pertinent to our inquiry is the fact that the Comptroller General's report revealed glaring deficiencies in the design, construction and operation of many of this nation's 6,000-plus sewerage systems. It cited the Federal Environmental Protection Agency's own statistical assessment of facility performance which showed that at any given time 50 to 75 percent of these plants were in violation of the EPA's standards for the issuance of National Pollutant Discharge Elimination System permits. The Comptroller General said that even more alarming was his General Accounting Office's random sampling of 242 waste water treatment plants in 10 states which showed that 87 percent (or more than 210 of the 242 plants) were violating the minimal conditions required by the federal permits. The National Pollutant Discharge Elimination permit is EPA's primary weapon for enforcing national clean water standards since such a permit specifies what types, and limits the amounts, of pollutants a public facility may discharge. What most alarmed the Comptroller General was his survey team's finding that more than a third of the 210 plants in violation were what he characterized as "serious violators" because their noncompliance with federal requirements was of prolonged duration and/or in excess of discharge limits by more than 50 percent.

The Comptroller General's study indicated also that of the major categories of noncompliance -- design and equipment deficiencies, infiltration and inflow problems, industrial waste overloads and operation and maintenance problems -- a dominant inadequacy revealed by the sampling was in the category of operations and maintenance.

This is not to say that there are no sewerage authorities operating facilities in an adequate and proper manner. There are, of course, many authorities whose operations are above reproach and who deserve our commendation. Furthermore, this Commission fully realizes that there are a lot of dedicated people serving on authorities. Nonetheless it is apparent that a number of authority members are incompetent and other-

wise ill-fitted to hold their posts and that their appointments were based on political influence or friendship rather than on merit. Elected officials with the power to make such appointments should be obligated to select only individuals of proven integrity and ability for these assignments. It is strange indeed that public officials time and time again violate their obligations to the citizens who elected them by appointing unqualified and incompetent people to supervise these highly complex facilities, thereby subjecting the very people they are designed to serve with substandard operations and unnecessary cost burdens.

The extent of such authority incompetence and other questionable practices cannot be ignored. After the conclusion of forthcoming public testimony, the Commission will propose recommendations that, we hope, will at least mark a beginning of a new era of public accountability by wastewater treatment authorities that will benefit all authorities. Those many authorities which are properly managing adequate facilities should have no fear of stringent requirements to more fully account for their activities. As for authorities which are not in compliance with appropriate design, construction, operational, managerial and personnel standards for their plants, they should be put on statutory notice that reforms must be implemented. Without these reforms, in view of the huge debt obligations that are being assumed, improperly equipped and poorly managed sewerage authority systems face defaults that could impose huge financial burdens on the county and local governments that have sponsored them. The citizens whose personal health, domestic safety and quality of life depend on these entities deserve protection from even the threat of a collapse anywhere in this state of such an essential public service. By these public hearings, the corrective recommendations they will produce and by continuing its surveillance in the field, this Commission intends to maintain an ongoing role in assuring that the public receives the appropriate, honest and fiscally stable sewerage treatment performance it deserves. Mandated accountability for all county and local authorities is the key to the success of this effort.

Experts Set Hearing Stage

At the outset expert witnesses provided an overview of the problems posed by county and local sewerage authorities. Their testimony set the stage for subsequent public hearing episodes which illustrated the extent of the managerial and operational deficiencies of a number of such entities and which, from time to time, caused the Commission to direct referrals of possible criminal evidence to the Attorney General's office. (The entire transcript of public hearing testimony has since been submitted to Attorney General Irwin I. Kimmelman).

These expert witnesses were Barry Skokowski, director of the Division of Local Government Services in New Jersey's Department of Community Affairs; Edwin H. Stier, director of the Criminal Justice Division in the Attorney General's Department of Law and Public Safety from 1977-1982; Kenneth Konz, special assistant to the Inspector General of the Federal Environmental Protection Agency (EPA), and Clifford A. Goldman, former State Treasurer and now a principal of a consulting firm specializing in governmental bond financing.

Local Authorities Need State Oversight

Skokowski testified as the overseer of the financial affairs of New Jersey's 567 municipal and 21 county governments. He described his Division's supervisory powers over local governments as "the most strict in the nation," including budget reviews, annual audits, certification of finance officers and tax collectors, debt management and programmed financial assistance. Questioned by James T. O'Halloran, executive director of the SCI, Skokowski recalled that county and municipal sewerage and water authorities were first authorized by the State Legislature in 1946, and municipal utilities authorities (MUAs) in 1957, primarily "to get around the debt limitation imposed by the Legislature" that prevented county and municipal governments from sponsoring critically needed but costly sewerage, water and other utility facilities. However, Skokowski testified, the authority-enabling laws of the 1940s and 1950s failed to give his division more than a perfunctory role of receiving periodic fiscal audits, a requirement that had been ignored to such an extent that he was unable to state precisely how many authorities were actually in operation. He said his Division had managed by means of a telephone survey to identify at least 78 utility authorities and 71 sewerage authorities but, he added, "it is my personal belief there are others that we have yet to identify."

Skokowski was referred to an SCI chart* which listed the amounts of federal and state grants to sewerage and utility authorities. He agreed that the chart was significant for what it could not itemize, because of a lack of available data. Skokowski testified:

Q Would you explain in some measure what those figures mean on that chart starting with the federal grants?

A. That particular chart indicates that there are over \$1,500,000 in federal grants that have gone to sewerage and municipal utilities authorities in New Jersey since 1970...it certainly leaves a lot to a person of regular means to comprehend. That number, I think, could grow as we do more and more research.

Additionally, it shows there are over \$150 million in state grants. But the most, I think, interesting figures on that chart are the figures that are not available; that is, we don't have good solid numbers on the bond proceeds or the user charges being levied against taxpayers for the State of New Jersey. There is, to my knowledge, no central repository in the state government for such vital numbers.

I would indicate that certainly compared to local governments, by that, I mean municipal and county governments, obviously the state knows the tax rates of every town and how much money is coming in, et cetera, but that information is not available for sewerage and municipal utilities authorities, to my knowledge.

*

FUNDS AVAILABLE TO
SEWERAGE & MUNICIPAL UTILITY AUTHORITIES
IN NEW JERSEY
(1970 to Present)

FEDERAL GRANTS:	OVER \$1,500,000,000
STATE GRANTS:	OVER \$ 150,000,000
BOND PROCEEDS:	FIGURES UNAVAILABLE
USER CHARGES:	FIGURES UNAVAILABLE

Q. And as you say, those absent numbers are more significant than the ones that are on there?

A. Absolutely, because again it's the taxpayer who is the bottom line there in the user charge. One way or the other, the taxpayer will be funding an operation that is, hopefully, very well run. As I say, many are.

Q. Can you approximate at this time how much debt the MUA's in New Jersey have incurred? Is there any figure that you can give to this Commission?

A. I can give this Commission the best figure of our research and, once again, cannot tell you this number is absolutely correct. The outstanding debt for 78 municipal utilities authorities that we have identified in the State of New Jersey according to our reporting sources is over \$1 billion.

Additionally, we have located 71 sewerage authorities that report a debt of over \$350 million. A lot of that money is financed by temporary notes or bans as we refer to them, but I do not want to attest to the amount of money being financed by those temporary notes because I'm not convinced of their accuracy.

Q. You have testified, I think that the MUA's are not subject to any limitation on the amount of debt to which they might become obligated. Is my understanding correct?

A. That is correct. I would think there is a limit in the marketplace, but I can't even testify to that effect because it appears that they do go out and borrow a lot of money without much trouble.

Q. Is there no statutory limit?

A. That's correct.

Q. Just for the sake of clarity, are MUA's subject to the Cap Law to which counties and municipalities are subject?

A. Absolutely not.

- Q. They're not. To your knowledge, does any federal or state agency oversee the MUA's closely at the present time?
- A. No, sir.
- Q. How about the federal grant people; isn't there any oversight of the grant money that is extended from the agency to the MUA?
- A. To my knowledge, all state and federal grants contain monetary provisions that's very common boilerplate, and to some extent I'm sure that goes on, but again it does not look at the total MUA or the sewerage authority...
- Q. Is there any monitoring of the MUA's or sewerage authorities by the Department of Environmental Protection in the state, to your knowledge?
- A. I would certainly feel that they do monitor their grants and they do monitor responses with the MUA's and sewerage authorities. I don't necessarily think -- I know that they don't look at the total picture of the MUA and the sewerage authority, they look at their funds. I think they're limited to the fact that they give out grants for a limited operation.
- Q. And I believe that you testified that there is no control over the rates charged users?
- A. That's correct.
- Q. So that the overall structure then of the MUA's are not really subject to any oversight?
- A. No, sir, that's right, you're correct. And I would say that if you compare the two to local governments, I call them municipal and county governments, the comparison is very, very obvious in terms that there is no review or scrutiny.
- Q. Now, you've testified that your office supervises and regulates the 567 municipalities, 21 counties in the state. You do not supervise the MUA's. You talk about local governments. Do you consider MUA's any form of local government or any form of government?

A. Yes, sir, I definitely do. In fact, as I read the state constitution, it indicates that the legislature can create and abolish local governments. They are, indeed, the shadow government of New Jersey because they don't report to the public, but they are more than a billion-dollar enterprise out there. And I would like to bring some light into the shadow, so to speak.

Q. They certainly have an effect upon the constituency which they serve, do they not?

A. Absolutely, they are a taxing district. Whether it's a user charge or taxes, it's still money that we taxpayers all have to pay out annually.

Q. Are you familiar with the organizational structure of MUA's and how the authority commissioners are appointed and that sort of mechanism?

A. Yes, sir, the local authority is created by action of either a county or municipal governing body, and they certainly have the legal right to appoint the appropriate individuals ...

The authority membership is normally for a five-year term, appointed by the governing body, and each year there's a new member appointed, staggered terms, one every year. But once the authority is created, it's autonomous. It has a great deal of power and it, in essence, can pick their contractors and their employees and they can set the budget, if, indeed, they have one, because unfortunately, I'm not convinced that all authorities have an annual budget.

Q. I see. Are there any qualifications, to your knowledge, for appointment as a board member?

A. No, sir, there are not.

Q. And to your knowledge, are there any qualifications for appointment as executive director of an authority?

A. No, sir.

Another exhibit depicting the organizational structure of authorities (See next page) led Skokowski to criticize the lack of standards for the selection of consultants and other "professional" advisors:

Q. Would you look at that chart and on the lower left where it has the "Professionals," if you will, who work with authorities, starting with the "Consultants" on the top line. How are those consultants chosen, to your knowledge?

A. It's an excellent question. They're chosen, hopefully, based on professional expertise, but they're selected by the authority commissioners without any review or oversight, and as long as they have the license they are selected. There is no requirement that there be any standards.

Q. Well, looking at all of those that might be called professionals, going down that list with accountant, attorney, engineer, et cetera, are there any limitations, to your knowledge, on the fees which these professionals may charge the authorities?

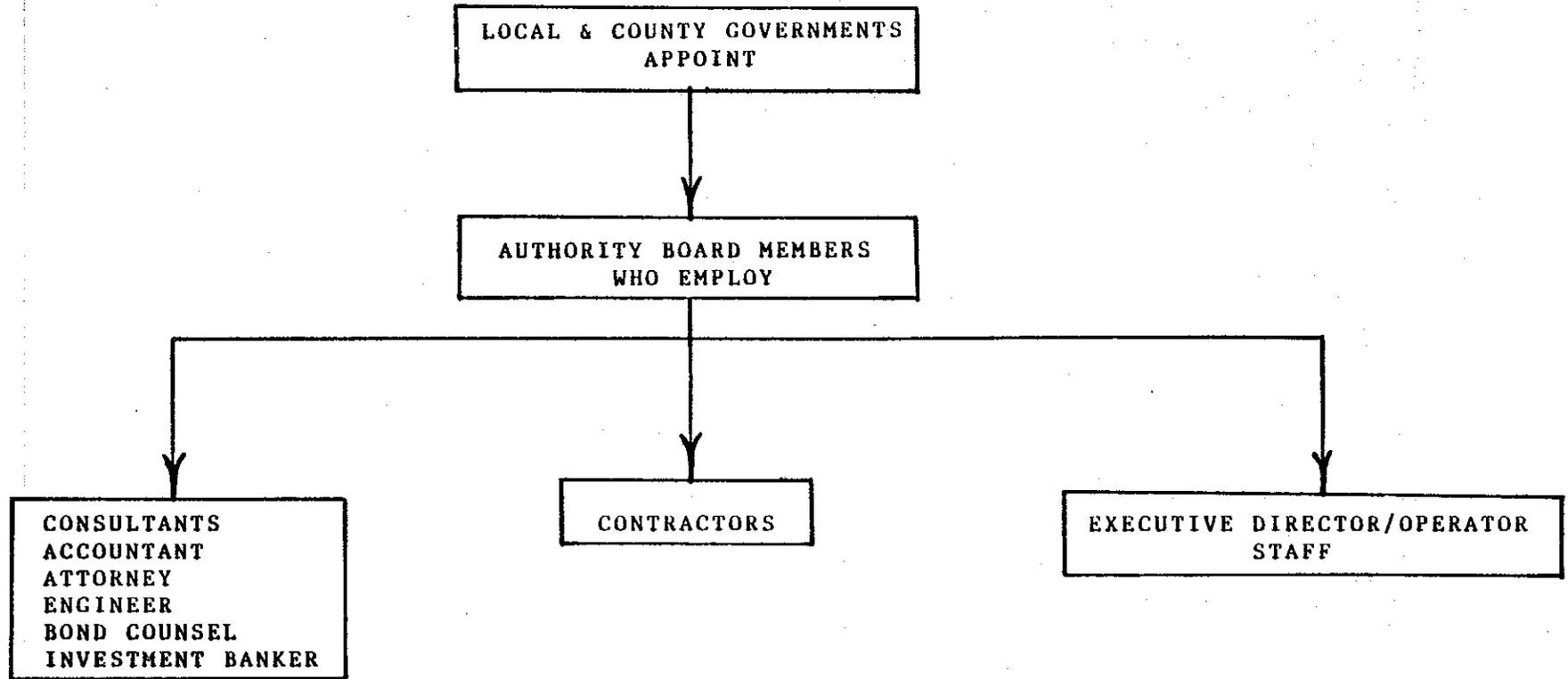
A. Absolutely not.

Q. With regard to the contractors who appear in that box right in the center, do you know how the contractors are selected?

A. Hopefully, I say that carefully, hopefully, the contractors to construct a facility are selected from public bidding under the Local Public Contracts Law. It is extremely clear to me that 40:A-11, which is the Local Public Contracts Law, requires MUA's and sewerage authorities to comply with the provision of that particular statute. I hear that that's not always the case, but certainly it is the way it should be done.

Q. Have you heard as well that there are some MUA's who feel that the Local Public Contracts Law is not applicable to them?

SEWER & MUNICIPAL UTILITY AUTHORITIES STRUCTURE



-17-

MUNICIPAL UTILITY AUTHORITY - Construction and operation of freshwater, sewerage, solid waste, and hydroelectric power facilities

SEWERAGE AUTHORITY- Construction and operation of wastewater facilities

A. Yes, I have, and yet the law specifically spells out the word "authorities," local authorities.

Q. So there's no question in your mind that it does apply?

A. That's correct.

Q. Would you explain in some detail how MUA's are funded, where they get their money to carry out their projects?

A. Well, certainly there are a number of MUA's that have operated in the State of New Jersey that have received federal and state grants and oftentimes they're really federal dollars being passed through the State Department of Environmental Protection.

Additionally, they have the right to go out on what are called bond anticipation notes, better known as bans to obtain their particular funding for various activities. Additionally, there is, to my personal knowledge, no limitation as to number of years in which a municipal utilities authority may roll over those particular bans.

By rolling over, I mean keep on going back to the bank year after year to refinance the particular operation, very similar to a person who takes a loan one year for \$1,000 and the very next year borrows \$1,200 to pay back the original principal plus the interest, and on and on and on.

Now, the concept is that MUA, and many are excellent MUA's and certainly, Mr. Chairman, there are a variety and a large number of sewerage authorities and MUA's that are operating to peak efficiency and deserve a lot of credit, but there are those, unfortunately, who have been borrowing moneys on bond anticipation notes continually and rolling over these funds without generating a revenue to pay off these bond anticipation notes, and that is a frightening circumstance in the State of New Jersey.

Q. I take it that your division does not have any supervisory power over these MUA's and sewerage authorities?

A. That's correct. The only authority that we are aware of is the fact that they must file an audit report with us. However, as the chairman of the finance board and prior to my assuming that role of the Local Finance Board, we inquired of the Attorney General for a formal, legal opinion as to our rights and obligations to supervise local authorities. There are those of us who believe that is a role for the Local Finance Board and the Division of Local Government Services.

Q. You have just stated that the MUA's do file audits with your division. Are you satisfied that these audits are in a standard form and in the form acceptable to your division?

A. No, sir, I'm not. The division, most recently, has obtained some really mediocre funding to get involved in this particular area, and one of the first things we've done is issue a contract to a consultant to assist us in the preparation of a standard audit guide and a red-flag system to bring forth trouble areas to our attention.

Q. How will that assist your division in carrying out what it feels it has to do with these MUA's?

A. Well, it's a very, I think, good system and it's a good beginning point. It is not overly aggressive. What we propose is a 26-week system, whereby, a consultant would aid our staff in the development of procedures. It's a mutual training ground. It would provide us with a system of knowing when there is insufficient money to repair the facilities that are involved. It would provide us with techniques to assure a standardized audit and would bring us up to the forefront, what is called in the accounting journals fixed-asset accounting, which does not exist in the State of New Jersey and which is really a requirement, if not enforced, but a

requirement of federal grants on such activities as sewerage and MUA authorities. Such accounting would see to it that we don't have collapse of the infrastructure.

The Camden County Authority Probe

Director O'Halloran asked Skokowski to describe the role of the Local Government Services Division in the 1976-77 investigation of the Camden County Municipal Utilities Authority (CCMUA). Despite the age of that inquiry, the debt-burdened Camden authority, which has yet to construct a facility adequate to meet its county-wide obligation, retains its potential for total collapse. Skokowski cited findings of a fiscal audit of the CCMUA by his division as an illustration of the problems that could afflict other such entities in New Jersey:

Q. Could you briefly highlight the findings of that audit that you conducted?

A. Yes, we reviewed all the records of the authority and we found out that the commissioners of the authority were involved in both operations as well as establishing policy. We found some of them had daily contact with the direction over the activities of the engineering-consultant employee attendants and overriding the executive director's recommendations on an employee matter or matters. We found that there was a violation of the principal policy versus execution. We found that whenever the executive director would be overridden, the reasoning was not clear as to, on the record, as to why that would occur.

We recommended, that there be a code of ethics established for the commissioners of the CCMUA, and I think that would apply to all public authorities.

We also found, and this I think is most problematic, they exhibited extremely poor management over consultant contracts. They selected a firm which, to our information, had little experience in sewage disposal systems, and in another case, a firm without any apparent execution or review of the firm's credentials by the CCMUA. We found that the contract negotiations procedures were really very poor. We

further found out that the CCMUA bylaws required the chairman to execute legal instruments or documents approved by the authority, but we also found that the award of these contracts were sometimes without prior consent of the authority commissioners.

The monitoring of the contracts that we have reviewed consisted only of CCMUA staff reviewing arithmetic calculations and determining whether reimbursements were proper. We found that CCMUA is being billed for costs not directly associated with the authority.

And we also found that the CCMUA commissioners increased the cost ceilings on their consultants contracts without amending the contracts, which, in my mind, is a violation of the Local Public Contracts Law. Certainly the engineering firm of Porter & Ripa needs nothing else to be said. They were deeply involved in Camden County and had a contract more than doubled from 1.5 to \$3.3 million. And, as I think, a partial result of inquiry that was made in this regard caused the disbanding of that particular firm.

Additionally, we found examples of what local governments, municipal and county governments, determined to be excessive spending of administrative costs. We found that the CCMUA owned two cars and at least three others, and those cars, by the way, were not leased through Local Public Contracts Law because the lease extended for a period not allowed in the Local Public Contracts Law. The cars had no guidelines for their use. They were perhaps a little more luxurious in some cases than municipal governments are able to purchase today.

And we even found that they had no controls over business travel expenses. We encountered the fact that they went to the islands, just about the entire staff and commissioners of the CCMUA at one particular point in time, and such travel is unheard of anymore at the municipal, county or even state level. These kinds of excesses, perhaps, are minor in terms of actual dollars, but

they do demonstrate to us the fact that the CCMUA was not at that particular time concerned about cost. They had yet to build any facilities to generate money, income, so, therefore, these kind of expenses certainly seemed extraordinary to us.

We also recommend that they can save money, a great deal of money, if they were to hire a full-time attorney rather than relying on their consultant solicitor, who was, at that particular time, for a part-time assignment, was paid \$39,000 annually.

Q. Okay. Do you know the operational status of the Camden County Authority at this time? Is it still self-sustaining is what I'm getting at.

A. No, not self-sustaining... It added a brand-new administration building in the City of Camden that is a very pleasant-looking structure and would appear to be a structure that was built looking for great expansion because it seems a little large for the staff that they might have at the present time.

Q. How many customers does the authority have at this time, if you know?

A. To clarify the question, the paying customers are limited to the City of Camden. The other municipalities in Camden County were forced, by court action, to join the CCMUA, but because CCMUA is not building any new facilities they don't have to get involved at this particular time.

Q. So that their user right now is the City of Camden; is that it?

A. Yes.

Q. So they have not built anything yet for which they were formed; is that correct?

A. That's correct.

Q. Now, you mentioned before the practice of rolling over. I assume that, based upon what you just said about Camden

County, that they have engaged in this rollover operation more than once?

- A. Yes, sir.
- Q. Do you know how many times they did?
- A. I would say that we could estimate six or seven times.
- Q. Is that rare? Is Camden County a rarity or common practice in the field?
- A. It's a fairly common practice until operations begin. I should point out that the local bond law that applies to municipalities and counties limits such rollovers to 5.5 years and that is the ultimate limit that's allowed for municipal and county governments, and we encourage them to go to permanent financing a lot earlier than that.
- Q. If there should come a day of reckoning when these MUA's must stop the rolling over and are unable to pay or to repay the debt, who pays it?
- A. Taxpayers of the various counties...the bottom line is the taxpayer.

Legislative Reforms Falter Despite Probes

Skokowski was asked to relate other investigations of authorities to current problems spotlighted by the Commission's public hearings - and to unsuccessful legislative efforts to make authorities more accountable to the public:

- Q. Now, did your office also conduct an examination of the Western Monmouth Utilities Authority?
- A. I was called to a meeting with the Division of Criminal Justice several years ago to consult with them about an investigation underway involving that particular authority. It was not exactly a full, total review like Camden County's was.
- Q. Could you give the Commission the benefit of any highlights of that examination or that meeting?
- A. The concern there was represented to be the fact that the transactions taking

place to fund the operation of the authority involved underwriters who would make negotiated bids on option notes being issued by the authority...money funds that could be used for purposes other than the fund's purpose. By that I mean the fact there are certain individuals who may have been at the receiving end of money as a result of their official position which did not involve the payment of any funds.

Q. All right. Are you aware of any improprieties or any problems in recent time, and by that I mean within the last two years, involving the Hudson County Municipal Utilities Authority?

A. Yes, sir. There was a problem with the rollover of Hudson County Municipal Utilities Authority last year. It was resolved temporarily, but certainly the long-term solution has got to involve state involvement to see to it that the fiscal integrity of all MUA's, especially Camden and Hudson, are taken care of appropriately.

Q. Has there been any legislative attempt in recent time to impose any regulations for oversight of MUA's in the state?

A. Yes, sir, there has. There has been an assembly bill last year called Assembly Bill 1533 and it's been reintroduced this year as Assembly Bill 144, and additional bills in the Senate, that would impose many of the same controls our division has over local governments to local authorities. We would, for example, have to receive copies of the budget. We would have to make sure that their creation as an MUA or authority was economically viable. We would have to review their project financing to make sure it is economically viable and we would have a variety of financial reporting systems installed.

Q. What happened in the past to Assembly Bill 1533?

A. It was not brought up for vote.

Q. And pending at this time is Assembly

144; is that correct?

A. Yes, sir.

Q. Generally, the bill provides, or the bills provide, that your division would have approximately the same kind of supervisory authority over MUA's, as you know of, over local governments; is that correct?

A. That's correct.

Q. Is there not in this state an association of authorities that is a kind of trade association? Are you familiar with that?

A. Yes, sir, I am.

Q. Do you know whether or not the Authorities' Association has taken a position with regard to this pending legislation?

A. They do oppose it.

Q. Would the passage of this legislation require any additional personnel in your division to enforce the provisions of the law?

A. Yes, sir, it would; not a large staff, but certainly a few people are needed.

Q. By a few, do you mean two or three or do you mean more than that?

A. I would, if I had my druthers, I would prefer five or six. I also would like to do something that's perhaps never been done before, and that is add a staff member who is skilled in the engineering field and could provide technical assistance and advice to these authorities on ways to operate that are cost-effective from a non-abuse -- use the term partisan, not in the term of partisan, but non-partisan activity, in the sense he would be the person trying to get the most cost-effective procedure underway rather than building consultant fees.

Q. Mr. Skokowski, would it be fair to say that (unlike) counties and municipalities with very high visibility and which are subject to regulation by your office in many matters and in many facets, would it be fair to say that MUA's, as compared with local governments, with millions of dollars available to them through grants and through bond proceeds, and as you have called them, shadow governments, are very much less visible and that these MUA's are subject to virtually no state fiscal control?

A. You're statement is quite correct.

Q. And it is the desire of your division to change that around to see to it that some controls are made viable over these MUA's and sewerage authorities?

A. That's correct. I don't like the word "control" so much. I like to be a part of what they're doing and make sure they're doing it right. The majority, who do the job right, should have no problem with our involvement. Those that need help should receive it and, hopefully, get a better bond rating and therefore less cost to the taxpayer. I certainly encourage that. I have made a budget request in the state budget for that kind of funding for the past several years and I am very supportive and actively working to get this system underway.

Present Authority Audit Filing "Useless"

The Commission noted that existing law requires local authorities to file annual fiscal audits with The Division of Local Government Services -- a requirement that Skokowski previously described as ineffective. Commissioner John J. Francis asked for an additional explanation:

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Do you have the power to do anything with those audit reports?

A. Frankly, the audit reports that we receive, I would say, are almost useless or they are less meaningful than the audit system that I would prescribe.

They merely indicate moneys come out, money has been spent for this particular activity. The controls of that money, how it's been utilized, are not shown as municipal and county audits would show. The scope of the audit is not uniform and oftentimes is very, very scanty about what it indicates.

Q. You've anticipated my next couple questions. There is no uniform system of accounting, I take it?

A. That's correct.

Q. There is for municipalities?

A. Yes, sir.

Q. Are these municipal reports done by an independent CPA?

A. They are done by a licensed CPA or registered municipal accountant. Normally, CPA's are controlled by professional services board by the Department of Law and Public Safety.

Q. In your opinion, is it enough of a safeguard, enough of a check, enough of a restraint, that the bonds issued by MUA's and sewerage authorities sell in the marketplace and that the authority is obligated to pay back the debt it incurs by selling those bonds?

A. I think I can answer that question most directly by indicating to you that I have, over the past three years, spoken to analysts on Wall Street and told them of my desire to get involved with sewerage authorities, MUA's and the like, and they praised that particular effort. They further indicate it should probably make the cost of the bonds go down (and) help reduce the increasing cost of funding. They like a full reporting disclosure and, believe me, they do like what we do for municipal and county governments. So, I can say to you that this has got to occur sometime in the future.

Q. You described for us some of the problem that you found in Camden which may still

persist. With the lack of oversight that you've described, could those same problems exist in many other MUA's and sewerage authorities had it not been known to any regulatory body?

A. Yes, sir.

Q. We've also heard in some of our private sessions that these, the bills that you're supporting, would provide greater (supervision) over an authority than over a municipality. Is that true?

A. Frankly, I believe if you read those bills, they parallel very closely municipal and county laws. The only thing that I could see anybody saying is the fact that creation of an MUA or authority should be reviewed first to make sure it's economically viable. We don't have to do that with local government because every square inch of New Jersey is incorporated already, that's correct, that's the only difference I, personally, see, sir.

Criminal Probes of Authority Misconduct

The next witness, Edwin H. Stier, director of the Attorney General's Division of Criminal Justice from 1977-82, reviewed the record of state investigations and prosecutions of fraud and other allegations against authorities. He contended that such law enforcement activities were, and continue to be, essential -- but would not alone produce the necessary reforms of the authority system. He agreed with Local Government Services Director Skokowski that statutory supervision by the State was needed to provide a basis for more effective law enforcement of both a civil and criminal nature against misconduct by authority members and employees and by vendors and others who provide services and supplies to authorities. Attorney Robert Geisler, who supervised the Commission's investigation but has since entered private practice, questioned Stier:

Q. From your position as Director of Criminal Justice, do you perceive any problems with utilities authorities and sewerage authorities as governmental bodies?

A. Yes, over the years that I've been with the Attorney General's office we've conducted numerous investigations of allegations of criminality and mismanagement that have arisen out of

the operation of utilities authorities. If I had to summarize the conclusions that I've come to, it's that we found a consistent pattern of administration among utilities authorities that is weak, inadequate. In effect, these authorities are run as though they are mom-and-pop operations.

Q. What are the specific problem areas?

A. Well, they're numerous. I think that the problem areas start with the lack of accountability; I suppose that's the best way to describe it, lack of accountability to the public for the operation of these authorities. The whole concept of creating an authority and making it independent of local government was, in part, for the purposes of insulating it (from) political interference. That insulation, however, as a practical matter, has not protected it from political interference and, in effect, political interference still goes on in the operation of these authorities. But the insulation that they've been given by removing them from the duly-constituted, Constitutionally-established local governments of the state, that insulation protects the political interference from detection and from being held accountable to the public. I don't want to indicate by my remarks all authorities, it's by no means true that all of them are poorly operated, but many of them are and nobody can do anything about it in part because of the fact that these authorities have been insulated from accountability to the public or any governmental body.

To be more specific about it, I think that the problem areas are in the lack of standards and lack of oversight in the selection of members, selection of contractors and procedures under which they operate -- auditing, fiscal accountability, quality of performance. There are virtually no standards by which these authorities have to operate and there is no single governmental entity overseeing their operation generally.

Q. Are the criminal laws of the state and the enforcement of those laws by the Attorney General's office and the county prosecutors sufficient to protect the public from the problem you just enumerated?

A. No, in a criminal investigation or prosecution we can only scratch the surface. We can only find the most flagrant kind of situations, and if the people who have decided to abuse their positions in these authorities are stupid enough to do it in a way where we can catch them, we can then conduct a criminal prosecution. In the majority of cases, either the system of standards and controls is inadequate to assure that in order to cheat the public somebody has to commit a crime to do it, or the problem is simply one of waste and mismanagement and not a criminal problem and we can't prosecute it.

But, to suggest that these authorities can be held accountable to the public through the criminal justice system, I think, is incorrect and is an inadequate solution to what I think is a major problem in the state.

Q. Has the Attorney General's office conducted many investigations into municipal utilities authorities and sewerage authorities?

A. Yes, we conducted numerous investigations all over the state.

Q. Have the investigations resulted in successful prosecutions?

A. In some few cases, yes, we've been able to determine that there were criminal violations and to gather enough evidence to support an indictment and a prosecution.

Q. Is the absence of a successful prosecution an indication that the problem is also absent?

A. Absolutely not. In many cases we have been frustrated in not being able to develop evidence of criminal violation

sufficient to justify prosecution. But we found mismanagement, absence of controls and all the other problems that I've alluded to, and in a number of these instances we have gone to other agencies of government which have a responsibility to oversee, to one degree or another, the operation of utilities authorities and ask them to intercede. And in some cases that has been (only) moderately successful, not because of a lack of enthusiasm or desire on the part of those state agencies to do anything about the problem, but because of an absence of authority to do it.

So, we have tried to take the information that we've gathered through our criminal investigations and provide it to other agencies. But at present, there is not sufficient authority in other agencies to step in and solve the problem. And just because nothing has been done by way of indictment or prosecution in that particular investigation should not in any way suggest that no problem exists.

CCMUA and Other Prosecution Targets

- Q. Do you have any concrete examples of some of the problems you've spoken to us about?
- A. Well, I think that the most flagrant and highly-publicized example of abuses by a utilities authority is the Camden County Municipal Utilities Authority situation. I know that Barry Skokowski testified at some length about it, and I don't want to repeat the details he provided. But I think in analyzing the history of the CCMUA the problems that were brought to the surface in the course of that series of investigations, audits, hearings and so forth, and by generalizing from them, I think you're going to find some insight into what the problems are in other utilities authorities.

That situation, CCMUA, was probably the most thoroughly investigated, audited and prosecuted situation that I know of in this state. And to this day, I'm not

certain that any significant changes have come about as a result of all that.

Q. How did that investigation begin?

A. Well, the investigation began with an allegation that an attorney who had been retained by the CCMUA was receiving excessive fees. We investigated those fees. I think the figure that we were told was \$10,000 a month for his legal services. We look into that, and as a result of that investigation, and in talking to people at the CCMUA and who had knowledge of it, we began to find a whole series of problems.

One investigation led to another. And I suppose if I were to catalog those investigations they would include the selection of engineering firms; that is, the process by which consultants who are selected by the CCMUA indicating the potential, if not for outright corruption at least for political favoritism and the lack of objectivity in that selection process; the personal profiting by individuals who are politically influential with members of the CCMUA (and) the decisions made by the CCMUA; that is, knowledge about where the sewer lines would go and the obvious appreciation of property values in those areas; excessive billing by a consulting firm.

We found in our investigation that at the time of our investigation fully 67 percent of the total funds of the CCMUA were paid to a consulting engineer in a series of very wasteful spending practices by the members of the CCMUA as though the funds of that entity were their's to do with as they pleased, and that they had no responsibility to the public, to the taxpayers, or to any governmental entity.

Q. Did any indictment result from the investigation?

A. Well, a number of things happened including a major indictment. The State Grand Jury indicted the firm of Porter & Ripa which was the consulting engineering firm for the CCMUA, charging in its indictment approximately \$400,000 in

fraud in its billings to the CCMUA, that is \$400,000 which, according to the indictment, were charged to the CCMUA improperly with knowledge that the CCMUA was not obligated to pay those amounts.

The corporation and several of its employees were convicted, and, in the course of that criminal prosecution there was also a lawsuit brought by the Attorney General against Porter & Ripa and the members of the CCMUA for permitting themselves to be defrauded by Porter & Ripa. The full amount of that lawsuit in its complaints, that is alleged in the complaint, was something around \$700,000.

We requested that the Department of Environmental Protection examine the operation of the CCMUA to determine whether or not they were complying with governmental standards to the extent that DEP has the authority to control what CCMUA did.

We asked them to exercise that authority and we asked for an audit by the Division of Local Government Services or the Department of Community Affairs, which audit was conducted with the conclusions that Barry Skokowski provided to the Commission just a few minutes ago.

And last, at the request of the then Attorney General Hyland, the Freeholders of Camden County initiated a removal proceeding against members of the authority, a very cumbersome, time-consuming, difficult proceeding which ultimately resulted in the removal of several members of the authority, including its chairman.

- Q. Do you have any opinion as to what the root of the problem was in Camden County?
- A. Well, if I were to pinpoint one major problem, it was excessive political interference in the way in which that authority operated and an inability on the part of the county freeholders, because of the legal independence of the

authority, to do anything about it, assuming that they had any desire to do anything about it.

Q. Was the authority being used as a political plum?

A. Well, at the time of our investigation we had very clear intelligence information indicating that there were two major political factions in Camden County; one headed by James Joyce, who has been convicted of jury tampering, and another headed by Angelo Errichetti and that those two political factions were vying for control of the authority, and ultimately struck a deal, which at the time of our investigation, put Joyce in control of the authority. And I think the record clearly demonstrates that James Joyce exercised very tight control over the way in which that authority operated.

Q. Do you know of any legislative or administrative changes that have occurred since the Camden County situation?

A. None to my knowledge.

Stier Suggests Reforms

Q. Do you have any recommendations to this Commission that should be enacted?

A. Well, without outlining in detail a specific legislative scheme, it seems to me that when you add up the total amount of money that is funneled by the federal and state governments through these so-called independent authorities and you compare the degree of accountability and oversight that the public can rely on with the degree of accountability and oversight that is imposed on a municipality, there is a serious inequity. I haven't added up the figures, myself, but I have got to believe that the total amount of money that runs through these sewer authorities very closely approximates, if it doesn't exceed, the total budgets of all municipalities in the state. Yet, there is no accountability to the taxpayers or anybody else for the way in which they operate. I mean no

meaningful accountability.

Sure, there is a requirement for outside audits, but those outside audits that are done by private accounting firms are inadequate to insure the public that these authorities are operating properly. It seems to me there's got to be a major overhaul of the standards by which these authorities are made to operate; that is, they have to be uniform, consistent standards.

And second, the responsibilities for the overseeing, for policing these authorities has got to be fixed in one place. Right now there's a serious split between the Department of Environmental Protection and the Department of Community Affairs. The Department of Community Affairs has, to some degree, the responsibility for the fiscal oversight; to some degree, not an adequate degree, but to some limited degree. The Department of Environmental Protection has the responsibility for environmental oversight of these authorities. I believe that so long as you have that division, you're still going to have gaps; you're still going to have potential for problems.

To give you an example, we found one authority in which they finally got, I think it was, a sewer line or a water line completed, and because of inadequate inspections, it was determined that the pipes were laid too shallow, and over the winter they all froze up and broke and the job had to be done all over again. Now, who is held responsible for that oversight? Is it a fiscal problem? Is it an environmental problem? Seems to me that oversight has got to be in one place, and that one agency has got to...impose standards and to police them, and those standards ought to include standards for the selection of the members of these authorities.

I can't believe that in the private sector a business that had to spend many millions of dollars, as these authorities spend, would go out and select a group of well-meaning amateurs

to run that business. Private business just doesn't run that way. People who ought to be in charge of running a business, a multi-million dollar business, are people who ought to know something about that business. Well, the selection of these members of the authorities, I submit, in most cases is not based on their experience in managing millions of dollars, it's based on political relationships.

Secondly, selection of staff has got to be made on the basis of some objective professional qualifications. It's the staff, in many cases, which actually has the responsibility for spending that money, for seeing to it that the selection of consultants and contractors is done on the basis of objective standards. And if you don't select the staff properly, if you base that on political considerations, if you don't have people who have the right kind of qualifications for the job, you're going to run into the kind of problems that we've encountered.

You've got to set uniform accounting procedures; that is, what kinds of records not only have to be maintained by the authority but what kind of records have to be maintained by the contractors with which they do business, so that you can adequately audit performance to determine whether or not money was paid in kickbacks, bribes to various public offices, to make sure that cost overruns, to make sure that change orders, which frequently occur in the course of constructing these very elaborate systems, are done on the basis of genuine need.

Purchasing procedures have got to be established, so that even in the selection of contractors, we go beyond simply competitive bidding and require adequate prequalification of bidders, so that people who are performing these contracts know how to do the work, have a proven record of success, and to make sure that the bidding laws aren't being circumvented by the kind of excessive billing through cost overruns, change orders and the like.

There has got to be a system for the selection not only of contractors, but consultants in which the bidding laws don't require that there be competitive bidding. Professional services are an area in which I believe that standards have got to be set. The selection of attorneys, engineers and the whole variety of people who have fed off of these utilities authorities over the years, that has got to be brought under control.

In addition, there has got to be genuine, thorough outside review, not only of the budget but adequate auditing of the expenditures made by these authorities; review of purchasing procedures and the purchasing itself to determine whether or not it was done in compliance with proper standards. Then, there has got to be some outside oversight of contract compliance to make sure that even when the job is done, that is when you have a sewer plant operating and sewer lines actually in and functioning, whether or not the authority got its money's worth or whether in ten years that facility is going to fall apart and we're going to have to go through the whole same construction process all over again.

Now, without getting into a lot of detail about how that can be accomplished legislatively, it seems to me it's long past time when the legislature, and whoever else has some degree of authority, to begin imposing and enforcing these standards.

Overview by U.S. Inspector General's Office

Kenneth Konz, special assistant to the Inspector General's Office of the U.S. Environmental Protection Agency (EPA), testified next about investigations and audits of "possible fraud, waste and abuse" of sewerage and public utility authorities. The results of some of the inquiries in which he participated were cited by SCI Chairman Lane in his statement opening the public hearing. On several occasions, while on temporary assignment to the then Commissioner David J. Bardin of the State DEP, Konz conducted audits of certain local authority operations in New Jersey. From the standpoint of the Federal EPA's inspection process, Konz provided a specialized review of both general and specific oversight problems with authorities.

Sewerage Construction Oversight is State Responsibility

Konz recalled that from 1976 to 1980 the State DEP had a staff of construction inspectors who had had on-the-job experience and who "kept track of all construction projects around the state," made "unannounced drop-in visits" at key periods of work-in-progress and maintained effective oversight. However, he pointed out, the DEP by 1980 had discarded this inspection process and reverted to the Federal system of infrequent, pre-announced inspections of a limited nature. The Federal system, he conceded, failed to uncover construction problems at a time when such deficiencies could be easily and cheaply corrected. The State DEP's inspection cutback, Konz emphasized, was a misjudgment, particularly since, in his view, full responsibility for the consequences of poor construction now rests with the local municipality or authority and ultimately with the state itself. The Commission asked Konz to elaborate on this topic:

EXAMINATION BY COMMISSIONER FRANCIS

Q. Mr. Konz, does the federal EPA conduct any kind of a review before it extends a grant to an MUA to see if that authority has the necessary competence, expertise and capacity to handle the funds and to build the project effectively and efficiently?

A. Historically, the answer to that is no. Federal grant programs have operated primarily on the basis (that)...the state and local government entities are responsible parties for grants. EPA's regulations in this vein have recently been tightened up in that a grantee is now supposed to demonstrate his capability. And what this means is if in future cases where we have instances and knowledge of previous deficiencies in grantee operations, they're going to have to, in the future, be able to demonstrate or explain to us what corrective action has been taken so such deficiencies don't continue.

Q. Do you have any feeling as to whether EPA would like greater authority in that area of review before it extends a bid or would you prefer to have it in a state authority or in municipal authority itself?

A. It's my opinion that that responsibility does rest primarily with the local government. In cases like New Jersey where we have municipal utility

authorities that are somewhat independent organizations without a great deal of oversight, I personally believe that a need for accountability and need for establishing clear responsibility and seeing that adequate systems are there is essential as the local governmental municipalities. And MUA's are created under state authority, under state law. I believe that the state body would be appropriate in exercising that oversight.

EXAMINATION BY MR. GEISLER:

Q. Mr. Konz, could you give us your opinion of the future role of the Federal Government in giving municipal utilities authorities and sewerage authorities grants to construct projects?

A. Okay. Currently the Congress, in Supplemental Appropriation Act, just provided EPA \$2.4 billion in 1982 money to continue funding the program. I believe New Jersey's share of that money is \$84 million. It's my understanding that at least for the next couple of years the Federal Government will continue providing construction grant funds.

There is a provision in the last legislature, however, which will serve to reduce the federal share from 75 percent down to 50 percent.

Above and beyond that time, ultimate conjecture as to Federal Government is up in the air. This particular program is among those that may end up at the state level under President Reagan's Federalism in delegating programs to the state. To talk about the interim period, it is clear, under EPA regulations as being clarified more and more that responsibility for the project will rest with the grantee.

The Federal Government, in policy documents being drafted right at this time, is taking a very clear position that grantees are responsible for their projects. The Federal Government will not come in and pay to repair projects

we've already funded that failed in their normal life. If we've got a 25 year project and it fails in ten, who's going to have to pay for the repairs? It's the local government.

Q. When you say the grantee is responsible, to whom are you referring? Are you referring to the authority board members, the attorney, the engineer, the accountants?

A. The authority is responsible. Now, unfortunately, what that will probably mean for the taxpayer, and it's the prime reason that additional oversight is needed, is that, yes, the authorities are responsible; yes, the authority may have to pay back lots of disallowed cost; they may have to expend money to repair facilities. The only source of money for those facilities, as you can tell when the Federal Government was no longer there, is the general public.

Q. But when you're talking about responsibility, are you talking about responsibility of the authority board members or of their consulting staff? Where does the responsibility ultimately lie?

A. With the federal grant, responsibility lies with the authority itself. Now, so many of the problems, many of the deficiencies that we observed in the course of our audits may well, in many cases, are the responsibility of the consulting engineer or of the contracting firm.

Now, as far as responsibility there I'm sure under the law that a grantee may have some recourse against its consulting engineer and its contractors for improper work. The only ultimate recourse the Federal Government has is to the grantee. We are in the process of establishing a system of what is called suspensions and debarments at the federal level. What we anticipate using these for besides instances of fraud, payoffs, collusion and bids and other criminal improprieties, we are also anticipating using this system of

procedures against ... engineering firms who perform inadequately.

What this will basically do is if a firm is found not to have performed satisfactorily on the work, they will be barred from doing business under the program for a set period of time.

Facility Construction Should be Expedited

The Commission also expressed a concern about the delays between the time an authority is created and the actual construction and utilization of its plant. Questions on this subject, on the high cost burden to taxpayers of rehabilitating poorly-built facilities, and on other aspects of authority malfunctioning were put to the witness:

EXAMINATION BY COMMISSIONER DEL TUFO:

- Q. Do you have any view, based upon your experience and your expertise, as to a general rule when an authority, let's say, subsequent to its creation should reasonably commence construction of the utility for which it was formed to provide and when that utility should be operational; say an MUA putting in a sewerage line, created in one year, how soon after that should we see some visible signs of progress.
- A. In the projects I've looked as I would say that typically the planning and design phase of a project should take no more than two or three years, and that construction should be underway in about three years, and that, depending upon the size of the projects, within a year or two after that...the project should be able to operate.
- Q. In the sense you'll be getting user fees if you have a facility in place and being able to pay the debt.
- A. It's absolutely essential to move as quickly as possible to get it on line. The public gets the environmental benefit from it, plus the revenues start being generated to pay off the substantial funds that are involved in these projects.

Q. And obviously it's important that the project be constructed properly, and you've had some examples in your testimony today where that did not occur.

A. No question about it. I've heard of instances where sewer lines were supposed to last 40 years have collapsed and failed in five and have to go in and repair them. Puts a substantial cost burden on everybody.

Q. Mr. Skokowski testified that he hoped at some time in the future that his agency would have on staff an engineering-type expert who might provide some useful type of information to MUA's in the course of the construction of projects or to give them some expertise in that type of professional operational area.

I'm looking at your letter to Mr. Geisler which has been marked as C-93, and I take it you would agree that there should be some state expertise in this area to assist MUA's who might not be gifted with that type of talent.

A. I fully believe that especially the smaller MUA's and municipalities should have available assistance. It is a big project, it is complicated and people working and having oversight have to have a basic understanding of construction and construction projects.

Q. Going back to the first two questions that I asked you; you're familiar with the Camden County Municipal Utilities Authority, are you not?

A. Yes, I am.

Q. And I'm asking this question in the the context of when facilities should be constructed and become operational. Do you know how long Camden County has been in the planning stage for the construction of sewerage facilities for the CCMUA?

A. My recollection, and I worked with the state agency while that investigation was going on, as I remember the initial planning for sewer facilities in Camden started some time in the late '60's.

- Q. And CCMUA has been in existence for over eight years or close to that?
- A. That's correct.
- Q. In any event, if one were to come to the factual conclusion that there had been no sewerage facilities constructed in Camden County by the CCMUA over this period of time, based upon the general rule of thumb that you testified to before, this would be, on its face, an unreasonable period of time?
- A. I would draw a conclusion that is an unreasonable period of time, I think, especially considering the millions of dollars that have been expended already with no tangible benefit.
- Q. With the Chairman's permission, Mr. Geisler has requested, and certainly the Commission agrees that Mr. Konz's letter to Mr. Geisler, marked as Exhibit C-93 will be made a part of the record, but with the Chair's permission, I would like to, very briefly, read two paragraphs of that letter into the record now, if I may. I'm referring to the fourth paragraph and final paragraph.

"In my opinion," this is Mr. Konz's letter, "any time the government commits to construction and operation of facilities which will be financed by and have a major cost impact on the public, the government must be held accountable for its action. In New Jersey, commissioners of municipal utilities Authorities are not. They are not elected. Expenditures are not reviewed by the public representatives. I believe this should change. Budgets should be required. Expenditures, accounting records and procurements should conform with the same laws as do local governments. Additionally, sewer charges, be they connection fees, operation and maintenance fees or replacement costs, should be reviewed by a State agency such as the Public Utilities Commission or the State Department of Community Affairs to assure that costs are reasonable and equitably distributed to all users.

"In making your decisions, I urge you to consider the long range implications. While I don't want to add to the bureaucratic burden on local government, the public deserves protection. Authorities must be held accountable. While providing oversight will necessitate expenditures for resources, in the long run cost savings and efficiencies should far outweigh the cost. Furthermore, the individual citizen pays the freight for this in the last analysis and can rest more contentedly based on the knowledge that someone is looking out for his interests."

Authority Bond Financing

Former State Treasurer Clifford A. Goldman, presently a visiting professor at Princeton University and a principal in a new firm specializing in public finance, testified on the procedures, objectives and problems connected with the issuance of revenue bonds by public entities, particularly sewerage and municipal utility authorities. His testimony immediately preceded public hearing episodes about flagrant improprieties in bond issue arrangements and sales by the East Rutherford Sewerage Authority and the Western Monmouth Utilities Authority. Goldman's views on authority financing, supplemented by subsequent public hearing testimony, provided the basis for Commission recommendations on this issue. Goldman's testimony, in part:

Q. Is there any difference between the sale of municipal bonds and authority revenue bonds?

A. Well, the difference, the major difference in the sale of, let's say, general obligation bonds of the government as opposed to authority revenue bonds is that the general obligations bonds are typically sold at competitive sales by sealed bids and the authority bonds are sometimes sold that way, but usually sold by the negotiating sales.

Q. Does this selection of underwriter by bid tend to protect the public more?

A. There are advantages and disadvantages to competitive bidding and to negotiating. The advantages of bidding, I think, are self-evident as far as ruling out favoritism and as far as securing the best price in the market at the time. There are advantages to negotiated sales in certain respects in flexibility of timing, and other things, but the advantages that are cited for negotiated sales, both in textbook description of this issue and in my experience, depend upon the ability of the issuer to conduct the negotiations.

Q. Regarding an authority, who pays the interest and the return of the principal on a bond?

A. The authority collects revenues from whatever its project source is and pays interest and principal from those revenues. In the case of sewer authorities, actually it is the user of the sewerage facilities who pays a fee and that fee then goes toward the payment of principal and interest.

Q. Are there other costs and fees involved in bonding?

A. Well, the sale of bonds involves a number of different fees and charges. The underwriter is compensated for his work by buying the bonds from the issuer at one price and selling them at a higher price to the investors. That, by the way, occurs in both the competitive sale and the negotiated sale.

The issuer has to have a bond counsel. There is a paying agent who has fees. There is a trustee who has fees and charges. There is typically an auditor involved in the procedure. There may be a financial advisor.

- Q. To your knowledge, is there any state agency that oversees authority bond sales?
- A. I don't believe there's any state agency which looks at a particular bond sale and approves it or in any way reviews it.
- Q. Is there any federal agency that does that?
- A. I don't believe there's any federal agency that specifically reviews bond sales. There are both at the state and federal level agencies which are involved in one way or another with the oversight of borrowing, but not sale by sale.
- Q. Does the Securities Exchange Commission regulate bonding in the same way it regulates stock transactions?
- A. The Securities and Exchange Commission does not regulate municipal issuers. They are exempt from the Securities Exchange Act. The dealers in municipal securities are regulated by the Securities and Exchange Commission through the Municipal Securities Rule-Making Board in a similar fashion. But the issuers, municipal government or authority is not subject to SEC regulations in the same way that a corporate borrower would be.

What Bond Counsel, Financial Advisors and Underwriters Do

- Q. Do you know whether there is any agency, either federal or state that oversees decision to issue bonds, the amount of the bonds, the selection of what is known as bond counsel, the selection of the financial advisor or the selection of an underwriter?
- A. I do not believe that those decisions are subject to review for prior approval.

- Q. Could you tell us exactly what the role is of a bond counsel?
- A. The bond counsel essentially has to opine that the bonds were issued legally and that they meet the requirements for tax exemption, which can be quite complicated. The bond counsel will oftentimes draw the bond resolution for the contract between the issuer and the bond buyer...
- Q. Could you tell us what role is played by an underwriter or an investment banker?
- A. The job of the underwriter in the transaction is to purchase the bonds from the issuer and then to resell the bonds.
- Q. What role is played by a financial advisor?
- A. A financial advisor is a consultant to the issuer where the issuer needs assistance in negotiating, for example, with an underwriter or, in the case of a competitive sale, where the issuer needs assistance in structure of a sale, making judgments about the timing, the size, the structure of the bond issue, assisting the issuer and securing the bond rating and so forth.
- Q. How were these three positions that you've just mentioned filled by most authorities?
- A. Well, I think they're filled in various different ways. The way we did it was to interview a number of firms in each category and select one that had the best experience and record of that particular type of financing and then keep those people as long as they did a good job. And, if they didn't do a good job, we redo the process and get someone else.
- Q. When a bond sale takes place does the authority become bound by a specific contractual obligation that may bind it for several years?
- A. Always the borrower has a contract with, in effect, the lender of the funds or bond holders, which lasts as long as the bonds are outstanding.

- Q. What is the substance of that contract?
- A. Well, in the case of a revenue bond such as you're discussing here, it would be how the moneys are taken in and to which funds they're deposited, when interest is paid, when the bonds may be purchased back or when they must be purchased back, a variety of other contractual protections for the bondholder.
- Q. Does the bond counsel make any guarantee that the elements of that specific contract are in the best interest of the authority or the public?
- A. Well, the bond counsel will, in these respects, advise the client as to the sufficiency of the contractual language to accomplish the purposes that are being sought.
- Q. Does the bond counsel get into the negotiations for the specific contents of that contract?
- A. The bond counsel participates in that procedure, yes.
- Q. Which one of the individuals that you mentioned is accountable for the authority getting the best possible financial deal when it goes to bonding?
- A. The authority itself is accountable for getting the best financial deal. If the authority has a financial advisor working for it, then the financial advisor shares the responsibility for advising the authority on the best terms that it could get under the circumstances.
- Q. From your experience, do most authorities have the expertise in their general staff regarding bond sales?
- A. I am not directly familiar with many, many local authorities. But since many of the smaller authorities sell bonds very infrequently, once or twice, perhaps, it would be unusual, I think, unless they had on their board people who are experienced in this field, it would be unusual for them to have permanent staff that was knowledgeable in this area.

Q. You mentioned a financial advisor before. Is a financial advisor the same as an underwriter?

A. No, an underwriter is a party to the transaction. The underwriter buys the bonds. The financial advisor is just that, an advisor, and advises the seller of the bonds about how to conduct the transaction vis-a-vis the buyer.

Q. Can or should underwriters act as financial advisors to authorities?

A. Underwriting firms do act as financial advisors. Some do. In that case, they will not participate in the underwriting of the bonds. There are rules which describe how they can or how they may not proceed as both financial advisor and underwriter.

Q. How are the interests of the authority and the underwriter different and how are they the same?

A. Well, essentially, you have a transaction where the authority is the seller of a product, a merchandise as it's called, which is a set of bonds, and you have the underwriter as the purchaser from the authority of that product. And so there is, in that respect, an investor-seller relationship, which presumably there's incentive for the seller to get the highest price he can and for the buyer to get the lowest price.

Now, I should say there is often a mutual interest in that the bond issue be successful and be undertaken well so that after the fact the underwriter can show that he's done a good job for the authority and will be rehired in the future by that authority or by other authorities who might ask for references on his performance.

Q. Are you familiar with the Municipal Securities Rule-Making Board?

A. To some extent.

- Q. Do you know whether or not that board has barred financial advisors from underwriting issues which they have participated in?
- A. There is a rule of that board, I think it was enacted in 1980, which defines the limits of a financial advisor participating in the underwriting. And generally speaking, financial advisors are not supposed to underwrite the same transaction that they advised upon for obvious reasons.

East Rutherford, Western Monmouth Transactions Questioned

- Q. Should a financial advisor have any association with an underwriter, and, if not, why not?
- A. First of all, a financial advisor should have no relationship with an underwriter on the deal in question. There is some gray area about whether a financial advisor should have any relationship with any underwriter even in a different state or on a different matter. But certainly on a transaction where the financial advisor or his client is the seller of the bonds, he should in no way benefit through the underwriter for the sale of those bonds.
- Q. Would it be unusual for the financial advisor to be paid by the underwriter?
- A. Yes, it would be.
- Q. Would that indicate anything to you?
- A. It would indicate that the financial advisor has his client's interest at conflict with his own interest.
- Q. At the request of the State Commission of Investigation did you review the certain facts of a bond sale conducted by the East Rutherford MUA in 1969 and 1971?
- A. Yes.

Q. During the East Rutherford bond sale the underwriter for those bond issues sold the issue, in its entirety to another underwriter who then offered it to the public. How would you characterize that transaction?

A. Too many people coming to dinner. I would say that the issuer in that case could have found the underwriter directly to sell the bonds and whatever compensation the second underwriter received probably could have been avoided.

Q. Could you describe what a typical fee arrangement would be for a financial advisor?

A. Financial advisors usually charge either by the bond, and when we say "by the bond" we talk about per thousand dollars, and typically, will charge \$1 per thousand, little more, little less, which is one-tenth of one percent; or financial advisors will charge on a per-house or per-project basis, which is preferable in my judgment, since it removes from the financial advisor any incentive to promote a larger, quicker bond sale.

Q. Were you also requested by the State Commission of Investigation to review certain facts and documents relating to the 1974 bond sale of the Western Monmouth Utilities Authority?

A. Yes, I was.

At this point the Commission read into the public hearing record an exhibit, marked C-91, signed by Alfred J. Marcus, secretary-treasurer of J.B. Hanauer Co. This exhibit was a certification by Marcus that J.B. Hanauer had been subpoenaed by the SCI in June, 1982, to produce documents relating to the Western Monmouth Utilities Authorities 1974 bond issue, which was underwritten by Hanauer. Marcus also certified that he had personally searched for the documents at the company's facilities in Livingston and East Hanover and had ascertained that no records other than a final prospectus was in existence, that his company's "standard operating procedure" was to destroy records over six years old in conformity with SEC guidelines, that the bond issue in question had been investigated by the U.S. Attorney's Office and the State Grand Jury in 1979, that the relevant records had been subpoenaed for those inquiries and had been returned to Hanauer in 1980 or 1981, and that, while he had no recollection of what was done with the records, "it would have been consistent with our

record destruction policy to shred them because they were no longer needed by the investigating agencies and were over six years old at the time."

Questioning of Goldman was then resumed:

Q. Did you, at our request, did you receive and review what has been marked C-91, a prospectus for the 1974 bond sales conducted by the Western Monmouth Utilities Authority?

A. Yes, I did.

Q. Is this the prospectus?

A. Yes, it is.

Q. Although you do not have the records of the underwriter, were you able to reconstruct the facts regarding the bond issue?

A. Well, let me say what we tried, what I tried to reconstruct before I answer that. What we have here is somewhat unusual. We have here the coupon rates that the issuer has to pay. Generally speaking, eight and a quarter percent. We do not have the amount for which the underwriter resold the bonds.

We have no record of it either as you say from the underwriter. There was no participation in this transaction by other underwriters in the syndicate, which there normally would be. So that there's no other syndicate member to go to for that information. As far as I can find out, the original advertisement that you often see in the financial press called the Tombstone --

Q. When you refer to "syndicate" are you referring to underwriting?

A. Underwriting syndicate. Normally, an underwriter will spread the risk or bring to bear the greater selling power of other underwriters by forming the syndicate. In this case there was one such underwriter.

In other words, the various methods by which one could find the sales price of these bonds by the underwriter were not available, and so in order to determine

what the spread was, in other words, what the underwriter's revenue was, we had to try to reconstruct the sales prices from other sources and I did attempt to do that and did, yes.

Q. Your statement is that it is unusual not to be able to find that information in the prospectus; is that correct?

A. Normally, a prospectus will list on the cover page so-called reoffering yield, that is you'll see here you have bonds with coupons of eight-and-a-quarter percent and you will see that they'll be priced to yield seven-and-a-half, or price to yield nine percent, and from that you can determine what the selling price is of a bond. That information is normally placed on the prospectus and is available.

Q. Could you tell us what you did in an attempt to determine what the fee that was made by J.B. Hanauer & Co. was?

A. Well, on the surface this is a \$12,250,000 bond issue, and in the records that I was given by the SCI staff, there is the fact that the authority was paid by J.B. Hanauer & Co. \$11,392,500 for these bonds. On the surface, therefore, the J.B. Hanauer made \$857,500, which is seven percent of the bond issue or, as we call it, \$70 per bond... These facts were given to me by the SCI from its investigation. Based on the few maturities that were given to me and based on what the bond sales at about the same time, I was able to attempt to reconstruct at what the yields might have been, what the selling price might have been in order to see that this \$70 per bond figure looks reasonable, and I believe it is within the realm of reason that that was earned by Hanauer based on this reconstruction.

Q. At the time of this bond sale what was the normal percentage fee that was being made by underwriters?

A. The percentage fee, which is called the spread, is the difference between the price the underwriter pays the issuer and the price he sells the bonds for to the investor ranges, in my experience, anywhere from about \$10 per bond or one percent, up to the highest one I've dealt with, and it was a terribly difficult deal, was \$34 bond at 3.4 percent. And, typically, the spread will be in the area of 15 to \$25 a bond, which is one-and-half percent to two-and-a-half percent. Sometimes three percent is not unusual. When you get above three percent it's unusual. And I've never been associated with any sale where the spread approached seven percent.

Q. What fee would have been generated to J.B. Hanauer & Co. had the fee been two percent?

A. Two percent would have been \$245,000.

Q. From your reconstruction of the sale, what do you estimate their actual fee was?

A. I would say that the stated difference is as good as any number to use and that would be \$857,500.

CHAIRMAN LANE: This is far in excess to the usual gain on such a transaction?

THE WITNESS: Yes, it is.

Q. Mr. Goldman, in both of these bond sales, the East Rutherford and Western Monmouth Utilities Authorities received their fees as a percentage of the bond sale. Do you have any comment on that?

A. That used to be a fairly general practice, I would say, maybe ten, 15 years ago. In New Jersey there was some controversy over that practice. There was some articles written by the Senate for the announced public issues, one by my partner David Boyle in the early '70's and thereafter, at least at the state-level bond counsels were never hired on a per-bond basis, but were hired on a per-hour basis.

Q. What would you suggest as a fee arrangement with the attorney for the MUA?

A. Well, per-hour basis is the proper basis. There is some liability involved which, I suppose, grows with the size of the bond issue, and there may be some adjustment for that, but the idea of paying per-bond is not the best approach, as far as I'm concerned.

More Oversight Needed on Authority Bond Sales

Q. Do you know of any changes in the past ten years affecting the method or controls over bond sales of this nature?

A. There has been, in fact, a tremendous change in the municipal bond market in the last ten years occasioned by the 1975 turmoil over the Urban Development Corporation in New York City, and some of the other problems of cities and the industry. And Congress and others have been studying various ways of improving financial disclosure, which was the main subject of this overhaul. So issues have been subjected to greater standards, not officially but through the industry practice of disclosure and accounting and so forth.

But, if you're speaking about institution arrangements for the specific oversight of bond sales, there have been no important changes that I know of. We suggested, in legislative form several years ago, some changes which have not yet been enacted.

Authority Bond Transactions

SCI Commissioner Francis prefaced public hearing testimony on these transactions with the following comment:

We will now proceed with testimony that will illustrate the lack of accountability of certain authorities in handling the financing of their facilities and the misbehavior such non-accountability can generate. Although these incidents, one involving the Western Monmouth Utility Authority and another the East Rutherford Sewerage Authority, have been subjects of official investigation, this will be the

first public disclosure by certain of the participants of the details of the misconduct that occurred.

Once again, the Commission must emphasize that these examples are not intended to reflect against the many authorities throughout this state as well as bond underwriters who serve them that are properly financing their facilities. These particular episodes were selected to illustrate the potential for abuses in authority bond financing procedures which we hope can be prevented from recurring elsewhere by the implementation of recommendations this Commission will propose after the public hearings conclude.

The Western Monmouth (WMUA) Transaction

As this episode got underway, the Commission distributed a fact sheet which provided the following chronological background:

April 27, 1972, WMUA Organizational meeting - election of officers; July 25, 1972, Louis J. Gartz appointed auditor; September 12, 1973, J.B. Hanauer and Co. of East Orange designated as investment banker for WMUA; November 22, 1974, Bond sale in principal amount of \$12,250,000 sold to J.B. Hanauer; April, 1976, New Jersey Magazine article: "A Gold Mine in the Sewers"; May 10, 1976, investigation requested by resolution of the Freehold Township Committee into the fees and commissions paid to WMUA advisors at bond sale; May 11, 1976, Resolution by the WMUA calling for investigation similar to Freehold Township's; May 25, 1976, Letter from Monmouth Prosecutor Coleman to Criminal Justice Director Stier turning investigation over to Attorney General's office; December 8, 1976, Deputy Attorney General Charles Sapienza terminates Attorney General investigation due to insufficient evidence, and August 2, 1981, Marvin Schaefer, WMUA attorney dies.

WMUA Auditor's Testimony

Gartz, of Freehold, was the Authority's auditor in 1974 when the Hanauer company was selected as bond underwriter. A CPA who also is a registered municipal accountant and a public school accountant, he had been with the WMUA since its creation in 1972, when Morton Salkind was authority chairman as well as mayor of Marlboro Township. His testimony concerned discussions with Elliot Friedman, president of Hanauer, and Marvin Schaefer, attorney for WMUA, during which a \$100,000 kickback was mentioned. SCI counsel James Hart, who questioned Gartz, was required on several occasions to recall Gartz's executive session testimony in order to refresh the witness' memory. The testimony began with questions about the early stages of the WMUA bond sale negotiations:

- Q. Did there come a time sometime after 1972 that the authority was considering bonding as a means of obtaining funds?
- A. Yes, shortly after the start of the authority preliminary funds were required for operation and studies.
- Q. Was one of the reasons for considering bonding, sir, the fact that expenses had been incurred by professionals hired by the authority?
- A. That's correct.
- Q. Can you tell me how many professionals were hired by the authority?
- A. There was an attorney, an engineer, and myself as the auditor.
- Q. Who was the attorney in 1972?
- A. Marvin E. Schaefer.
- Q. And who was the engineer?
- A. I believe, Howard Schoor, from Howard Schoor Engineering.
- Q. Were you involved in any way in the attempt or the process of obtaining funds through bonding?
- A. I was asked to look into ... and talk to different investment banking firms for the possibility of temporary financing to the end result of permanent financing.
- Q. By the way, can you tell me how many bond sales there were that were conducted by the authority between 1972 and 1977?
- A. Just one.
- Q. Can you explain for the Commission what it is that you did at the interview that you conducted pursuant to proceeding to have a bond sale?
- A. The gentlemen, the representatives of the firms that I spoke to, I informed them of the formation of the authority; what its intent was; what they were proceeding to do; that they would be

looking for permanent financing, and that they right now were looking for temporary financing until final arrangements on acquisition of private sewer companies was completed.

Q. I take it, sir, that these firms that you spoke to were underwriters who handled this type of bond sale. Is that correct?

A. That's correct.

Q. Can you tell me, sir, what the amount of the bond sale was?

A. \$12,250,000 was the final bond sale in 1974.

Q. Was Mr. Schaefer, whom you testified was the attorney for the authority, was he involved in any way in the selection process of the underwriter?

A. I would think so.

Q. Can you tell me how he was involved in the selection process?

A. Following the firms that I spoke to and the information that I derived from speaking to these representatives of these firms, I met with Mr. Schaefer and gave him that information, and, to the best of my knowledge, it was transferred to the authority chairman.

Q. How many of these underwriting firms did you speak to, sir?

A. I would say, approximately four or six firms.

Q. Could you name them for me, please?

A. Bache; Merrill Lynch; Kidder, Peabody; J.B. Hanauer. They're four that come to my mind right now.

Q. You mentioned J.B. Hanauer, sir. Can you tell me how you came in contact with them?

A. At the time I was working for another public accounting firm handling their governmental audits, and I was introduced to a representative of J.B. Hanauer from one or two of the partners in that firm at that time.

Commissions or Referral Fees Mentioned:

- Q. During your interviews of any of these underwriting companies, did any of them mention to you, sir, the possibility of them paying a commission or a finder's or referral fee to you?
- A. There were indications of that from --
- Q. Well, could you just answer that question yes or no, sir, please?
- A. Yes.
- Q. So at least some of these firms did mention commissions to you; is that correct?
- A. Commission, referral fees.
- Q. Was one of the firms that mentioned this commission or referral fee J.B. Hanauer?
- A. They were.
- Q. Can you tell me what this fee was to be in payment of?
- A. Nobody ever specifically stated what it was. I interpreted that it was if they were named as the underwriter.
- Q. They were to pay the sum of money in return for getting the job as underwriter. Do I understand you correctly?
- A. That's the way I interpret it.
- Q. Was it indicated or stated in any way that this payment was to be made in cash?
- A. Not to my knowledge.
- Q. Do you recall testifying, sir, before an executive session of this Commission on July the 1st of 1982?
- A. Yes, sir.
- Q. Do you recall being asked the question, sir: "Question: And what was it to be, a cash payment?" Do you recall being asked that question, sir?
- A. I don't recall it now.

Q. Do you recall your answer, sir, as being: "That's what the indications were"?

A. I don't specifically recall it if that's what I said.

Q. If that was your answer to the Commission on July the 1st, sir, would that answer have been truthful?

A. Yes.

THE CHAIRMAN: Does it refresh your recollection now as to what actually took place?

THE WITNESS: I don't recall specifically all the questions that were asked me on July 1st. If he's reading from the document that says that's what he asked me and that was my answer, then I would say that's what I stated.

BY MR. HART

Q. Can you tell me, sir, who was to receive this cash payment?

A. To my knowledge, there were no specific mention of names.

Q. Did you have an interpretation, sir, as to who would share in the payment?

A. Following the discussion when it was first mentioned to me, and I subsequently discussed it with at least one of the partners in the firm that I work for and then with the attorney for the authority, my indications or interpretations were that myself, the attorney, possibly the commissioners.

Q. This commission or referral fee that we have been talking about, in effect, it's a kickback, is it not, in return for J.B. Hanauer getting the underwriting job?

A. Today I would interpret it as that, yes.

The \$100,000 Kickback Discussions

- Q. Can you tell me the names of the individual, or individuals, with whom you spoke at J.B. Hanauer?
- A. The first gentleman that I ever met from J.B. Hanauer was a -- fellow's name was Charlie. I don't recall his last name.
- Q. Was that Charles Schwartz? Does that --
- A. I believe so.
- Q. -- refresh your recollection?
- A. Yes. Then subsequent to that I, once J.B. Hanauer was named as, I guess, the investment banker, at least for the temporary financing, my dealings were with Elliot Friedman and Al Marcus.
- Q. And which of these individuals, sir, mentioned to you the possibility of J.B. Hanauer paying a referral or commission or a kickback?
- A. I think the first indications, if I recall correctly, came from Mr. Schwartz.
- Q. Are you finished with your answer, sir?
- A. Yes.
- Q. Were there any statements made to you by either Mr. Marcus or Mr. Friedman that would indicate to you that they were willing to pay a kickback to you in return for hiring them as the underwriter?
- A. I don't recall right now specifically them mentioning.
- Q. Let me ask you this, sir: On how many occasions did you meet with Mr. Marcus and Mr. Friedman?
- A. Numerous times during the period of the temporary financing up to the final permanent closing.

Q. And what were their positions with J.B. Hanauer?

A. I believe Mr. Friedman was the president of J.B. Hanauer and Mr. Marcus was the treasurer.

Q. Did Mr. Marcus or Mr. Friedman ever state to you that you would receive \$100,000 in commission or finder's fee if J.B. Hanauer was selected as underwriters for the authority's bond sale?

A. I don't recall them mentioning that.

Q. I already asked you, sir, and you indicated that you recall testifying in executive session on July 1st. Is that correct?

A. That's correct.

Q. Do you recall being asked the question at that time: "When you discussed -- you stated that you discussed the matter once with Mr. Schwartz and on other occasions with Mr. Friedman and Mr. Marcus. On those times you discussed it with Mr. Friedman and Mr. Marcus, did they discuss the fact that you would be receiving any kind of finder's fee or referral fee?" Do you recall being asked that question in executive session?

A. Not specifically.

Q. Would this answer refresh your recollection, sir: "Answer: I think there were indications of it at those meetings"?

A. Again, I would -- I have to answer the same way; I don't specifically recall that question. And if that's what my answer was, you're asking me to -- I don't, I don't want to answer wrong. I don't specifically recall somebody saying that to me back in 1972 and 1973 at this time.

Q. During any of your meetings with Mr. Marcus or Mr. Friedman did they indicate to you that they were aware of the hundred-thousand-dollar offer that Mr. Schwartz had made to you?

A. I don't honestly recall.

Q. You indicated, sir, that you discussed this hundred-thousand-dollar offer with Mr. Schaefer. Is that correct?

A. I discussed with Mr. Schaefer the indications of a referral fee, or whatever.

Q. When did you have discussions with Mr. Schaefer in that regard?

A. I guess, shortly after it was indicated to me from Mr. Schwartz.

Q. And what was Mr. Schaefer's response when you advised him that you had been made this offer?

A. I don't know. I think we just discussed it. I asked him what it meant, how it would work, things like that.

THE CHAIRMAN: Was the division of that money discussed?

THE WITNESS: No. sir.

Reactions to the Kickback Offer

Q. You stated you asked Mr. Schaefer what this offer meant. What was his response to that? What did he tell you this offer was?

A. I don't specifically recall. I would -- I take it he indicated that it was a referral fee.

Q. You knew, did you not, that acceptance of such an offer would be illegal, didn't you?

A. I did at a subsequent date, yes, when I finally analyzed it myself.

Q. Did Mr. Schaefer advise you that the acceptance of that money would be illegal?

A. I don't recall him specifically telling me that.

- Q. What was your response to the J.B. Hanauer representatives when they initially made this offer to you?
- A. I just basically listened to what they said. I didn't respond at all.
- Q. Can you tell me where you were when this offer occurred?
- A. I believe I was out to lunch with the gentlemen.
- Q. Do you know where that was, sir?
- A. I don't recall specifically.
- Q. Can you tell me the year?
- A. I would have to presume now it was 1972.
- Q. Do you know when --
- A. Or --
- Q. -- the closing was on the bond sale?
- A. It was in December of '74.
- Q. Were you informed by anyone from J.B. Hanauer as to when you could expect to receive this money?
- A. No.
- Q. Did you ever receive any of the money or a portion of the money?
- A. No, sir.
- Q. Did Mr. Schaefer receive the money or any portion of it, to your knowledge?
- A. Not to my knowledge.
- Q. Did anyone receive the money or any portion of it, to your knowledge?
- A. Not to my knowledge.
- Q. Who was eventually appointed as underwriter for the bond sale?
- A. J.B. Hanauer handled the temporary financing, and they continued on into the permanent financing.

Q. Did you recommend J.B. Hanauer to the authority?

A. It never came down to a formal recommendation from me.

Q. I take it --

THE CHAIRMAN: How about informal; informally did you recommend them?

THE WITNESS: I had indicated what my discussions were with the firms to Mr. Schaefer, the attorney. Subsequent to that, at a meeting one night J.B. Hanauer was appointed.

THE CHAIRMAN: You didn't oppose their appointment, I take it?

THE WITNESS: No.

Gartz Was Also the Authority's Financial Advisor

Q. Were you also acting as the financial consultant to the authority, sir, in addition to being the auditor?

A. Yes, in the beginning years, you know, they were just starting.

Q. Did you find it unusual that, as the auditor and financial consultant for the authority, you were not asked for a specific recommendation as far as underwriters were concerned?

A. Not in this particular case.

Q. You didn't find it unusual, sir?

A. Not in that particular case.

Q. Do you recall being asked a question in executive session, sir: "Did you find it unusual, the fact that you were the financial consultant for the authority and the authority made their selection without consulting you?" Do you recall being asked that question?

A. Yes.

- Q. Do you recall giving the following answer: "Yeah, to a point, I think. You know, I wasn't aware that it was coming on the night of the meeting, if I recall. You know, it came up at the night of that meeting was when I first was aware that the resolution was on." Is that your answer, sir?
- A. That's what I answered to then, yes.
- Q. Was that a truthful answer?
- A. Yes.
- Q. So you do find it unusual that you were not consulted for a recommendation as to hiring J.B. Hanauer as the underwriter?
- A. In general, yes, I do.
- Q. Why did you find it unusual?
- A. Because I just felt if I was asked to interview these firms and, you know, then they should have asked me for a report and what my recommendations were.
- Q. And you were never asked for a report, sir?
- A. Not from the commissioners, no.

Why WMUA Chose Hanauer as Underwriter

- Q. Can you tell me why J.B. Hanauer was selected as the underwriter for that bond issue?
- A. My only interpretation and understanding is that they were probably one, or the only one, that was willing to finance the temporary funds.
- Q. Do you think, sir, that their selection had anything to do with the fact that the Hanauer company was willing to pay this hundred-thousand-dollar kickback?
- A. I would think now that would have had a bearing in it, possibly.
- Q. Did you tell anyone other than Mr. Schaefer about this hundred-thousand-dollar kickback offer?
- A. No, sir.

- Q. Did you tell any members of the authority, any of the commissioners?
- A. No, sir.
- Q. Would you tell me why you didn't tell any members of the authority?
- A. I felt in my relating the information and the facts to Mr. Schaefer, the attorney, who had asked for it, that he was, in turn, going to relay the information to the chairman.

Hanauer's 7 1/2 Per Cent Fee

- Q. The closing for this bond sale, sir, occurred in November of 1974; is that correct?
- A. I believe so.
- Q. Were you present at the closing?
- A. Yes, sir.
- Q. Can you tell me what the fee was that was earned by J.B. Hanauer for their underwriting activities?
- A. I believe it was seven and a half percent.
- Q. Seven and a half percent of the total bond issue?
- A. The total 12,250,000.
- Q. If my math is correct, sir --
- A. It was 800-some thousand.
- Q. \$850,000, approximately?
- A. Yes.
- Q. Were you surprised by that fee, sir?
- A. I was that day, yes.
- Q. Why were you surprised by the amount of that fee?
- A. I just felt that it was higher than what my opinion was that the market carried for that day.
- THE CHAIRMAN: What would have been a normal fee in that case?

THE WITNESS: I would have felt that not exceeding four percent.

THE CHAIRMAN: Four percent. We had some testimony today it would go around two percent. Four percent would be the highest?

THE WITNESS: I would think that would have been the highest.

THE CHAIRMAN: And seven is little bit high, quite a bit high.

BY MR. HART:

Q. When did you first learn that Hanauer's fee was to be seven percent of the issue?

A. The morning of the closing.

Q. Did you express your concern to anyone that the fee was exorbitant or that you thought the fee was exorbitant?

A. I discussed it shortly after hearing what the fee was, which was towards the end of the closing, with the bond counsel for the authority.

Q. Who was the bond counsel for the authority?

A. The firm is Mudge, Rose, Guthrie & Alexander and the representative was Walter Breen.

Q. What was Mr. Breen's response to your statement that you felt the fee was excessive?

A. I think he indicated, if I recall correctly, that he felt that it was high, also.

Q. Did you at any time prior to the bond closing indicate to the authority or any of the commissioners what you felt would be a reasonable fee for J.B. Hanauer's services?

- A. I believe that there were discussions from time to time with the attorney, and I recall correctly, I was -- would ask from time to time as has the final fee been determined and arrived at with J.B. Hanauer, and the answers were, no, and I would -- I believe that I indicated what my feelings were that the market was carrying at that time as a fee.
- Q. And what was the figure that you felt? Four percent?
- A. I think I gave them a range of somewheres between two and a half to four percent.
- Q. Could you tell me how many times you asked -- you referred to the attorney. I assume you mean Mr. Schaefer?
- A. Yes.
- Q. Could you tell me how many times you asked him what Hanauer's fee was going to be?
- A. Probably somewheres between two and four times.
- Q. Would the last time have been just prior to the closing by a day or two, sir?
- A. Possibly.
- Q. Subsequent to the closing, did you have any discussion with any of the authority members, the commissioners, or the chairman concerning J.B. Hanauer's fee?
- A. Well, I think I had discussions with the chairman.
- Q. That would be Morton Salkind?
- A. Yes.
- Q. What were your discussions with him?
- A. I think there was, when the news of the discount fee had hit into the newspapers, his -- there were certain controversial articles against it. He and I had a discussion on it. He had requested that could I put a letter together explaining in my opinion why it was seven and a half percent.

Q. He was asking you, in effect, to send a letter to the authority. Is that correct?

A. Yes, to give him a letter.

Q. Justifying the amount of J.B. Hanauer's fee?

A. Well, I guess you can interpret it as justification. He asked me to explain how I felt they arrived at seven and a half percent; and in our conversations I had indicated to him that I felt that it was high, but I would put down what I felt how they possibly arrived at it.

Q. Did you eventually send such a letter to Mr. Salkind or members of the authority?

A. I gave the letter to Mr. Salkind. It was addressed to the authority.

Q. And did that letter justify the seven percent or seven and a half percent fee of J.B. Hanauer?

A. In whose opinion? I don't know what you mean by that. I gave him in a letter my explanation of how they possibly arrived at seven and a half percent. Whether that's accurate or not, I can't tell you.

THE CHAIRMAN: Does that letter indicate your approval of that percentage?

THE WITNESS: No, sir.

THE CHAIRMAN: Did it indicate your disapproval of that percentage?

THE WITNESS: I don't believe, not in those terms.

THE CHAIRMAN: Just what was the nature of that letter?

THE WITNESS: It set forth facts as to what I felt their fee was for the 12,000,000 bond issue, and what possibly their fee was for the temporary financing inasmuch as they did not charge the authority for any of the temporary financing that took place over a two-year period.

THE CHAIRMAN: Doesn't that indicate your approval after the fact of that fee?

THE WITNESS: I don't interpret it as that.

BY MR. HART:

Q. Let me show you, sir, what has been marked as Commission Exhibit No. C-65. Would you look at that, please? Do you recognize that document, sir?

A. Yes.

Q. What is that document?

A. That is a copy of a letter that I had sent to the chairman and the members of the authority.

Q. Now, this is somewhat of a lengthy letter, sir. I am not going to read it all, but I would like to read for you the second sentence of the first paragraph. "I feel, as a result of these articles and statements, it is incumbent upon me as your auditor to set forth to you my explanation of the discount fee and the facts relating thereto." Now, is that sentence contained in the letter you sent to Mr. Salkind?

A. I would believe so, yes.

Q. And did you go on thereafter in the letter to set forth the type of work and the amount of work that J.B. Hanauer had done for the authority?

A. I believe that's what the contents are.

Q. And did you indicate other information concerning bond sales that you felt may be comparable to the one that was involved in with Western Monmouth?

A. I believe I did.

Q. And did you indicate the rating of the Western Monmouth bonds and why that particular rating may have influenced or caused part of the excessive or the high seven percent, seven and a half percent fee earned by Hanauer?

A. I think that was in there, yes.

Q. Do I understand correctly, then, sir, that your letter that you sent to the commissioners of the authority, in effect, justified, or set forth reasons, if you don't like the word "justified," set forth reasons that would support the seven and a half percent fee going to J.B. Hanauer?

A. Yes.

THE CHAIRMAN: If the witness wants any part of that letter that hasn't been read or wants to read the whole letter, you may do so, or have any part of it read.

BY MR. HART:

Q. Would you like to do that, sir?

A. Not unless you're going to proceed with questions. I haven't read it since I submitted it.

THE CHAIRMAN: You may read it now if you care to.

Q. Would you like to read it, sir? (Handing to the witness.)

THE CHAIRMAN: Nothing that you want added?

THE WITNESS: No, sir.

THE CHAIRMAN: All right. Go ahead.

BY MR. HART:

Q. So, on the one hand, sir, you say that you felt the fee, the seven and a half percent fee earned by Hanauer, was excessive. Is that correct?

A. As a basic discount fee, yes.

Q. On the other hand, you sent this letter to the authority at the request of Mr. Salkind, and that letter sets forth reasons, does it not, supporting the seven and a half percent fee earned by Hanauer?

A. That letter --

Q. Is that correct?

A. -- sets forth facts, information regarding other sales, ratings, their interest rates, and the services that were performed by J.B. Hanauer, and I equated to those services and other criteria possible percentages that related to the seven and a half percent.

COMMISSIONER DEL TUFO: Mr. Gartz, you thought that fee was excessive, did you not?

THE WITNESS: As a basis.

COMMISSIONER DEL TUFO: And you commented on that to counsel and to other people after the closing? Didn't you testify that way?

THE WITNESS: At the day of the closing when I first found out.

COMMISSIONER DEL TUFO: You testified here today you thought the fee was excessive?

THE WITNESS: Yes, sir, as a basic discount fee.

COMMISSIONER DEL TUFO: That letter being sent because of articles in the newspaper, that letter was sent at the request of Mr. Salkind. Is that correct?

THE WITNESS: That's correct.

Another Version of \$100,000 "Commission"

The next witness, Attorney James E. Demetrakis of Fort Lee, recalled that he was representing a developer in the Monmouth County community of Manalapan in 1973 when he first met Manalapan lawyer Marvin Schaefer. He testified that he met with Schaefer, now deceased, for business or professional reasons on a number of occasions between 1973 and 1975. He recalled one meeting at which Schaefer mentioned receiving a \$100,000 "commission." Counsel Hart questioned Demetrakis about Schaefer's disclosure:

Q. All right. During the time period that you had this business relationship with Mr. Schaefer, were you aware, sir, that he was the attorney for the Western Monmouth Utilities Authority?

A. Yes, I -- he indicated that to me on one of the meetings that parenthetically he was also the attorney to the sewerage authority there that was then in the process of being formed.

Q. Your business with Mr. Schaefer had nothing to do with the authority, I understand?

A. Absolutely nothing.

Q. Did there come a time when Mr. Schaefer made a statement to you concerning his receipt of a large sum of cash?

A. Yes, sir.

Q. Can you tell me where you were when he made such a statement to you, sir?

A. Mr. Schaefer was entertaining some guests at the St. Mortiz bar and suggested that, if I wanted some additional information on the status of some matters in the community, to stop in there and see him late in the afternoon, it being shorter to go to New York than travel down to Monmouth. I stopped in, he was entertaining some guests, and I believe it was sitting around a table, and he mentioned to me that he had received a substantial commission, or was -- had received a substantial commission from a company, a bonding company, a New Jersey bonding company.

Q. Did he tell you that the substantial amount that he had received was \$100,000?

A. Yes, he did, sir.

Q. Did he tell you that he had received that in cash?

A. Yes, he did.

Q. What was the name of the bonding company that he received this from?

A. I don't recall, sir. I don't believe that he ever told me the name.

Q. Did he tell you that he had received this hundred thousand dollars in cash in a little black bag?

A. I don't recall that, sir.

Q. Do you recall, sir, talking to Charles Sapienza and other representatives of the office of the Attorney General in 1977?

A. Yes, sir, I do.

Q. Do you recall Mr. Sapienza? You know him, sir?

A. I don't remember what he looks like. I know the name.

Q. You spoke to him, I take it?

A. Yes, sir.

Q. Approximately how many times did you speak with him?

A. I don't recall. I believe it was more than once.

Q. Do you recall telling Mr. Sapienza and other members of the Attorney General's office that Mr. Schaefer's statement to you was as follows: "You represent sewer authorities. If you do any bonding, you should contact J.B. Hanauer because they kick back a commission. I got \$100,000 delivered in a little black bag."

A. I do not recall making that statement, sir, but I do recall, as I indicated previously, that Mr. Schaefer indicated that he had received a commission of, in cash, for approximately a hundred thousand dollars. I do not remember the name of Hanauer company or the little black bag.

Q. If, in fact, sir, you had made that statement to Mr. Sapienza, it would have been true, would it not?

A. Yes, sir.

East Rutherford Sewerage Authority's Bond Issues

This authority was created by the Borough of East Rutherford in June 3, 1968. It hired Alfred A. Porro Jr. of Rutherford as counsel in July, 1968. In February, 1969, the authority appointed Frederick M. Rosenberg as its clerk and employed as its financial adviser on bond sales a company called Municiplex, Inc. Porro and Rosenberg had created this company with offices in Lyndhurst, where Porro had his law office. On October 30, 1975, a Bergen County Grand Jury returned an indictment listing Porro and Thomas Jones, who had been East Rutherford's mayor from 1965-1969, as defendants and naming Rosenberg, Timothy Sullivan, Walter Schultz and Richard Tecott as co-conspirators but not as defendants. The indictment charged conspiracy to conduct a fraudulent bond underwriting, bribery and misconduct in office. However, after prolonged litigation, the indictment was dismissed in 1981 on grounds that

Porro's constitutional rights under the Sixth Amendment were violated. The Bergen Prosecutor's Office criticized the court's decision but nonetheless decided against continued prosecution of the case. The Commission included the East Rutherford episode in its public hearing schedule to further illustrate the corruptive influence of absolute autonomy on authority bond financing.

Witness Makes Public Apology

Rosenberg, who had originally been slated to testify for the prosecution if the Bergen Grand Jury indictment had been tried, was the first witness at the public hearing review of the case. During the course of his testimony, Rosenberg put the following personal statement into the hearing record:

This was a situation that happened thirteen years ago. I was involved in an impropriety. I told the truth about it and I was never charged for it. However, I don't diminish the fact that what I did was the wrong thing to do and I've lived with it for thirteen years. I have great sorrow about it, and as far as the people of the state of New Jersey goes, I just would like to express my own personal apology, and there's nothing more.

Under questioning by SCI Counsel Gerard P. Lynch, Rosenberg recalled first meeting Porro in 1965. He came to know Tecott, he recalled, as a neighbor who was interested in municipal and sewerage authority finances. When Porro mentioned that Carlstadt was looking for an underwriter for a sewerage bond issue, Rosenberg said "I brought him together with Mr. Tecott." As a result, Rosenberg testified, he and Porro split a finder's fee:

Q. And was Mr. Porro still the attorney for Carlstadt at this time?

A. Yes.

Q. Did you yourself have anything to do with the Carlstadt bond issue?

A. No.

Q. Your sole function with that bond issue was just bringing Mr. Porro and Mr. Tecott together?

A. Yes.

- Q. Was a finder's fee paid in this case?
- A. Yes.
- Q. Did Mr. Porro obtain any part of this finder's fee?
- A. Yes.
- Q. What percentage was Mr. Porro's share?
- A. We shared 50/50.
- Q. How much was the finder's fee for? Do you recall?
- A. I don't recall the exact amount. It was in the five-thousand-dollar range.

As a result of the Carlstadt transaction, a business relationship developed among Porro, Rosenberg and Tecott. This relationship resulted in Porro and Rosenberg forming Municiplex and Tecott leaving the firm of J.B. Hanauer Co. to form his own underwriting company. As Rosenberg explained in his testimony, Tecott could not serve with a financial advisory firm such as Municiplex and also do bond underwriting, "so the two firms had to split." Rosenberg also testified about the reason why Municiplex was created:

- Q. Was it absolutely necessary that the Township of East Rutherford have a financial adviser --
- A. No.
- Q. -- for the sewerage authority?
- A. No.
- Q. Could they have hired an underwriter instead of a financial adviser?
- A. Yes.
- Q. Had they done that, would yourself and Mr. Porro have received any profits thereby?
- A. No.
- Q. Therefore, the formation of Municiplex was merely a self-serving entity; is that correct?
- A. Yes.

- Q. I show you...a letter which was sent by Municiplex, your name appearing as president, Mr. Rosenberg, at the end, and ask you what the purpose of this letter was.
- A. It cites the need for a financial adviser firm such as Municiplex.
- Q. Does it also recommend that the Township of East Rutherford form a sewerage authority?
- A. And to form a sewerage authority.
- Q. Who is the author of that letter?
- A. My name appears on it, but the letter was written by Mr. Porro and myself.
- Q. Now, this letter was sent prior to the formation of that sewerage authority. Is that correct?
- A. Yes, sir.
- Q. Did the sewerage authority eventually become in reality an entity?
- A. Yes, it did.

However, certain "arrangements" had to be made to pave the way for creation of an authority by the borough. Rosenberg testified about conversations he had with East Rutherford's Mayor Thomas Jones and Porro:

- Q. Now, prior to the formation of this sewerage authority, did you have any conversations with Mayor Jones, Mr. Porro and yourself --
- A. Yes, I did.
- Q. -- regarding what would be necessary in order to have this sewerage authority formed?
- A. Yes.

- Q. Would you tell us what discussions were held with Mayor Jones and Mr. Porro in that realm?
- A. Well, we discussed the need for paying monies to the mayor in order to make sure that the authority would go through without any hinderance.
- Q. Okay. Was there any fixed determination as to how much monies would be needed in order to get this authority approved by the city council?
- A. There was no fixed sum at the time. I think it was dependent upon the, excuse me, upon the outcome of the bond underwriting.

Even before the East Rutherford Sewerage Authority was created, it was agreed that Tecott's underwriting company would handle the authority's bond issues. Rosenberg's testimony continued:

- Q. Were they any discussions held between Municiplex and the firm of Tecott-Jackson regarding this bond for the authority prior to the actual formation of the authority?
- A. Yes.
- Q. Was there any agreement entered into between Municiplex and Tecott-Jackson with reference to this first bond issue in East Rutherford?
- A. Yes.
- Q. And did that agreement guarantee that Tecott-Jackson would be the underwriter for this first bond issue?
- A. Yes.
- Q. And this is prior to its formation. Is that correct?
- A. Yes. I don't know that that agreement was in writing. I don't recall that. But there was an agreement.
- Q. Now, when the township did form the sewerage authority, was Mr. Porro still the township attorney?
- A. Yes.

Q. Do you know who became the attorney for the East Rutherford Sewerage Authority?

A. Mr. Porro.

Q. Do you know how that came about?

A. No, I don't.

Rosenberg Becomes Authority Clerk

Rosenberg testified that Porro resigned on July 18, 1968, as the registered agent for Munciplex. His resignation from the firm came exactly one week after the East Rutherford sewerage authority was created. But Porro's dealings with and through Munciplex continued, and Rosenberg himself subsequently became the authority's clerk. His testimony:

Q. Did Mr. Porro cease all operations with Munciplex?

A. Ostensibly.

Q. Did Munciplex engage in bonding contracts with any other municipalities?

A. Yes.

Q. What were they?

A. Raritan Township and Pemberton Township.

Q. Did Mr. Porro take part in any negotiations on behalf of Munciplex with these two townships?

A. Yes, he did.

Q. Was this after he resigned as registered agent for Munciplex?

A. Yes.

Q. Did Mr. Porro take an active role in any further negotiations with East Rutherford?

A. Yes.

Q. Was there any major decision affecting Munciplex where Mr. Porro did not take a part in it after he resigned?

A. No.

- Q. Was Mr. Porro instrumental in presenting Municipleplex to the authority?
- A. Yes.
- Q. Did you obtain a position in that authority yourself?
- A. Yes, I did.
- Q. What was that position?
- A. I was named a clerk to the authority.
- Q. How much were you paid as clerk?
- A. About 6, I think it was \$6700 a year.
- Q. What was the purpose of your being hired as clerk for the authority?
- A. Well, on the one hand, it was for the purpose of working for the authority at a minimal salary because they couldn't afford to pay, you know, any more. On the other hand, it gave us the opportunity of being conversant and on top of the authority actions on a consistent basis.
- Q. Did you, in fact, attend all of the meetings where bonding was discussed?
- A. Yes.
- Q. Did Municipleplex hire itself out to the Township of East Rutherford as a financial adviser?
- A. Basically, yes.
- Q. What were to be the functions of a financial adviser?
- A. To obtain a, basically, to obtain an underwriting at the lowest possible interest rate and to effectuate, you know, the completion of the bond issue for the project.
- Q. When Municipleplex was hired, did it request a twenty-one-thousand-dollar-a-year salary which was rejected by the authority?
- A. That's correct, yes.

- Q. If this salary was rejected, how was Municipalex to be paid?
- A. It was actually from the proceeds of the bond issue.
- Q. Who was actually going to pay it?
- A. Tecott-Jackson would have paid that.
- Q. That was the bond underwriting company on the first bond issue?
- A. Yes.
- Q. Did the commissioners of the authority know that Alfred Porro had an interest in Municipalex and shared 50/50 in all of the profits?
- A. I really -- I don't know that to be a fact. I would assume so.
- Q. Did any of the commissioners of the authority know that there was a contract in existence between Tecott-Jackson and Municipalex wherein Tecott-Jackson was guaranteed this first bond issue?
- A. Once again, I would presume so, but I don't know that, you know, for a fact or who would know it.
- Q. But Mr. Porro, as the attorney for the authority, knew?
- A. Yes.
- Q. Who proposed Tecott-Jackson to the authority?
- A. We did.
- Q. When you say "We," who is "We"?
- A. Municipalex.
- Q. Did you attempt to find any other underwriter who might have been more beneficial for the authority?
- A. No.

- Q. Was there another underwriter considered?
- A. No.
- Q. Why not?
- A. Because the sole purpose of Municplex, as I indicated, was to be actually self-serving, and we didn't.
- Q. Did East Rutherford Sewerage Authority eventually obtain a first bond issue?
- A. Yes.
- Q. How much was this bond issue for?
- A. I think it was \$5.6 million.
- Q. Did Tecott-Jackson underwrite this bond issue?
- A. Yes.
- Q. Did Municplex receive monies as a result of this bond issue?
- A. Yes.

Fees Charted*

Counsel Lynch utilized a chart compiled by SCI accountants to trace some of the fees received by Municplex, Porro and Rosenberg from East Rutherford Sewerage Authority bond issue proceeds. Rosenberg's testimony continued:

- Q. I would like you to look at the top figure. It is a figure of \$117,121. I ask you if this was Municplex's 50/50 share of the profit that Tecott-Jackson received from the underwriting of the first bond issue.
- A. It is.
- Q. I show you line number 2 in this chart and I ask you if this figure of \$40,000, is this the figure of the finder's fee that you testified to earlier?

*See Chart, next page.

EAST RUTHERFORD SEWERAGE AUTHORITY

JANUARY 1969 - FIRST BOND ISSUE

\$5,500,000

MUNICIPLEX INC. - FEES (PORRO-ROSENBERG CORPORATION)	\$117,121
FRED ROSENBERG (FINDER'S FEE)	\$ 40,000
ALFRED A. PORRO, JR. (E.R.S.A. PAID LEGAL SERVICES)	\$ 55,000
TOTAL	<u>\$212,121</u>

MAY 1971 - SECOND BOND ISSUE

\$2,600,000

MUNICIPLEX INC. - FEES (PORRO-ROSENBERG CORPORATION)	\$48,000
FRED ROSENBERG (FINDER'S FEE)	\$20,000
ALFRED A. PORRO, JR. (E.R.S.A. PAID LEGAL SERVICES)	\$49,500
TOTAL	<u>\$117,500</u>

A. Yes.

Q. I show you line number 3 and I ask you, did Mr. Porro tell you that he received the sum of \$55,000 from the sewerage authority itself for his work performed on the bond preparation of this first bond issue?

A. I know he received a legal fee and I don't know the amount.

Q. He never mentioned that he received 55,000?

A. I don't recall that he did.

Q. All right. With regard to the \$117,000 figure, did Mr. Porro receive any of these monies?

A. We shared everything 50/50.

Q. He received one-half of the \$117,000?

A. Yes.

Q. Was Mr. Porro still the attorney for the authority --

A. Yes.

Q. -- when he received this money from Municiplex?

A. Yes, he was.

Q. Did Mr. Porro receive any of the finder's fee that was listed here, \$40,000?

A. I don't believe so.

Q. All right. Could you tell us what happened to that forty-thousand-dollar finder's fee?

A. \$20,000 was put aside to pay the mayor and \$20,000 was used to pay the income tax on the amount.

Q. All right. How did the \$40,000 get to Mayor Jones?

A. It was, it was given to a --

Q. I stand corrected. It's \$20,000.

A. It was given to an envelope -- it was given in an envelope to a secretary in Mr. Porro's office.

Q. Did you personally deliver this envelope on the first bond issue?

A. I believe so.

THE CHAIRMAN: Cash money in the envelope?

THE WITNESS: Yes, sir.

Q. After you personally delivered this money to Mr. Porro's office, did you have any further discussions with Mayor Jones regarding monies due him?

A. Yes, on occasion he expected more monies.

Q. Could you tell us on what occasions you are referring to?

A. I don't know any specific occasions.

Q. What did Mayor Jones say to you, if anything, regarding monies due him?

A. That he felt there were more monies due him.

Q. So that would indicate he had received the initial \$20,000?

A. Yes.

Q. Do you discuss with anybody else as to whether or not Mayor Jones actually received the envelope that you dropped off at Mr. Porro's office?

A. No, I don't recall.

Q. Mr. Porro ever indicate to you during the discussions in reference to these payments that this was the way things were done in East Rutherford?

A. He didn't say specifically East Rutherford, but, you know, he did mention on occasion that this is the way things were done. He didn't mention East Rutherford.

The Second Bond Issue Deal

By the time, the East Rutherford Sewerage Authority decided to sponsor another bond issue, the Tecott company was replaced by another underwriting firm. However, as with the first bond issue, the selection of the new underwriter was a foregone conclusion. As with the previous bond issue, also, a series of payoffs were arranged. Rosenberg's testimony continued:

Q. Did a second East Rutherford bond issue ever become necessary?

A. Yes.

Q. Was Mr. Porro still the East Rutherford sewerage attorney at that time?

A. Yes, he was.

Q. Did he promote or take any active part in this second bond issue?

A. Well, as he did -- as we did in the first, yes.

Q. Was Munciplex still the financial adviser for the authority at this point?

A. Yes.

Q. Was Tecott-Jackson the underwriter of this second bond issue?

A. No, they weren't.

Q. Why not?

A. Well, we had a personality conflict and we went to another bonding firm as a result.

Q. What other bonding firm did you go to?

A. Gibraltar Securities, Newark.

Q. Was there an agreement between Munciplex and Gibraltar Securities prior to the second bond issue?

A. Yes.

Q. Was Gibraltar Securities guaranteed the second bond issue when it came to fruition?

A. Yes, they were.

- Q. Were any other underwriters ever presented to the authority?
- A. Not to my knowledge.
- Q. Why not?
- A. For the reason that I stated before.
- Q. That being?
- A. That being that Municiplex was obviously profit motivated and self-serving.
- Q. Did you already have a contract with Gibraltar where they were guaranteed it, also?
- A. Yes.
- Q. Isn't it a fact that in both issues, in both bond issues in East Rutherford, the selection of the underwriter was a foregone conclusion prior to the bond issues even coming to fruition?
- A. Yes.
- Q. Was the second bond issue for \$2.6 million?
- A. Yes.
- Q. Did you and Mr. Porro discuss what might be necessary in order to get this second bond issue approved?
- A. Yes, we did.
- Q. Could you tell us the substance of these discussions; where they took place, and who the participants were?
- A. There was one basic meeting and it took place at a diner on Route 46 in Totowa.
- Q. What's the name of that diner?
- A. Golden Star, I think. I'm not sure exactly.
- Q. Who participated?

- A. Mr. Porro; Mr. Cheval, who was the chairman of the authority; Mr. Pandullo, the engineer; and myself; a member of the authority, Mr. Felice.
- Q. What was the purpose of this meeting at the Golden Star Diner between these individuals?
- A. It was indicated by Mr. Cheval he wanted everything done through him and nobody else.
- Q. What do you mean "everything done through him"?
- A. Any financial remuneration coming from us would go through him and nobody else.
- Q. And what would he do with this financial remuneration?
- A. I assume that he would just pay everybody he had to pay.
- Q. And were there any amount discussed as to how much was to be paid?
- A. Yes. It was the twenty-thousand-dollar figure which is shown there.
- Q. Did this second bond issue ever come to fruition?
- A. Yes, it did.
- Q. Again I refer you to Exhibit No. 4 and I ask you to look at the bottom half of the chart and where it indicates the May, 1971 2.6 million-dollar bond issue.* I would like you to look at the first figure on that chart and ask you if the \$48,000 was the profit Municplex received as its 50/50 share with Gibraltar Securities.
- A. Yes, it was.
- Q. Did Mr. Porro receive one-half of that figure?
- A. Yes.

*See Chart, P. 84.

Q. Was Mr. Porro still the East Rutherford Sewerage Authority attorney at that time?

A. Yes.

Q. I show you the second figure on this bond issue and ask you what that reflects.

A. This was the amount of money that I indicated had to be paid.

Q. The finder's fee?

A. Yes.

Q. I show you a third figure on that chart, a figure of \$49,500, and I ask you if that's the figure that Mr. Porro received from the East Rutherford Sewerage Authority for the bond work he performed on the second bond issue.

A. Well, as I indicated before, I know he received a legal fee. I don't know that that is the amount.

Q. With regard to the \$20,000 finder's fee, where did that money go?

A. Well, I was out of the country when the bond issue closed.

Q. Where were you?

A. I was in Sweden.

Q. Could you tell us what part you took in this twenty-thousand-dollar --

A. Well, I spoke to somebody in my office.

Q. Who.

A. Walter Schulz, who worked for us, and instructed him to put the money in an envelope and to leave it with Mr. Porro's secretary at that time.

Q. Were you aware whether or not this \$20,000 actually got to Mr. Cheval or --

A. I assume that it did because I didn't hear anything else.

- Q. Was the full \$20,000 delivered?
- A. No, it was \$18,000.
- Q. What happened to the additional \$2000?
- A. 2000 went into my own account.
- Q. With regard to the stock that Mr. Porro gave up, did he eventually get that stock back?
- A. Yes.
- Q. Had there been any agreement that he was to get this stock back in writing?
- A. No, not in writing.
- Q. Was it a verbal agreement?
- A. Yes, it was.
- Q. In reality, did Mr. Porro ever give up any of his interest in Municiplex?
- A. No.

Testimony Corroborated

Counsel Lynch called former Essex County Assistant Prosecutor James Mayer to testify about a sworn statement he took in July, 1975, from Walter Schulz. As previously noted, Rosenberg testified that he was vacationing in Sweden when the second bond issue was closed and that he telephoned instructions to Schulz on what to do with the \$20,000 he was to pick up from Gibraltar, the underwriting firm. Schulz's sworn statement, as put into the public hearing record, corroborated Rosenberg's testimony about the payoffs from the bond issue deals. As read by Mayer, the statement by Schulz concluded as follows:

"Question: So did you go to Gibraltar the same day you got the phone call from Rosenberg?

"Answer: Yes.

"Question: And the same day you also made the deposit?

"Answer: That's correct.

"Question: And the same day you made the deposit you went back to Porro's office?

"Answer: That's correct.

"Question: Now, was there any conversation when you dropped the envelope with the balance of the money to whomever it was at Porro's office?

"Answer: No conversation, not that I can remember. I might have said this is very important or this is the envelope Al is expecting, or something to that effect or get this to Al immediately. I might have said something like that. There was no conversation as to what was in it or anything like that... no.

"Question: Did you have any conversation with Fred Rosenberg after that money was dropped off at Porro's office?

"Answer: Well, when Fred came back..uh.. yes, that everything went smoothly. Thanks a lot. I was a little upset getting involved in this thing and Fred said everything is O.K. I appreciate you bailed me out. You know, that type of conversation. That's all.

"Question: Do you know what happened to that money after you dropped it off at Porro's office?

"Answer: No, I don't. It could have gone in ten different directions as far as I know.

"Question: Now, to clarify one point, going back to the conversation you had with Fred Rosenberg, before he went on vacation... did you discuss the fact that you were to tell Sullivan \$20,000 was going to East Rutherford? Is that right?

"Answer: Right. Fred instructed me that in the event that it came up in a conversation that I was to tell them that the money was to go to East Rutherford... the boys in East Rutherford.

"Question: In your discussion, was it made clear what was meant by the boys in East Rutherford?

"Answer: Well, no, not really. You know, if I assume it was going to be the officials in East Rutherford, they were, you know, we were gonna tell Tim that it was going to the officials in East Rutherford. If your question is specifically the Sewer Authority or mayor and counsel, or, who, no, that was never defined in my conversation with Fred or any conversations that I had specifically with Tim. Exactly who...

"Question: In other words, it was just....

"Answer: For officials, you know. It was kinda of an understood situation... you know... with the parties concerned, that it was going to the officials in East Rutherford. It wasn't like who or any specific names.

"Question: The term referred to the public officials in East Rutherford in general without naming anyone specifically?

"Answer: Yes, yes, it was. There was no clear-cut definition that it was going to the East Rutherford Sewer Authority. No, I couldn't answer that.

Authority Chairman Testifies

Henry Cheval, who was chairman of the East Rutherford Sewerage Authority at its outset (and who was still the chairman at the time of the SCI's public hearing), indicated in his testimony that he relied solely on Porro and Rosenberg in connection with agency's bond issue dealings. Although obvious conflicts of interest became apparent from time to time, Cheval never raised any questions about them. Excerpts from Cheval's testimony follow:

- Q. Now, you indicated you knew an entity known as Municplex. How did that come to your attention?
- A. Later on after the authority was formed Mr. Rosenberg came to the meeting. He was Municplex.
- Q. Who got Mr. Rosenberg to come to your meetings?
- A. I believe at the time Mr. Porro or Mr. Rosenberg were doing the work for the Carlstadt Sewer Authority, the bonding for the Carlstadt Sewer Authority.

Q. Did Mr. Porro or Mayor Jones ever tell you that, prior to the formation of your authority, that Municipex was recommending that the authority be formed?

A. No.

Q. What was the purpose of Municipex being hired by your authority?

A. They were hired to do financial advising work.

Q. Was that absolutely necessary for your authority?

A. Yes, it was.

Q. Why.

A. We didn't have the expertise in that field, the members of the sewer authority themselves.

Q. Were you aware of whether or not Mr. Porro and Mr. Rosenberg shared in any of the proceeds of the Carlstadt bond issue?

A. I wasn't aware of that, no.

Q. You mentioned the Carlstadt bond issue. Could you tell us why that had an influence in your hiring Municipex?

A. That was, Carlstadt Sewer Authority was formed just prior to the East Rutherford Sewer Authority, and I knew some of the members of the Carlstadt Sewer Authority and they recommended both Municipex and Mr. Porro very highly.

Q. After your authority was formed did you hire an attorney or retain an attorney?

A. Yes, we did.

Q. Who was that?

A. Mr. Porro.

- Q. Why was Mr. Porro retained by your authority?
- A. I believe Mr. Porro helped form the sewer authority and he did a good job in Carlstadt and he was recommended by the people of Carlstadt, so we hired him on that basis.
- Q. Was he being paid a retainer fee by the authority?
- A. I believe he was.
- Q. Did you also know whether or not he was paid a percentage of any bond issue that he worked on?
- A. Yes, I believe he got a percentage of the attorneys' fees for the bonds, bonding.
- Q. Was that percentage up to two percent of any bond issue that he worked with?
- A. I can't recall, but I think so.
- Q. I am going to show you Exhibit C-62 and ask you if that would refresh your recollection that Mr. Porro was to receive up to two percent of any bond issue that he worked on with the authority. Paragraphs Number 7 and 8 of Resolution Number 8.
- A. Yes, I recall. I recall this, yes.
- Q. I show you Exhibit Number 4, which is over here, and it indicates a fee of \$55,000 on the first bond issue of \$5.5 million. Did your authority pay Mr. Porro \$55,000 for his work on that bond issue?
- A. I believe we did.
- Q. Do you know whether or not Mr. Porro had any interest in Municiplex?
- A. No, I did not.
- Q. Do you know that Mr. Porro was receiving one-half of the profits of Municiplex?
- A. No, I did not.
- Q. Did you ever know that Mr. Porro had an interest in Municiplex?

A. I still don't know. I don't know, no.

X X X

Q. Did Mr. Porro ever tell you at any time that he had any share in Municiplex?

A. He told us he had an interest in Municiplex.

Q. After he told you he had this interest in Municiplex, you, as chairman of the authority, knowing he was your authority attorney, did you do anything to remedy this problem?

A. I believe he sent a letter to the authority excusing himself between doing business with the authority and Municiplex.

Q. Did you ever discuss with Mr. Porro what interest, in fact, he had with Municiplex?

A. No, I did not.

Q. Did Mr. Porro ever tell you that he was a full partner in Municiplex?

A. No, he did not.

Q. Was Mr. Porro the attorney for the authority when you hired Municiplex?

A. I believe he was, yes.

Q. And you mentioned earlier that Mr. Porro recommended or introduced Mr. Rosenberg to your commission. Is that correct?

A. Yes, he did.

Q. Did you question Mr. Porro as to why he would be introducing Mr. Rosenberg if he had an interest in Municiplex?

A. No. The only reason that he brought him to the meeting is they had formulated the bonding for the Carlstadt Sewer Authority and we were about ready to go through the same things ourselves, so he brought him in for an interview with the sewer authority commissioners.

- Q. Did you ever check out the qualifications of Mr. Rosenberg prior to hiring Municiplex?
- A. We had our attorney check him out.
- Q. Did you personally, as chairman of the authority, check out the qualifications of Mr. Rosenberg?
- A. No, I did not.
- Q. Were you aware that Mr. Rosenberg had absolutely no experience whatever in the bond market or financial community?
- A. No, I did not.
- Q. Is there any reason why you as chairman didn't check it out?
- A. I had our attorney check it out and took his word for it.
- Q. You relied solely on Mr. Porro's word for a financial adviser?
- A. Yes.
- Q. Did East Rutherford have a first bond issue?
- A. Yes, we did.
- Q. Who was the bond underwriting company on this bond issue?
- A. I really don't remember.
- Q. Would the name Tecott-Jackson ring a bell with you?
- A. I would say so, yes.
- Q. How was Tecott-Jackson selected by your authority to be the bond underwriter?
- A. We took Mr. Rosenberg's recommendations.

X X X

- Q. Did any other company make a presentation before your authority?
- A. I don't believe so.

Q. Any reason why not?

A. We took Mr. Rosenberg's recommendations.

Q. Were you aware that Municipex and the firm of Tecott-Jackson already had a contract whereby Tecott-Jackson was guaranteed the first bond issue even before that bond issue came about?

A. I was not aware of that.

Q. Were you aware that Municipex had another agreement with Tecott-Jackson whereby when the bond issue did come to fruition, that they would share the profits of that 50/50, equally?

A. No, I did not.

Q. And it is your statement that you did nothing to check into this bond underwriting company yourself?

A. No, I did not.

Q. Could the authority have hired a bond underwriting company itself without the need for a financial adviser?

A. I really don't know.

Q. Are you still chairman of this authority?

A. Yes, I am.

Q. Did you at any time since you found out of Mr. Porro's interest in Municipex do anything to remedy that situation up to the present time?

A. No, I haven't.

Q. Is Mr. Porro still the attorney for the authority?

A. Yes, he is.

Q. Did there come a time when there was a second bond issue?

A. Yes, there was.

- Q. And could you tell us who the bond underwriter was of the second bond issue?
- A. I believe it was Gibraltar.
- Q. And did you have any other bond underwriting companies present before your authority?
- A. Again, I can't recall any.
- Q. Did you rely totally on Mr. Rosenberg for the second bond issue?
- A. Yes, we did.
- Q. Were you aware Mr. Rosenberg, as part of Municiplex, entered into a contract with Gibraltar Securities whereby they guaranteed the second bond issue?
- A. I was not aware of --
- Q. Were you aware of a -- are you aware of a contract between Gibraltar Securities and Municiplex whereby Municiplex was guaranteed half of the profits made by Gibraltar Securities on the second bond issue?
- A. No, I'm not.
- Q. Could you tell us, Mr. Cheval, with regard to the second bond issue, whether or not you had any discussions with Mr. Porro concerning the qualifications of Gibraltar Securities?
- A. I believe we discussed that at one of our meetings, yes.
- Q. When you found out that the bonding company on the second bond issue was going to be Gibraltar Securities, did you question Mr. Rosenberg as to why there was a switch in bond underwriting companies?
- A. No, we did not.
- Q. On the discussions regarding the bonding companies, was Mr. Porro present to give legal advice to the authority on both bonding companies?
- A. I believe he was, yes.

Denies Payoff Discussion

Cheval was asked about the meeting at a Rt. 46 diner at which, according to Rosenberg, arrangements for a \$20,000 payoff were made. Cheval denied both that a discussion about money took place and that he ever accepted payoffs from the authority's bond issue actions:

Q. Mr. Cheval, did you have any discussions with Mr. Rosenberg in the Golden Star Diner, also present at that diner was a Mr. Felice, the chairman of the authority, yourself, and Mr. Pandullo, the engineer for the authority, wherein it was discussed that monies were to be given to the commissioners, specifically to yourself; that you would then hand it over to the other commissioners of the authority if as a result of getting the second bond issue passed?

A. I had the meetings, but that was not discussed at the meeting.

Q. Pardon me?

A. I had meetings with these people in many places, but that monies were not discussed at those meetings.

Q. Did you ever receive any monies whatsoever as a result of either the first bond issue or the second bond issue at East Rutherford, New Jersey?

A. No, I did not.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Cheval, what were the amounts of those two bond issues?

A. I believe they were 5.8 million and 2.6.

Q. Did you concede that you had any obligation as chairman whatsoever to inquire who your underwriters were?

A. We took the recommendations from our attorney and from the financial adviser.

Q. And you thought that was enough as chairman that you relied on your attorney, who had a conflict of interest, and on your financial adviser who apparently made a pre-existing agreement with the underwriter? You were satisfied you had completed your duties as chairman by simply delegating it to them?

A. Yes, I did.

"Did Henry Ever Stiff You?"

Alan Schamberg, the next and final witness of the East Rutherford episode, was the sewerage authority's treasurer and finance committee chairman at the time of the two bond sales. As had Cheval, the authority's chairman, Schamberg testified that he never questioned the backgrounds or the actions of Rosenberg, Municiplex, and the the Tecott-Jackson and Gibraltar underwriting firms. In fact, he testified, he acquiesced in everything that either Porro or Rosenberg advised in connection with the bond sales.

Counsel Lynch introduced a transcript of a taped conversation between Rosenberg and Schamberg -- and confronted the witness with his recorded comments on the alleged bond sale payoffs:

Q. Mr. Schamberg, did you at any time receive any monies from any particular individual, either Mr. Rosenberg or Mr. Porro, as a result of the passage of either the first bond issue or the second bond issue?

A. No, sir.

Q. Mr. Schamberg, I'm going to show you a transcript of a conversation that's Exhibit No. C-94 between yourself and Mr. Fred Rosenberg, dated October 8th, 1975. I ask you to look at this document. Now, I want to have your answers on some questions. This is a conversation between you and Mr. Rosenberg. On that conversation, if you look three-quarters of the way down the page, you're talking and you're saying, "They're still pushing on, on, uh, a payoff." Rosenberg's answer was: "That's what they're pushing on."

A. Wait, wait.

Q. Do you recall --

A. I see.

Q. Then further on down the page, the last sentence, Rosenberg is saying, "You know what they want to know?" You turn to the top of Page 2, you answer, "I know what they want to know, but I just wanted to let them know that another thing."

Rosenberg then states: "Did Henry ever stiff you?" Your answer: "No...not that I know of...uh, but I don't think he would."

Mr. Rosenberg answers: "No."

What did you mean when you told -- what did you think Mr. Rosenberg meant when he said, "Did Henry ever stiff you?" Was he referring to a payoff that was to be given to the commissioners of the East Rutherford Sewerage Authority?

A. According, according to this, Henry stiffed me, that means that I was supposed to get something that I didn't get, and I didn't get anything.

COMMISSIONER FRANCIS: The "Henry" refers to Mr. Cheval, who is chairman of the authority?

THE WITNESS: Yes, sir.

Q. Further on down the page, right about the middle, Mr. Rosenberg again is talking. He says, "I'll tell you what - what the saving grace, one of the saving graces - assuming that Henry doesn't open his mouth..." Your answer, "Yea."

Rosenberg continues, "...you know is a fact that everything went to him." And you go, "Yea, I know."

Rosenberg says, "You know?" And you answer, "Yea."

What did you refer to when you knew that everything went to Henry?

A. I really don't know what was going through my mind when I told him that because we were at his -- we were at a place and then he was telling me that he had to go and he was in a hurry.

Q. Did Mr. Cheval ever tell you that he had a meeting with Mr. Porro and Mr. Rosenberg where it was discussed that \$20,000 was to be paid by Gibraltar Securities and that everything was to go through Henry Cheval?

A. Not that I know.

Q. And this is what was being talked about between you and Mr. Rosenberg?

A. Not that I know. I don't know nothing about that meeting.

Q. Continuing with the statement. Mr. Rosenberg is stating: "and that this doesn't affect you or any of those other guys." Your answer: "We wouldn't have to worry about a God damn thing if it wasn't for Ed Rys." Who is Ed Rys?

A. Ed Rys he was one of the commissoners.

Q. Continue. Mr. Rosenberg said, "Why, what did Ed Rys do?" Your answer: "He's the one that insisted on it."

Rosenberg says, "On what?" Your answer, "You know." Rosenberg says, "Now wait a minute, I, no, jerking - joking aside." You say, "I mean it."

Rosenberg says, "Insisted on what?" Your answer: "On the remuneration, what you gave to Henry and everything."

What did you mean by "what you gave to Henry and everything," and what did you mean by "remuneration"? These are your words?

A. The only thing I could remember is that Rosenberg told me that Ed Rys wanted to go on a vacation and he wanted Rosenberg to pay for it. That's all I can remember.

Q. What did that have to do with what you gave to Henry and everything?

A. I don't know nothing, I don't remember that.

Q. Let's read on.

A. Yes, sir.

Q. Rosenberg said, "But I thought, I thought it was Henry that insisted on it. I never heard that..." Your answer: "No, Ed Rys."

Rosenberg: "Is that right?" You say, "Yea."

This is another statement I would like you to clarify. Rosenberg then says, "You know, you know, I'll tell you something. I, he came in to see me once. I don't know if I ever told you this story, after the second issue, and he wanted a trip to Bermuda or, or to the Bahamas or something - he wanted me to pick up the tab. I told him to pound salt, you know. I said everybody's taken care of, you know. He's the greedy guy, I guess, you know, greedy guy. How's your family?"

Isn't that the first time you heard about the trip to Bermuda?

A. No, no, because I did some work with Rosenberg over his house and I did some repairs for some screens for him and that's when he told me about it.

Q. Well, what was the fact about the remuneration that he gave to Henry?

A. That, I don't know nothing about that. I don't remember.

Q. Those are your words?

A. Well, that's what I said, yes.

THE TESTIMONY -- SECOND DAY
WEDNESDAY, JULY 28, 1982

Transition Statement

In a statement prefacing the second public hearing session, Commissioner Robert J. DelTufo noted that the previous day's testimony on bond financing misconduct at certain authorities had produced information "which has not heretofore been in the public domain." He added:

We turn today to witnesses whose testimony will illustrate other questionable practices and procedures by certain sewerage authorities, including the abuse of the appraisal process in acquiring sites for facilities, the adverse impact of partisan political pressures on the appointments of authority members and key staff people and the prevalence of kickbacks and bribes in the dealings of plant operators with peddlers of wastewater treatment chemicals.

In connection with testimony about bribes, the Commission notes that, as required by the statute which governs our operation, we have referred certain investigative findings to the Attorney General's office for possible criminal prosecution and will continue to make such referrals at the conclusion of these hearings. The value of the SCI's traditional liaison with New Jersey's prosecutorial agencies will be reflected by a good portion of the public hearing testimony today.

Today's proceedings will further illustrate the absolute need for public accountability by the autonomous entities which build and operate costly and complex sewerage facilities. The Commission reiterates its view that no sewerage authority in this state that is doing a proper job in serving its region, its county or its municipality can possibly take issue with the ultimate objective of these proceedings -- to make all such agencies more candid and open in the conduct of their public business. The only authorities that cannot afford accountability are those whose mismanagement or misconduct would be revealed by accountability.

As we have stressed, there are numerous authorities in New Jersey that are operating with propriety and integrity. We believe these many outstanding authorities will support our effort to generate public and legislative demand for statutory proscriptions of misconduct by some authorities that tend to defame all authorities.

We will begin today's session with a depiction of appraisal transactions in Cape May County which might never had occurred had the authority in question been required to account for its day-to-day conduct in a more open manner to the citizens it serves.

Land Appraisal Conflicts in Cape May

The Cape May County Municipal Utilities Authority (CMCMUA) in 1981, purchased two treatment plant sites at highly inflated prices based on questionable valuations by an unqualified and duplicitous appraiser. In one transaction, the authority bought for \$1,402,000 some 82 acres of a 780-acre site that had been sold on that same day for \$750,000. In the other transaction, not only were suspiciously inflated valuations involved, but the appraiser at one point also gave the sellers of the site a high appraisal, for a fee, prior to negotiating with the same sellers for the site purchase on behalf of the authority.

The Fish Plant Property Deal

The Commission called Special Agent Michael Goch to outline, by means of a chart*, the events that led to the authority's purchase of the Menhaden Fish Plant site. SCI Counsel Robert Geisler questioned Goch:

- Q. Mr. Goch, did you conduct an investigation into the purchase of the Menhaden plant property by the Cape May Municipal Utilities Authority.
- A. Yes, I did.
- Q. Did you participate in drawing up the chart that is now displayed to the Commission?
- A. That is correct.
- Q. Could you explain the contents of the chart?

*See Chart, next page.

PURCHASE OF "MENHADEN PLANT" PROPERTY
 BY CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY (CMC MUA)

-107-

--	ZAPATA HAYNIE CORPORATION	OFFERS PROPERTY FOR SALE THROUGH REAL ESTATE AGENT TITO MACCHIA - APPROX. 780 ACRES.	\$ 750,000
APRIL 12, 1979	GILBERT RAMAGOSA 5911 PACIFIC AVENUE WILDWOOD CREST, NJ	OFFERED TO LEASE PROPERTY FOR \$58,000 PER YEAR. AGREEMENT TO PURCHASE ON OR BEFORE MAY 1, 1981 - APPROX. 600 ACRES.	\$ 750,000
MAY, 1980	ROMAN P. OSADCHUK 131 SEASPRAY COURT NORTH WILDWOOD, NJ	SUBMITTED APPRAISAL REPORT TO CMC MUA, MARKET-VALUE - 12 ACRES	\$1,427,000
APRIL 23, 1981	CMC MUA	PASSED RESOLUTION NO. 24-81 PURCHASE - 82.8 ACRES.	\$1,402,000
MAY 1, 1981	CMC MUA	PURCHASED "MENHADEN PLANT" PROPERTY FROM GILBERT RAMAGOSA - 82.8 ACRES	\$1,402,000
MAY 1, 1981	GILBERT RAMAGOSA	PURCHASED "MENHADEN PLANT" PROPERTY FROM ZAPATA HAYNIE CORPORATION - APPROX. 600 ACRES.	\$ 750,000

A. Yes. I received the assignment to look into the sale of the property, what is known as the Menhaden Plant property, to the Cape May County Municipal Utilities Authority. At the time I determined, endeavored to determine the rightful owner or the owners of record, and I checked for deeds and, also, tax assessor's tax bills, and found that the owners were Zapata-Haynie Corporation.

Q. Did they offer the property for sale?

A. The property was for sale, and the realtor was Tito Macchia.

Q. What was the offering price for that property?

A. At that time it was \$750,000.

Q. For how many acres of land?

A. For 780 acres.

Q. Did Mr. Gilbert Ramagosa enter into a contract to lease and also to purchase those 780 acres in April of 1979?

A. Yes. It was April 12th of '79 there was correspondence from Zapata-Haynie Corporation to their attorney, James Cafiero, which indicated that Gilbert Ramagosa was interested in leasing and possible purchase of the Wildwood property. The terms of the lease were: \$58,000 per year to be paid monthly. At the end of a two-year period he was to purchase the property for \$750,000.

Q. Was the closing date set as May 1st, 1981?

A. That is correct. That is the deadline for this contract.

Q. In May of 1980 did Mr. Roman Osadchuk submit an appraisal report to the Cape May Municipal Utilities Authority indicating that twelve acres of the 780 acres owned by Zapata-Haynie Corporation had a value of \$1,427,000?

- A. That is correct.
- Q. Did the records of the Cape May Municipal Utilities Authority reflect that they resolved to purchase that property in April of 1981 for \$1,402,000?
- A. That was approved through a Resolution.
- Q. On May 1st, 1981, at back-to-back closings, did Mr. Ramagosa purchase the 780 acres from Zapata-Haynie Corporation for \$750,000 and then did Mr. Ramagosa sell that property, sell twelve acres of that property, to the Cape May Municipal Utilities Authority for \$1,402,000?

THE CHAIRMAN: On that very same day?

- A. On the very same day there was a back-to-back settlement.

The Appraiser's Story

Roman P. Osadchuk of Wildwood was employed as the authority's appraiser for the fish plant site purchase. During his testimony he conceded that he had no professional qualifications as an appraiser and indicated that his various valuation reports were replete with omissions and contradictions. He was evasive at the outset of his appearance and had to be confronted with his previous Executive Session testimony on the subject of his initial employment by the authority:

- Q. On any occasion prior to your being hired by the MUA had you ever been interviewed by any of the board members of the MUA?
- A. Yes, I had.
- Q. Who interviewed you?
- A. I believe, a number of the board members. I was at their meeting.
- Q. What meeting did you attend?
- A. I don't remember specifically.
- Q. ...Mr. Osadchuk, do you remember testifying before the State Commission of Investigation on June 10th, 1982?

A. I do.

Q. Do you remember being asked this question and giving the answer --

"Question: Prior to your being hired by the MUA to conduct the appraisal on the site including the Menhaden site, have you ever been, for any reason, had you ever been interviewed by the members of the MUA board?" And did you give the answer, "Not that I can remember, no"?

A. Yes.

Q. Was that the truth when you gave that statement?

A. Yes.

Q. So you were never interviewed by the MUA board prior to being hired to conduct an appraisal on the Menhaden site; is that correct?

A. That particular time, that's correct.

Osadchuk next recalled how he was personally selected as appraiser -- on an hourly pay basis -- by John Vinci, who was a member of the CCMUA since its inception in 1972 and the Chairman at the time the authority made the questioned site purchases:

Q. Did any member of the MUA approach you and ask you if you wanted to conduct the appraisal on the Menhaden site?

A. Yes, sir.

Q. Who was that?

A. John Vinci.

Q. What fee arrangement did you have with the MUA to conduct this appraisal?

A. It was on an hourly basis.

Q. Did you give the MUA an estimate?

A. No, sir.

Q. Was your arrangement with the MUA unusual?

A. No, sir.

- Q. Do you normally conduct appraisals on an hourly basis?
- A. At times I do, sir.
- Q. Is it not a fact that on most occasions you conduct them for a fixed fee?
- A. That's correct.
- Q. Was this appraisal a difficult appraisal?
- A. Yes, it was.
- Q. Yet you were selected with no prequalifications regarding your ability to conduct the appraisal. Is that correct?
- A. I don't know what they based hiring me on, sir.
- Q. Did you ever present the authority board members with any appraisals you had conducted before?
- A. I don't remember.

The site Osadchuk set out to assess was an abandoned fish processing plant. The witness described the grounds as follows:

- Q. Was the area littered with debris?
- A. Yes.
- Q. Broken concrete?
- A. Yes.
- Q. Twisted metal?
- A. Yes.
- Q. Broken glass?
- A. Yes.
- Q. Broken windows on the buildings?
- A. I believe so.
- Q. The metal rusted?

- A. I really don't know about the metal.
- Q. What approaches to the value did you take in your appraisal?
- A. Market, economic, and construction.
- Q. The economic, is that also known --
- A. Cost.
- Q. Regarding the cost approach, did you claim a depreciation factor of 34 percent in estimating the life of the buildings on that property?
- A. I believe so.
- Q. How did you arrive at that 34 percent?
- A. I used a valuation service called Marshall's.
- Q. How did you go about using that valuation service?
- A. I just looked into the charts and made an estimate.

The \$131,500 Chimney

Because of the credence that the authority placed on Osadchuk's appraisal, the Commission pressed the witness for details on how he came to value the site at almost twice what its sale price was. The testimony continued:

- Q. Was there a brick smokestack on the property several stories tall?
- A. Yes, there was.
- Q. To what was that smokestack attached?
- A. It was free-standing.
- Q. What functional purpose did it have when you conducted your appraisal?
- A. At that point?
- Q. Yes.
- A. None.
- Q. What value did you give it in your appraisal?

A. I took a value which was given to me by a consulting engineer.

Q. What value, what price did you put on that smokestack?

A. \$131,500.

Q. What was the elevation of the property that you examined? Was it two to five feet above sea level, approximately?

A. That's what my report says, yes.

Q. Did you consider that a negative factor in approaching your cost analysis?

A. Yes, sir.

Q. Did you indicate that on the your appraisal?

A. I did not use the cost approach in my final appraisal.

Q. My question is: Did you indicate that in your appraisal that it was a negative factor?

A. I don't remember. I would have to read it.

Q. Would you take a look and tell us whether there's any indication that you indicated that as a negative factor? Mr. Osadchuk, is it not a fact, in examining comparable properties of higher elevation you gave no indication in your appraisal report that the fact the Menhaden site was only two to five feet above sea level was a negative factor?

A. I took that into consideration in my report. That's one of the reasons I did not use the cost approach.

Q. Did you indicate that in your report at all?

A. I might have not indicated it in my report. However, I did not use that approach to value. At that point it would not have to have been written.

Q. But you did do a cost analysis. Is that correct?

A. Yes, I did.

Q. Did you make any adjustment for the limitation placed on portions of that property by the restrictions of the Coastal Facilities Act?

A. Yes, sir.

Q. Did you state in your appraisal that you were limiting the cost of the property because of restrictions of the Coastal Facilities Act?

A. I don't remember whether that's in the report, sir.

Q. If I told you that it wasn't in the report, would you accept that?

A. Yes, I will

X X X

Q. Did not your contract with the MUA require you to take test borings?

A. If they were so ordered, yes. They were not available.

Q. But you did not take any test borings. Is that correct?

A. No, I did not, sir.

Q. In fact, you did not know what the soil conditions were on that site?

A. No.

(The witness confers with counsel.)

I described them in my report, but no test borings were taken at that time.

Osadchuk said he also used the "market approach" in his appraisal effort and that he "searched all over the county looking for a comparable sale." Ironically, he contacted a representative of the Zapata-Haynie Corp., the owner of the fish plant site, during this search but claimed that he was never told that the

property was under contract for sale at \$750,000 -- which would have provided one "comparable sale." Osadchuk eventually abandoned the economic and market approaches for his appraisal and utilized an "income approach" instead, as he explained:

- Q. Did you use the income approach?
- A. Yes, I did.
- Q. What rental value did you put on the property for office and warehouse space?
- A. \$2 per square foot, sir.
- Q. For office or warehouse?
- A. For warehouse, sir.
- Q. What rental value did you put on office space?
- A. I believe I put \$5 a square foot.
- Q. How did you establish those values?
- A. I used comparable leases in the area, sir.
- Q. What leases did you use?
- A. Well, I got the most comparable figure from the Cape May County Airport Authority, I guess it was called, for rental.
- Q. Did you include in your income approach the cost of land twice by adding the value of the land after you established the rental value?
- A. Yes, I did.
- Q. Is that a mistake?
- A. That's the way I figured it, sir.
- Q. In essence, what you were saying, though somebody rents the property, they don't rent the land, is that correct, by using that approach?
- A. You take that into consideration, so I adjusted my rates, quite frankly.

- Q. Didn't you make an assumption that the property could be rented triple net?
- A. Yes, sir.
- Q. Isn't it unusual to rent any property in that area at triple net?
- A. NO, sir.
- Q. What property in that area could be rented at triple net?
- A. Cape May County Park.
- Q. What in Cape May County Park?
- A. They have warehousing facilities there.
- Q. Did you fail to deduct any operating costs from the net rental income?
- A. What do you mean by "operating costs," sir?
- Q. Did you include any management cost?
- A. Management for who, sir?
- Q. For the rental property.
- A. I don't understand what you're asking, sir.
- Q. Did you include any overhead?
- A. Well, that was all considered in the figures that I used.
- Q. Did you state that in your appraisal?
- A. I took it into consideration, but I didn't state it, sir. I really never do.

Ignored Rumors of Cheaper Sale Price

Osadchuk persisted in his \$1.4 million appraisal despite rumors the property was for sale at half that figure and that its actual assessed value was nearly two-thirds less than the price he set. His testimony continued:

Q. At the time you conducted the appraisal, did you believe that the 780 acres property containing the twelve acres that the MUA was interested in was for sale between, for between 600 and \$700,000?

A. I heard rumors, yes, sir.

Q. You heard many rumors to that effect; is that correct?

A. I sure did, yes, sir.

Q. Did you try to verify those rumors?

A. No, sir.

Q. Did you indicate that in your report?

A. No, sir.

Q. Did you determine whether the property was, indeed, under contract for sale for 600 or \$700,000?

A. No, I did not.

Q. Can you explain how you can arrive at a higher value for a twelve-acre portion of 780 acres, a value that you set at \$1.4 million, when the whole of that area was for sale for \$750,000?

A. A purchaser just didn't come down the pike, sir, and my appraisal stands for, by itself. I felt that that was the value and that's what I placed it at at that time.

X X X

Q. During the course of making your appraisal, did you visit the Middle Township tax assessor?

A. Yes, sir.

Q. Were you accompanied by another employee of Tolz Realty?

A. Yes, sir.

Q. For what purpose did you go to the tax assessor?

A. I wanted to get his assessment sheets.

Q. Did he advise you that the property, the large acreage of property, the 780, approximately 780 acres had been assessed for \$500,000?

A. I believe he did, sir.

Q. Did that set off any flags or warnings to you that your appraisal of \$1.4 million might be high?

A. Could have.

Q. Did you not remark to Mr. Hand, the tax assessor, that you had to get a high appraisal and you were having trouble doing it?

A. No, sir.

Q. Did you have occasion to talk to your former partner, Herman Tolz, in one of the Tolz offices and state to him, that, in fact, they want a high appraisal, referring to the Menhaden Plant appraisal?

A. No, sir.

The Commission sought to recapitulate, using its Menhaden land deal chart*, certain highlights of Osadchuk's testimony:

Q. To recapitulate your testimony regarding the Menhaden plant, and these will be substantiated by facts from other witnesses, you appraised the property at, according to the chart, at \$1.4 million, is that correct, in May of 1980, at \$1,427,000. Is that correct?

A. Yes, sir.

Q. And the MUA purchased that property in April 23rd, resolved to purchase that property on April 23rd, 1981, for \$1,402,000. Is that correct?

*See Chart, next page.

PURCHASE OF "MENHADEN PLANT" PROPERTY
 BY CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY (CMC MUA)

--	ZAPATA HAYNIE CORPORATION	OFFERS PROPERTY FOR SALE THROUGH REAL ESTATE AGENT TITO MACCHIA - APPROX. 780 ACRES.	\$ 750,000
APRIL 12, 1979	GILBERT RAMAGOSA 5911 PACIFIC AVENUE WILDWOOD CREST, NJ	OFFERED TO LEASE PROPERTY FOR \$58,000 PER YEAR. AGREEMENT TO PURCHASE ON OR BEFORE MAY 1, 1981 - APPROX. 600 ACRES.	\$ 750,000
-119- MAY, 1980	ROMAN P. OSADCHUK 131 SEASPRAY COURT NORTH WILDWOOD, NJ	SUBMITTED APPRAISAL REPORT TO CMC MUA, MARKET-VALUE - 12 ACRES	\$1,427,000
APRIL 23, 1981	CMC MUA	PASSED RESOLUTION NO. 24-81 PURCHASE - 82.8 ACRES.	\$1,402,000
MAY 1, 1981	CMC MUA	PURCHASED "MENHADEN PLANT" PROPERTY FROM GILBERT RAMAGOSA - 82.8 ACRES	\$1,402,000
MAY 1, 1981	GILBERT RAMAGOSA	PURCHASED "MENHADEN PLANT" PROPERTY FROM ZAPATA HAYNIE CORPORATION - APPROX. 600 ACRES.	\$ 750,000

A. That I don't know.

Q. Do you know that the MUA purchased it on May 1st, 1982, from Mr. Gilbert Ramagosa for \$1,402,000?

A. I know that from the newspaper, sir.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Osadchuk, did anyone from the authority ever ask you to come in with a high figure on your appraisal of the Menhaden plant?

A. Never, sir.

Q. Did you ever tell anyone that you had been told to come in with a high figure?

A. Never.

Q. Did you deliberately inflate your appraisal?

A. No, sir.

The \$700,000 Conflict of Interest

The second land purchase by the Cape May authority found Osadchuk not only making various inflated site valuations but also working for both the buyer -- as the negotiator for the authority -- and the seller -- as the appraiser for the Jersey Cape Racquet Club. This property consisted of two lots which the authority identified as the "Seven Mile Beach/Middle Region Site."

Again, SCI Special Agent Goch was asked, through testimony, to chart* Appraiser Osadchuk's activities in this deal:

Q. Mr. Goch, did you participate in compiling the data that's in the chart before the Commission at this time?

A. That's correct.

Q. Does this relate to the purchase by the Cape May Municipal Utilities Authority of two lots adjacent to the Jersey Cape Racquet Club?

*See Chart, next page.

CONFLICT OF INTEREST
IN THE PURCHASE OF
SEVEN MILE BEACH/MIDDLE REGION SITE

BY CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY (CMC MUA)

1-29-79	OSADCHUK SUBMITTED LETTER OF "OPINION OF VALUE" TO CMC MUA	\$ 93,000
4-30-80	HENRY N. HAND SUBMITTED APPRAISAL REPORT TO MUA	407,000
7-16-80	OSADCHUK APPOINTED AS "NEGOTIATOR" FOR CMC MUA IN ABOVE PURCHASE	
1-21-81	OSADCHUK HIRED BY AND SUBMITTED HIS APPRAISAL REPORT TO JERSEY CAPE RACQUET CLUB (SELLERS)	432,000 **
	** AFTER SUBMITTING ABOVE REPORT OSADCHUK STARTED NEGOTIATIONS WITH THE "SELLERS"	
2- 4-81	AT CLOSED WORKSHOP SESSIONS OSADCHUK GAVE VERBAL REPORT RE RESULTS OF NEGOTIATIONS AND ALSO HIS OPINION OF VALUE (48 ACRES @ \$10,000)	480,000
4- 8-81	CMC MUA ADOPTED RESOLUTION NO. 21-81 TO PURCHASE LAND	700,000

A. That's correct. They are known as Lot Number 12 and Lot 13.01.

Q. Do the records of the Cape May Municipal Utilities Authority indicate that Mr. Roman Osadchuk submitted an opinion of value to the Cape May MUA of \$93,000 on January 29th, 1979, for those two lots?

A. Yes. I obtained a copy of the correspondence dated 1/29/79 which indicated opinion of value of 93,000.

Q. Do the records of the municipal utilities authority indicate that the authority had the property appraised by Henry N. Hand and he set a value of \$407,000 on those two lots?

A. That is correct.

Q. Do the records indicate --

THE CHAIRMAN: Just a minute. How does Henry Hand get in this picture?

THE WITNESS: He was appointed by the MUA authority to conduct an appraisal of two lots to the properties which were considered as a site for the Seven Mile Beach-Middle Region.

THE CHAIRMAN: And that's subsequent to that opinion of value that you are talking about, 93,000?

THE WITNESS: That is correct.

BY MR. GEISLER:

Q. On July 16th, 1980, do the records of the MUA indicate that Mr. Osadchuk was appointed as negotiator for the utilities authority to purchase those two lots?

A. That is correct, the minutes of the meeting indicate that he was appointed as negotiator.

Q. Do the records subpoenaed by the State Commission of Investigation indicate

that on January 21st, 1981, Mr. Osadchuk was hired by one of the owners of the two lots in question to conduct an appraisal?

A. Well, I don't know when he was hired. However, on 1/21/81 he submitted his appraisal report to the owners of these two lots, plus other properties that were owned by the sellers.

Q. Did he indicate a --

THE CHAIRMAN: Just a minute; just a minute. Are we talking about the same property being appraised or opinion given, the 93,000 and the 432,000?

THE WITNESS: That is correct, it's the same two lots. And in this case Henry N. Hand's appraisal was for the two specific lots, that's lot 12 and lot 13.01.

THE CHAIRMAN: Yes.

THE WITNESS: And at that time the two lots that were being considered by the authority were incorporated in the appraisal, the total appraisal submitted to the sellers by Roman Osadchuk.

THE CHAIRMAN: My question, is, are we talking about the same property on the 93,000 figure and now the 432,000 figure?

THE WITNESS: That is correct.

BY MR. GEISLER:

Q. On February 4th, 1981, did Mr. Osadchuk advise the members of the Cape May Municipal Utilities Authority that he had a verbal opinion that the property was worth \$480,000?

A. Yes, he did that at ... (a) ...closed workshop session of the municipal utilities authority meeting.

THE CHAIRMAN: And that was a month subsequent to the four-thirty-two figure that he had appraised it; is that correct?

THE WITNESS: That's correct.

BY MR. GEISLER:

Q. In fact, after that did the Cape May Municipal Utilities Authority purchase those very two lots for \$700,000?

A. That is correct.

Appraiser Worked for Buyer and Seller

Osadchuk at first insisted that he was employed by the authority as its negotiator after he had completed his appraisal for the Jersey Cape Racquet Club. However, he was forced to admit that he worked for both sides at the same time. His testimony:

Q. Could you tell us where the Jersey Cape Racquet Club is located and those two sites are located?

A. Yes, sir. The Jersey Cape Racquet Club is located just off of the Garden State Parkway north of Stone Harbor Boulevard on the east side of the Parkway going north.

THE CHAIRMAN: Tell us what you did for the authority in relation to this second property we are now discussing.

THE WITNESS: There was, there was property adjacent to the racquetball club that I was hired to try and purchase from the owners on behalf of the MUA.

BY MR. GEISLER:

Q. Were you presented with an appraisal done by Henry Hand by the MUA indicating that the value of these two lots was \$407,000?

A. Yes, sir.

Q. Were you told to attempt to purchase that property from the owner of the property, the Jersey Cape Racquet Club, for that price?

A. Yes.

X X X

- Q. Did you subsequently tell the authority that the property was worth \$480,000, the two?
- A. Yes, sir, I estimated it. I didn't make a formal appraisal on that for the, for the authority.
- Q. In fact, I show you what has been marked C-132, minutes of the Cape May Municipal Utilities Authority in which you inform them the property was worth \$480,000. Is that correct?
- A. I gave them an opinion, that's correct, sir.
- Q. And the MUA subsequently purchased that property for \$700,000. Is that correct?
- A. I don't know, sir.
- Q. You never learned of that fact?
- A. No, sir.
- Q. Did you consider that you had been employed by both sides of the transaction?
- A. No, sir. I made, I made the MUA aware, sir. The sequence of events were, in 1979 I had the letter and in 19--
- Q. Could you answer the question yes or no?
- A. Okay.
- Q. Were you employed by both sides of this transaction?
- A. Yes, I was.
- Q. At the time you were conducting negotiations to purchase that property were you also employed by the owners of that property?
- A. I believe my appraisal was already completed by that time, sir.

Q. Could you tell us when you completed your appraisal?

A. I'd have to go back and research it, sir. Oh, yeah, January 22nd, 1981. I did look that up.

Q. And could you tell us when you were hired as negotiator for the MUA?

A. I don't have that contract in front of me.

THE CHAIRMAN: When did you conduct this negotiation?

THE WITNESS: All during 1981, I believe, sir.

Q. If I were to tell you that the records of the MUA indicate that you were hired as the negotiator on July 16th, 1980, would you agree to that?

A. Yes, sir.

Q. So, then, indeed, you were negotiating the purchase of the property at the same time you were working for the owners of that property?

A. It could have been, sir.

Q. Did you inform the attorney, or any of the attorneys, of the authority of (this) fact?

A. Yes, I did, sir.

Q. Did you inform them of the fact because you felt there was a conflict of interest?

A. Yes, I did.

Q. Yet even though you felt there was a conflict of interest, you still continued to work for both sides. Is that correct?

A. He advised me it was perfectly all right for me to do that because in one capacity I was a negotiator, in the other capacity I was appraiser.

- Q. Who advised you it was proper?
- A. Mr. Fulginiti.
- Q. Did you advise any of the authority members that you were employed by both sides of this transaction?
- A. I didn't, sir. I just told the solicitor.

Appraiser's Qualifications Questioned

Herman A. Tolz, a realtor for 35 years, testified next. He recalled that Osadchuk had been a partner in one of his real estate offices but that the relationship had ended up in litigation. He recalled that his firm had done only 30 to 35 appraisals throughout its history, "most of which were single residences." He contended that neither Osadchuk nor he himself were qualified to appraise the Menhaden plant property. His testimony:

- Q. To your knowledge, did Mr. Osadchuk have any formal training in appraising?
- A. Are you referring to schooling?
- Q. Yes.
- A. To my knowledge, the only schooling Mr. Osadchuk had in appraising work would be, or appraisal, would be part of what we call a G.R.I. program, which is a broad coverage of the entire real estate business, and I would assume that the portion devoted to appraising would have taken less than one day, from what I'm told about it.

X X X

- Q. Are you familiar with the Menhaden plant property in Middle Township?
- A. I've driven by it on many occasion. I've never had occasion to be in it.
- Q. Would it be complicated to conduct an appraisal of it?
- A. I would think so.
- Q. Would you conduct an appraisal of it?

THE WITNESS: This was for the 75.45 acres that the Menhaden plant was setting on. There was two other parcels besides this.

THE CHAIRMAN: Did you have appraisals for those two other parcels?

THE WITNESS: Yes, I do.

COMMISSIONER FRANCIS: Assessments.

THE WITNESS: These are the appraisals now since the wetlands went in effect, which they are also wetlands. One of them was appraised, the Block 15, Lot 26-1 was appraised at \$500, and Block 14-38, Lot 3, was appraised at \$6200.

BY MR. GEISLER:

Q. Did these two individuals comment on the value of the appraisal that they were working on?

A. The only thing they told me was that they would have to get the appraisal up.

Q. Did they tell you how high they would have to get it up?

A. No, they did not.

Q. Did they mention a figure of a million dollars to you?

A. In that area, yes.

Q. Is that unusual?

A. Let's say this: It's not unusual for a municipality to pay more than a individual or a business would, but it's unusual for them to pay this much more.

Q. That's twice the tax assessed value; is that correct?

A. Right.

COMMISSIONER DEL TUFO: How did you get into this conversation about higher, they had to get the appraisal higher?

THE WITNESS: After they looked at my appraisal they said this is --

COMMISSIONER DEL TUFO: This is not acceptable or something to that effect?

THE WITNESS: Right.

COMMISSIONER DEL TUFO: Can you give us the dynamics or the conversation, to the best of your recollection?

THE WITNESS: Well, after they looked at the appraisal, they said, we, our appraisal is going to be higher. Can't you give us some sales or something comparable to this? And there's nothing comparable in the township or in the county to this. And they made another appraisal in our municipality of vacant land which they didn't comment on getting the price up on the vacant, on the other appraisal. But on this they did.

Experts Condemn Osadchuk's Appraisal

Two of New Jersey's most respected professional appraisers -- James V. Hyde, Jr., director of right-of-way for the New Jersey Transportation Department, and John J. Boylan, Jr., chief of the department's Bureau of Appraisals -- were asked to assess Osadchuk's work as CCMUA's appraiser in its fish plant property purchase. They attended the hearing to report on their review, which was critical of Osadchuk's qualifications and performance. Boylan, who conducted the review at Hyde's direction, was the primary witness. He said Osadchuk should have used a depreciation factor of 72 per cent rather than 34 per cent, which "would have resulted in a very significantly lower value." He said Osadchuk's "income approach" assumption failed to assign tax, insurance, repair, reserve and other operating costs to the buyer, as well as the costs of any improvement loans and vacancy and credit losses.

"If you took all of these items," Boylan said, "and deducted them from the potential income as reported in the appraisal, the resulting value conclusion would be drastically lower." In addition, he testified, Osadchuk's appraisal utilized a technique in which land value was added twice, "which appears to be double compensation."

COMMISSIONER FRANCIS: That would, again, have the effect of greatly inflating that appraisal value?

MR. BOYLAN: Yes, it would.

Boylan said he also reviewed the Ramagosa contract to purchase the fish plant property for \$750,000 as well as the contract for the authority's purchase of the same property on the same day for \$1.4 million. The testimony on this issue:

Q. Were you provided with a contract with a lease for 780 acres and a contract to purchase that property?

A. Yes, I was.

Q. Did you review the deed and purchase contract from Gilbert Ramogosa to the MUA where the MUA purchased the property for \$1.4 million?

A. Yes, sir.

Q. Had the appraiser mentioned, or the appraisal mentioned, the existence of the purchase contract, would it have been significant?

A. It would have raised the flag. If the entire property had sold or was under contract for sale for \$750,000 at the time I was writing an appraisal and when I got done my report I came to a conclusion that twelve acres out of 780 was worth a million four hundred thousand dollars, I would want to take another look.

THE CHAIRMAN: Maybe two looks.

MR. BOYLAN: Or two, yes.

Authority Attorneys Testify

John H. Mead, counsel to the CCMUA since its inception, was called to testify about Osadchuk's appraisal and other events related to the authority's two major land deals in 1981. Mead was questioned first about the appraisal of the Menhaden plant site:

Q. Were you in charge of the -- were you selected by the MUA to negotiate the purchase of that property.

A. Yes.

Q. Did you review Mr. Osadchuk's appraisal?

A. Yes.

- Q. And how much was that appraisal for?
- A. That appraisal was for one million four hundred some-odd thousand dollars.
- Q. Did it concern you that that property had been purchased or was under contract for purchase for \$750,000 and not just twelve acres but 780 acres?
- A. I read the appraisal thoroughly in view of that fact, yes.
- Q. Were you of the opinion that a second appraisal was required?
- A. I thought it was a decision that should be made by the authority members.
- Q. Did they decide not to have a second appraisal?
- A. That is correct.
- Q. And did they make that decision based on a recommendation from you?
- A. No. I think that I presented that option to them rather objectively.
- Q. Do you know why they didn't have, conduct a second appraisal?
- A. I think there were several reasons that were discussed at the time as to why they didn't have a second appraisal. One reason was that they were, they were satisfied with the Osadchuk appraisal. Another reason was that they were aware or made aware of another appraisal by Mr. Lamanna which seemed to support the Osadchuk appraisal, and it was an option they elected to proceed with.

X X X

- Q. Did you tell them that you had seen a second appraisal of the Menhaden plant property that indicated the property was worth \$1.9 million?
- A. Yes, the entire property, not the property being purchased.

Q. Would you be surprised if I told you that that is not an appraisal, that it is better termed a feasibility study?

A. I would be surprised, yes, sir, because it is designated at the top "Appraisal." It's designated, "Appraisal Vincent Lamanna" on the table of contents. It says, "Purpose of appraisal." At one point here it says that it's made to determine fair market value even though it's for mortgage purposes. Yes, I realize it's a question of terminology or semantics, but I would be surprised if you told me this was a feasibility study and not an appraisal.

Q. You have no expertise in appraisal of real estate, do you?

A. None other than the normal attorney has who handles some real estate work, that's correct.

Q. Prior to the purchase of the site by the MUA, had that site been approved for a sewage treatment plant by either the E.P.A. or D.E.P.?

A. Not formally, sir.

Although he was the authority's counsel, Mead claimed he had "almost nothing to do" with the acquisition of the Cape Jersey Racquet Club site. He did recall some of the dollar figures related to that site, as he testified:

Q. Regarding the same two pieces of property, did Mr. Osadchuk give an opinion of value of those two pieces of property of \$93,000?

A. I have -- I believe that he did at one time, but I have very little information on that subject.

Q. Did Mr. Henry Hand submit an appraisal of value of that property of approximately \$407,000?

A. Mr. Harry Hand did the main appraisal in that approximate amount, but I don't know the exact amount.

Q. If I were to tell you --

- A. I had almost nothing to do with that acquisition. My involvement was the fact I was at some meetings when it was discussed.
- Q. Do you know for a fact the authority purchased those two lots for approximately \$700,000?
- A. Approximately.
- Q. Do you know why when the authority's appraisal was for \$400,000 it purchased the property for \$700,000?
- A. No, sir.
- Q. Do you know why the authority did not begin condemnation proceedings against that property?
- A. No, sir.

The CCMUA's other lawyer, Anthony J. Fulginiti, was involved in the authority's acquisition of the Jersey Cape Racquet Club property. He was asked about Osadchuk's conflicting role in that deal:

- Q. Did it come to your knowledge that an opinion of value of \$93,000 had been given by Roman Osadchuk to the Cape May Municipal Utilities Authority for that property?
- A. No, it did not.
- Q. Did you receive information that an appraisal had been conducted by a Mr. Hand for the MUA setting the value at \$407,000?
- A. Yes, I did.
- Q. During the course -- was Mr. Osadchuk appointed as negotiator for the purchase of property by the MUA?
- A. Yes, he was.
- Q. After he was appointed as negotiator for the MUA, did he come to you and advise you that he had been hired by one of the owners of the two pieces of

property to conduct an appraisal of those two pieces of property?

- A. What time are you talking?
- Q. After he was hired as negotiator for the MUA to purchase those two lots.
- A. I don't understand your question as to timing.
- Q. At any time did Mr. Roman Osadchuk advise you that he had been hired by one of the owners of the two lots adjacent to the Jersey Cape Racquet Club to conduct an appraisal for them?
- A. He advised me that he had performed an appraisal for one of the owners, and that's all he advised me.
- Q. And was this during the period he was acting as negotiator for the MUA?
- A. Yes, either then or it was in that time period. I don't remember whether his appraisal, not appraisal, his negotiating was done, but I believe not.
- Q. Did he speak to you because he felt there was a conflict of interest in his being employed by both sides?
- A. I have no idea why he spoke to me. It was a gratuitous comment to make.
- Q. What, if anything, did you say to him regarding that?
- A. That he should do something about it.
- Q. To your knowledge, did he continue to be negotiator for the Cape May Municipal Utilities Authority after that conversation you had with him?
- A. The best of my knowledge, yes.
- Q. Did you advise the members of the board of the Cape May Municipal Utilities Authority of your conversation with Mr. Osadchuk?
- A. No, I did not.

- Q. Did the authority subsequently purchase those two lots for \$700,000?
- A. I believe that's the exact figure, yes.
- Q. Could you tell us how it came about that the authority did not condemn that property since it had an appraisal of \$407,000 for those two lots?
- A. It was the authority's decision. My recommendation was to condemn it.

CMCMUA Chairman's Recollections

John Vinci, a member of the authority since its creation, served as its chairman at the time of the \$1.4 million and \$700,000 land purchases. He was asked to recall certain events related to those actions that had been discussed in prior testimony. Excerpts from Vinci's testimony follows, first on the Menhaden plant site:

- Q. Did the authority purchase the property for \$1.4 million?
- A. Yes, sir.
- Q. At any time did you receive any information that the individual who sold the property to the MUA had himself purchased a larger portion of property for \$750,000?
- A. I read in the papers that the purchaser had purchased seven or some hundred acres of lands for, I believe, \$750,000.
- Q. Did you read that before or after the authority purchased that property?
- A. I believe it was during the authority's consideration of the property.
- Q. Did that raise any red flag to you that the individual selling it to the authority purchased a larger portion for less money than the authority was paying for twelve acres?
- A. Not a great deal, sir.
- Q. Why didn't it raise any red flag to you?

A. Well, because, sir, it was represented to me by our solicitor, Mr. Mead, that the acreage that we were having appraised was only the good portion of the site, the usable portion; the twelve acres was the only land that was buildable and the 70 acres that we acquired would be used for a buffer, and the remaining wetlands were worthless.

Q. Are you testifying that by excising these twelve acres from 780 acres the price increases from \$750 -- \$750,000 to \$1.4 million?

A. I believe I said, sir, that, in keeping with the conversation that I had with Solicitor Mead, and that was that we had appraised the portion of the site that was usable, buildable, twelve acres, and that the 70 some-odd acres we were going to obtain besides that were to be used for buffers, and the remaining portion was wetlands, which would have no value and probably cause us trouble by trying to maintain ownership.

Q. Did the authority board members select Mr. Osadchuk to conduct the appraisal?

A. Yes, we did.

Q. Based on Mr. Osadchuk's appraisal, did the authority board members vote to purchase...the Menhaden plant site, for \$1.4 million?

A. We voted to purchase the site based on negotiated fee that Solicitor Mead had brought back to the authority.

Q. Did you place total reliance on Mr. Mead?

A. I placed a great deal of reliance and credibility into what Mr. Mead brought back to the authority. I always did. I think John Mead is a man of great stature and understanding. He's a compassionate individual.

Q. Did Mr. Mead vote on the selection of Mr. Osadchuk?

A. I don't believe Mr. Mead voted. he represented to us that Mr. Osadchuk was available to do the appraisal. I think we entrusted and delegated Mr. Mead and the Solicitor Fulginiti certain areas in which they were responsible for handling on behalf of the project. I think one of those were to obtain appraisers for the authority.

Q. Would you be surprised if I told you that Mr. Mead doesn't know how Mr. Osadchuk was selected?

A. To a great degree, I certainly would, yes.

Vinci also testified about the value fluctuations on the Jersey Cape Racquet Club site:

Q. Did the authority purchase it for \$700,000?

A. Yes, sir, we did.

Q. Prior to purchasing it for \$700,000, did the authority hire Mr. Osadchuk to give an opinion of value of \$93,000 for those two lots, and did he give a value of \$93,000?

A. I believe that Mr. Osadchuk rendered a letter of opinion to us. This was done in the sequence of the following: Initially, when we went into site selection activity, we used municipal assessments and we were criticized for not having more reflective land figures. So what we thought was, at least, this was represented to me, I think Solicitor Fulginiti indicated that we should have, when you have numerous sites involved, an opinion from a qualified real estate appraiser as to what a fair value would be in their opinion without going into an in-depth appraisal, and I believe to that extent Mr. Osadchuk did render a letter of opinion. It was not a detailed letter. It was done, as a matter of fact, in a very short time, and subsequent to that Mr. Hand did a more detailed appraisal on the property.

Q. And was his appraisal for \$407,000?

A. I believe it was, sir.

Q. And did Mr. Osadchuk report to the authority that he believed that a fair price for the property would be \$480,000?

A. I do not recall that, sir. It may very well be, but I don't recall the specifics.

Q. And the authority purchased that property for \$700,000. Is that correct?

A. Yes.

Q. When Mr. Osadchuk advised you or advised the authority that he thought the value was \$480,000, did he also advise you that he had been hired by one of the owners of those two lots to conduct an appraisal for them at that very same time?

A. No, he didn't advise me, sir.

Q. Did anyone question Mr. Osadchuk as to how he changed his opinion of the value of that property from \$93,000 to \$480,000?

A. Sir, I think I tried to explain to you in my previous answer in response to your question that we asked, and I think it's fair to say, in a very unique fashion to have a letter of opinion without the benefit of detailed information, give us a letter opinion.

I also know that, in speaking to our solicitor, and I don't know whether I discussed this with Mr. Osadchuk or not, that he was using a per acreage residential value rather than commercial value, and you could have a difference there of four or five times the value per acre.

THE CHAIRMAN: What was the detailed information he used for the 480 figure that he had not used for the 92,000 figure?

THE WITNESS: Sir, very simply, as I said before, the letter of opinion was something that was done in a matter of days. I cannot answer accurately what Mr. Osadchuk used to render the letter of opinion or what he used to render the detailed appraisal, but I'm sure --

THE CHAIRMAN: You have no idea?

THE WITNESS: I'm sure he did the necessary work to do an in-depth appraisal.

THE CHAIRMAN: What makes you sure of that?

THE WITNESS: Well, by virtue of the voluminous appraisal that he delivered.

BY MR. GEISLER:

Q. Could you tell us how the authority justified purchasing that property that it had an appraisal for of \$407,000 for \$700,000?

A. The justification, in my opinion, was that during the negotiations Mr. Osadchuk represented to the sellers the authority was offering the appraised value and he come back to the authority and indicated that there was no movement, and that we had a decision to make; either to go to condemnation or to negotiate.

Q. Was there anything preventing the authority from condemning that property?

A. To the best of my knowledge, no sir.

THE CHAIRMAN: Did anybody in your authority or on your advisers ever conceive of the possibility of hiring a second appraiser, well qualified appraiser? Did it ever occur to you?

THE WITNESS: Sir, I can only --

THE CHAIRMAN: Putting out all this public money.

THE WITNESS: Sir, I can only testify in this instance, when we discussed the Menhaden site, as I so discussed earlier, I believe I represented to the authority, and I have a press release which I showed you on my last visit here, indicating that I advanced the idea of a second appraisal, and --

THE CHAIRMAN: Who rejected it?

THE WITNESS: It was not rejected per se. If you recall --

THE CHAIRMAN: Was it ignored?

THE WITNESS: Pardon?

THE CHAIRMAN: Was it ignored?

THE WITNESS: It was not ignored. It was certainly considered.

THE CHAIRMAN: By whom?

THE WITNESS: By all of us.

THE CHAIRMAN: And it was turned down?

THE WITNESS: Not turned down. I think the chain of events that unfolded, as I pointed out to you on my previous visit, those being the appraisal that was brought to my attention by Mr. Corson of Corson Real Estate and subsequently the information that I gave to the authority of that appraiser, appraisal being done on behalf of a client who was going to purchase that property in the amount of \$1.9 million, I think that the second appraisal did surface at that point, sir.

THE CHAIRMAN: You knew very well the 1.9 contemplated a tremendous development?

THE WITNESS: No, sir, I did not.

THE CHAIRMAN: Well, you should have.

THE WITNESS: I did not have the occasion to review that appraisal of \$1.9 million.

THE CHAIRMAN: Well, why did you accept it?

THE WITNESS: I accepted it because our solicitor was privileged the opportunity to see that appraisal, and it was done by the only M.A.I. in the county, Mr. Vincent Lamanna. In my opinion, Mr. Lamanna's credibility stood high.

The Commission questioned Vinci on the failure of the authority members, and particularly the chairman, to assume more responsibility for the authority's actions:

COMMISSIONER DEL TUFO: You don't feel your responsibility as chairman of that authority was to inquire into the facts and circumstances of the value of the property and the public money that's within your charge to expend to buy this property, you didn't think you had to do that yourself or that the authority members should do it?

THE WITNESS: Sir, I believe that I exercised the best judgment to the best extent I personally could have.

COMMISSIONER DEL TUFO: You know Mr. Ramagosa, don't you?

THE WITNESS: No, sir, I don't.

COMMISSIONER DEL TUFO: You don't know Mr. Ramagosa?

THE WITNESS: No, sir. I have never met Mr. Ramagosa, as I so stated before, and I believe the only member of the authority that knows Mr. Ramagosa, and he so testified, was Mr. Gillian, who indicated he was in business with him and that happened after the purchase. Had I known that prior to that, I certainly would have make that public.

BY MR. GEISLER:

Q. Did you or any other authority member request of Mr. Osadchuk that he come in with a high appraisal?

A. Absolutely not.

Q. Do you know of any reason why Mr. Osadchuk would attempt to come in with a high appraisal?

A. Absolutely not.

"Politics Over Merit"

Introducing the next episode, Commissioner Henry S. Patterson, II, recalled that "the selection of authority members and staff executives on the basis of partisan politics rather than proven merit was among the SCI's investigative findings." One example of such findings was the political maneuvering at the Franklin Township Sewerage Authority which enabled Albert Koszkulics to switch from chairman to executive director of the authority. Koszkulics was a Republican leader in Franklin when he was appointed as one of the five authority commissioners in 1975, at a time when the GOP was in control of the township. He became chairman of the authority a year later and subsequently began a vendetta against the incumbent executive director which enabled him to usurp that job in January, 1979. (Koszkulics resigned as executive director of the Franklin Township Sewerage Authority in August, 1982.)

Political Self-Promotion

The circumstances of Albert Koszkulics's self-promoted transition from authority chairman to executive director were described by Dorothy Marold, the authority's administrative assistant, under questioning by SCI counsel Michael V. Coppola. In addition to recording authority receipts and disbursements, investing all funds and handling personnel records, she also prepared the agenda for and kept the minutes of all authority meetings. At the outset of her testimony, in connection with Koszkulics's appointment as an authority commissioner, she emphasized that in her township such appointments "are made by the political party that's in power at the time."

Koszkulics's Predecessor

Lawrence M. Gerber served as executive director of the Franklin Township Sewer Authority for eight years before Koszkulics replaced him. Since Mrs. Marold's job required her to report directly to the executive director, the Commission sought her opinion of Gerber's capabilities:

Q. During the eight years was he involved in the day-to-day operations of the authority?

A. He took an active part. He participated and went out on the different various construction sites and handled all the affairs of the authority.

Q. Was he interested in how the whole operation worked, including the sewers, the office, everything that went on in that authority?

A. Yes, that's correct.

Q. What is your opinion as to his qualifications and competency when he was the executive director?

A. I think he was well qualified and competent.

Gerber's Pay Frozen

The move to force Gerber to resign so Koszkulics could replace him began in the Spring of 1978. Mrs. Marold testified:

Q. All right. Now, directing your attention to April 12th, 1978, did the commissioners freeze the salary of Mr. Gerber?

A. That's correct.

Q. I now show you what has been marked C-70. Do you recognize C-70 as your handwriting and notes of the meeting that took place on April 12, '78?

A. That's correct.

Q. Now, do those notes show and at that meeting was Mr. Gerber's salary frozen?

A. Yes, that's the meeting.

Q. Did Mr. Koszkulics, as chairman, chair that particular meeting?

A. That's correct.

Q. And was the position of executive director, the salary range frozen at a level of 17 to 25,000?

A. That's correct.

Q. And was Gerber making 25,600 at that particular time?

A. That is correct.

Q. Directing your attention to December 6, 1978, did an agenda meeting take place?

A. I believe so.

Q. All right. On that date -- I show you C-71. Do you recognize what C-71 is?

A. Yes.

Q. Is that your handwriting reflecting what took place at the December 6 meeting?

A. That is correct.

Q. During that meeting did Mr. Gerber express his intention to resign as of December 31st, 1978?

A. That is correct.

Q. Was Mr. Koszkulics present at that meeting?

A. Yes, I believe he was. Yes.

Q. All right. Do you know why Mr. Gerber did, in fact, resign?

A. I believe he was upset that they had frozen his salary. He felt that he, you know, earned or should have gotten a increase in salary. They also, I think, had found fault with some of the matters that he had handled.

Q. All right. Is it your opinion that the salary was frozen because they wanted to get him out of the position?

A. I would say so.

Gerber prepared a classified advertisement that ran in the Newark Star-Ledger and the New York Times, advertising the impending executive director vacancy. As a result, a "stack of resumes" was received in the mail from applicants for Gerber's job. Mrs. Marold gave the resumes to the authority's personnel committee. However, she testified, the authority ignored the job applications:

Q. To your knowledge, did any of the commissioners review those resumes at any time, or interview anybody that was listed on those resumes at any time?

- A. Not to my knowledge that I saw.
- Q. All right. And you were present at all the meetings?
- A. Yes, that's right.

Koszkulics Finally Gets Job

Mrs. Marold next testified that the authority quickly hired Koszkulics as executive director after pretending that it had considered all the mailed-in applications for the job. The authority also lied about the length of time it had spent on Koszkulics's appointment after a public protest over its action. Mrs. Marold's testimony:

- Q. Did Koszkulics resign as chairman and as a commissioner as of January 2nd, 1979?
- A. That is correct.
- Q. Was there a meeting of the commissioners on January 3rd, 1979?
- A. That is correct.
- Q. I now show you what's been marked C-77. Do you recognize it as the minutes of the January 3rd agenda meeting, 1979 meeting?
- A. That is correct.
- Q. At that meeting did the commissioners recommend that a particular individual be appointed as executive director?
- A. Yes.
- Q. Who did they recommend?
- A. Mr. Koszkulics.
- Q. Now, I am going to read some language to you at the bottom of Page 1 of C-77. This is language that you wrote down spoken by Mr. King. "At this time Mr. King said that the personnel committee received nine resumes and reviewed each one. He personally delivered to each commissioner copies of the resumes; after reviewing all resumes, all applications, realized he overlooked a person with the most

experience, Past Chairman Albert Koszkulics, recommended that Albert Koszkulics as executive director and the board members agreed, felt he knew the township."

Now, did they, in fact, review any resumes at that meeting?

- A. Not in my presence.
- Q. How much time was spent discussing the position of executive director at that meeting, January 3rd, 1979? Approximately twenty minutes; would that be fair to say?
- A. I would say.
- Q. What time did that meeting end, by the way? 10:54?
- A. 10:54.
- Q. Did there come a time after the January 3rd meeting that the commissioners made a statement indicating that the January 3rd meeting had ended at 1:30 in the morning?
- A. Yes, at the regular meeting of January 8th.
- Q. Was Koszkulics present at that January 8th meeting?
- A. Yes, he was.
- Q. Was that, in fact, the time that the January 3rd meeting had ended, 1:30 in the morning?
- A. No, it ended at 10:54.
- Q. Did they say it ended at 1:30 in response to criticism concerning the appointment of Albert Koszkulics?
- A. Yes.
- Q. Did they tell the people at that meeting that it ended at 1:30 and they spent a great deal of time discussing the appointment of Albert Koszkulics?

A. That is correct.

Q. That wasn't true, was it?

A. No.

Q. In fact, the meeting ended at 10:54?

A. That is correct.

Q. And that's reflected in your minutes?

A. That is correct.

Pay Freeze Melts

Although Koszkulics's initial employment contract authorized a salary of \$23,000, or \$2,000 less than the salary freeze imposed on Gerber, the new executive director was granted around-the-clock use of an automobile. In addition, a year later, the authority raised his salary by \$6,500 under a new contract whose generous terms set off another public protest. Mrs. Marold testified on these issues:

Q. Now, I hand you what's been marked C-83. It is a contract, January, '80, between Koszkulics and the sewerage authority. Did they increase his salary to \$29,500?

A. That is correct.

Q. He got an increase of approximately \$6000 between '79 and January, '80?

A. 6500.

Q. Okay. Was there any explanation given regarding the salary freeze that they had previously instituted on the position while Koszkulics was the chairman?

A. No.

Q. The terms of that contract found its way into the newspaper; isn't that correct?

A. That is correct.

Q. And, also, in that January, '80, contract he was given an automatic increase of ten percent per year?

A. That is correct.

- Q. For a period of five years?
- A. That is correct.
- Q. And the contract states that he was able to use a car, a sewerage authority car, for personal use? It actually said that?
- A. That is correct.
- Q. And once it made it into the newspapers, did the commission do anything with respect to the ten percent automatic increase and the use of the car for personal use?
- A. Yes. Mr. Koszkulics had written a letter and due to a lot of pressure, the public, from the public.
- Q. The letter came after the newspaper articles?
- A. Right.
- Q. And they gave him a new contract?
- A. Yes.
- Q. And they took out the ten percent?
- A. The following month, and they took out the ten percent, right.

THE CHAIRMAN: What figure is the new contract?

THE WITNESS: There was no figure inserted. It just said that each year he would have the privilege to negotiate a new salary or an increase in salary.

BY MR. COPPOLA:

- Q. Isn't it true the salary 29,500 remained the same, they took out the automatic ten percent increase at that time?
- A. That is correct.
- Q. And right now he's earning \$33,500?

A. That is correct.

Expense Vouchers Questioned

Public clamor over the terms of Koszkulics's employment as executive director extended to authority expense accounts, as Mrs. Marold testified:

Q. Now, were there also complaints submitted by the public regarding expense voucher submissions by members of the authority and the commissioners?.

A. Yes.

Q. After the complaint came in, was there a change in the manner in which vouchers were submitted, that is, the amount of the vouchers that were submitted?

A. Yes.

Q. What was the change?

A. They were much lower and there were very few coming in, expense vouchers.

Q. Okay. Specifically with respect to Mr. Koszkulics, did he at one time get reimbursement for a lunch where he claimed the expenditure as cementing Polish relations?

A. That is correct.

Q. Was there a clamor raised about that reimbursement to him?

A. Yes, there was.

Q. And after the outrage in the newspaper, did Mr. Koszkulics then forward the money back to the authority?

A. That is correct.

The Commission asked Mrs. Marold to compare Koszkulics's performance with Gerber's in the executive director's post:

Q. What can you tell us about his work habits as compared with Gerber's?

A. As compared to Gerber's, Mr. Gerber participated, like I say, in all the different aspects.

Q. Did Mr. Koszkulics?

A. No, no.

Q. Is it fair to say he worked on the average of 25 hours a week?

A. Yes.

Q. Koszkulics that is.

A. Yes.

Q. Is it also fair to say that, when he wasn't in your office, he would tell you that you could reach him at home?

A. At times.

Q. Now, did you have additional work during that year, January, '79 to January '80?

A. Basically, investing of the funds.

Q. And Mr. Koszkulics told you to do that?

A. I just assumed. They never -- he never asked about it.

Q. When Mr. Gerber was executive director, isn't it true Mr. Gerber actually invested funds?

A. Right.

Q. Now, is Mr. Koszkulics supposed to supervise you?

A. Yes.

Q. Does he supervise you?

A. No, not really.

Q. Based on the work that he does, is he needed at the authority?

A. Let's put it this way: We operated a full year without an executive director at one time.

"I Don't Need to do Anything"

G. Joseph Lancsak, veteran field supervisor at the Franklin Township Sewerage Authority, was the next witness. He also was asked to compare Koszkulics's performance as executive director with Gerber's. At one point he testified that Koszkulics told him as long as Lancsak was on the job, "I don't need to do anything." Lancsak's testimony initially concerned his relationship with Gerber:

Q. Is the field supervisor supposed to work closely with the executive director on the day-to-day operations of the authority?

A. Yes.

Q. What kind of working relationship did you have? Was it good or bad?

A. Very good.

Q. When you say, "Very good," could you tell us how he became involved in the operation of the authority and with you in your position?

A. Mr. Gerber got very much involved in all phases and operations, functions, and building, field work, whatever. He had -- very knowledgeable.

Q. Did he have an understanding of the operational and technical aspects of the collection of sewage in Franklin Township and the way your system operated?

A. Very much so.

Q. In December, '78, isn't it true that Mr. Gerber left the authority?

A. Yes, sir.

Q. Do you know why he left? I'll rephrase the question. Did politics have anything to do with him leaving the job?

A. I would say, yes.

Q. Isn't it true that the commissioners froze his salary?

A. Yes, sir.

X X X

Q. Now, did there come a time when Mr. Koszkulics replaced Mr. Gerber as the executive director?

A. Yes, sir.

Q. January, 1979?

A. I believe it was January

Q. Did you know Mr. Koszkulics?

A. Most of my life.

Q. He was a commissioner since 1975; is that correct?

A. Yes, sir.

X X X

Q. Now, after he became executive director, did he ever have a conversation with you about you making his job easier?

A. Yes, sir.

Q. What did he say to you?

A. He came to my office and I wanted to show him the functions, just what we do, and he said, "Joe," he says, "you've been here a long time, I don't need to do anything. You're not going to be retiring or leaving." He says, "I'll always have you here."

Q. Did he also tell you after he was appointed that he had some political influence in the town?

A. Yes, sir.

Q. Do you remember what he told you?

A. He told me he's very influential and that he had control of some board members and he'd get what he wanted.

Q. Was it your understanding that board members were the members of the sewerage authority?

- A. I assumed so.
- Q. Is Koszkulics supposed to supervise your activities?
- A. Yes, sir.
- Q. Does he?
- A. Very little.

X X X

- Q. Now, since he took over, have your responsibilities increased or decreased?
- A. Increased.
- Q. Is the increase due to new work or are you doing someone else's work?
- A. I would say doing someone else's work.
- Q. Whose work are you doing?
- A. I would say, the executive director.
- Q. And the executive director is Mr. Koszkulics?
- A. Yes, sir.
- Q. All right. What work of his are you doing?
- A. I get the planning and zoning prints and whatnot and make an evaluation of them, whether there's sewer accessibility or whether it goes to engineering. I make a report on it and I've given it to him and he would, in turn, look it over and put it in his words and give it back to the board.
- Q. Okay. When Mr. Gerber was the executive director, did he do that work?
- A. Yes, sir.
- Q. Now, during your coffee-break discussions or at any other time does Mr. Koszkulics indicate to you that he understands what's going on at the sewerage authority? Is he knowledgeable or isn't he knowledgeable?

- A. I would say not very knowledgeable.
- Q. Mr. Michael King. He's a commissioner?
- A. Yes, sir.
- Q. If I were to tell you that he gave Mr. Koszkulics the credit or the praise for keeping the sewer rate at \$85 a year, would that be a fair statement, that Mr. Koszkulics is responsible for keeping that rate at \$85.
- A. In my opinion, no.
- Q. Why not?
- A. Mr. Gerber, our engineers, projected this system years back, and from my knowledge the rate of developments and whatnot come, and they're coming into the township, are projected up till 1982, and there is very little new stuff coming in.
- Q. So, Mr. Koszkulics had nothing to do with setting the rate at \$85?
- A. I would say, no.
- Q. The rate was set years ago?
- A. Yes, sir.
- Q. Mr. Koszkulics has claimed before the State Commission of Investigation that the work of the authority merely involves pipe sizes, designing pumping stages, measurement, all of which he claims were elementary to him. Did he ever demonstrate to you that he actually comprehended the operation of the sewerage authority?
- A. No, sir.
- Q. Do you have any examples that you could give us that would demonstrate his lack of understanding of engineering principles? Would it refresh your recollection to speak of p.s.i. guages?

- A. Yes. Over the past three and a half years he's been there, he had us install p.s.i. guages in our lift stations.
- Q. Did you tell him prior to the time that they were installed that they were a waste of money?
- A. His explanation what benefit they would serve and whatnot, I couldn't understand it. I did say it was a waste of money.
- Q. All right. What they do is measure the flow of pressure on the intake and outtake valves of the pump station?
- A. Yes, sir.
- Q. Do you keep a chart of the readings that you get from the valve, the intake value? Do you recognize that?
- A. Yes, sir.
- Q. Does the chart indicate the measurements for the intake valve are zero?
- A. They all indicate zero on this chart.
- Q. Is that because you always get a reading of zero on the intake valve and you don't need to find out how much pressure is going in there?
- A. Yes, sir. On intake we got no readings whatsoever.
- Q. You told him that prior to the time he had those valves put on there or the gauges put on there?
- A. I told him I didn't think it would work.
- Q. And you get a reading of zero all the time?
- A. Yes, sir.
- Q. Mr. Koszkulics claims he supervises the whole activity of the operation. Does he supervise you?
- A. No, sir.

Self-Promoter Testifies

Koszkulics, the next witness, gave his version of the events which led to his replacement of Gerber as the Franklin Township Sewerage Authority's executive director. His political background was one topic of his testimony:

Q. Were you active politically at the time you became commissioner?

A. Yes, I was.

Q. And in what fields, in what activities?

A. Well, I had been a committeeman in the district and I had been president of the Franklin Township Republican Organization as well.

Q. What party was in control at the time you became a commissioner?

A. At the time I became a commissioner it had to be the Republican Party of which I was a member.

Q. Why do you think it had to be the Republican Party?

A. I'm sure I wouldn't have been appointed otherwise.

Koszkulics also was asked about the lid that the authority placed on Gerber's salary:

Q. There has been testimony that the executive director salary was frozen in 1978. Is it not true that the personnel committee of the authority made that recommendation to the commission and that you were chairman of the authority at the time the recommendation came in?

A. I might question with respect to the word "frozen" as we did not establish that fact by resolution.

Q. Isn't it true that the salary was given a range from 17,000 to 25,000 as reflected in the agenda minutes taken by your administrative assistant, Dorothy Marold?

- A. Number one is the reason for that was that is the highest post in the town, and recognized as such even today is that of the township manager who supervises approximately 200 people. I may be off a bit, and the reason he was told and advised that -- he was represented by counsel at the time, I may add, that the authority was not inclined, after due deliberation, to grant a raise which was substantially higher than that of the township manager. Of course, we were already, let's say, talked to or had been suggested that we do not permit a situation of that sort to occur.
- Q. So 25,000 was a cap in view of the township manager salary; is that what you're telling us?
- A. Which was essentially correct.
- Q. What was the township manager's salary?
- A. At the time I don't know, but it was less than Mr. Gerber.
- Q. Isn't it true that that salary range was set in order to get Mr. Gerber out of the position?
- A. Not true, sir.
- Q. Was it felt at that time that that is what that job was worth, \$25,000?
- A. I cannot honestly make that judgment because a job is worth, is dictated by many factors, the times, the value of the job. We felt that he will progress in his position, that is the director at that time, but not beyond that of the manager at the time because the public was somewhat sensitive to issues already at that time.
- Q. They were sensitive to salary issues at that time?
- A. It was not a permanent freeze, I would like to make that clear. There was no such resolution adopted.

Koszkulics said Gerber's resignation came as a "surprise" but that he was not particularly sorry about it. His testimony continued:

Q. When did you become aware that Mr. Gerber was going to resign?

A. If I recall, sir, it came rather as a surprise, because we did not ask for his resignation. He had a work agreement which extended five years and I believe he had three-and-a-half years exhausted of that time?

Q. When did you become aware that he was going to resign?

A. I don't remember the exact date, but I believe December prior to my own appointment.

Q. Would it be December 6 at the agenda meeting?

A. That is when he presented his resignation, it wasn't a meeting that I can recall, yes.

X X X

Q. On December 6, Mr. Gerber told you and other members that he was going to resign effective December 31; is that correct, 1978?

A. That would be correct, sir.

Q. Did you find the position of chairman of the authority challenging?

A. Well, I sort of liked the idea, I mean, as I recall.

Q. Did you enjoy the position as chairman?

A. I did enjoy it, yes, I did.

Q. Were you sorry to see Mr. Gerber leave?

A. I'm under oath, not particularly.

Q. Did you have aspirations for his job?

A. Never.

Q. Never?

A. No, sir.

Q. You resigned from the position of chairman as of January 2nd, 1979; isn't that correct?

A. That is correct.

Q. That was prior to the appointment of an executive director to succeed Mr. Gerber; isn't that correct?

A. That is correct.

Q. Between December 6 the time he told you he was going to resign and January 2, 1979, did you have any discussions with other members of the authority regarding you getting the job of executive director?

A. Initially, not because I was not personally interested in it, I did not seek it. In fact, it was my recommendation that we advertise, for the first time incidentally, for a director. It was never done before that time.

Although he claimed responsibility for advertising for Gerber's replacement as executive director, Koszkulics said he never reviewed any of the applications that resulted from the advertisement. He explained that in the meantime other members of the authority had "prevailed upon me to consider the job myself." Further excerpts from his testimony follow:

Q. When did they prevail upon you to accept the job of executive director?

A. It had to be very close to the day of my resignation.

Q. January 2, 1979?

A. I'm not sure, but very close to the day of my resignation.

Q. Now, you know that they discussed the appointment of a new executive director at their January 3 meeting and you're telling us now that they talked to you about the position, they tried to prevail upon you prior to the meeting selecting somebody.

A. Again, they may have mentioned this to me, but I don't fully understand that question, sir.

Q. All right, the question is this: Prior to January 2, 1979 the date that you resigned as chairman, did you discuss your appointment as executive director with the other commissioners or anyone on behalf of the commissioners?

A. I'd have to say that might have been discussed, but as I say I refused the appointment on several occasions. I wasn't interested.

Q. You may have refused, but you did have discussions; is that true?

A. We had a few discussions with the personnel committee.

X X X

Q. Who did ... prevail upon you?

A. Well, again, this calls for a slight explanation. Number one is the authority was almost comprised entirely of new members, five commissioners, I was the oldest one in terms of service and I was the only one intimately familiar with every frame of the job at the time because I lived through designation, through debt, unfortunately or through resignations. The commissioners were all new and frankly, and I must say it with some modesty, that they felt that I should stay on or because I was familiar with the jobs, the applications and the current business of the authority, and in that situation ultimately it made every sense.

Q. They appointed you or recommended that you be appointed on January 3, '79 at an agenda meeting; is that true?

A. Sir, this is not embedded in my memory bank exactly when it was recommended. They prevailed upon me, yes, to accept the job.

Q. Did you submit a resume?

A. Yes, I did. First one to do so, I believe.

Q. When did you submit the resume?

A. Oh, must have been few days before my appointment, I suppose. I submitted a similar one to the town because I almost became town manager myself.

Q. Do you remember?

A. When? Have to be in January, sir, I don't remember exactly what date.

Q. After you resigned as chairman?

A. After I had indicated that I might consider, yes. I hope you don't hold me to any moment. I do say I gave a resume and I don't know exactly what day I gave it to them.

Q. Well, I show you what's been marked C-79; is that a copy of the resume that you submitted?

A. Yes, it seems to be, yes, sir.

Q. And on the second page you indicate that you had resigned as chairman as of January 2, 1979 on your resume?

A. I said sometime in January, I wasn't sure, but if it says so, it says so.

Q. It's your resume.

A. Yes, it is my resume.

Koszkulics was also questioned about his \$6,500 salary increase and other contractual benefits:

Q. Now, you were hired at a salary of 23,000?

A. Yes, sir.

Q. A year later you were given an increase to 29,500. What happened to the salary freeze or the salary scale?

A. What happened, number one, is I accepted the job for 3000 or 3500 less than my predecessor, and we had an agreement, more or less, that we'll discuss it in six months, and I did not press that issue.

We discussed it another year, and I should point out at this time, for the benefit of this Commission, that I offered my resignation to the Township, a signed resignation -- if I do not fit the bill, ask for my resignation, I'll say good day to you in grace and depart.

They haven't done that in three-and-a-half years.

X X X

Q. So in one year you were given a salary increase of over \$6,000?

A. I believe so.

Q. With an automatic increase of ten percent per year and use of a car for your personal use for 24 hours?

A. I can't accept your terminology of personal car. It was used entirely for business, even when I had the car, it was never used after my -- unless it was for official business.

Q. But the terms of the contract gave you the car for personal use?

A. If it so says, but I did not use it for such.

CHAIRMAN LANE: You know that's in the contract, don't you?

THE WITNESS: I believe I do, sir, yes.

CHAIRMAN LANE: Let's not quibble.

Q. Didn't that information hit the papers that you were going to be given an automatic increase of ten percent and the use of that car for 24 hours?

A. That did hit the papers.

Q. And after it hit the papers the ten percent was taken out by the Commission along with the car for 24 hours?

- A. I beg your pardon. I requested it be taken out, myself.
- Q. You requested that it be taken out?
- A. I requested it.
- Q. After it hit the papers?
- A. Yes, sir.

Koszkulics also was questioned about reimbursements he made to the authority for lunches that he had put on his expense account:

- Q. Is it not true on one occasion, specifically in November of 1980, you took two individuals to lunch and charged it to the authority as cementing Polish-American relations?
- A. I'm proud to respond to that with a positive yes.
- Q. You submitted a voucher for reimbursement for the authority for that?
- A. I did.
- Q. And did there come a time when you then reimbursed the authority out of your pocket for the money that the authority had given you?
- A. For the same reason, yes, but if I had the same opportunity I would not have. It was a legal expenditure and quite proper.

Former Director's Testimony

Gerber, the final witness in the Franklin Township episode, was executive director of the East Brunswick Sewerage Authority at the time of his public hearing appearance. He spoke as a graduate of Newark College of Engineering, as a member of the New Jersey Water Pollution Control Association, as an adviser on sewerage plant operator training and licensure and as an officer of the Authorities Association of New Jersey. He was questioned about certain of the events which resulted in his displacement as executive director of the Franklin Township authority:

- Q. Now, did there come a time in April of 1978 when your salary was frozen at \$25,000?

A. That is correct.

Q. Do you have an opinion as to why your salary was frozen?

A. Yes, I do.

Q. What's that opinion?

A. Well, earlier that year, the beginning of the year, the end of the previous year, the attorney for the authority came in the office and spoke with me and told me that he had been assigned by the board to investigate my activities and my contract to determine if there was any way that I can be discharged for cause for not living up to my contract. He showed me a draft letter that he had written back to the authority indicating that he had, in fact, conducted the investigation and found no reason to have cause against me for anything at all.

Q. Do you think the politics in Franklin Township had anything to do with your salary being frozen in April of '78?

A. I would think that that would not be a wrong assumption to make.

CHAIRMAN LANE: Excuse me, prior to the attorney talking to you as you have related, had you heard any complaints about your work, any objections been made to any of the things you did in the operation of that plant?

THE WITNESS: No, sir.

X X X

Q. Did there come a time when you learned that Koszkulics was chosen for the job of executive director?

A. Yes.

X X X

Q. Now, do you have an opinion -- well, are you familiar with Mr. Koszkulics while he was the commissioner?

A. Yes.

Q. And could you describe briefly your dealings with him when you were the executive director and while he was the commissioner regarding the technical and operational aspects of the sewerage authority?

A. I was left alone by him with the exception of at meetings when business was discussed. I was unable to communicate with him at his place of work. He did not, as other chairman had done in the past, contact me on a daily or semi-weekly basis with regard to operations of the authority.

Q. Was there a newsletter involved in certain aspects of your relationship with Chairman Koszkulics?

A. I had offered to write a weekly newsletter to the board outlining activities during each and every week. I believe that I wrote two or three and the board suggested that I stop. It was a practice, which I have continued, however, both at Western Monmouth and at East Brunswick.

Q. Based on the qualifications that are set forth in that classified ad, do you feel that Mr. Koszkulics met those qualifications in 1979 when he was appointed.

A. I do not.

Q. And what do you base that opinion on?

A. My familiarity with Mr. Koszkulics since about 1963. My knowledge basically coming from him of his job experience.

X X X

Q. What is your present salary at East Brunswick?

A. Over \$35,000 a year.

Q. What was your salary in 1978 when you left the Sewerage Authority in Franklin Township?

A. \$25,600.

COMMISSIONER FRANCIS: Mr. Gerber, how does the East Brunswick plant for which you are executive director compare with the Franklin Township plant for which you were executive director, in size, scope, complexity?

THE WITNESS: Very, very similar. Both East Brunswick and Franklin Township are collection agencies. Both have approximately 200, 250 miles of collector sewers. I have 15, 14 pumping stations in East Brunswick.

I believe I had 11 when I left Franklin Township. An awful lot of the sewer construction in both communities was done by developers completing housing projects.

Kickbacks on Chemical Purchases

The next public hearing episode was described by Commissioner Patterson as "a direct example of the SCI's liaison with the Attorney General's office." The Commissioner noted that the primary witness, a sewerage plant superintendent, was in the process of pleading to a bribery accusation and that "as part of that process he is being required to recite his activities in full this afternoon." This case was among a number of matters referred to the Attorney General's office during both the Commission's investigation and public hearing.

Robert Rogove, the plant superintendent involved in this episode, worked for the Township of Ocean (Monmouth County) Sewerage Authority for 15 years. He admitted during his testimony that he had accepted thousands of dollars in kickbacks from a salesman by the name of Arthur Cohen and from two unidentified chemical companies and that he purchased twice as many barrels of chemicals as his plant actually needed during 1975-1980. Paradoxically, the chairman of this authority during his testimony contended that it wasn't until he listened to Rogove's public hearing revelations that he realized the existence of a kickback scheme. Yet this authority had been alerted in early 1980 by an independent auditor that there were suspicious "similarities" of invoices, bank accounts and other financial data which indicated irregularities in purchases. The authority reacted by requiring, for the first time, full compliance with the State bid laws in the purchase of chemicals. In the latter part of 1981 it reorganized its office staff. In early 1982 it dismissed its auditor. Rogove did not submit his resignation as the authority's plant superintendent until July 9, 1982, only 18 days before the Commission's public hearing.

The Auditor's Alert

The independent accounting firm employed by the Township of Ocean Sewerage Authority was Sidney Binder and Co. of Long Branch. The first witness in this public hearing episode was Thomas P. McDaniel of Eatontown, a staff auditor for the Binder firm, who first discovered irregularities in the authority's accounts. His testimony, in part:

Q. In February of 1980 were you working on a fiscal 1979 audit of the Township of Ocean Sewerage Authority?

A. Yes, I was.

Q. Did you observe anything unusual when you were working on this audit?

A. Yes, there were some striking similarities in a number of different chemical vouchers which were paid for various chemicals which seemed to be quite relative.

Q. Could you tell us what you learned of during your audit?

A. Well, during the audit we ran across several vouchers, like I said, that were for the purpose of payment of chemicals. These vouchers apparently were originating from the same source using the same typewriter. There were similarities on the actual invoices that were relative to the vouchers and addresses were similar, telephone numbers were similar. And then when we examined the canceled checks, we noticed that all of the checks were going into one or two similar bank accounts.

Q. But they were all different companies; is that correct?

A. Yes, there were five different ones all together, I believe.

Q. Do you remember the names of those companies?

A. Yes, well, right off the sheet here there's Hart Chemical Company, Artco, Jafco, International Research and Northeast Labs.

A. Yes.

Q. Could you tell us which ones, which companies you did business with at the Township of Ocean Sewerage Authority?

A. International Research, Artco, Northeast Laboratories, Jafco, Hart Chemical and I think Global Research.

Cohen Kicked Back 20 Percent Cash

Q. Did you have any agreement with Mr. Cohen involving your purchasing of chemicals from Mr. Cohen during the years 1975 to 1980?

CHAIRMAN LANE: Whereby you gained some benefit?

THE WITNESS: Yes.

Q. What was that agreement?

A. That he would pay me 20 percent of the cost of the chemicals.

Q. How did you enter into this agreement?

A. Verbally.

Q. When did it occur that you entered into it?

A. In 1975.

Q. In what form did you receive the 20 percent?

A. Cash.

Q. Where did you receive the cash, what locations?

A. At the sewerage authority.

Q. In relation to orders you placed with Mr. Cohen, when did you receive the money?

A. At the time of placing the order.

Q. Did you receive cash every time you placed an order with him?

- A. Yes.
- Q. What did you do with the cash after you received it from him?
- A. I deposited it in the bank.
- Q. What bank was that?
- A. Garden State Bank.
- Q. Did you invest it later?
- A. Yes.
- Q. Where did you invest it?
- A. In mutual fund and money markets and stock.
- Q. What types of chemicals did you purchase from Mr. Cohen?
- A. All types.
- Q. Could you give us some of the types of chemicals you purchased from him?
- A. Enzymes, sewer cleaning compounds, liquid lime, and general cleaning chemicals.
- Q. Did Mr. Cohen ever bid for any of the chemicals that he sold to the Township of Ocean Sewerage Authority prior to 1980?
- A. No.

Purchased Twice As Much As Necessary

- Q. Did you purchase more chemicals than were needed to operate the plant from Mr. Cohen?
- A. Not really.
- Q. I show you a copy of your transcript from an Executive Session hearing on July 22, 1982, directing your attention to the question on line 15; "Did you purchase excess chemicals" -- the last part of the question. Answer: "I would say enzymes are purchased more than we normally used."

Question, line 20, "How much more did you receive than you normally use?"

Answer, "Maybe twice as much."

A. That's right.

Q. Is that correct?

A. That's correct.

Q. So you did purchase more chemicals than you needed from Mr. Cohen?

A. Yes.

Q. In order to rid yourself of the excess chemicals you purchased, how did you get rid of them?

A. We just used more.

Circumvented State Bid Laws

Q. You knew Mr. Cohen was using all five companies when you purchased from him, did you not? You know all those five companies were basically Mr. Cohen; is that correct?

A. Right.

Q. Did the authority board members who are authorizing payments know Mr. Cohen was using these five companies?

A. Not to my knowledge.

Q. Did you ever tell them or did they ever ask you?

A. No.

Q. Why did you purchase from Mr. Cohen under the five different companies?

A. He thought if we spread the thing around it wouldn't be illegal.

Q. Did he also think he wouldn't be discovered?

A. I imagine so.

COMMISSIONER DEL TUFO: By illegal you're talking about the bidding laws, circumventing the bidding laws of the state?

THE WITNESS: Yes.

Q. Whose idea was it to use the five different companies?

A. His.

Q. Who selected which of the five companies you would purchase them from?

A. He did.

Q. Did you purchase the same chemicals from all five companies?

A. Yes.

Q. Were they all the same product even though the name had been changed?

A. Yes.

Q. What were the main chemicals in terms of amounts that you purchased from Mr. Cohen?

A. Enzymes, lager lime and sewer compounds.

One Day's Sales, Kickbacks Charted*

Q. I show you a chart marked C-9 which was prepared by accountants of the SCI pursuant to material received from the Township of Ocean Sewerage Authority. It represents purchases on a one-day period on November 28, 1978.

CHAIRMAN LANE: These are purchases on one single day?

MR. GEISLER: Yes.

Q. (It) reflects, first of all that you purchased -- the Ocean Township Sewerage Authority purchased chemicals from Hart Chemical Company 100 pounds of enzymes, 55-gallons liquid lime

*See Chart, next page.

ARTHUR COHEN'S SALES TO TOWNSHIP OF OCEAN SEWERAGE AUTHORITY

ON ONE DAY...NOVEMBER 28, 1978

<u>COMPANY NAME AND ADDRESS</u>	<u>PRODUCT</u>	<u>COST</u>	<u>CERTIFYING SIGNATURE</u>
1. HART CHEMICAL CO. P.O. Box 13 Robbinsville, N.J.	100 lbs. ENZYMES 55 gal. LIQUID LIME	\$ 795.00 1,097.25 <u>\$1,892.25</u>	M. Martin, Sales Manager
2. INTERNATIONAL RESEARCH P.O. Box 4 Levittown, P.A.	100 lbs. ENZYMES 800 55 gal. LIQUID LIME LAGER	\$ 995.00 1,097.25 <u>\$2,092.25</u>	S. LoBianco, Office Manager
3. ARTCO 7 Meadowview Drive Cranbury, N.J. (East Windsor Twp.)	100 lbs. ENZYMES	\$ 995.00	A. Berger, Manager
4. JAFCO CHEMICAL RESEARCH P.O. Box 167 Hightstown, N.J.	100 lbs. SUPER ENZYMES 750	\$ 995.00	Art Cohen, Office Manager
		<u>\$5,974.50</u>	
		<u>ROBERT ROGOVE'S KICKBACK x 20%</u>	
		<u>\$1,194.90</u>	

paying \$7.95 for the enzymes for a liquid lime for a total of \$11,907.25. Hart Chemical was Mr. Cohen's company; is that correct?

A. That's right.

Q. And you knew it was Mr. Cohen on the date you purchased it from him on that date; is that correct?

A. Right.

Q. The second purchase on that date was from International Research in Levittown, Pennsylvania; is that correct?

A. That's right.

Q. And you purchased 100 pounds of enzymes at 9.95 a pound from International Research and 55-gallons liquid lime lager at 19.95 a gallon; is that correct?

A. That's right.

Q. You paid two different prices for those chemicals; 7.95 a pound and 9.95 a pound; is that correct?

A. That's right.

Q. And what is referred to as liquid lime and liquid lime lager in both instances was the same substance; is that correct?

A. That's right.

Q. You made a third purchase from Artco in Cranbury, New Jersey with a mailing address of Cranbury; is that correct?

A. That's right.

Q. That was also Mr. Cohen; is that correct?

A. That's right.

Q. You know that even though there were several different addresses used they were all Mr. Cohen?

A. That's right.

Q. You purchased 100 pounds of enzymes at 9.95 a pound for \$995; is that correct?

A. That's right.

Q. These were the same enzymes that you had purchased from Hart Chemical and International Research; is that correct?

A. That's right.

Q. And you made a fourth purchase from Jafco Chemical Research in Hightstown, New Jersey. Again, this was one of Mr. Cohen's companies; is that correct?

A. That's correct.

Q. And you purchased 100 pounds of super-enzymes-750 at 9.95 a pound for a total of \$995; is that correct?

A. That's right.

Q. And all these sales were from Mr. Cohen, they were all the same substance enzymes and lager lime purchased under four companies for a total of \$5,974.50; is that correct?

A. That's right.

Q. And you received 20 percent of that sale; is that correct or \$1,194.90?

A. That's right.

CHAIRMAN LANE: When did you receive that 1,100 odd dollars?

THE WITNESS: When the order was placed.

CHAIRMAN LANE: On the date that appears on that chart?

THE WITNESS: Yes, sir.

CHAIRMAN LANE: In cash money?

THE WITNESS: Yes.

Five Years' Chemical Sales Charted*

BY MR. GEISLER:

Q. Mr. Rogove, I show you a chart prepared from the records of Township of Ocean Sewerage Authority regarding sales (by) Mr. Cohen, the five Cohen companies that you have identified. Have you seen this chart before?

A. Yes.

Q. Do you agree with the figures on the chart?

A. Yes.

Q. The chart indicates that for a five year period, the fiscal years 11-30-76 to 11-30-80 you purchased 12,100 pounds of enzymes. 12,100 pounds of enzymes for \$96,560 and purchased other chemicals in the amount of \$51,600; is that correct?

A. That's right.

Q. For a total of \$148,160; is that right?

A. That's right.

Q. And you purchased them from Hart, International Research, Jafco Chemical, Northeast Labs and Artco?

A. That's right.

Q. All basically Arthur Cohen. Is it not correct that every year since 1976, just in the purchases of enzymes alone the Township of Ocean Sewerage Authority was violating the bidding laws of the State of New Jersey; is that correct?

A. That's correct.

*See Chart, next Page.

SALES BY ARTHUR COHEN'S COMPANIES

TO

TOWNSHIP OF OCEAN SEWERAGE AUTHORITY

<u>FISCAL YEARS ENDED</u>	<u>SALE OF ENZYMES QUANTITY (LBS)</u>	<u>AMOUNT</u>	<u>SALE OF OTHER CHEMICALS</u>	<u>TOTAL SALES</u>
11/30/76	2,000	\$15,000	\$5,232	\$20,232
11/30/77	2,700	\$20,250	\$5,143	\$25,393
11/30/78	3,300	\$26,145	\$5,992	\$32,137
11/30/79	3,300	\$28,415	\$19,360	\$47,775
11/30/80	800	\$ 6,750	\$15,873	\$22,623
	<u>12,100</u>	<u>\$96,560</u>	<u>\$51,600</u>	<u>\$148,160</u>

COMPANY NAMES USED: HART, INTERNATIONAL RESEARCH, JAFCO CHEMICAL, NORTHEAST LABS AND ARTCO.

Authority's Reaction Was Mostly Inaction

- Q. During the years that this was occurring, did any authority member or consultant to the authority question you about the chemicals you were purchasing or what you were doing?
- A. No.
- Q. Who authorized the payment for the purchase of all these chemicals; was it the same two individuals that you mentioned earlier?
- A. The authority, yes.
- Q. When this was discovered by the authority's accountant in 1980 and brought to the attention of the authority board members, did you meet and discuss the situation with them?
- A. Yes.
- Q. Could you tell us what, in substance, occurred when you met with them?
- A. Well, they were informed that they were going over the bidding laws, and they decided at that time to put all chemicals out to bid.
- Q. Did they do anything else?
- A. No.
- Q. Did they ask you if the chemicals you were purchasing were necessary?
- A. They asked me that, yes.
- Q. Did they rely totally on your statement that they were?
- A. Yes.
- Q. Did they dismiss anyone as a result of the situation they discovered in 1980?
- A. No.
- Q. Did they dismiss the accounting firm who discovered the situation?
- A. Subsequently, yes.

- Q. Was it as a result of this discovery?
- A. I don't know, you know, I had no knowledge of what they did for them.
- Q. Did the authority conduct any investigation of the situation?
- A. Just an informal.
- Q. And the informal investigation merely consisted of asking you what you were doing; is that correct?
- A. That's right.

Kickbacks From Other Sources

- Q. Did you receive any kickbacks from other chemical companies totally unrelated from Mr. Cohen?
- A. Yes.
- Q. Totally unrelated to Mr. Cohen, rather. Were these chemical companies selling chemicals to the Township of Ocean Sewerage Authority?
- A. Yes.
- Q. What percentage did you receive from these -- how many other companies did you receive kickbacks from?
- A. Two.
- Q. What percentage did you receive from each of those companies?
- A. Ten percent.
- Q. Did you receive it in cash.
- A. Yes.
- Q. Did you receive it in the same fashion that you received it from Mr. Cohen?
- A. That's right.
- Q. Mr. Rogove, I show you chart C-7.* At the request of the Commission, because

*See Chart, next page.

SELECTED CHEMICAL PURCHASES BY AND KICKBACKS TO ROBERT ROGOVE
TOWNSHIP OF OCEAN SEWERAGE AUTHORITY

	<u>COMPANY A</u>	<u>COMPANY B</u>	<u>ARTHUR COHEN'S COMPANIES*</u>
12/1/75-11/30/76	---	\$7,011	\$20,232
12/1/76-11/30/77	\$3,962	8,827	25,393
12/1/77-11/30/78	2,250	8,334	32,137
12/1/78-11/30/79	3,676	7,557	47,775
12/1/79-11/30/80	<u>2,020</u>	<u>11,764</u>	<u>22,623</u>
TOTALS	<u>\$11,908</u>	<u>\$43,493</u>	<u>\$148,160</u>

ROGOVE'S KICKBACKS
BASED ON ADMITTED
PERCENTAGES

\$1,191 \$4,349 \$29,632

TOTAL ESTIMATED
KICKBACKS

\$35,172

*Hart, Jafco, International Research, Northeast Labs, and Artco.

this matter has been referred to the Attorney General, I instruct you not to reveal the identities of Company A or Company B. Do you understand that?

A. Yes.

Q. Have you seen this chart before?

A. Yes.

Q. Have you identified Companies A and B to the SCI?

A. Yes.

Q. When did you start receiving kickbacks from Company A?

A. 1976.

Q. And from 1976 up to November of 1980 did you purchase \$11,908 of chemicals from Company A?

A. Yes.

Q. And you received a ten percent kickback from that company; is that correct?

A. That's right.

Q. When did you begin receiving kickbacks from Company B?

A. 1975.

Q. And from the period December 1, 1975 to November 30, 1980 did you purchase \$43,493 in chemicals from Company B?

A. That's right.

Q. And the chart also reflects that during the same five year period you purchased \$148,160 of chemicals from Mr. Cohen's company; is that correct?

A. That's right.

Q. You received a ten percent kickback from Company A which gave you a kickback of \$1,191; is that correct?

A. That's right.

Q. From Company B you received \$4,349; is that correct?

A. That's right.

Q. For a total of \$35,172; is that correct?

A. That's right.

Q. This situation was never investigated or learned of by the authority members; is that correct?

A. No.

Authority Irresponsibility Exemplified

The extent to which the Township of Ocean Sewerage Authority abdicated its sworn duty to safeguard the integrity of its operation was illustrated by the final witness in the Rogove episode. This witness, Stephen Kessler, had been appointed to the authority in February, 1976, and was its chairman for three years until early 1982. The athletic director at Asbury Park High School, Kessler recalled that his colleagues as part-time authority members had included a builder, a florist and a race track parimutuel clerk and that all depended almost totally on the authority's professional staff for the day-to-day operation of the agency. Although he signed most of the vouchers and checks for Rogove's chemical purchases, he said he never noted any irregularities in Rogove's dealings with various so-called chemical companies until the spring of 1980 when the authority's auditors raised questions about Rogove's activities. He testified about the authority's reaction to the auditors' findings as follows:

Q. After the situation was discovered at the Township of Ocean Sewerage Authority, what if any action did the authority take to remedy it?

A. When we were first notified in the Spring of '80 I had a meeting with counsel and with Mr. Panis, who is a partner in the Binder firm. I then decided that we must take immediate action, and we held a meeting also in that Spring, I believe it was April, where all our professionals, and of course counsel were demanded to attend. We then went over all this escalating chemical and enzymes that

had been purchased. We questioned Mr. Rogove. We had the professionals, engineering professionals with input as to the uses of these chemicals and uses of these enzymes, where they were, where they went, and how they were distributed within the system.

It was then decided upon by the consulting engineer and the attorney that we did not have enough evidence and that we were reminded of the individuals personal Constitutional Rights involving the situation and, therefore, at that time we instructed the consulting engineer, Mr. Lawrence, who represents the Schorr firm, we instructed him that everything should be bid according to law and that specs for everything that we anticipate for the year should be drawn up and bid properly.

- Q. Would you be surprised if I told you that the cost of enzymes for the Township of Ocean Sewerage Authority dropped from a high of 9.95 a pound to 2.45 a pound and that lager lime dropped in cost from 19.95 per gallon to \$5.12 a gallon?
- A. Today I would not be surprised.
- Q. Who is responsible for allowing the situation to prevail during the five year period up to 1980?
- A. I really don't know who is responsible.
- Q. Were the authority members responsible?
- A. We were certainly not responsible.
- Q. Do you know who was?
- A. I would assume that our professionals, if any, would be held responsible.
- Q. Was the accounting firm for the authority dismissed as a result of this?
- A. Eventually, yes.

The Commission, because of its investigative findings in this area, pressed the witness on the issue of direct authority responsibility for authority operations:

Q. Mr. Kessler, Mr. Rogove, an employee of the authority for over 15 years, today has admitted to taking kickbacks from Arthur Cohen and two other chemical companies during the period 1975 to 1980. He's admitted to his receiving ten percent from two of the companies and 20 percent from Mr. Cohen -- receiving kickbacks in the amount of \$35,172 in chemicals.

He's admitted to purchasing excess chemicals unneeded by the authority and using them up so he could purchase additional chemicals. He has stated that the authority members were not interested in what he was doing regarding the operation of the plant.

Can you tell us how the authority board members have allowed this situation to occur?

A. I believe I touched on that earlier. I think part of the problem is that many of us have expertise in other fields. All of these purchases obviously are chemicals, enzymes or whatever. I, myself, don't have any particular expertise in running a plant.

I'm more or less of a volunteer who wants to serve the community. I really don't have expertise. And how we allowed this to happen, we were not informed. Once, Counselor, when we were informed, as far as I'm concerned, the day I was informed, I took action to try to remedy any or all or any irregularities that I found.

Q. What action was that?

A. That was the action of bidding every anticipated article, of getting quotes when necessary and abiding by the bid laws in the laws of the State of New Jersey regarding all purchases.

COMMISSIONER PATTERSON: But apparently the action was to fire the accountants and that's all.

THE WITNESS: No, sir, after we did that we had no reason to think that our house was not in order. At that time, approximately a year ago, we changed the job description of an executive secretary. We had an executive secretary and we changed her job description to executive director to give her more authority to basically be the head administrator and to govern the entire authority including Mr. Rogove.

COMMISSIONER PATTERSON: What you did then, you're telling me, I believe is you fire the accountants who told you that something was wrong, you made one of the existing employees the executive director and everything went back, nothing else happened?

THE WITNESS: Well, we may need not have to go back not necessarily in that order. We mainly let the auditor go for the fact that we felt that the auditor should have picked up these discrepancies in the purchases of chemicals and enzymes, not in the eight years -- there were apparently eight years in the chart that I was shown, and within that eight years we felt that, again, with all this continuing investigation, we felt he seemed more and more responsible. The immediate reaction was he was not responsible because we also queried him quite heavily also.

COMMISSIONER DEL TUFO: Have you hired a new outside auditor to keep you advised?

THE WITNESS: We hired a Mr. Louis Gartz, this February.

Q. Has Mr. Rogove resigned?

A. We have accepted Mr. Rogove's resignation, and yesterday myself and another member have interviewed five prospective candidates for that position, and he's agreed to stay on, hopefully, to train until we can have an actual operator in that position.

CHAIRMAN LANE: When did you first learn that he was taking these kickbacks?

THE WITNESS: About two minutes ago.

CHAIRMAN LANE: Honestly, two minutes ago?

THE WITNESS: When that gentleman put that chart up.

The Commission questioned why the authority did not heed the initial alert it received about purchasing irregularities and turn the matter over to a law enforcement agency. Questioning of Kessler continued:

COMMISSIONER DEL TUFO: The use of multiple companies for the same type of products in 1980 and the things that the auditors revealed to you at that time didn't give you any clue or any warning as to what was going on?

THE WITNESS: We might have had thoughts but, again, we had no proof.

COMMISSIONER DEL TUFO: Didn't one of your board members suggest that (it) be referred to a law enforcement agency for an investigation?

THE WITNESS: I don't recall that. It was suggested. It was discussed if we should turn this over to the Monmouth County Prosecutors office --

COMMISSIONER DEL TUFO: And you did not do that?

THE WITNESS: We did not do that on advice of our regular counsel.

COMMISSIONER DEL TUFO: Who is your legal counsel at the time?

THE WITNESS: Mr. David Weinstein.

COMMISSIONER DEL TUFO: Why did you not turn this over to the law enforcement authority?

THE WITNESS: Because he felt that we did not have substantial evidence to warrant this.

COMMISSIONER DEL TUFO: Well...if you come across the indicia of a possible crime, don't you feel an obligation to turn that over to a law enforcement -- you're not the investigative prosecutorial agency. That's what the prosecutor's office is there for. Don't you feel that kind of responsibility?

THE WITNESS: Yes, I certainly do. At this time we did not feel any crimes were committed.

COMMISSIONER DEL TUFO: You just said there were the indicia of criminal acts there. I'm not saying that you had proof of criminal acts, but don't you feel as a public -- serving in the public, in a public position, that when you come across that type of situation, that type of information, those kinds of suspicions, that they should be referred to a law enforcement agency for investigation? Just tell me yes or no.

THE WITNESS: Yes.

The witness earlier reported that the Ocean Township authority had employed a new auditor, Louis J. Gartz, a CPA with offices in Englishtown and Freehold. SCI Commissioner John J. Francis recalled that Gartz had played a role in the previous day's testimony about a questionable bond issue transaction at the Western Monmouth Utility Authority. Francis suggested that Kessler's authority or its counsel obtain a transcript of the testimony by and about Gartz "before you proceed too far along the road of using him as your auditor."

In addition, the Commission questioned Kessler about the authority's reaction to a low bid only recently submitted to the Ocean Township authority by Arthur Cohen, from whom Rogove said he had accepted kickbacks. The testimony on this issue, which concluded Kessler's appearance, follows:

Q. Are you aware that only two weeks ago...or rather July 9, 1982, Arthur Cohen, using the name Hart Chemical Company, submitted a bid to the Township of Ocean Sewerage Authority for enzymes including enzymes and lager lime bidding prices of \$2.90 a pound

for enzymes that in 1978 the Township of Ocean was purchasing from him at \$9.95 a pound and a bid for lager lime at \$5.40 per gallon, that Ocean Township was purchasing from Mr. Cohen in 1978 at \$19.95 a gallon. Are you aware of that?

A. Yes.

Q. Are you aware that it was Mr. Arthur Cohen, same individual who was dealing under five different companies?

A. Yes, I'm aware of that.

COMMISSIONER PATTERSON: Was that the winning bid?

THE WITNESS: Yes, it was, I believe so.

COMMISSIONER PATTERSON: You continued to do business with a man who --

CHAIRMAN LANE: Cheated.

COMMISSIONER PATTERSON: -- cheated, as the Judge said?

THE WITNESS: He was low bid in this particular -- yes. I guess the answer to that question is yes.

COMMISSIONER PATTERSON: You knew he was setting up five different companies, sir, subsequent -- you must have known that by last July.

THE WITNESS: I knew that as of last February at a hearing that I attend last February. That's when I was informed of this.

COMMISSIONER PATTERSON: I find it very difficult to understand the reason why you would continue to buy from someone who you knew months before was trying to circumvent the law... Thank you.

Summing Up by Witness and Commissioners

THE WITNESS: Can I make a statement?

CHAIRMAN LANE: Yes, you have the right to say whatever you would like to say.

THE WITNESS: Thank you. I would just like to have it on record, and I speak for myself and no one else, that I have served the sewerage authority faithfully, honestly and I've given a great deal of time to the authority to try to do the best job that I, personally, can do.

If this Commission or any other body can make things easier and make jobs easier for fellows like me who are trying hard, and I would say I'm trying pretty hard by missing one meeting, one authority meeting in six years, if you can make things easier for us and set up guidelines and assist us in any way, I'm all for it.

COMMISSIONER PATTERSON; Certainly (we're) going to try to.

COMMISSIONER DEL TUFO: On that score, you responded to Commissioner Patterson's question affirmatively before. One of the things that we're greatly interested in is having some accountability of authorities to a state agency with fiscal oversight responsibilities upon budgets and purchasing practices and the like so that there will be some expertise, some assistance, waving red flags sooner. There's been legislation introduced in the legislature to that effect which we support. I take it from your response to Commissioner Patterson's question that ...you would favor that type of approach and that type of assistance?

THE WITNESS: I think all professional assistance, coming from the proper authorities, I think that would be welcomed by all authority members throughout the State of New Jersey or anywhere.

COMMISSIONER FRANCIS: Let me just add, also, that although it's laudable that you and other people work for the authority as laymen and without compensation, I don't think that's enough. I don't think simply because you do that you can delegate your

responsibilities to professional engineers, lawyers, accountants. I think you have obligations, yourself, to set up regulated audit procedures and investigatory procedures so that things like the excess sales of chemicals and the kickbacks don't occur.

Municipal officials have the same obligations. Bank directors, although perhaps compensated for the time they're at board meetings, have the same obligations to make sure that there are regular audit and accounting procedures, even though they're not in there running the day-to-day operations of the bank. They still have that ultimate legal responsibility.

I think it's high time that authority members realize they got that ultimate responsibility and they've got to make sure that those duties are carried out.

CHAIRMAN LANE: In that same vein, I would suggest very strongly the elected officials have the appointing powers in these instances have a very, very definite responsibility to put people in those offices who will assume and take care of the responsibilities counsel has just talked about.

THE TESTIMONY -- THIRD DAY
THURSDAY, JULY 28, 1982

Transition Statement

That questionable practices in the operation of authority facilities could not have persisted except for managerial incompetence and irresponsibility was firmly established by the Commission's inquiry. This was emphasized by Commissioner Henry S. Patterson, II, as he opened the third public hearing session. Recalling the previous day's testimony about the kickbacks in chemical purchases, Patterson stated:

Today's witnesses will not only indicate the widespread nature of these kickback practices but also will demonstrate how mismanagement of sewerage facilities has allowed such practices to flourish. We will learn how chemical peddlers circumvent state bidding laws through the establishment of numerous paper companies, how bizarre arrangements between buyers and sellers have permitted the generation of payoff cash, how high-pressure sales techniques have resulted in excessive purchases and subsequent dumping of chemicals by plant operators.

In order to put all the unsavory details of these activities into the hearing record, certain witnesses have been granted immunity by the SCI in cooperation with the State Criminal Justice Division.

Once again we must point out that corruption within certain sewerage authorities can be primarily attributed to the incompetent and dishonest management of the authority facilities that a lack of accountability on the part of these entities has perpetuated. The ultimate victim of these evils are, of course, the citizens who have so little to say about how these facilities are operated.

How Chemical Peddlers Operate

A key witness in the following episode was Arthur Cohen of East Windsor, who was identified during Wednesday's testimony as the chemical salesman who paid 20 percent kickbacks to Robert Rogove at the Township of Ocean Sewerage Authority. Cohen, who peddled so-called wastewater treatment and cleansing products on a nationwide basis, utilized numerous "paper companies" as part of his various schemes for generating large amounts of hidden cash and to circumvent state bidding laws in his deals with public agencies. Confronted with incriminating investigative data, he made admissions during his testimony that prompted the Commission to

refer his case to the Attorney General's office for prosecutorial inquiry.

Cohen's Chemical "Mixer"

Cohen operated out of a small factory in Tullytown in Bucks County, Pa., where employees packaged enzymes and other ingredients for sale at excessive prices via Cohen's sales network. How these products were "blended" was described by one of Cohen's "mixers," Daniel A. Deter of Levittown, Pa. Excerpts from his testimony follow:

Q. How long have you been employed by Mr. Cohen?

A. Six years.

Q. Where do you work for Mr. Cohen?

A. Tullytown, Pennsylvania.

Q. What type of building do you work in?

A. It's just a small one-story building.

Q. What do you do for Mr. Cohen?

A. I blend chemicals, mix chemicals.

Q. Do you know how many companies Mr. Cohen has operating out of that area, that facility?

A. Not really. It's been Hart Chemical and Northeast Labs that I've worked for.

Q. What is your educational background in chemicals and chemistry?

A. None. I just worked for another chemical company before I worked for Mr. Cohen, and what I learned, I just learned by doing. I have no -- I didn't go to school for anything.

Q. At the present time do you work with anybody else at Mr. Cohen's plant in the handling of chemicals?

A. Yes.

Q. Does he have any knowledge of chemistry?

A. No.

Q. What types of chemicals does Mr. Cohen sell, to your knowledge?

A. Janitorial supplies, mainly; cleaners and things of that nature.

Q. Was there a time period when Mr. Cohen did employ a chemist?

A. Yes.

Q. What type of chemist did he employ?

A. To my knowledge, he was a cosmetic chemist.

Q. When you say "cosmetic chemist," what type of chemicals did he specialize in?

A. Cosmetics.

THE CHAIRMAN: Just tell us what you do in a typical day's work. Just tell us that.

THE WITNESS: Orders come from the office that I should fill, and depending what they are, whether it's a cleaner or whatever, I just go by the formula and make what's on the order sheet.

Q. Do you work directly under Mr. Cohen and under his direction?

A. No, I don't. I just more or less do it on my own.

Q. Who tells you what to make and what to do with it after you make it?

A. That, that is all on what comes down from the order sheet from the office. Whatever they put on there is what I make.

Q. And the office is Mr. Cohen; is that correct?

A. That's right.

Q. What types of chemicals do you mix and blend at that plant?

A. Various cleaners; mainly pine cleaners and just general cleaners.

Q. Is the main ingredient of the items that you make water?

A. Mainly water, yes.

Q. Does Mr. Cohen sell enzymes?

A. Yes.

Q. Could you tell us how you go about preparing the enzymes that Mr. Cohen sells?

A. Enzymes are made, for an example, ten pounds of enzymes would be made with eight pounds of salt and two pounds of enzymes.

THE CHAIRMAN: Who mixes that?

THE WITNESS: I mix that, the salt and the enzymes together.

COMMISSIONER DEL TUFO: Do you mix eight pounds of salt with two pounds of enzymes pursuant to some formula that you follow?

THE WITNESS: Yes.

COMMISSIONER DEL TUFO: Is that Mr. Cohen's formula, or his company?

THE WITNESS: His.

Q. Are all the enzymes that you made for Mr. Cohen made the same way?

A. Yes.

Q. All mixed with salt?

A. Yes.

Q. All mixed to the ratio of two pounds of enzymes to eight pounds of salt?

A. Yes.

Q. Were the enzymes that Mr. Cohen sold himself the same as the enzymes that Mr. Cohen sold to other middlemen?

A. Yes.

Q. Could you tell us whether the labels that were placed on the enzymes sold by Mr. Cohen were all the same?

A. Yes, they were all the same.

Q. Was there any quality control in the plant?

A. No.

Q. Was there anything done to see if the chemicals that Mr. Cohen was selling were harmful?

A. No.

Q. Were these chemicals that you mixed and made at that plant sold all over the United States?

A. I believe so, yes.

Q. Did you make enzymes the same way no matter what Mr. Cohen called them?

A. Yes.

Q. Do you know how many different companies Mr. Cohen had?

A. The only ones I know are Hart Chemical and Northeast Labs.

Q. Did you ever hear the name Jafco?

A. Yes.

Q. Is that one of Mr. Cohen's?

A. Yes.

Q. Artco?

A. I believe so.

Q. Northeast Laboratories?

A. That was Mr. Cohen's, yes.

Chemical Peddler Cohen's Testimony

Arthur Cohen testified that he sold cleaners, degreasers, deodorants and related products both on his own account and as a "private labeler" and a "drop shipper" for other companies. He said his products were made at his Tullytown, Pa., plant, and that during the past five years he employed as many as nine workers at the plant and a sales force of 50. He also testified that he operated under numerous corporate names, that he, his wife, Audrey, and some of his employees used many aliases, and that he had as many as five mailing addresses. Counsel Geisler pressed Cohen for more details about his operation:

Q. During the past five years how many business names have you had?

A. Ten, twelve.

Q. Could you tell us what they are?

A. Hart Chemical, National -- International Research, Sagam Associates, Artco, Northeast Laboratories, Custom Chemical Specialities, Global Research. Okay. International, Artco, Northeast, Jafco, S.G.M., Hart Chemical, Custom Chemical, Global Research, Sagam Associates, Trans-National Development.

Q. Do you agree with what's depicted on chart C-10*?

A. Yes.

Q. Would you state for the record how many aliases you have had during the past five years?

A. Five or six.

Q. Could you tell us what they were?

A. Art Martin -- I'm blank.

Q. How about Gerry Kaplan?

A. Gerry Kaplan, yes.

*See Chart, next page.

COMPANIES/CORPORATIONS USED BY ARTHUR COHEN

ARTHUR M. COHEN
7 Meadowview Drive
Cranbury, New Jersey
AND
Fox Drive & Main Street
Tullytown, Pennsylvania

INTERNATIONAL RESEARCH

HART CHEMICAL CO.

ARTCO

CUSTOM CHEMICAL SPECIALTIES

NORTHEAST LABORATORIES, INC.

GLOBAL RESEARCH

JAFCO CHEMICAL RESEARCH, INC.

SAGAM ASSOCIATES, INC.

S.G.M. ASSOCIATES

TRANS NATIONAL DEVELOPMENT CORP.

CHEM-PRO LABORATORIES

AMERICHEM ENTERPRISES, INC.

- Q. Jim Roberts?
- A. Roberts, yes.
- Q. Mr. Rappaport?
- A. Rappaport?
- Q. Art Goldman?
- A. Goldman, right.
- Q. Who is A. Martin, A. Berger, and Pat Evans?
- A. Pat Evans was my wife.
- Q. How about A. Berger?
- A. I don't know.
- Q. Is it not a fact that they are aliases for your wife?
- A. It's possible that she signed that.
- Q. Do some of your employees also use aliases?
- A. Yes.
- Q. How about Paul Edwards?
- A. Yes.
- Q. Who is that?
- A. Ed Visinski.
- Q. Ed Paul?
- A. Ed Visinski.
- Q. Mrs. Jay, J-a-y-e?
- A. Marie Jutkiewicz.
- Q. Mr. Karr, K-a-r-r?
- A. Marvin Kaplan.
- Q. During the past five years how many mailing addresses have you had?
- A. Five, I guess.

Q. Could you tell us where they were?

A. One was in my home; one was my plant in Tullytown; I have a P.O. box in Hightstown; a P.O. box in Robbinsville; and a P.O. box in Levittown, Pennsylvania.

Q. One company of yours, Hart Chemical, had three addresses?

A. Right.

Q. What chemicals did you make or mix specifically?

A. Deodorants, cleaners, degreasers, enzymes, things of that nature.

Q. When you say that you make chemicals, isn't it a fact that you really blend chemicals --

A. Blend chemicals, right.

Q. -- that you purchased elsewhere?

A. Right. Dow Chemical makes chemicals.

Q. And the ingredients that you purchased to blend together are ingredients that anyone could purchase, is that correct, from the same sources?

A. I would think so, yes.

Q. Is one of the major ingredients in your chemicals water?

A. In certain items, yes.

Q. Enzymes are one of your main products; is that correct?

A. It's not a main product, but it's one of my products, yes.

Q. Is it not the major product that you sell?

A. To Ocean Township it was.

Q. Could you tell us what enzymes are?

A. As I understand it, it's a food for bacteria in the digesters.

Q. When you say as you understand it, you really don't know what enzymes are, do you?

A. No, sir.

Q. From where did you obtain the enzymes that you sold?

A. Rohm & Haas.

Q. And after you purchased them you cut them with plain salt?

A. Solar salt, right. S-o-l-a-r. I don't know if it's regular salt, what kind of salt it is.

Q. Did you direct one of your employees, a Mr. Deter, to mix two pounds of enzymes with eight pounds of salt when he was making enzymes for you?

A. I don't know the exact formula, but I assume that's correct.

Q. Rock salt, the salt that you purchased for approximately seven cents a pound?

A. I'm not sure, but under fifteen cents.

Q. You paid approximately \$1.20 a pound for the enzymes you purchased from Rohm & Haas. Is that correct?

A. I would guess so.

MR. GEISLER: C-11.*

Q. Mr. Cohen, I direct your attention to the middle of that chart indicating that for a mixture of two pounds of enzymes per ten-pound batch at \$1.20 a pound, and eight pounds of salt at seven cents a pound in a ten-pound batch, the cost of making enzymes for you was 30 cents a pound. Do you agree with that figure?

A. That would be right.

Q. And you sold your enzymes for \$8 a pound or even more; is that correct?

GROSS PROFIT FROM ENZYME SALES

BY ARTHUR COHEN TO

TOWNSHIP OF OCEAN SEWERAGE AUTHORITY (TOSA)

SEWERAGE AUTHORITY BUYS
ENZYME PRODUCT FROM
COHEN RETAIL COMPANY @ \$ 8.00 PER LB.

COHEN WHOLESALE - COMPANY
PURCHASES ENZYMES FROM
SUPPLIER AND MIXES WITH SALT

2/10 LB. ENZYMES AT 1.20/LB. = 24¢
8/10 LB. SALT AT .07/LB. = 06¢
COHEN'S COST OF ENZYME PRODUCT .30 PER LB.

GROSS PROFIT \$ 7.70 PER LB.

TOTAL SALES (IN POUNDS) OF
ENZYME PRODUCT BY COHEN'S COMPANIES
TO TOSA (1976-1980) 12,100 LBS.

COHEN'S GROSS PROFIT ON ENZYME SALES TO TOSA \$93,170 *

* THIS GROSS PROFIT IS BASED ON TOTAL ENZYME SALES
OF \$96,560, A GROSS PROFIT OF APPROXIMATELY 96%.

A. Yes, I did.

Q. So you were making a profit when you were selling them for \$8 a pound of \$7.30?

A. Less the drum and delivery, yes.

Q. You sold these enzymes yourself; is that correct?

A. Yes.

Q. You also sold these enzymes to middlemen, is that correct, other people?

A. Yes.

Q. You drop-shipped. Could you tell us who you drop-shipped for? Specifically regarding enzymes.

A. To be very honest, I don't know who buys what. I don't take orders. But there are a couple I know, and that would be Chemical Systems, B & G Chemicals, and G.S.A.

Q. G.S.A., is that run by Jack Israel?

A. Yes.

Q. Is that called General Supply Associates, also?

A. Yes.

Q. Martin Rankin?

A. He bought enzymes, right. S & M.

Q. In how many states have you sold your chemicals over the past five years?

A. Forty-eight.

What Cohen Used As "Incentives"

Q. Have you used any gifts, premiums, checks, or cash as bribes or kickbacks, whatever term you would choose, to enable you to sell chemicals in any of these states?

A. In my telephone operation I did.

Q. Could you tell us what your telephone operation was?

A. It was my company in New York that sold, sold chemicals over the phone, and we used gifts as a incentive.

Q. When you say gifts, did you also use cash?

A. No, not that I know of.

THE CHAIRMAN: And you're saying you never gave anybody cash--

THE WITNESS: That's right.

THE CHAIRMAN: -- in connection with these sales, as a kickback of payoff? Is that right? Is that your testimony?

THE WITNESS: No, it was gifts.

THE CHAIRMAN: What do you mean "gifts"?

THE WITNESS: It could be a television set or golf clubs, or pot and pans, whatever, fishing rod.

THE CHAIRMAN: You again say you gave no one cash in connection with these sales --

THE WITNESS: Right.

THE CHAIRMAN: -- as a kickback or payoff or in anyway illegitimately?

THE WITNESS: Right.

When Does a Gift Become a Kickback?

Despite his claims that he never gave kickbacks, Cohen was confronted with evidence that he sent a \$250 check to the home of John Floden in Columbia Falls, Montana, who bought \$945 worth of snow and ice melting chemicals from Cohen for use by that municipality. He was asked if this amounted to a bribe or kickback to Floden:

Q. Mr. Cohen, do you distinguish between premiums, gifts and kickbacks and bribes?

A. Do I distinguish?

Q. Yes.

A. Yes, I do.

Q. Could you tell us what the difference is?

A. Bribe is cash, and the rest are premiums and gifts.

Q. A check for \$250, what is that?

A. That was to buy a gift.

Q. That takes it out of the category of kickbacks, is that correct, according to you?

A. I'm not sure.

Q. You stated that you give gifts to people. What types of gifts do you give to your customers?

A. I don't give any gifts any more. Okay? That was my phone operation was giving gifts.

Q. Could you tell us what types of gifts you authorized to be sent to your customers?

A. Television sets, fishing records, pot and pan, anything out of a Sears catalogue. Anything you can imagine.

Q. Is it a fact anything one of your customers wanted, he could get?

A. Depending on his order, yes.

Q. So that the bigger the order, the bigger the premium or gift you would give that person?

A. Quite possibly.

Q. And you gave premiums and gifts to private individuals and also to employees of public bodies. Is that correct?

A. See, I never gave gifts. People worked for me would give a gift.

Q. And every time you would authorize the gift that would be sent?

A. Yes, I would.

THE CHAIRMAN: Well, you also authorized these employees of yours to make these presentations, did you not?

THE WITNESS: Actually, they got less of a percentage on their commission by giving out these gifts. They were allowed to give within range of what the order was.

THE CHAIRMAN: Well, you knew what they were doing?

THE WITNESS: Yes.

THE CHAIRMAN: All the way?

THE WITNESS: Yes.

THE CHAIRMAN: And you allowed it?

THE WITNESS: Yes.

THE CHAIRMAN: You are the guiding genius--

THE WITNESS: Yes.

THE CHAIRMAN: -- of all these businesses, are you not?

THE WITNESS: Yes.

THE CHAIRMAN: You knew what was going on all the way through?

THE WITNESS: Yes.

COMMISSIONER FRANCIS: Wouldn't it be fair to say you even encouraged giving gifts as a way to make sales?

THE WITNESS: No, it was a thing doing business.

THE CHAIRMAN: Did you discourage it?

THE WITNESS: No, I did not.

SCI Counsel Geisler read into the hearing record a list of items purchased by Cohen from a Philadelphia catalogue company, including a color television set and a fishing rod and reel, for a total of \$529.10. The testimony continued:

Q. ... We have a a whole series of labels like that. Did you receive numerous bills for items that were purchased from M. Sickles & Son in Pennsylvania and sent to your customers as bribes?

A. As gifts, yes.

Q. Again, you distinguish bribes from kickbacks because --

A. They received credit for those.

Q. As a result of purchasing chemicals from you?

A. Uh-huh.

Q. Confronted with all this information, you still claim that you didn't give any cash or kickbacks --

A. I did not.

Q. -- or gift in the state of New Jersey?

A. I did not.

Q. You did not. What was so special about the state of New Jersey that you would be able to do it throughout the rest of the country but not New Jersey?

A. Because I did not sell. These were my salesmen who sold.

THE CHAIRMAN: You're making a distinction between your personally being involved in handing over these gifts, bribes, or whatever they're called--

THE WITNESS: Yes, sir.

THE CHAIRMAN: -- and your employees doing it?

THE WITNESS: Yes.

THE CHAIRMAN: But, again, what they did was at your direction, under your control. Isn't that so?

THE WITNESS: I would say so, yes.

THE CHAIRMAN: Well, you're pretty sure of that, aren't you?

THE WITNESS: Yes, I am.

BY MR. GEISLER:

Q. When your employees gave gifts to people, did they have to purchase the gift from you?

A. It came off their commission.

Q. So you knew about all the gifts that all of your employees were giving?

A. Yes.

Cohen Denies Rogove's Testimony

Responding to questions, Cohen said he had known Robert Rogove, the Township of Ocean Sewerage Authority plant superintendent, for 10-12 years. The testimony, in part:

Q. Mr. Cohen, you are well aware that Mr. Rogove has testified under oath before this Commission, are you not?

A. Yes, I am.

Q. You are well aware that he's admitted to committing the crime of receiving kickbacks?

A. 29,000.

THE CHAIRMAN: Just listen to the question.

Q. \$29,632?

A. I'm aware of it.

Q. Did you give Mr. Rogove any kickbacks?

A. No, I didn't.

Q. Did you have large amounts of cash at your disposal during the past five years?

A. I don't know what "large" means, but I use cash.

THE CHAIRMAN: Just a minute. Just a minute now. You said you didn't give Mr. Rogove any --

THE WITNESS: Yes, sir.

THE CHAIRMAN: -- kickback. Did any of your employees give him any of these kickbacks that he's testified to?

THE WITNESS: No, sir.

THE CHAIRMAN: And you say that under oath?

THE WITNESS: Yes, sir.

THE CHAIRMAN: And what makes -- why do you say it? What do you base that on?

THE WITNESS: I have no salesman who goes in other than me. I'm the only salesman.

THE CHAIRMAN: And you have no means, or your employees had no means, of giving Mr. Rogove money or gifts of any kind. Is that what you're telling us?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: Why was it in other states you used salesman, but for Ocean Township you personally called on Mr. Rogove?

THE WITNESS: I sold Bob Rogove for many years, and he was my customer. Why should I give a salesman a commission for going to lunch?

COMMISSIONER FRANCIS: You had a long and close relationship with Mr. Rogove?

THE WITNESS: Yes, I did.

COMMISSIONER FRANCIS: In a business capacity?

THE WITNESS: Yes, I did.

COMMISSIONER FRANCIS: You sold chemicals to Ocean Township?

THE WITNESS: Yes, I did.

COMMISSIONER FRANCIS: Did you have an agreement with Mr. Rogove that rather than a gift you would give cash?

THE WITNESS: No, I did not.

COMMISSIONER FRANCIS: Do you know any reason why he would make up this story and apparently plead to receiving kickbacks?

THE WITNESS: No, I do not.

COMMISSIONER FRANCIS: It's totally a fabrication on his part?

THE WITNESS: I would say so.

THE CHAIRMAN: Excuse me. You mentioned before Mr. Francis started questioning you, you mentioned commissions in connection with Rogove. What was that?

THE WITNESS: He asked me how come I did the selling rather than having a salesman selling. If a salesman sold him, I'd have to give the salesman commission. Okay, so rather than pay a salesman to sell him, it was easy enough for me to go see him. I wasn't really selling him.

THE CHAIRMAN: So, in your relation with him as a purchasing agent for that authority, you, in effect, saved commissions?

THE WITNESS: Yes.

THE CHAIRMAN: And gave out nothing --

THE WITNESS: Right.

THE CHAIRMAN: -- by way of commission, payoff, gift, anything?

THE WITNESS: Right.

THE CHAIRMAN: And that's your testimony?

THE WITNESS: Yes, sir.

BY MR. GEISLER:

Q. Was Mr. Rogove one of your best customers?

A. Yes, he was.

Q. I direct your attention to chart C-8. That's a chart prepared by our agents and accountants from records of the Township of Ocean Sewerage Authority and your records, which we have subpoenaed. Do you agree with the amount of sales during the five-year period indicated on that chart, namely fiscal years 11/30/76 to 11/30/80?

A. I would assume it's correct.

Q. In other words, you sold \$148,160 of chemicals to Ocean Township?

A. I would assume it's correct.

Q. Is there any particular reason that you were able to sell so many chemicals to Ocean Township?

A. No.

Q. Were you just a good salesman?

A. We got along, Bob and I.

Cohen Admits Bid Law Violation

Q. Did you sell to the Township of Ocean Sewerage Authority under five different company names?

A. Yes, I did.

Q. The Public Contracts Law of this state requires three quotes for purchases over \$500, and requires bidding for amounts over \$250 -- \$2500, and after 1980 required bidding for amounts over \$4500. Did you conspire with Robert Rogove to evade that law?

A. Yes.

Q. Did you use the five companies to evade that law?

A. Yes, I did.

COMMISSIONER FRANCIS: How long did you do that, use those five company names to--

THE WITNESS: Many years.

COMMISSIONER FRANCIS: -- avoid the bidding laws?

THE WITNESS: Many years.

COMMISSIONER FRANCIS: Ten years? Longer?

THE WITNESS: No, wouldn't be longer. I'll say ten years, eight years, eleven years.

COMMISSIONER FRANCIS: During those ten or eleven years, did you learn of any inquiry by the authority itself, by the commissioners, to find out who these five companies were, or whether the bidding laws were being followed?

THE WITNESS: No.

COMMISSIONER PATTERSON: You, I think, testified that you conspired with Robert Rogove to get around the bidding laws by dealing with these five companies.

THE WITNESS: Right.

COMMISSIONER PATTERSON: Why would Mr. Rogove agree, cooperate with you in this scheme, if he weren't getting paid off?

THE WITNESS: He liked my product, he liked me.

COMMISSIONER PATTERSON: He did it out of love?

THE WITNESS: He liked me. We got along. We really did. We had a good relationship.

COMMISSIONER PATTERSON: Pretty expensive liking in the case of Mr. Rogove, isn't it?

THE WITNESS: I liked it. I made --

COMMISSIONER PATTERSON: No, I mean, he's pleaded, he's admitted that he was guilty of taking bribes and you say he didn't take them from you, and he's in a lot of trouble and apparently you say he was not telling the truth and he cooperated with you in this scheme just because he liked you?

THE WITNESS: Yes.

COMMISSIONER PATTERSON: Awfully difficult to believe.

In early 1980, as previously stated, the Ocean Township Authority's auditor questioned certain purchasing patterns and the authority reacted by requiring competitive bids for all chemical purchases. Cohen said he could not recall whether Rogove alerted him to this situation but, according to the witness, he still tried to keep the Ocean Township chemical business.

Q. Did you stop selling to Ocean Township Sewerage Authority in 1980 under the five different companies?

A. Yes, I did.

Q. In May of 1981 did you sell to the Township of Ocean Sewerage Authority under yet a sixth different name, S & M Research?

A. Yes. Yes, I did.

Q. And that's because Mr. Rogove informed you that the authority accountants had discovered your scheme involving the five other companies that you chose to sell under S & M Research?

A. I don't recall that at all. I think I decided I needed another company.

- Q. Why did you need another company?
- A. It looks better.
- Q. Looked better to whom?
- A. To spread out the business. To the authority, I guess.
- Q. When you say it looked better, you mean that they wouldn't discover your relationship with Mr. Rogove; is that correct?
- A. Possibly.
- Q. Did your chemical sales to the Township of Ocean Sewerage Authority drop off radically after the year 1980?
- A. Yes, it did.
- Q. And did it drop off because the authority had discovered the scheme that you had with Mr. Rogove?
- A. No, it dropped off because the S.C.I. subpoenaed me and I was very nervous about going anywhere.
- Q. Why were you nervous about going anywhere?
- A. Because I thought I was being followed, I thought my phone was tapped. I became paranoid. The pressure was very great.
- Q. Were you nervous because you would be caught giving bribes to public officials?
- A. No, I wasn't.

At this point Cohen noted that S & M Research was one of a number of companies set up by Martin N. Rankin of Freehold, a colleague in the chemical sales business. (Rankin followed Cohen as a witness. Unlike Cohen, Rankin testified under a grant of immunity).

Cohen further testified that he had never submitted bids to the Ocean Township authority during his dealings with Rogove. But after their bid law-evasion scheme was uncovered, Cohen testified he did submit a bid to the township authority -- at about \$2.50 a pound for enzyme products he previously charged \$8 per pound for. His testimony on price inflation in chemical sales follows:

- Q. Did there come a time when you began submitting bids to the Township of Ocean Sewerage Authority?
- A. Yeah, I just submitted one.
- Q. Could you tell the Commissioners how much your bid for enzymes was?
- A. I'm not a hundred percent sure. I think, about two-sixty or two-fifty a pound.
- Q. So during all those years the Township of Ocean Sewerage Authority was paying an inflated price for your enzymes?
- A. They were paying \$8 a pound.
- Q. An inflated price?
- A. \$8... There are many companies that get 12 and \$15 a pound for the same product.
- Q. When they bid for enzymes?
- A. I don't know their bid prices. You asked me when I charge \$8. Other companies get 15 and \$17.
- Q. During the years depicted on the chart, could you tell us how much you charged the Township of Ocean Sewerage Authority for lager lime?
- A. I believe my price for lager lime was 19.95 a gallon.

Q. And did there come a time this year that you submitted a bid to the Township of Ocean Sewerage Authority for lager lime?

A. Yes, I did.

Q. Could you tell us what the price was in this year in your bid?

A. I'm not exactly sure. I think it's --

Q. \$5.12? Five-forty a gallon?

A. Okay. I was going to say \$6, but, okay, very possible. I don't know.

Q. So during all those years the Township of Ocean Sewerage Authority was paying an inflated price for lager lime?

A. They were paying \$19 a gallon.

Q. Could you tell us what lager lime was?

A. It's a substitute for lime. They use it to sweeten the sewage in the digester.

X X X

Q. Referring to what's been marked C-8, would you agree that, for the years depicted on that chart, the purchases of enzymes exceeded the bid limit in every year?

A. It exceeded the bid limit.

How Cohen Generated Cash

Q. Did you sell chemicals to the Ocean Township Sewerage Authority under your Artco Company?

A. Yes, I did.

Q. Is it not a fact that every check made payable to the Artco by Township of Ocean Sewerage Authority was cashed by you, some \$15,500?

A. All Artco checks were cashed.

Q. And none of that cash is reported in any of your books and records. Is that correct?

A. That's correct.

Q. Cash never went into the banks or anything; is that correct?

A. Correct.

COMMISSIONER FRANCIS: What were the dates of those, Mr. Geisler?

MR. GEISLER: During the five years in question, the fiscal years 11/30/76 to 11/30/80.

Q. Could you tell us how you were able to cash that check made payable to Artco?

A. Just went into the bank and cashed it.

Q. Did you add -- the name of the check as Artco, A-r-t-c-o?

A. Right.

Q. Did you add h-e-n on the end of the name to make it out to Art Cohen?

A. No, I did not.

Q. Didn't you testify before this Commission that that's what you in fact did?

A. No, I think what I said, Artco, when I went to the bank, if anybody asked. I would say they left off the h-e-n, it's made out to Art Cohen. I would endorse it.

Q. Did you ever add the h-e-n?

A. I don't think I did.

Q. But you convinced the bank personnel?

A. Yes.

Q. Are there any other public bodies who bought from Artco?

A. I don't think so.

- Q. How about Woodbridge?
- A. No, not from -- oh, through Rankin not me. Through S & M.
- Q. So at least you had \$15,500 of cash that was unrecorded in any of your business records?
- A. If that's the amount.

Rankin Helped Cohen Get Cash

- Q. At one time was Martin Rankin one of your employees?
- A. Yes, he was.
- Q. Did Mr. Rankin subsequently go into the chemical sales business on his own?
- A. Yes, he did.
- Q. When Mr. Rankin was in business on his own, did you have an agreement with Mr. Rankin to generate cash?
- A. Yes.
- Q. While the chart is being obtained, I show you what's been marked C-104 and ask you to examine it. Would you examine C-104, and I ask you if it refreshes your recollection as to whether or not you sold chemicals to Woodbridge Township using the name Artco.
- A. They're invoices to Woodbridge Township under Artco.
- Q. Does that refresh your recollection as to whether or not you sold chemicals to Woodbridge using the same Artco?
- A. I did not sell it. Rankin sold it under Artco. He used my company name, my invoices, my order pads, and he sold it. I've never been to Woodbridge.

THE CHAIRMAN: What benefit did you derive from these sales?

THE WITNESS: It generated cash for me.

BY MR. GEISLER:

Q. If I told you those invoices total up to \$10,000, would you accept that amount?

A. I'll accept it.

Q. That was unrecorded income, also?

A. Yes, it was.

Cash Generation Scheme Detailed

Q. Referring to the chart* that is up, did your cash-generation scheme with Mr. Rankin work in the following way: First of all, Mr. Rankin sold chemicals to, and on the chart it is Woodbridge, using one of your company names and the payment, the payment check was mailed to your, one of your addresses? Is that correct?

A. That's correct.

Q. Your home address?

A. Yes.

Q. You cashed the check, but didn't record the income?

A. That's correct.

Q. To get the money back to Mr. Rankin, you sent a check to him as payment for a fictitious chemical purchase. Is that correct?

A. I sent him a check, he sent me an invoice saying it was chemical purchases.

Q. Yes. Indicating that you purchased chemicals from him --

A. Right.

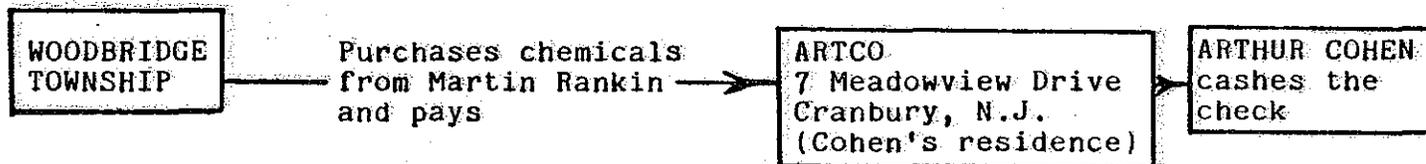
*See Chart, next page.

COHEN/RANKIN

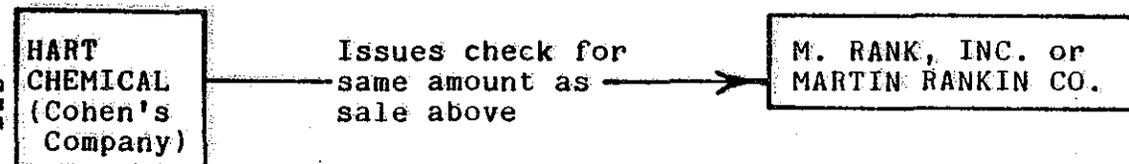
SALES TO WOODBRIDGE TOWNSHIP

(CASH GENERATION SCHEME)

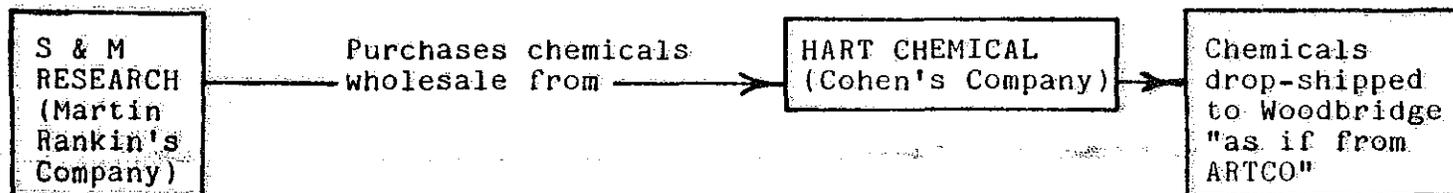
RESULTS



Cohen gets cash; does not record any sale.



Cohen's company records check as a "chemical purchase" (fictitious) reducing his taxable income; Rankin gets cash; does not record any sale.



S. & M. Research records purchase - reducing taxable income.

Q. -- when, indeed, you never did purchase chemicals from him?

A. That's correct.

Q. Rankin didn't record the fictitious sale. Is that correct?

A. I don't know.

Q. Rankin did purchase chemicals from you getting a tax deduction for himself?

A. I don't know what he did.

Q. But Mr. Rankin did purchase the chemicals that he sold from you?

A. Yes.

Q. And at a wholesale price. Is that correct?

A. Sure, yes.

Q. As a result of the scheme, both you and Mr. Rankin obtained cash. Is that correct?

A. I obtained cash. I don't know what Rankin did with his.

Q. Our accountants advise that, as a result of this device, you received 10,000 in cash during the years 1979, 1980 and part of 1981. Do you agree with that amount?

A. I'll accept it.

Q. This is an additional amount of unrecorded cash that you had in your pockets?

A. Yes.

Q. Whose idea was this scheme?

A. Mine.

Q. Is this scheme standard in the chemical industry?

A. I don't know. It was my idea.

Q. Did you ever testify before the Commission that this scheme was standard?

A. I don't recall.

Q. I show you what's been marked C-45A, a transcript of your testimony of April 8th, 1982, before an executive session of the State Commission of Investigation. I refer you to Page 97, lines 14 and 15, in particular...I am going to read from line 9. "For how long a period did you have this arrangement, the bill-as-if arrangement with Mr. Rankin?"

"Answer: You're talking about the Marsh Chemical thing?"

"Question: Yes."

"Answer: Standard procedure in the industry."

COMMISSIONER DEL TUFO: Do you remember being asked that question and giving that answer?

THE WITNESS: I kind of remember and I understand what he's saying. I think I can answer.

COMMISSIONER DEL TUFO: Does that refresh your recollection now?

THE WITNESS: Yes, it does, pretty good.

THE CHAIRMAN: He wants to explain it. Give him a chance to explain it.

THE WITNESS: Thank you. What I think the question was, was it standard in the industry to use other company names. I'm pretty sure that's what it meant. I said, no, you didn't put it standard in the industry. I said it was standard in the industry using other company names, and I think that's what it refers to.

Q. Is it standard in the industry to use other company names?

A. I think so.

Q. In the same manner that you used it at Township of Ocean Sewerage Authority?

A. I would think so.

Q. And for the same purpose, to avoid the bid laws of the state?

A. I would think so.

Q. Did you receive payment from the Borough of Jamesburg off the books?

A. You showed me that invoice. I don't remember it.

Q. Do your own records indicate that you received payments from the Borough of Jamesburg, yet later directed that your records indicate that you, indeed, had not received payment from the Borough of Jamesburg?

A. I don't know for sure.

Cohen Confronted With Checks to Rogove

Q. The night after you received a subpoena from the New Jersey State Commission of Investigation did you direct one of your employees, a Georgeanne Lang, to search your cash disbursement records for any reference to Robert Rogove?

A. I don't remember that.

Q. Do you know whether she found some?

A. I don't remember doing it.

Q. Did you direct her to obliterate any references to Robert Rogove in your records?

A. I don't remember saying anything like it.

Q. I show you what's been marked C-111. That is a page from your disbursements journal.

THE CHAIRMAN: For the record, what's it amount to? What does it purport to be?

MR. GEISLER: It's a page from his disbursements journal indicating checks that had been written by Mr. Cohen.

THE CHAIRMAN: Over what period of time?

THE WITNESS: It's one month. One week. It's the first week in November. Of '79.

BY MR. GEISLER:

Q. And is there a name obliterated on the bottom of that page?

A. There is.

Q. Black ink?

A. Yes.

Q. Could you tell us whose name is under that black-ink obliteration?

A. I have no way of knowing.

Q. Could it have been Robert Rogove?

A. I have no way of knowing.

Q. Do you know how that occurred in your records?

A. No, I do not.

Q. Would anyone have done that without your direction?

A. I don't know.

Q. Did you make any checks payable to Robert Rogove?

A. Yes, I did.

Q. Were not those checks kickbacks to Mr. Rogove?

A. No, they were not.

Q. I show you what's been marked C-109 and C-110, checks made payable by Hart Chemical Company to Robert Rogove for the amounts -- excuse me -- Hart Chemical Company and International Research, the check payable for \$300, the International Research check for \$201.60.

A. Yes.

Q. Were those checks given to Mr. Rogove as kickbacks?

A. They were given to Mr. Rogove, not as kickbacks.

Q. Didn't you testify that you never gave anything to Mr. Rogove?

A. Right.

Q. And confronted with these two exhibits, you still maintain that you never gave anything to Mr. Rogove?

A. I had borrowed money from him. I had borrowed an A & S card from him, Abraham & Straus credit card. We were shopping one day and I needed some money.

Q. Mr. Cohen, did you use the hidden cash that you have had, you just described, to give Mr. Robert Rogove a 20 percent kickback on all the orders that he gave you?

A. No, I did not.

Q. Mr. Rogove is in the process of pleading guilty to this scheme, to receiving kickbacks from you. He's testified under oath at this hearing. In the face of his testimony and your testimony today that you had a scheme with Mr. Rogove to avoid the bidding laws of the state, and that Mr. Cohen purchased large amounts of chemicals from you, are you still willing to testify that you didn't give Mr. Rogove any kickbacks?

A. That's right.

SCI Refers Cohen's Testimony to Attorney General

COMMISSIONER DEL TUFO: I don't have questions. But while Mr. Cohen is still in the room, I would like to say it would be my recommendation that the transcript of his testimony here today be referred to the Attorney General's office for appropriate review in view of his admission of violating the bidding laws in the state of New Jersey and conspiracy to violate the bidding laws. It would also be my recommendation that the Attorney General be asked to review this transcript with regard to whether Mr. Cohen has perjured himself today, on the basis particularly in connection with his dealings with Mr. Rogove; and I would say that should Mr. Cohen's recollection improve during the course of the proceedings, he would be given an opportunity to come back here today and straighten out the record. Otherwise it would be another aspect of that type of recommendation.

THE CHAIRMAN: These recommendations that our fellow Commissioner has just enumerated have the full approval of the other three commissioners.

Immunized Witness Describes Kickbacks

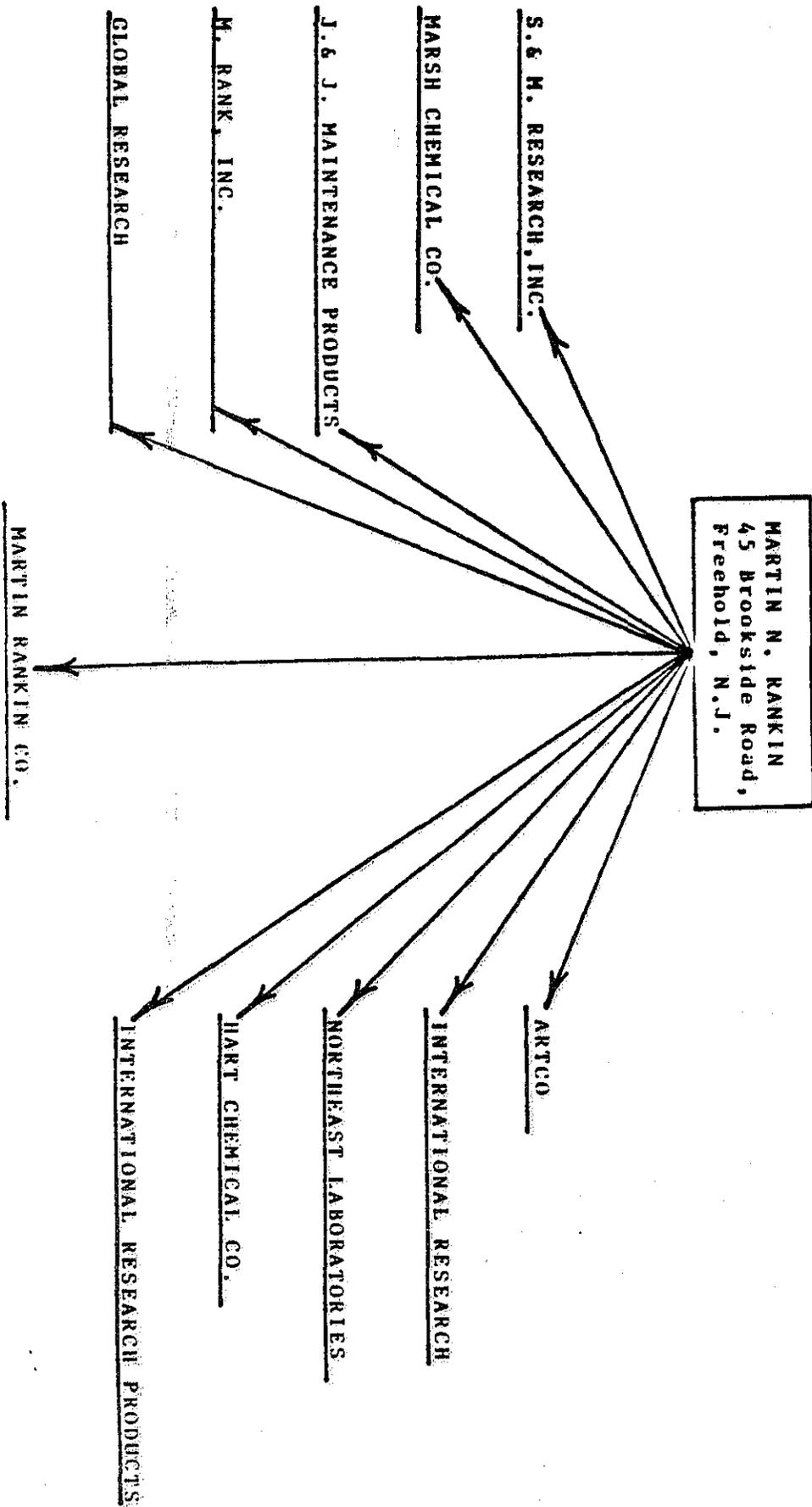
The next witness, Martin N. Rankin of Freehold, testified under a grant of immunity. He was a chemical salesman who once worked for Arthur Cohen but who had been in business for himself since 1977. Rankin during his testimony admitted establishing numerous fictitious companies in order to violate the State bidding laws and to generate hidden cash reserves which he said he utilized to pay 10 percent kickbacks. Many of his customers were governmental agencies, including sewerage authorities. Rankin also testified that he conspired and collaborated with Cohen in cash generation schemes. Excerpts from Rankin's testimony follow:

- Q. What did you do after you left Mr. Cohen's company?
- A. I went into business for myself.
- Q. What was the name of your business?
- A. S & M Research.

- Q. From where did you obtain the chemicals that you sold?
- A. I bought them from different supply houses.
- Q. Did you purchase many of them from Arthur Cohen?
- A. Yes, sir.
- Q. During the past five years to whom did you sell chemicals, generally?
- A. To public and private bodies.
- Q. Mr. Rankin, I show you what's been marked chart C-13.* Do you recognize what is depicted on that chart?
- A. Yes, sir.
- Q. What is depicted on that chart?
- A. Those are the different companies I sold chemicals under.
- Q. S & M Research, Marsh Chemical, J & J Maintenance, M. Rank, Inc., Global Research, Artco, International Research, Northeast Laboratories, Hart Chemical Company, International Research Products and Martin Rankin Company?
- A. Yes, sir.
- Q. Could you tell us what different mailing addresses you had for those different companies?
- A. Well, I had a mailing address in Farmingdale; I had a mailing address in Colts Neck; I had a mailing address in Howell; had a mailing address in Freehold; had a mailing address at my house.

*See Chart, next page.

COMPANIES/CORPORATIONS USED BY MARTIN N. RANKIN



Q. Were these all, except for your house, were they all post office boxes?

A. Yes, sir.

THE CHAIRMAN: While you were operating your own companies, you also sold under Mr. Cohen's company's names for him?

THE WITNESS: Yeah, because I wanted additional companies to sell under, so I used some of his companies.

Q. Did you just use the company names?

A. I just used the company names, his company names.

Q. Did you use any aliases in certifying items on vouchers?

A. Yes.

Q. Could you tell us why you used different company names, the different mailing addresses and the different personal names?

A. Because I didn't want to show all business going into one company.

COMMISSIONER PATTERSON: Why?

THE WITNESS: Because of the state laws, the bid laws.

COMMISSIONER PATTERSON: So you used the multiple companies to get around the bidding laws?

THE WITNESS: Yes, sir.

BY MR GEISLER:

Q. Could you tell us of the companies you used which ones were incorporated under the laws of the State of New Jersey?

A. Well, none of them were really incorporated.

Q. When we refer to companies, we're referring to fictitious business names; is that correct?

A. Yes, sir, you could say that.

How Bid Laws Were Circumvented

Q. How did you think you were circumventing the law by using the numerous companies?

A. Well, if the law at the time when I was selling it was \$2500, now it's \$4500 for, you know, if you buy a certain item, so I was trying to get around the law by not, you know, putting all my business for a particular item under one company; breaking it up under different companies.

Q. Did the persons who were actually purchasing chemicals for public bodies know you were using several different companies?

A. Yes, sir.

Q. Did the people who were authorizing payment, the upper-echelon people at those public bodies, know that you represented all the different, all the different companies were really you?

A. I don't think so. I never had anything to do with the upper-echelon people, so I really, you know, as far as I know, no.

Q. When you sold enzymes, did you sell them under different names?

A. Yes, sir.

Q. Did you call it different things?

A. Yeah.

Q. Did you call them such as Blast, High Court, N-Zymes?

A. Yes, sir.

Q. And did you use different names for other chemical products that you sold?

A. Yes, sir.

Q. Why did you use the different names for the same product?

A. Well, again, to get around the bid law. Of course, enzymes, if I sold a municipality over \$4500 in enzymes, I used different names, too, so they think -- they wouldn't know it's the same product.

Q. Did you just make up names as you went along?

A. Yeah. Yes.

Q. When you sold to employees of public bodies under the different product names, did the person who was purchasing those chemicals from you know he was purchasing the same chemical under different names?

A. Yes, sir.

Q. Who selected which name to use, the employee or you?

A. Oh, I did.

Q. Did you change the price when you used the different names for the same product?

A. Yeah, I might have varied it by a few cents a pound to whatever.

Q. Why was that?

A. To show again, you know, it's a different item.

EXAMINATION BY COMMISSIONER PATTERSON:

Q. Mr. Rankin, going back to enzymes for a moment, I want to make sure I understand what you did.

You bought the enzymes from Mr. Cohen's company and other companies and they came to you in barrels all marked exactly the same?

A. No, they never came to me.

Q. Went to the customer?

A. Right.

Q. If you bought them from Mr. Cohen, the barrels were marked the same. But you billed the customer with different names, different trade names for the enzymes?

A. Yes, sir.

Q. And if you -- the prices were billed differently, too, according to the names? In other words, the name would have one price and another name would have a higher price?

A. Normally, but they were pretty much in the ball game. It really wasn't -- one price was like, say, 5.95 a pound and the other 9.95. It may be a nickel a pound, dime a pound off. It was pretty much the same price.

Q. Was the purchase of using different names the purpose being so that you could have different prices?

A. No, no, no. The reason I used the different names and different prices is to get around the bid laws, showing the different items.

Kickbacks "To Induce Business"

Q. To induce people to purchase chemicals from you, did you give them gifts, premiums or cash; that is, did you give anybody any kickbacks?

A. Yes, sir.

Q. Is that commonplace in the chemical sales business?

A. I don't discuss what other chemical salesmen do, but I guess I'm not the only one doing it in the field.

Q. Why did you give kickbacks?

A. Just to induce business.

Q. What did you usually give --

A. Cash.

Q. Did you give gifts also?

A. Yeah, occasionally, rare occasion.

Q. What amounts of cash did you give those receiving kickbacks?

A. Usually ten percent of the sale.

Q. How would you determine who you would offer a kickback to?

A. Somebody you go to and just feel out. If you feel, you know, he would take, you would give him. If you didn't -- I don't know, it's a gut feeling. You know, you didn't hit everybody with it. Some people you just feel, you know, wouldn't take anything, so you didn't bother.

Q. How long would it take you to feel somebody out like that?

A. It's hard to say. It could range from the first sale to five, six months later.

Q. When you say feel them out, would you feel them out by talking to him or --

A. Yeah, you know, general conversation with them, you know, you would get a feeling, you know. It's something that I would feel myself.

COMMISSIONER FRANCIS: Would you give us an example of how such a conversation would go?

THE WITNESS: Well, I would tell them, may tell the party, you know, "I'll offer you a deal." They may respond, "What kind of deal?" I say, "You know, I'll give you cash, you know." And if they're receptive to it, that's it.

BY MR. GEISLER:

Q. When you gave somebody cash, how would you get the cash that you would give to them?

A. Usually out of my business account. I'd write out a check for cash for expenses, cash the check in the bank and carry cash around with me.

Q. When would you usually give the cash to the person receiving the cash?

A. When I got the order.

Q. Where would you make the payment?

A. Well, I would make the payment when I was alone with him. You know, either in a restaurant, my car, or in his office.

Q. How many of your customers during the period of time that you were in business for yourself were public bodies?

A. Approximately 20.

Q. Were any of them MUA's or sewerage authorities?

A. Yes, sir.

Q. How many of them -- how many public bodies did you give kickbacks to?

A. Approximately eight.

Q. At those eight public bodies, how many individuals did you give kickbacks to?

A. There were some public bodies where I gave more than one individual kickback to.

THE CHAIRMAN: And were they usually ten percent kickbacks?

THE WITNESS: Yes, sir.

Q. Was there one public body where you paid off four people?

A. Yes, sir.

Q. How did it come about that you had to give to four different people at one public body?

A. Well, when I first tried to get into the account, I couldn't make any headway, so I went to the purchasing agent and I offered him a deal and he, in turn, called up the, you know, the municipal garage and told him that I would give the deal, and that's how one or two people, you know, more than one person got involved in the kickback.

Q. And it extended to four people?

A. Yeah, it called up to four people.

MR. GEISLER: I think at this point I should indicate for the record that because this information has been referred to the New Jersey Attorney General's office we have instructed Mr. Rankin not to divulge the names of the authorities or the individuals who were receiving the kickbacks from Mr. Rankin.

Q. Was there one public body at which you had to pay off two people?

A. Yes, sir.

Q. How did that come about?

A. Well, the, the person that used to do the buying had a new boss and he couldn't get the okay without the other one, so I had to pay off two people, you know, to get that business.

Q. How much did each one of those receive?

A. I think I gave them ten and ten.

Q. Did you stop paying kickbacks to both people at that public body?

A. Yes.

Q. Why was that?

A. Well, I had a meeting with one back in the fall, and I told him the heat was on and I didn't want to pay off any more, I told him, you know, there's not going to be any more kickbacks.

Q. What did he reply?

A. He didn't really reply anything. He didn't say anything, you know, and we parted company.

Q. Have you sold to them since then?

A. No.

Q. Did you have a conversation with another individual from that same community at a later date?

A. Yes.

Q. And did this occur in a parking lot?

A. Yes.

Q. Could you tell us what in substance occurred?

A. Well, he cornered me. He saw my car in the lot and told me to pull over in my car and wanted to know why I turned state's evidence against him. I told him I had to tell him. He asked me (about the) S.C.I.

Q. Did he tell you he was worried about going to jail?

A. He was worried about his job, pension, jail, whatever.

Q. Was there a sewerage authority where a person approached you regarding the S.C.I. investigation?

A. Yes, sir.

Q. What, in substance, occurred?

A. Well, here again, you know, he was disturbed why I turned state's evidence and I told him again I had to do what I had to do. You know, again, I'm sorry, you know, I'm sorry the whole mess came about.

COMMISSIONER PATTERSON: When you worked for Mr. Cohen, did you give kickbacks at that time?

THE WITNESS: Yeah.

COMMISSIONER PATTERSON: So it's through your entire career in the chemical business you have been giving kickbacks?

THE WITNESS: Basically, yeah.

THE CHAIRMAN: While you worked with Mr. Cohen, were you giving ten percent or twenty percent?

THE WITNESS: No, basically ten percent. I basically always gave ten percent.

THE CHAIRMAN: How did you get the cash that you gave, the ten percent you gave?

THE WITNESS: From my, from my business. From my account.

THE CHAIRMAN: While you were working for Mr. Cohen?

THE WITNESS: Oh, while I was working for Mr. Cohen. No. When I was working for Mr. Cohen, I didn't have that many accounts, so I don't remember where I got the cash from. I got the cash from me, you know. Nobody else gave me the cash.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Mr. Rankin, how long did you carry on this pattern or scheme of making cash payments to purchasers of your chemical products?

A. Let's say, I've been in business since 1977. '77, '78, '79, '80. About three years, you know, a little more.

Q. And would it be correct to say that for the same period of time you were also carrying on this scheme of taking various steps to disguise or to evade the bidding laws?

A. Yes, sir.

Q. Did you learn in any way, directly or indirectly, that any municipal utility authority or sewerage authority had ever taken any steps to find out whether your invoices were proper, whether the sales were proper, whether any of its employees were receiving any payments for those sales?

A. No, not as far as I know, no.

Big Price Mark Ups Allowed for Kickbacks

Q. How could you afford to give kickbacks and make a profit?

A. Well, there's enough profit you make on a sale in chemicals. I mean, you know, it's a fairly, you know, marked up, you know, it's a high mark-up item. I don't know if it's marked up any different than anything else you buy, but there's enough profit in the sale to warrant.

Q. How high a kickback could you give and still make a profit?

A. I don't know. You might be able to go to 20 percent, 25 percent. You know, it's all what price you're going to charge a person. Some people -- you know, if you're going to charge a person 9.95 a gallon for something that only sells for 2.95 a gallon, you got a lot of room.

Q. In fact, one individual received 15 percent from you. Is that correct?

A. Yes, sir.

Q. He was employed by a public body?

A. Yes, sir.

Recalls Cash Generation Scheme

Q. Did you have any agreement to generate cash with Arthur Cohen after you left his employ?

A. Yeah.

Q. What was that agreement?

A. Well, when I used one of his companies, I'd have a money transfer, you know, where I could generate some cash for myself by using one of his companies.

Q. Referring to chart C-12,* did the arrangement work in the following way: First you would sell chemicals to a public body, and on the chart it's referred to as Woodbridge, using one of Mr. Cohen's company names with Mr. Cohen's home address? Is that the way you do it?

A. Right, yeah.

Q. And that public body would mail a check to Mr. Cohen's address?

A. Right.

Q. Made out to one of Mr. Cohen's companies?

A. Right.

Q. Mr. Cohen would then cash the check and do what he wanted to with that cash. Is that correct?

A. Yeah. I don't know what he done with the cash.

Q. Then to get the money back to you, he would make a payment by check, mail the check to you from his company, purportedly for chemicals that he had purchased from you?

A. Yes, right.

Q. You never sold chemicals --

A. No.

Q. -- to Mr. Cohen?

A. No.

Q. Then you would still have to obtain the chemicals, so you would purchase them at a wholesale rate from Mr. Cohen. Is that correct?

A. Yeah, right.

Q. And you would obtain a tax benefit from that? That would be a business expense purchasing those chemicals?

A. Well, it would be a purchase.

Q. If I were to tell you that our records indicate that you obtained approximately \$10,000, would you --

A. I'm not going to argue with you.

Q. Did you have this cash available to you to use as kickbacks?

A. Yeah, I had it. You know, I could have used it for anything I wanted.

One Official Got a Camera

Q. Did you give anybody any tangible items such as any gifts?

A. Yeah.

Q. To how many individuals did you give tangible items?

A. Basically, one.

Q. What did you give -- to whom did you give the camera that you mentioned?

A. To William Calnan of Summit.

Q. What position does he hold in Summit?

A. City Forester.

X X X

Q. I show you what's been marked C-157, 156, rather, and ask you if that's the camera you gave to Mr. Calnan.

A. Yes, sir.

- Q. What kind of camera is that?
- A. It's a underwater camera.
- Q. Is that a Nikonas III?
- A. Nikonas III.
- Q. Is that made specially for use underwater?
- A. Yes.
- Q. I show you what's been marked C-157 and C-158, receipt and a check for the camera. Is that the check you used to purchase the camera?
- A. Yes, sir.
- Q. When did you purchase it?
- A. May 8th, 1980.
- Q. Could you tell us what you paid for that camera?
- A. \$326.45.
- Q. How did you deliver it to Mr. Calnan?
- A. I brought it up there personally, gave it to him personally.
- Q. Where did you give it to him?
- A. Might have been in his office. I don't really remember. It was given to him up in Summit...That's where his office is, 520 Springfield Avenue.
- Q. In Summit?
- A. Summit.

X X X

- Q. Did you give Mr. Calnan anything else pertaining to photography?
- A. Yes, sir, gave him an electronic flash.
- Q. What was the value of the flash?
- A. I don't know. I guess, roughly, around a hundred.

- Q. How did you know to get him a flash?
- A. Well, I knew he wanted a flash. You know, mentioned it in his conversation with me.
- Q. Did you give him anything else?
- A. I gave him a watch, possibly two. I don't really remember.
- Q. I show you what's been marked C-159. Is that the receipt for the watch?
- A. Yes, sir.
- Q. How much did you pay for the watch?
- A. Let's see. It came out to 87.50 plus shipping. 90.50.
- Q. Did you offer the camera, the flash, and the watch, or watches, as kickbacks?
- A. Well, I offered them.
- Q. Did he pay you for the items?
- A. No, sir.

SCI Agent Corroborates Gifts to Calnan

SCI Special Agent Richard Hutchinson testified that Calnan at first denied and then admitted receiving gifts from Rankin during an interview in the City Forester's office in Summit. Hutchinson testified as follows about his interview with Calnan:

- Q. Were you accompanied by anyone on that interview?
- A. Yes. I was with Special Agent Wendy Bostwick.
- Q. Was she present during the interview?
- A. Yes, she was.
- Q. Did you question Mr. Calnan concerning any gifts he may have received from chemical salesman?
- A. Yes, I did.

Q. What did he tell you?

A. Initially he denied that he received anything. He hadn't heard of anything. The only indication he did give me was that approximately ten years ago he had an occasion when a salesman offered him something but he threw him out.

Q. What did you say?

A. I advised him that I didn't think he was telling me the truth.

Q. Did he eventually make additional statements?

A. Yes, sir. I asked him specifically in reference to Martin Rankin, S & M Research, and at that time he indicated he received a gift from Martin Rankin and specified it as being a Seiko watch.

Q. Did Mr. Calnan indicate whether or not he had received anything else from Mr. Rankin?

A. I asked him if he had received anything further. He stated he didn't think so. I advised him there was something else and I suggested that, perhaps, he received a Nikonos 3 camera.

Q. What did he say when you made that suggestion?

A. He remembered it.

Q. Did you ask him about any accessories that went with that camera, specifically a flash unit?

A. I asked him if he received anything else from Mr. Rankin and he indicated he didn't think so, and I offered to refresh his memory and I mentioned the electronic flash. He said he did get an electronic flash from Mr. Rankin.

State Vendors Contract System Violated

The State of New Jersey provides for state, local and other governmental entities a "shopping list" service that enables the purchase of certain products without competitive bidding from

vendors who have been pre-qualified to sell such products. Such State-accredited vendors are assigned contract numbers that identify the products they can sell without competitive bids. These products are generally the type for which competitive bid specifications can't be drafted because of the difficulty of determining in advance the type or quantities a public entity might require in any specified period of time. Martin Rankin, the previous witness, had recalled in his testimony that other chemical peddlers had misused the State contract system -- by selling waste treatment chemicals under contract numbers assigned to products other than chemicals -- as another means of bypassing the State bid laws.

The SCI's investigative findings included a particularly flagrant violation of the State contract numbers system. In this case, a "paper company" was established by a chemical peddler who worked for a recognized chemical product manufacturer. The purpose of the fake company was to hide from his regular employer certain sales the peddler made independent of his employer, mostly by abusing the State contract numbers system. These abuses included false applications, forgeries and other misrepresentations, not the least of which were the chemicals sold without bids to authorities under contract numbers that were supposed to apply to boiler supplies or car repair parts.

The Compliant Company "President"

The first witness in this episode was Agnes Froberg, a legal secretary. Prior to January, 1982, she was employed by Donald Levenson of the Marlton law firm of Levenson, Vogdes, Nathanson and Cohen. She recalled that in 1978 Levenson and Jack Israel of Mount Laurel, a chemical products salesman, asked her to become president and secretary of a company to be known as General Supply Associates Laboratories Inc. She was not required to have any interest, financial or otherwise, in this company. Excerpts from her testimony follow:

Q. Did they give you a reason why they wanted you to be the president of the corporation?

A. The only reason that was given to me was because Mr. Israel did not want his name to appear as general -- as (a) public record.

Q. Was Mr. Israel the East Coast representative for Malter International?

A. I believe so.

Q. What did they tell you this new business would be doing?

A. Selling cleaning supplies.

- Q. Did they tell you that, although Mr. Israel was the owner and the operator, his name would not appear on any documents?
- A. Yes, sir.
- Q. They told you that you would not have any decision-making powers? Is that your testimony?
- A. They really didn't say --
- Q. Did you have any?
- A. -- that I would. No, I didn't.
- Q. What were your duties regarding the corporation?
- A. I sent out a few bills, signed the checks, and that's about -- oh, answer the phone if it rang.
- Q. Where was the phone located?
- A. In my office.
- Q. When you say your office, the law firm?
- A. Yes, sir.
- Q. Was this phone specially installed for General Supply Associates Labs?
- A. Yes, sir.
- Q. Who had the stock for the corporations?
(The witness confers with counsel.)
- A. I don't know.
- Q. Did you sign any contracts or documents for G.S.A.?
- A. I may have. In all probability, yes.
- Q. Did you know what you were signing?
- A. No, sir.
- Q. How did you know when to sign something for General Supply Associates Labs?
- A. Mr. Israel would ask me to sign them.

- Q. Did he direct you where to sign?
- A. Yes, sir.
- Q. Did you ever read what you were signing?
- A. No, sir.
- Q. What was your salary per month?
- A. \$25.
- Q. This is as president of General Supply Associates Labs?
- A. Yes, sir.
- Q. Where did the mail for General Supply Associates Labs come?
- A. P.O. Box 269, Marlton.
- Q. Is that the mailing address for the law firm?
- A. Yes, sir.
- Q. Did General Supply Associates Labs have any other facilities?
- A. Not to my knowledge.
- Q. Did they have a warehouse?
- A. Not to my knowledge.
- Q. Did they have any testing facilities for chemicals?
- A. Not to my knowledge.
- Q. What other employees of G.S.A. were there?
- A. The only one that I know of is Regina Israel.
- Q. Do you know whether she did anything for General Supply Associates Labs?
- A. No, I really don't.
- Q. To your knowledge, who acted for General Supply Associates Labs? Did anybody do anything besides yourself?

- A. Jack Israel.
- Q. Did you give Mr. Israel authority to sign your name?
- A. Yes, sir.
- Q. How did you give him that authority?
- A. Well, there were checks that he wanted to write, and they weren't signed and he had asked me if he could sign my name to them.
- Q. And he would sign "Agnes Froberg"?
- A. Yes.
- Q. Would you know to what documents he would be signing your name?
- A. Not really.
- Q. Would you sign checks in blank for Mr. Israel?
- A. Yes.
- Q. What would you do with the bills and checks that you would receive in the mail at the law firm for General Supply Associates Labs?
- A. I would put them in a folder or envelope and wait for Mr. Israel to pick them up.
- Q. When you signed a check, did you do so only at Mr. Israel's direction?
- A. Yes, sir.
- Q. Do you know what types of chemicals General Supply Associates Laboratories, Inc., actually sold?
- A. Cleaning supplies is all I remember.
- Q. Do you know to whom they sold chemicals?
- A. Only a very certain few.
- Q. Did they sell to the Bellmawr Sewerage Authority?
- A. Yes, sir.

- Q. The Town of Audubon?
- A. Yes, sir.
- Q. Oaklyn Borough?
- A. Yes, sir.
- Q. Did Mr. Israel use the aliases John Cerri or Frank Cerri?
- A. I know of John Cerri.
- Q. Was that one of Mr. Israel's aliases?
- A. Yes.
- Q. Do you know why Mr. Israel, the East Coast representative of Malter International, would want to use an alias John Cerri?
- A. I can only assume.
- Q. And what can you assume?
- A. That he didn't want his employer to know that he was General Supply.
- Q. Did General Supply Associates Laboratories, Inc., sell enzymes?
- A. Yes.
- Q. Do you know what an enzyme is?
- A. No, sir.

Her Name Signed on False Documents

- Q. Do you know what a State contract is?
- A. No, sir.
- Q. Do you know whether General Supply Associates Laboratories, Inc., had a State contract?
- A. I believe so, but I'm not sure.

Q. Would you be surprised if I told you that your name, Agnes Froberg, appears on numerous State contracts that General Supply Associates Laboratories, Inc., has?

A. No, sir.

Q. Did you authorize, or did you know that Mr. Israel was signing your name on bids for State contracts?

A. I really don't know.

Q. Did you know that Mr. Israel in signing your name was certifying to certain factual statements to the State of New Jersey?

A. I guess so, but I don't know.

Q. I show you what's been marked C-151. Mrs. Froberg, do you know that a State contract enables the contract holder to sell chemicals to public bodies outside of the bidding laws of this state? Do you know that?

A. No, I didn't.

Q. After having examined C-151, which is captioned "Affirmative Action Employee and Information Report," does your name, "Agnes Froberg," appear at the bottom of that report?

A. Yes, sir.

Q. Did you sign that document?

A. No, sir.

Q. Do you know what that document is? Have you ever seen it before?

A. I don't believe so, but I may have. I really don't know.

Q. It is a report for General Supply Associates Labs, Inc., to the State, is it not?

A. I don't know.

Q. Does it indicate that the company name is General Supply Associates Laboratories, Inc., at the top of the report?

A. Yes, sir.

Q. Does it indicate a total of five employees for General Supply Associates Labs, Inc.?

A. Yes, sir.

Q. Concerning the facts on the report? Does it state that it is an affirmative action affidavit?

A. Yes, sir.

Q. Does your name appear on the bottom of that affidavit?

A. Yes, sir.

Q. Did you sign that affidavit?

A. No, sir.

Q. Do you know who signed that affidavit with "Agnes Froberg"?

A. I wouldn't know other than Jack Israel.

COMMISSIONER FRANCIS: Were you a front for --

THE WITNESS: - other than --

COMMISSIONER FRANCIS: -- Mr. Israel?

THE WITNESS: A front?...My name was listed as president and secretary of the corporation.

COMMISSIONER FRANCIS: But Mr. Israel ran the corporation?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: Made all the decisions?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: Signed all the documents?

THE WITNESS: Most of them.

COMMISSIONER FRANCIS: Would you agree with me that you were simply a front for him?

THE WITNESS: If that's the way you want to put it, yes, sir.

BY MR. GEISLER:

Q. Did you know that to obtain a State contract a company or a corporation had to comply with the affirmative action requirements of the State?

A. No, sir.

Q. Is it not a fact that General Supply Associates Labs, Inc., did not have five employees as indicated on this report?

A. Not that I -- not to my knowledge.

COMMISSIONER FRANCIS: Now, I'm not clear yet whether you quarrel with my characterization of your acting as a front for the corporation. Do you recall testifying before the commission on December 16?

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: Lines 14 through 17. Were you asked this question, and did you give this answer.

THE WITNESS: Yes, sir.

COMMISSIONER FRANCIS: "Could you sum up your position with the GSA that you were a front for Mr. Israel?

"Answer: That would be about what I would call it." Would you agree that, in effect, that's all you were?

THE WITNESS: Yes, sir.

THE CHAIRMAN: You just did what you were told to do?

THE WITNESS: Yes, sir.

BY MR. GEISLER:

Q. Mrs. Froberg, I direct your attention to Exhibit C-138, which is entitled, "A Purchase Bureau term contract advertised bid proposal" for General

Supply Associates Laboratory, Inc. Does your signature appear on the bottom of the first page as president for the company?

A. Yes, sir.

Q. Is this a contract for the period October 15th, 1978, to October 14th, 1979, for water, fuel and air conditioning chemicals?

A. Yes, sir.

Q. Did you sign this document?

A. Yes, sir.

Q. Did you know what you were signing when you signed it?

A. A bid. That's all.

Q. Were the contents of this bid application true when you signed it?

A. I don't really know.

Q. Referring to the second page of the exhibit, the affirmative action supplement to bid specifications, did you sign the bottom right-hand corner of that page indicating that an affirmative action affidavit has been submitted to the Purchase Bureau?

A. Yes, sir.

Q. Did you know whether an affirmative action affidavit had been actually submitted to the Purchase Bureau?

A. No, sir.

Q. If I were to tell you that the Purchase Bureau had not received an affirmative action affidavit from your firm, would that surprise you?

A. Yes, sir.

Q. Referring to the third page of that document, "Stockholder disclosure form," it states, "In spaces provided list the names and addresses of all owners, directors, partners, officers and indirect owners owning ten percent

or more interest in the bidder's firm. If corporate owner, list in the space provided stockholders for corporation whose ownership through the corporation is ten percent or more of the bidder. Complete affidavit at bottom of form. If it has already been submitted to the Purchase Bureau, use the form for any changes and complete the affidavit." Does your signature appear at the bottom of that form?

A. Yes, sir.

Q. Did you sign the certification indicating that the only owner of interest in General Supply Associates Laboratories, Inc., was Agnes Froberg of 618 Lincoln Avenue, Magnolia, New Jersey?

A. Yes, sir.

Q. Was that statement true?

A. No, sir.

Q. Who witnessed your signature?

A. Steven Herron.

Q. Who is he?

A. He was a member of the firm.

Q. What firm is that?

A. Levinson, Vogdes, Nathanson & Cohen.

Sewerage Chemicals Sold as Air Conditioner Chemicals

Q. This was a State contract for water, fuel and air conditioning chemicals. Is that correct?

A. Yes, sir.

Q. Could you tell us why Mr. Israel submitted bids in the bid application for Concentrated Foam Control, a liquid formulated for controlling foam in waste disposal plants, particularly helpful in eliminating foam in aerator tanks? Do you know why that was submitted in a bid for air conditioning chemicals?

A. No, sir.

Q. Do you know why Mr. Israel, referring to a further section of that bid, submitted a bid for Sewer Solvent, especially compounded for use in municipal sewers?

A. No, sir.

Q. Referring to the next bid proposal, if you would, C-139, again, a Purchase Bureau term contract advertised bid proposed for General Supply Associates Laboratory, Inc., for automotive parts, excluding repairs, for the period January 1st, 1980, through December 31st, 1980, did you sign the bottom of that bid application?

A. Yes, sir.

Q. Did you know what you were signing when you signed it?

A. No, sir.

Q. Did you do so at the direction of Mr. Israel?

A. Yes, sir.

Q. Referring to the second page of the affirmative action supplement to bid specifications, does your signature appear on the bottom or was that signed by someone else?

A. That was signed by someone else.

Q. Does the signature indicate Agnes Froberg?

A. Yes, sir.

Q. Does it indicate that an affirmative action affidavit had been submitted to the Purchase Bureau?

A. Yes, sir.

Q. Do you know for a fact whether an affirmative action affidavit had been submitted to the Purchase Bureau?

A. No, sir.

Q. Would you be surprised again if I told you it had not been?

A. Yes, sir.

Q. Referring to the stockholder disclosure form on the following page, does it again indicate that Agnes Froberg was the sole party having an interest in General Supply Associates Laboratories, Inc.?

A. Yes, sir.

Q. Is that document signed by you?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir.

Q. Did you know what you were signing when you signed it?

A. No, sir.

Q. If I were to tell you that we have similar bid proposals for boiler and fuel oil chemicals, January 15th, 1980, to January 14th, 1981, which is Exhibit C-140, indicating the same information, would your responses be the same?

A. Yes, sir.

Two False Names on One State Contract

Q. If I were to tell you that these contracts indicate that General Supply Associates Laboratories, Inc., has a warehouse, would that be a misstatement of fact?

A. To my knowledge.

Q. If I were to tell you that these bid proposals indicate that General Supply Associates Laboratories has a testing facility, would that be a misstatement of fact?

A. To my knowledge.

Q. I refer you to Exhibit 141, another Purchase Bureau term contract advertised bid proposal for General Supply Associates for boiler and fuel oil chemicals for one year of date of award. This contains a signature date of 12/5/80. Did you sign the cover sheet?

A. No, sir.

Q. Does the name -- is the name "Agnes Froberg" written on the bottom of this cover sheet?

A. Yes, sir.

Q. Do you know who signed it?

A. No, sir. I can only assume.

Q. Referring to the affirmative action supplement on the second page, is that your signature there?

A. No, sir.

Q. Referring to the stockholder disclosure form --

A. No, sir.

Q. -- does it indicate that Agnes Froberg is the sole owner of interest in General Supply Associates Laboratory?

A. Yes, sir.

Q. Does the written name Agnes Froberg appear as the signature of the authorized representative of G.S.A.?

A. Yes, sir.

Q. Is that your writing?

A. No, sir.

A. Is it Jack Israel's?

A. It may be.

Q. Is it witnessed by a John Cerri?

A. That's what it looks like.

- Q. That is Mr. Israel's alias, is it not?
- A. Yes, sir.
- Q. So Mr. Israel not only signed this, but he witnessed it, is that correct, using two different names?
- A. I don't know.
- Q. Did Mr. Israel have a habit of indicating a little circle after signing your name?
- A. That's the way it appears.
- Q. And does that little circle appear after the written name "Agnes Froberg"?
- A. Yes, sir.
- Q. So does that appear to you to be Jack Israel's signing of your name?
- A. Very possibly.
- Q. You didn't authorize anybody else to ever sign "Agnes Froberg," did you?
- A. No, sir.
- Q. And I would indicate for the record we have a similar contract, C-143, automotive parts and accessories for General Supply Laboratories, Inc. Would your answers probably be the same for another State contract?
- A. Yes, sir.
- Q. Do you know how important having a State contract is to Mr. Israel and General Supply Associates Laboratories, Inc.?
- A. No, sir.
- Q. Are you still the president of General Supply.
- A. Yes.
- Q. Do you know what your company sells or does?
- A. No, sir.

Q. Where is it located now?

A. It's still in Marlton.

Q. And where?

A. As far as I know, P.O. Box 269.

Q. Do you know who answers the phone for G.S.A. now?

A. No, sir.

How Jack Israel Sold Chemicals

Jack Israel, the next witness, was East coast sales manager for Malter International of New Orleans, a producer of cleansers, weed killers, pesticides and other chemical products. His testimony about the purpose of General Supply Associates and his use of Mrs. Froberg as a "front" was marked by contradictory and evasive responses, as illustrated by these excerpts:

Q. Do you have a company called General Supply Associates Laboratories, Inc.?

A. I do business for General Supply, Inc., yes, sir.

Q. You say do business for them. Is that not your company?

A. Basically, I do not own it, but after testifying twice in front of you there is a possibility that I do get income from it, so there would possibly be that I have something to do with it that way. I don't own any stock or anything like that.

Q. Can you tell us who owns General Supply Associates?

A. Agnes Froberg, I believe. At this point there is no stock issued with the corporation, so, basically, I believe that she did own it and that's my answer.

X X X

Q. Tell us how it was formed.

A. It was formed, basically, okay, where I asked Agnes Froberg, okay, to own General Supply for me and also be the president and secretary of it. In turn, she said that she would, yes.

- Q. This president of the company received a salary of \$25 a month from you?
- A. Agnes received \$25 a month and also there were a couple of times where she got a promotion or something like that.

COMMISSIONER PATTERSON: You said she owned the company for you. I want to know what's the difference between somebody owning the company for you and your statement a little while ago that you didn't think you owned the company.

THE WITNESS: I feel that if a person owned stock in the company and if she were the president and the owner, they would be the owner. If somebody did work for the company, okay, it wouldn't mean they owned the company but, basically, they supervised or worked for the company.

COMMISSIONER PATTERSON: I would take it to mean if I asked you to own a company that I really owned and you were running it for me.

THE CHAIRMAN: Tell me the extent of what Mrs. Froberg's ownership was. What did her ownership amount to, to your knowledge?

THE WITNESS: Basically, Mrs. Froberg, okay, owned General Supply, okay, in order to really keep my name, okay, out of reach of people knowing that I had anything to do with General Supply where they would in any way go back to my employer or hurt me, okay, employment-wise. Basically, she did paperwork. She answered the phone, okay; she helped me on anything that had to be done. She signed checks for me, and, basically, did paperwork. That was her extent of it.

THE CHAIRMAN: That was the extent of her ownership?

THE WITNESS: Yes.

X X X

THE CHAIRMAN: You and I have different definitions, apparently, of ownership.

COMMISSIONER PATTERSON: She was fronting for you, wasn't she?

THE WITNESS: No, she was not.

COMMISSIONER PATTERSON: Not fronting for you?

THE WITNESS: No.

COMMISSIONER PATTERSON: Didn't you just say that you didn't want to be tied into the corporation because of your main job and you needed somebody to have their name in the corporation?

THE WITNESS: I said that she did that for me so my name would not be known to get me in any trouble, okay, to hurt me with my company, okay. I do not call that fronting, sir.

COMMISSIONER PATTERSON: Well, I do.

Israel's testimony also contradicted statements made in sworn applications for State contract numbers as to what his General Supply company (GSA) owned and how many people it employed:

Q. Did G.S.A. have a warehouse with 15,000 square feet?

A. G.S.A. did not have a warehouse.

Q. Did your firm have its own testing facilities?

A. Testing facilities would be where we brought our chemicals from.

THE CHAIRMAN: Just answer the question. Did the firm have its own testing facilities?

THE WITNESS: No, sir.

Q. Who were the employees and what did they do?

- A. Basically, it would have been Agnes Froberg, Jean Israel, Eileen Adler, Harry Dashoff. That would be basically it.

X X X

- Q. Do you remember testifying before this Commission at Executive Session?

- A. Yes, I do, sir.

- Q. C-49; I am referring to page 19. Do you remember being asked a question on line 4: "Who were the employees of G.S.A.?" The answer: "The, employees, basically, were my wife, Agnes Froberg and not out front was myself." Did you testify under oath that those were the employees of G.S.A.?

- A. There is testimony here that I said that, yes.

Israel testified that he purchased enzymes and other sewerage treatment chemicals from Arthur Cohen's Hart Co. at Tullytown, Pa. Cohen, a previous witness in the Commission's public hearing, had concocted a scheme for generating hidden cash from chemical product sales. Israel's relationship with Cohen was so close that he occasionally used Cohen's name or one of Cohen's companies in his chemical sales operation.

Chemical Sales Under State Contract Numbers

Wastewater treatment chemicals were sold under state contract numbers that were assigned to other unrelated products by Malter International as well as by Israel's corporate front, General Supply Associates. Israel's testimony on this issue continued to be evasive:

- Q. Is it not a fact that when one has a State contract, the purchaser does not have to bid for the item?

- A. When you have a State contract the purchaser does not have to bid for the contract.

- Q. Did you have State contracts or did you apply for State contracts as the East Coast representative of Malter International for Malter International?

- A. Yes, I did, sir.

- Q. And over the years 1978 to date what types of State contracts did Malter International have in the State of New Jersey?
- A. They had a contract for automotive parts, accessories. They had one for boiler and water, fuel additives.
- Q. For the years 1978 to present did General Supply Associates Laboratories, Inc. have a State contract?
- A. Yes, it did, sir.
- Q. What contract did that company have?
- A. Automotive and I think just recently boiler.
- Q. Could you tell us how you went about obtaining State contracts for Malter International, G.S.A.?
- A. We are on a mailing list. The contract is sent to you in the mail. In turn, you fill the contract out and sent it back to the State for the State to review it, go over it and issue you a contract number.
- Q. Was Malter International or were you questioned as the East Coast representative of Malter International by Captain Carey of the Collingswood Police Department regarding Malter's use of State contract numbers to sell to Collingswood?
- A. Yes, I was, sir.
- Q. Is it not a fact that Malter sold enzymes under its State contract for automobile parts and supplies to the Town of Collingswood Waste Water Treatment Plant?
- A. I understand that bids were sold to public works and it did say enzymes.
- Q. This was sold under a contract for automobile parts and supplies?
- A. I don't recall. There were State contract numbers. I did not sell the account. I wasn't aware.

Q. Were you in charge of the sales person who sold that account?

A. The sales person did work for me.

Q. You are the one who obtained the State contract for that sales person to use; is that correct?

A. For the whole state, yes.

Q. Did you ever sell enzymes under a State contract for boiler supplies?

A. Myself personally?

Q. Malter international in the State of New Jersey.

A. Could be a possibility it was sold by Malter.

Q. Do you think it is proper for Malter International to sell enzymes under State contracts for boiler supplies?

THE CHAIRMAN: Does he understand that those purchases are outside the scope of the authority of the contract?

(The witness confers with counsel.)

THE WITNESS: I don't know that, sir.

THE CHAIRMAN: You what?

THE WITNESS: I don't know that's beyond or within the scope. Basically, one answer could be yes and one answer could be no. I don't know what is legal and what is not by that contract.

Q. Have you submitted bids and have you seen those bids at the SCI headquarters in Trenton, written bids for boiler and fuel oil chemicals wherein you indicated you would sell enzymes under those bids?

A. I said I sold them bids at the hearings I had with the SCI.

Q. You included enzymes as one of the items?

A. There were enzymes, yes.

- Q. Do you think it is proper to sell enzymes under that contract to public bodies?
- A. That's the same question. I don't know if it is or isn't.
- Q. Do you know what -- the enzymes are primarily for use in sewerage waste water treatment plants?
- A. No; they are not primarily for the waste water.
- Q. The enzymes you sold for Malter International, were they designed for use in sewerage waste water treatment plants?
- A. The enzymes that were sold from Malter are two different types; the label on one says sewer plants. It could be used anywhere, under a kitchen sink.
- Q. Would it be used to treat or to add to boiler and fuel oil chemicals?
- A. Can it be added to a chemical to make another chemical, if that's what you are asking, no.

Israel's Sales Through General Supply Associates

- Q. Did you obtain State contracts for G.S.A. also?
- A. Yes.
- Q. Also for automobile parts and supplies and boiler and fuel oil chemicals?
- A. Yes, sir.
- Q. Did you include in those contracts, in your bids for those contracts enzymes?

Q. How could you state this was your own testing facilities?

A. Basically, the same way as Malter, okay, would go out to someone to do their testing. It would still be Malter's testing if you pay for it. Sure they have their own testing person and they come back and pay for it and that's the test.

COMMISSIONER FRANCIS: Does the question say is it your own test or does it say is it your own testing facility?

THE WITNESS: Testing facility.

COMMISSIONER FRANCIS: Isn't that different from a test?

THE WITNESS: No, sir. It was a testing facility that we had. If we bought boiler chemicals from Hart Chemical, then we did have a --

COMMISSIONER FRANCIS: Did your company own a testing facility?

THE WITNESS: It says -- it doesn't say own.

COMMISSIONER FRANCIS: You are making some distinction that totally eludes me...I would like the witness to tell me what distinction he makes between have a testing facility and own a testing facility.

THE WITNESS: If I had my own testing facility, it would be somewhere where I would send something and have it tested. If I owned it, it would mean a company that I personally owned.

COMMISSIONER FRANCIS: So you thought a question on an affidavit form that said does your firm have their own testing facility, you thought that meant do you have tests made somewhere? Is that what your testimony is?

THE WITNESS: No, sir. I thought exactly what I put down. Do you have your own testing facility; my answer is still yes.

COMMISSIONER FRANCIS: What's the next line after that question?

THE WITNESS: It says "how many individuals" --

COMMISSIONER FRANCIS: Is that the next line? Do you have trouble reading?

THE WITNESS: "Sales service." Excuse me, sir. "Does your firm have their own" --

COMMISSIONER FRANCIS: Okay, Mr. Israel, let's go one line beyond that. Will you read that?

THE WITNESS: "If not" --

COMMISSIONER FRANCIS: Is the next line "If not, name the company and address for which your firm uses for testing"?

THE WITNESS: It does say that.

COMMISSIONER FRANCIS: What did you put in there?

THE WITNESS: I didn't put anything in there.

COMMISSIONER FRANCIS: Why not?

THE WITNESS: Because, basically, I had a firm that was doing testing for us.

COMMISSIONER FRANCIS: I give up.

Q. Going down to the sentence enumerated E, "Does your firm warehouse the products quoted herein?" The answer contained on this application is "Yes." If so, how many square feet. Excuse me. "If so, how many square feet of storage do you have? And written in here is "15,000 square feet."

Could you tell us if, in fact, this was a lie, was it not?

A. No, sir.

Q. Did you have a warehouse?

- A. Warehouse was Hart Chemical where I bought all my chemicals and I think he had about 15,000 square foot.
- Q. Do you own part of Hart Chemical?
- A. No, sir.
- Q. Do you have any agreement with Arthur Cohen?
- A. No, sir.
- Q. Then the warehouse is not yours, it's Mr. Cohen's?
- A. I buy my supplies from Mr. Cohen which would be my warehouse for shipping. They ship all my chemicals out of Hart Chemical warehouse.

THE CHAIRMAN: I take it you think you answered all these questions honestly, forthrightly, and correctly; is that right?

THE WITNESS: I know I have to my belief. I have answered these questions honestly and truthfully.

Sold Enzymes As Auto Parts and Supplies

- Q. In that bid further on did you bid...for sewer solvent specially compounded for use in municipal sewers?
- A. There were brochures turned in with bids.
- Q. This was under a contract for water, fuel and air conditioning chemicals; is that correct?
- A. Yes, sir.
- Q. Did you sell enzymes under any State contract to any public body in the state?
- A. I do not remember. I could have, okay, on a few, buy I don't remember.
- Q. I show you what's been marked as part of C-152.
- A. Yes, sir.

Q. Did you sell contracts to the -- did you sell enzymes to the Borough of Audubon under a State contract number?

A. I sold enzymes to the Borough of Audobon and I do see a State contract number.

Q. Was the voucher signed by Agnes Froberg?

A. Signed by -- Agnes Froberg's name. I signed it.

Q. If I were to tell you that the State contract number were for automobile parts and supplies, will you tell us how you were able to sell to a public body enzymes for sewerage treatment under a contract for automobile parts and supplies?

A. Basically, okay, I don't remember that, but it's down here.

Q. You admit using a State contract, then, to sell to public bodies?

A. I didn't remember until you showed me this. I still don't recollect, okay, what was done, but it's here in front of me.

Q. As a matter of fact, Malter International sold to public bodies using State contract numbers, sold sewer chemicals to sewerage treatment plants; is that correct?

A. Malter International used State contracts to sell to municipalities yes, sir.

The Document With Israel's Two False Signatures

Q. Mr. Israel, time and time again, did you sign Agnes Froberg's name to affidavits when applying for purchase bureau term contracts with the State?

A. Yes, I did, with her permission.

Q. Did you ever have occasion to not only sign her name but witness the signature with one of your aliases or with an alias?

A. Yes, sir.

Q. I show you what's been marked C-141, Stockholders Disclosure Form. Who signed that? Who placed the signature of Agnes Froberg on that document?

A. I did.

Q. Who witnessed the signature of Agnes Froberg?

A. I did.

Q. What name did you use to witness the signature of Agnes Froberg?

A. John Cerri.

Q. Again, I ask you how important is it for a chemical salesman to obtain a State contract?

A. It's nice to have it, but it's not life or death. You can sell without it.

Q. You would go to the extent of falsely certifying documents to obtain them?

A. I never falsified any documents to my belief.

EXAMINATION BY THE CHAIRMAN:

Q. Is it your understanding it's perfectly proper? Have you ever been advised by an attorney that it's perfectly proper to sign affidavits to swear to something by the use of somebody else's name?

A. Basically, sir, I was never advised of what was right or wrong, but I used John Cerri as an alias to keep my name from the public and to this day I feel I haven't done anything wrong, okay, or anything criminal, but doing what I thought was right.

Q. Even today you think you may sign this girl's name if somebody gives you their permission to sign an affidavit?

A. As of today I feel stupid in the matter, but I don't feel I was wrong.

Q. Just stupid?

A. Certain things show I didn't think before I did something.

Israel's Testimony Referred to Attorney General

EXAMINATION BY COMMISSIONER FRANCIS:

Q. Did G.S.A. make any sales under any State contract numbers?

A. I don't remember, sir, until what you showed me today.

Q. Having seen that today, would you answer the question did G.S.A. make any sales under those State contracts?

A. I still don't remember because you are showing me something that I don't recall back to that time what was said.

EXAMINATION BY THE CHAIRMAN:

Q. Aren't these documents evidence of such sales?

A. They are vouchers. They are not G.S.A. sales forms. They are vouchers filled out by the municipality. The only thing I did was sign my signature accepting it was received, okay, and for payment. I did not add anything else to it.

EXAMINATION BY MR. GEISLER:

Q. Mr. Israel, one last question. The enzymes that you sold to the borough or town of Audobon, they were purchased from Mr. Cohen; is that correct?

A. They were purchased from Hart Chemicals.

Q. Mr. Cohen?

A. Hart Chemicals. He owns that, yes, sir.

Q. Those enzymes by using the State contract number, those were sold outside of the State bidding requirements; is that correct?

- A. I wouldn't know that answer.
- Q. You didn't have to submit a bid when you sold to Audubon, did you?
- A. You don't have to submit a bid -- if I sell up to a \$500 now you don't have to submit a bid. I could sell five orders for \$499 everyday of the week without getting a bid. I can also sell up to a thousand dollars by giving a verbal bid. I can also sell up to \$4500 going to bid as many times as I see fit, if you will accept my bid. That's a state law.

COMMISSIONER DEL TUFO: As I said this morning with respect to Mr. Cohen, I believe the transcript of Mr. Israel's testimony should be referred to the Attorney General's Office for review. I certainly don't concur with your construction of the bidding statutes, nor do I concur with your view of signing affidavits. I believe it should be referred to the Criminal Justice Department.

State Purchase Bureau Witness Explains System

This episode's final witness was Angela Corio, a procurement supervisor in the State Purchase and Property Division's Purchase Bureau. She testified as an expert on the State's contract number system. Excerpts from her testimony included:

- Q. Are you familiar with shopping list term contracts ordered by the State of New Jersey?
- A. Yes, I am.
- Q. Could you tell us what they are?
- A. A shopping list contract includes a number of items from a number of vendors which may or may not overlap. The purpose of a shopping list contract is to cover items which we buy in the course of a year of which we do not know the quantities at the onset, and to provide a convenience so we have a source of supply for those items.
- Q. Are two of the shopping list contracts auto parts and supplies and boiler chemicals?

A. Yes.

Q. Let me ask you: In applying for a State contract if an individual submits an affirmative action employee information report which indicates the company is not complying with the state requirements, will that company receive a contract?

A. No.

Q. You have received information that companies are using State contracts to sell outside of the bid laws of the state?

A. Yes.

Q. What types of contracts are they using to do that?

A. Primarily shopping list type contracts, among them auto parts.

THE CHAIRMAN: What we are fundamentally interested in, if I may, is your knowledge of the system. We would like your recommendations, if you have any, for a change in the system that would tighten the system and make it more effective.

THE WITNESS: Yes; we lose control in those areas where contracts are extended to local governments. Under the present system they are not required to report to us with regard to what they purchase on those contracts or the dollar amounts expended. If we knew more specifically what it is that was purchased, we would be able to eliminate shopping lists. We would be able to determine line item requirements based on quantities of vendors, compete on those specific items in the quantities that we need and obtain open competition and I think better pricing.

COMMISSIONER DEL TUFO: It's lack of information now which creates problems in trying to --

THE WITNESS: One of the aspects, yes. The other is we do not have the staff to police the contracts. We are in the business of buying. We do not do auditing, or within severe limits we do follow up. We do not have the staffing to do that.

THE CHAIRMAN: What additional staff would you need in the present situation?

THE WITNESS: Well, presently our cooperative purchasing section consists of one person and all she does essentially is mail copies of our contract awards to interested municipalities. It's a clerical position. She merely is a mailing person. She does not monitor the contract. She when asked for advice most often cannot give it to municipalities, and it is either referred to the local public finance office or to the township attorney or board attorney, as the case may be, for a decision.

COMMISSIONER DEL TUFO: Would it be your view, then, if one is going to have this type of system which is by virtue of people qualifying for State contracts not having to submit to bidding, that if that system is going to be in place what is required is information to be supplied to the treasury and for staffing to oversee the operation of that system?

THE WITNESS: Yes; if the law is to be met.

COMMISSIONER DEL TUFO: Otherwise the way the law stands now there's great possibility for abuse?

THE WITNESS: True.

Kickbacks Led to Overbuying of Sewerage Chemicals

The Commission's inquiry into the activities of another chemical peddler, Samuel Jacobs of Marlton, led to the discovery that 20 percent kickbacks were his primary inducements for making sales. Even his personal business cards, which were highlighted by a large "\$" sign, suggested that greedy sewerage plant operators could make money dealing with him. The next public hearing episode describes kickbacks to chemical product buyers at the Beverly

Sewerage Authority in Burlington County and at the Pennsauken Sewerage Authority, Magnolia Sewerage Authority and the sewer department of Collingswood Borough, all in Camden County.

Unneeded Chemicals Dumped at Beverly

One of Jacobs's customers was Gustav Weber, whose purchases were so excessive that he had difficulty dumping or otherwise disposing of unneeded chemicals. Weber dealt with Jacobs at Beverly Sewerage Authority and then for seven months at the Collingswood sewer plant before moving to Florida.

The first witness in this episode was Fred Weller, who was questioned by SCI Counsel James Hart about conditions at the Beverly Sewerage Authority when he was appointed acting superintendent to succeed Weber in December, 1980. One problem that immediately confronted him was that dumping of excess chemicals by Weber had disrupted the sewage treatment process at the plant. Excerpts from Weller's testimony follow:

Q. Upon commencing your duties as acting superintendent did you notice anything unusual about the effluent, that is the product that was produced by the plant?

A. Yes. The effluent was very poor at the time I took over.

Q. Could you give the Commission a comparison between the effluent and the influent at the time you commenced your duties as acting superintendent?

A. The effluent was about the same quality as the influent of the plant.

Q. I take it that is not normal, sir, is it?

A. No, it is not.

Q. How should it have been?

A. The effluent should have been much cleaner and less BOD organic growth.

THE CHAIRMAN: That was shortly after a man named Weber had left?

THE WITNESS: Yes, sir.

THE CHAIRMAN: You found conditions that weren't ideal; is that correct?

THE WITNESS: Yes.

Q. Can you tell me are chemicals used to treat the influent going into the plant?

A. Yes. There are some chemicals used.

Q. Who is currently in charge of purchasing those chemicals?

A. Currently I am in charge.

Q. Can you tell this Commission the types of chemicals that you purchased and used at the plant, sir?

A. I use a degreaser that would dissolve solid grease and I use enzymes to create a growth on trickling.

Q. Do you use any chemicals other than those two?

A. No, sir.

Q. Can you describe for the Commission the results you have been getting since December of 1980 with the use of those two chemicals.

A. Excellent results.

Q. When you first started at the Beverly Sewerage Authority did you notice anything unusual about the supply of chemicals that was on hand?

A. There were a large stockpile of chemicals that had no use in the plant, that were unable to be used.

THE CHAIRMAN: This stockpile you found when you went on the job apparently had been placed there or brought there by a man by the name of Weber; is that correct?

THE WITNESS: Yes, sir.

Q. Can you tell me what types of chemicals were on hand?

A. ...There was a Slow-Grow control for grass that's used on parks and recreation fields. There were drums of solvents for cleaning electric motors.

There were solvents there for washing down concrete. And several drums of degreasers.

Q. Do I take it, sir, that none of those chemicals have a use in a sewerage authority plant?

A. There were a few of the chemicals that were used. Degreasers were used, and weed killers were used.

Q. The rest of the chemicals you mentioned would have no purpose?

A. No purpose.

Q. Can you tell me how much of those chemicals were on hand when you commenced your duties?

A. There were about 20 drums of chemicals.

Q. 20 drums of chemicals that had no use or purpose in the sewerage plant?

A. Out of the 20 drums I would say five of them -- we used 5 of them.

Q. There were 15 drums that served no purpose?

A. No purpose.

Q. Were those drums filled or empty of chemicals, sir?

A. Full.

Q. Were there several empty drums?

A. Roughly 10 to 15.

Q. Can you tell me, sir, since you have been purchasing chemicals since December of 1980 based upon your experience in the purchasing, can you estimate for the Commission the value of the chemicals that were on hand when you commenced your duties and that would serve no purpose in a sewerage authority plant?

A. I would estimate \$500 a drum, each drum, 15 drums.

- Q. That would be approximately \$7500, sir?
- A. Yes.
- Q. I take it, then, that spending money, spending \$7500 for those types of chemicals would have been wasting that money; would that be a fair statement?
- A. Yes, sir.
- Q. Did you receive any information, sir, that the empty drums about which you just spoke had contained chemicals that were dumped, and by "dumped," I mean wasted, thrown away, destroyed for the purpose of getting rid of them?
- A. Yes.
- Q. How did you receive that information, sir?
- A. When I took over the plant I spoke to the other men that worked in the plant, the laborers, and when I asked them where did the chemicals go that were in the empty drums from behind the plant, they indicated that Mr. Weber had informed them to set these drums up at the head of the plant and open them up and to also pour some of these right out into floor drains.

Dumped Chemicals Polluted River

- Q. Where do items or objects or liquids that are dumped into the head of the plant eventually empty into, sir?
- A. The Delaware River.
- Q. What about the floor drains, where would they lead to eventually?
- A. They would head back to the head of the plant and eventually end up in the river.
- Q. So, I take it, then, that any chemicals that would be dumped in those two locations would eventually end up in the Delaware River?

A. Yes, sir.

Q. Can you tell me, sir, why Mr. Weber would have ordered those chemicals dumped?

A. He was under the understanding I was coming back to work at the Beverly plant and a lot of the chemicals were moved around the plant, hidden in different rooms and covered over with things and he was getting prepared to leave; and he knew that the inventory of chemicals was way too high and when I took over the plant, he kept indicating to me to make sure that I explained to the authority that the plant needed chemicals to operate.

"Sprinkle Deodorizer Around The Yard"

The next witness, John Wills, came to work at Beverly Sewerage Authority four months before Weber quit his job as Beverly's superintendent. Wills, the authority's assistant plant superintendent, recalled Weber's apparently frantic effort to dispose of all the excess chemicals he had purchased. Questioned by Counsel Hart, Wills testified:

Q. Did Mr. Weber ever order you to dump chemicals, that is to waste them, to get rid of them?

A. Yes, sir.

Q. Can you tell me when that was, sir?

A. It was about three months or two months after I started working there.

Q. I take it, then, that would have been about two months before Mr. Weber left?

A. Yes, sir.

Q. Can you tell me whatever he said to you concerning the dumping of the chemicals?

A. He told me what drums to set up at the head of the plant and what drums to spread around the yard to get rid of -- I don't know to get rid of; he told me to set it up.

Q. You said something about chemicals in the yard?

A. Deodorizer; he told me to sprinkle it around the yard.

Q. The chemicals that were at the head of the plant, were they eventually dumped?

A. Yes.

Q. Who dumped them, sir?

A. Mr. Weber.

Q. Did anyone help him?

A. No.

Q. Did you see him dump the chemicals?

A. Yes, sir.

THE CHAIRMAN: They were dumped on the ground or away from the sewerage system itself?

THE WITNESS: No. Dumped at the head bar screen.

Q. What type of chemicals were dumped?

A. Degreaser. I am not too familiar with any of the chemicals that he dumped.

Q. In addition to degreaser, was soap also dumped, barrels of soap?

A. Yeah.

Q. What type of soap was that, sir?

A. Detergent that you mix with laundry.

Q. Laundry type detergents?

A. Yeah.

Q. How many barrels were dumped?

A. I myself remember about five that I set up.

Q. Did anyone else set up any additional barrels to be dumped?

A. There was a man working with me; his name was William D. Griffith. Gus told him to set up some, too.

Q. What was the size of these barrels that we are talking about?

A. Some were 55 gallons and some are 35 gallons.

Q. I take it this dumping, sir, was an extraordinary way of getting rid of these chemicals, was it not? The dumping of chemicals didn't serve any purpose in the system?

A. At that time I wasn't familiar. I just did what he told me to do.

Q. Looking back on it now, did the chemicals serve any legitimate purpose?

A. No, sir.

Q. Do you know whether or not Mr. Weber had been asked to resign his position as superintendent?

A. I don't recall.

Q. Can you tell me whether or not any barrels of chemicals were removed from the site of the plant itself?

A. At one time Mr. Weber informed me that a truck would be pulling into the plant and that I was supposed to put two drums on that truck and I did that.

Q. Did you dump chemicals anywhere else upon Mr. Weber's instructions?

A. We had six drums of digestants which he had told me to take two up on top of the plant and he dumped it from there. He had William D. Griffith set up two more drums and two holding drums we had in the ground.

Q. Were some of those drums dumped into floor drains?

- A. That I really can't -- I don't know.
- Q. Did you notice empty drums, sir, in the back of the plant?
- A. Yes, sir.
- Q. Were you led to believe, sir, that those empty drums had contained chemicals that were dumped?
- A. Yes, sir.
- Q. How many empty drums were in the back of the plant?
- A. I would say approximately 12 all told.
- Q. Are those drums still there, the empties?
- A. No, sir.
- Q. Did Mr. Weber indicate why he wanted these chemicals dumped?
- A. No, he didn't.
- Q. Do you know a chemical salesman by the name of Sam Jacobs?
- A. Yes, sir.

Collingswood Sewer Department Abuses

In October, 1981, Deputy Police Chief William Carey of Collingswood was assigned to investigate allegations that the borough had paid for more chemicals than necessary to run its sewerage system and that State bid laws had been violated by misuse of the State contract numbers system for expediting certain types of governmental purchases. Gustav Weber, who previously had worked at the Beverly Sewerage Authority, had been head of the Collingswood sewer plant during the period when the alleged wrongdoing took place. Questioned by Counsel Hart, Chief Carey testified about his investigation as follows:

- Q. Were you able to determine who was in charge of purchasing chemicals at the Collingswood Sewer Department?
- A. Yes. The department head was Gustav Weber.
- Q. Was he there, sir, when you began your investigation?

A. No. He had left in July of that year. He had terminated his employment in July of that year.

Q. Where did he go, sir?

A. I later found out he went to Florida.

Q. Do you know for what period of time he worked as the sewer superintendent?

A. From January 1, 1981, until July 17, 18.

Q. Do you know why he left his position there?

A. I found that he was hired on a temporary basis for approximately a year. That was the arrangement he entered with the board of commissioners, to work for approximately a year because they were supposed to have another employee get a license to run the plant and that was Gus --

Q. He stayed for approximately seven months?

A. Yes.

Q. During your investigation did you have occasion to check municipal vouchers to determine the amount of chemicals Mr. Weber had purchased during the seven-month period that he was the superintendent?

A. Yes.

Q. I would like you to look, sir, at what's been marked as Exhibit C-14.* It will be placed on the easel in just a moment. Do you recognize that exhibit, sir?

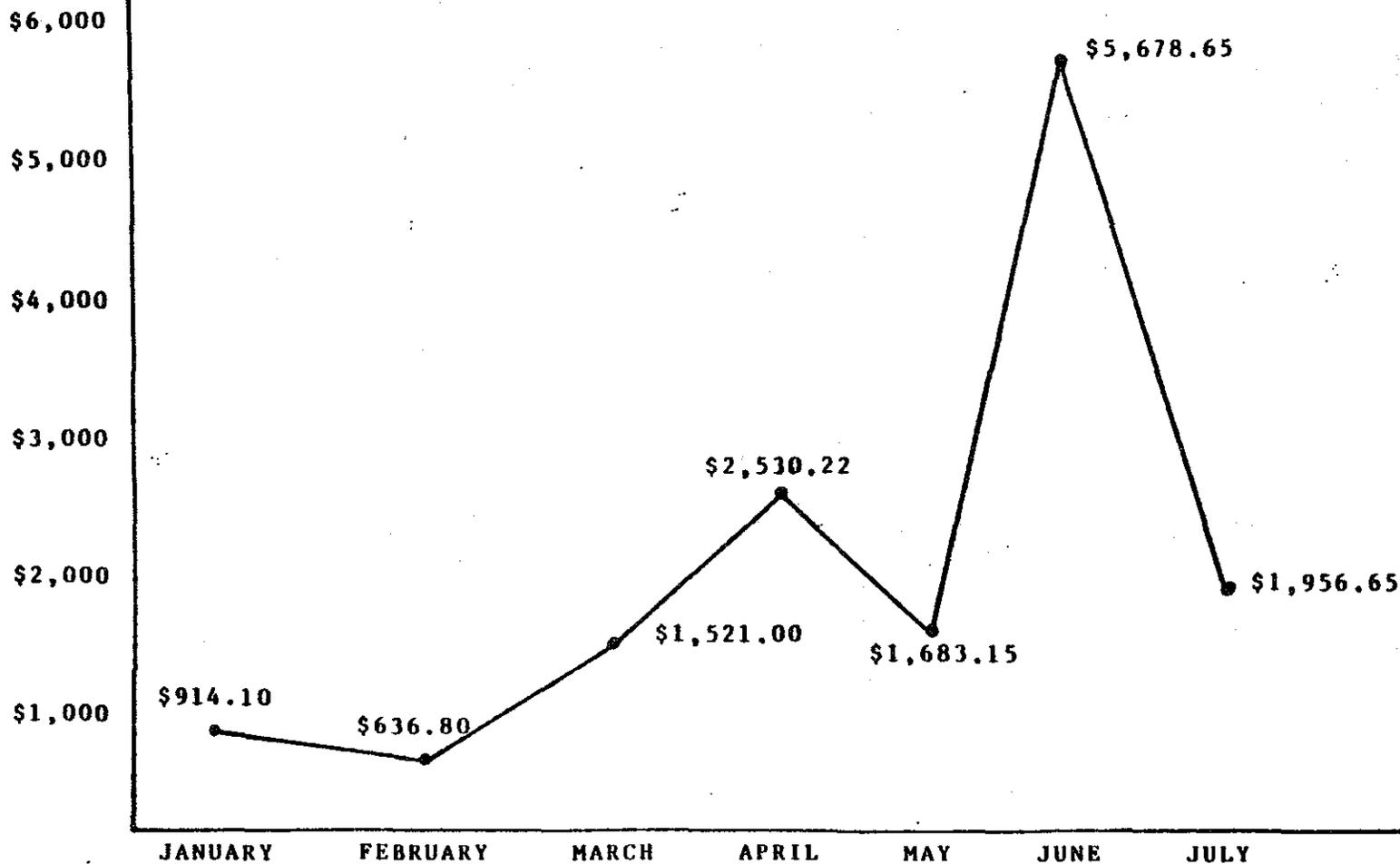
A. Yes, I do.

*See, Chart, next page.

CHEMICAL PURCHASES BY GUSTAV W. WEBER, JR. AT THE BOROUGH OF COLLINGSWOOD SEWER DEPARTMENT

JANUARY TO JULY, 1981

DOLLAR AMOUNT



WEBER'S TOTAL PURCHASES- \$14,920.57

Q. What is depicted on that exhibit?

A. On the left a dollar amount in thousands of dollars and on the bottom the period January through July, which represents Weber's tenure in office.

Q. What was the total amount, sir, of chemicals he purchased during that period?

A. \$14,920.

Q. I notice, sir, about the month marked April there seems to be a considerable increase in the dollar amount of purchases made by Mr. Weber that month.

Do you have an explanation or did you come to find out a possible explanation for that, sir?

A. Yes. When I talked with the two fulltime workers at the sewer plant, I learned from them that Gus indicated that he intended to leave initially at the end of April.

Q. Now, I notice above the month of June there is quite a drastic increase in the dollar amount of purchases he made in that month. I take it from the previous testimony, sir, that was just prior to his departure from the sewer department; is that correct?

A. That's correct.

Q. This approximate \$15,000 worth of chemicals that Mr. Weber purchased, can you tell me how that compared to the normal dollar amount of chemicals purchased for the sewer department?

A. Yes. I questioned the clerk that handles that account with the borough and there's a \$20,000 appropriation for the year for chemicals to run the sewer plant.

Q. Were you told, sir, that there were certain chemicals that made up the bulk of the purchases of this \$20,000?

- A. Yes. It was explained to me that to run the sewer plant the two bulk chemicals that were required were polymers and chlorines, and there were approximately \$7,000 worth of those chemicals needed per year to run the sewer plant.
- Q. So there would have been \$13,000 remaining in a calendar year to purchase other types of chemicals; is that correct?
- A. Yes.
- Q. And in some seven months Mr. Weber had already expended approximately \$15,000 worth?
- A. That's correct. Exclusive of polymers and chlorine.
- Q. Were you able to determine from whom Mr. Weber had purchased this some \$15,000 worth of chemicals?
- A. Yes. There was six different chemical companies.
- Q. Was one of those companies Malter International?
- A. That was the company that he purchased the majority of his chemicals from.

How Bid Laws Were Broken

- Q. In your examination of the borough vouchers, did you observe vouchers made out to Malter Chemical Company?
- A. Yes.
- Q. Did those vouchers relating to Malter contain State contract numbers?
- A. Yes.
- Q. Did you have occasion to check with the State Department of Treasury concerning those contract numbers?
- A. Yes, I did.
- Q. What were the results of your inquiry with the Treasury Department.

- A. I found that Malter International held no contract to supply sewer chemicals; that the contract number on the vouchers was for auto accessories.
- Q. And did the Treasury Department tell you anything about the selling of chemicals to sewer plants under an automobile or automotive part contract?
- A. They told me that it was not allowed under the contract that Malter held; that in no way were they able to supply chemicals to a sewage authority under that contract.
- Q. During your investigation did you have occasion to check with other municipalities or other authorities where Mr. Weber had worked prior to Collingswood?
- A. Yes. I had learned that he had worked at the City of Beverly and for a private corporation named Kings Grant in Cherry Hill prior to coming to Collingswood.
- Q. Had they experienced similar problems with Mr. Weber insofar as over-purchasing of chemicals is concerned?
- A. Yes; I called them to determine whether there was a pattern of that type in Mr. Weber's behavior and I found from both of those authorities that during his tenure with them he had over-purchased chemicals also.
- Q. In regards to Malter International did you have occasion to speak to any representatives from that company concerning the State contract numbers they were using in Collingswood?
- A. Yes, I did.
- Q. Who did you speak to?
- A. I spoke with Martha Gold, the sales person, and with her supervisor, Mr. Jack Israel.

- Q. Did they offer an explanation to you concerning the use of the State contract numbers for automotive parts when they were selling or when the salesman was selling to a sewer department?
- A. They indicated to me that the chemicals sold to the Collingswood Sewer Department were the same types of chemicals that would be sold to an automotive gas station to clean the floor and that, therefore, in their opinion, their chemicals were under a contract.
- Q. How did their opinion compare with what you were told by the Department of Treasury?
- A. I called them back to try to determine whether their version was correct or whether the Department of Treasury was correct, and the Treasury told me no, that contract was in no way authorizing them to sell chemicals to a sewer plant.

Jacob's Gifts to Weber

- Q. During your investigation did you receive information concerning a chemical salesman by the name of Sam Jacobs?
- A. Yes. I found Sam Jacobs that was associated with the S & S Research Chemical Company.
- Q. Was that one of the companies whose name appeared on any of the vouchers?
- A. Yes.
- Q. Can you tell me whether or not Mr. Jacobs was involved in the giving of any inducements to Mr. Weber so Mr. Weber would purchase his chemicals?
- A. I found that Mr. Weber had gone on at least two -- three golf outings as a guest of Mr. Jacobs.
- Q. Were there any other gifts that you heard about, sir, concerning Mr. Jacobs and Mr. Weber?

- A. I had heard that Mr. Jacobs had supplied Mr. Weber with golf balls and with golf equipment.
- Q. That was the extent of what you heard, sir?
- A. Yes.
- Q. Did you interview Gus Weber?
- A. Yes, I did by the phone from Florida.
- Q. Did you question him about whether or not he accepted kickbacks or gifts from chemical salesman?
- A. I asked him if he had ever taken any monies from salesman. He indicated to me that he had not. He indicated to me that he had taken small gifts such as pens or penknives or lunch or breakfast.

Half His Buyers Got Kickbacks

Testifying under a grant of immunity, Sam Jacobs of Marlton gave a detailed account of his cash kickback practices as a chemical products salesman. He operated two companies, Jay Chemical and S & S Research, but prior to 1976 he had worked for Malter International. Contrary to what Malter sales representatives had told Collingswood Deputy Chief Carey, the Malter Company was no exception to the rule when it came to providing "inducements" to prospective chemical buyers. During the course of his testimony, Jacobs said that 70 percent of his sales were to governmental entities and half of these buyers took gifts or kickbacks. Excerpts from Jacobs's testimony follow:

EXAMINATION BY MR. HART:

- Q. Based upon your experience in the chemical sales, can you tell me whether or not it's a common practice for salesman to offer inducements to customers so that the customers purchase chemicals?
- A. Yes.
- Q. Can you give me some examples of the types of inducements that are used in the industry?
- A. Just about anything from novelties, more or less in the idea of pens, fish knives, hunting knives, things of that

order. Inducement to buy or thank them for their time and other times it comes into play.

Q. Are more expensive inducements ever used, sir?

A. Yes.

Q. Television sets?

A. It could be, yes.

Q. Microwave ovens?

A. Yes.

Q. Cash?

A. In areas, yes.

Q. When you worked for Malter International did the company encourage the use of inducements?

A. Yes. All chemical companies do.

Q. Would you explain what the Malter system was of inducements?

A. Well, when you are trained actually as a salesman -- the company has novelties. When I speak to novelties, I specify anything in the gift area. Some companies give shirts, things of this order. These are given to customers to break the ice if you are running across a potential client, a way of introducing yourself to give them something to break the ice. If they are a fisher or hunter you give them a fish knife. You are trained in this manner not only may I say with chemical companies, but I would say with any type of selling companies.

Q. Would you tell me whether or not upper management at Malter was aware of the practice of giving inducements at the time that you worked for them?

A. No doubt about it.

Q. During the time that you had your own companies and, if I recall correctly, that's from 1975 up to the recent past?

- A. Recent past.
- Q. Can you tell me during that six, seven-year period, whatever it might be, what types of customers did you sell to?
- A. I sold to municipalities of the road department, sewer plants, parks and grounds, industry, all types of industry.
- Q. Can you tell me what percentage of your customers were governmental in nature?
- A. I would say in the area of about 70 percent.
- Q. 70 percent of your business was -- of your customers was with municipal or other governmental agencies or departments or authorities?
- A. That's correct.
- Q. Did you utilize a system of inducements?
- A. Yes.
- Q. What form did these inducements take?
- A. Well, to put it generally, whatever, more or less, it took to get the order.
- Q. Small novelty gifts?
- A. Started with novelty gifts.
- Q. Larger gifts?
- A. Larger gifts.
- Q. Cash.
- A. Yes.
- Q. Can you tell me what percentage of your governmental customers accepted gifts or gratuities or cash?
- A. I would say 50 percent.

How Jacobs Tested Kickback Receptivity

- Q. I am interested right now, sir, in any cash kickbacks or payments that you made to any governmental purchasing agents. Can you tell me how that

system worked whereby you paid purchasing agents cash in return for them buying from you?

A. How I did it?

Q. How you worked it, yes, sir.

A. Number one, as far as purchasing agents I had no dealings with them. It was the municipality, perhaps, the superintendents of the road department, the superintendent of the sewer plant. A proposal -- I would suggest anything they bought from me, they would get, maybe, 20 percent of the action. If the bill was a thousand dollars, they would get a couple of hundred bucks.

Q. Was 20 percent your standard?

A. Right.

Q. Who would first mention the possibility of a kickback?

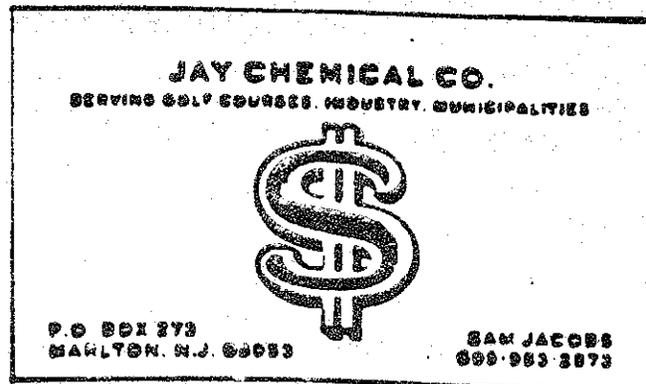
A. I must say I did.

Q. How would you determine whether or not to make a 20 percent kickback offer to an individual who was purchasing your chemicals?

A. You would be in a place, I would say, you know -- in the interim of the business, of being in the business I just knew, more or less, containers around from different chemical companies. I knew what type operation, what everybody had, what they were giving, if they were giving gifts or whatever the case may be. I felt in my mind that that gentleman would be receptive to my offer. I would offer on the basis of something -- I would use like John or Joe, you can throw me out if you want, if you want to, but I know you have got three years of lots of gifts and if we can work together on a cash basis, anything you buy from me I will give you 20 percent of the bill.

Q. Do I understand you correctly, sir, that you would determine whether or not to make this 20 percent cash kickback offer to an individual by looking at the chemicals or the chemical companies he had been dealing with in the past?

- A. That would enter into the picture.
- Q. From knowing which companies were selling to this particular individual you knew the type of gifts or cash that he had been receiving up to that point?
- A. Yes. That would enter into the picture.
- Q. Did you ever utilize business cards in your business?
- A. I had a dollar sign on one. I think I was drunk at the time. I did have one under the Jay Chemical Company. It was red. I should have made it green.
- Q. I ask you to look at what has been marked as C-18.* Do you recognize that?
- A. Yes.
- Q. That is your business card, sir?
- A. Yes.
- Q. It's not very subtle, was it, sir?
- A. Pardon me? No.
- Q. What did you explain to these individuals who did not know what that dollar sign stood for, sir?
- A. They could be -- they could benefit from that card.
- Q. For the record, sir, is that an accurate reproduction of your business card?
- A. Yes, it is.



Jacobs Describes Deals With Weber

- Q. Did you ever have occasion to sell chemicals to an individual by the name of Gustav Weber?
- A. Yes, I did.
- Q. Who is Gustav Weber?
- A. He was a sewerage plant operator of Beverly Sewerage Plant and Kings Grant Sewer Plant and Borough of Collingswood Sewer Plant.
- Q. What type of chemicals did you sell to Mr. Weber?
- A. Well, chlorobenzene, degreaser, weed killer, paint, granular sewer solvent for the lines. I believe the truck wash. Just about everything a sewer plant can use.
- Q. Can you tell me what years you sold to Mr. Weber?
- A. I would say starting about 1977 or 78, in that area there.
- Q. Until when, sir?
- A. Until about a year and a half ago.
- Q. Is that when he left for Florida?
- A. Yes.
- Q. You sold to him right up until he left Collingswood; is that correct?
- A. Correct.
- Q. Did you ever pay any kickbacks to him?
- A. Yes.
- Q. Cash kickbacks?
- A. Yes.
- Q. What was the arrangement you had with Mr. Weber?

- A. I must say this, that with Mr. Weber I didn't -- I induced that. I presented it to him and he accepted that so we had more or less a 20 percent arrangement.
- Q. A 20 percent arrangement?
- A. Just about.
- Q. Did you have any arrangement with Mr. Weber concerning the ordering and then non-delivery of chemicals?
- A. I think we did that once or twice, yes.
- Q. How did that work, sir?
- A. Well, we wouldn't ship it and then I billed it out. That we would, more or less, split the bill.
- Q. You say that occurred how many times?
- A. I think twice if I recall.
- Q. How would you pay Mr. Weber?
- A. Cash.
- Q. Where would you get the cash?
- A. I would go to the bank and get it and cash a check or money in my account, I would take it out. Usually I would wait until I got the check.
- Q. You would get the check from the sewer department or the authority?
- A. Right.
- Q. You deposit that into your account?
- A. Yes.
- Q. You would write a check to your yourself or to cash?
- A. Right.
- Q. Where would you meet Mr. Weber to pay him?
- A. There was a little luncheonette we met at the time in Beverly. He has come to my house and that was about it. Maybe in the car.

- Q. Over the period of years that you sold to Mr. Weber how much business dollarwise did you do with him in which you paid kickbacks to him?
- A. I would say possibly in the area of 6, 7,000, in that area.
- Q. 6 or \$7,000?
- A. In about that area of the gross business, just monies.
- Q. Can you tell me whether or not Mr. Weber purchased an excess amount of chemicals, that is more than was needed for the operation of the plant?
- A. In my opinion he did.
- Q. Why do you say that?
- A. There were other containers that were laying around.
- Q. He was still buying chemicals when he had containers that were unopened?
- A. Yes.

Kickbacks at Pennsauken Sewer Authority

- Q. Did you ever sell chemicals to the Pennsauken Sewer Authority?
- A. Yes.
- Q. When was that?
- A. I sold them since about 1970 or '71.
- Q. Was an individual by the name of Wilmer Webb in charge of purchasing chemicals from Pennsauken?
- A. The last three or four years that I dealt with him. There was another gentleman there before.
- Q. Did you have an arrangement with Mr. Webb concerning kickbacks?
- A. Yes.
- Q. What was the arrangement with him, sir?
- A. There was -- anything he bought would be a 20 percent of the bill.

Q. Basically it was the same arrangement you had with Mr. Weber that you had with Mr. Webb; is that correct?

A. That's correct.

Q. When would you pay him?

A. The same. I would, more or less, meet him when I got the check, and told him I would call him when I received the check and we would meet and I would give him the cash.

Q. The cash you would generate by writing a check to cash or to yourself?

A. Yes.

Q. Over the period of years that you sold to him how much business dollar-wise did you deal with him in which cash kickbacks were involved?

A. About 5,000, I would say.

Two Simultaneous Kickback Payments

One of Jacobs's more unusual recollections was the time Weber and Webb were given kickback checks in each other's presence at the chemical peddler's home. Jacobs's testimony continued:

Q. Was there ever a time when you paid a kickback to both Mr. Weber and Mr. Webb at the same time?

A. Yes.

Q. Will you explain how that occurred, sir?

A. Last year, a little over a year ago I had an operation and I could not travel or drive and I sold him some material and I called him; if they wanted to stop up my house and if I wasn't there, if he desired the monies I owed him, I would be happy to give it to him, but I did explain I didn't have the cash and I couldn't get to the bank. But I said if they wanted to take a check, he said no problem.

Q. They were willing to accept a check for this particular kickback?

A. Yes.

- Q. Will you look at the easel, sir, to what has been marked as C-16. Can you identify that, sir, and tell me what it is?
- A. Yes. That's a check that I issued to Gustav Weber. It's in my handwriting.
- Q. Dated June 8, 1981?
- A. Correct.
- Q. In the amount of \$175?
- A. Correct.
- Q. Did you give that check to Mr. Weber?
- A. Yes.
- Q. At your home on that date?
- A. Yes.
- Q. Was Mr. Webb present when you gave Mr. Weber that check?
- A. Yes, he was.
- Q. I would like you to look, sir, at what's been marked as C-15.
Do you recognize that, sir?
- A. Yes, I do.
- Q. What is that?
- A. That's a check I gave to Mr. Webb at the same time. They both came to my home.
- Q. That check is made out to Mr. Wilmer E. Webb in the amount of \$220?
- A. Correct.
- Q. It is dated June the 8, 1981?
- A. Right.
- Q. Was Mr. Weber present when you gave Mr. Webb that check.
- A. Yes.

- Q. I would like you to look at what's been marked as C-17, sir. Do you recognize that?
- A. Yes, I do.
- Q. What is that, sir?
- A. They are two stubs of the same check that I gave to Mr. Webb of 1224 and 1225.
- Q. They are numbered consecutively?
- A. Yes.
- Q. Up in the right-hand corner I see a date. Is that June the 8, sir?
- A. Yes. 1981.
- Q. Taking stub number 1224 what note is written there? Above the word "gift," what is written?
- A. Wilmer Webb.
- Q. Below the word "gift"?
- A. Pennsauken.
- Q. And that gift, in effect, was a kickback for an order Mr. Webb placed with you; is that correct?
- A. That's correct.
- Q. Stub number 1225, what note is made out on that stub, sir?
- A. That's the Collingswood to Gus Weber and under there it says "gift."
- Q. Again that gift, sir, was a kickback to Mr. Weber for an order he had placed with you?
- A. Yes.
- Q. Do you know the dates that the orders were placed that generated these kickback monies?
- A. It had to be roughly about six weeks, in that area there. Six to seven weeks.

- Q. Let me show you, sir, what has been marked as C-67A and C-69A. Would you look at these documents and tell me if you recognize them?
- A. Yes, I do.
- Q. What are those documents and please refer to them by number?
- A. C-67A is the order of two -- Mr. Weber at the Borough of Collingswood. The order I had taken which pertains to the giving of cash; and C-69A is to Pennsauken Sewerage Authority to Mr. Webb.
- Q. What is the date on those orders, sir?
- A. One's April -- both are April the 22. In fact, I had written the orders together, if I recall.
- Q. You wrote the orders at the same time?
- A. I recall we met in the diner the three of us, and I wrote the orders.

Kickbacks at Magnolia Authority

- Q. Did you ever do business with the Magnolia Sewer Authority?
- A. Yes.
- Q. Over what period of time?
- A. I would say -- in my own business?
- Q. Yes, sir.
- A. More or less, roughly, in the five-year period.
- Q. Who was the purchasing agent of Magnolia?
- A. A gentleman by the name of Mike. Iavecchia, I believe, is the last name.
- Q. Did you have a kickback arrangement with him?
- A. Yes.
- Q. Will you explain that arrangement?

A. This was on the basis also of the 20 percent activity.

Q. Did you ever non-ship to Mr. Iavecchia?

A. Well, when he was buying at the time mostly types of copper sulfate and I would bring one back and order two, and then one would go to me and one would go to him.

Q. If I understand what you are saying correctly, sir, he would order two bags of a chemical?

A. Right.

Q. You would deliver one bag?

A. Right.

Q. You would get paid for two bags?

A. Right.

Q. And then you would split that payment 50/50 with Mr. Iavecchia?

A. Yes.

Q. How often did that happen, sir?

A. I would say about four times, five times.

Q. What was the approximate dollar amount of business you did with Mr. Iavecchia which involves kickbacks?

A. I would possibly say \$3,000 area.

State Contract Number System is "Rip Off"

Q. During the course of your employment in the chemical industry or chemical sales industry did you ever gain any knowledge of schemes used by chemical salesman or chemical companies involving the use of State contract numbers.

A. I have heard. There is no conclusive proof that I can give you, but in my travels -- this to me is one of the biggest rip-offs around. These gentlemen go around and tease me, having one number which constitutes

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like one item, and the customer would feel -- which I have been told by somebody, which covers their whole line, which does not.

Q. Did you say this State contract number scheme is one of the biggest rip-offs around?

A. I am saying that in my activity in the chemical business I would get very perturbed about this because I couldn't do it. I did not have a number and I just felt -- this is my opinion. I am not naming the company or whatever, but I think this is done and it bugs me.

Q. Can you tell me whether or not chemical salesman who make use of State contract numbers are selling their products at the lowest price?

A. I don't believe so.

Q. Why do you say that, sir?

A. I have been around where a possibility of a dozen aerosol they are getting \$65, \$70 a dozen, which I can sell 40, 45. I think they get the highest price around.

Q. You told us, sir, that gift-giving and inducement-giving and cash kickbacks were common practice in your line of business. Could you have remained in business without utilizing such a system?

A. It would be a lot of hard work.

Kickback Admissions Made to SCI Agent

Two recipients of kickbacks from Jacobs had admitted prior to the hearings that he had paid them cash in return for buying his chemical products. These admissions were made by Wilmer Webb and Michael Iavecchia to SCI Special Agent Richard Hutchinson during the course of the Commission's investigation. Hutchinson's testimony follows, in part:

Q. Pursuant to your duties did you have occasion on May the 5th of 1982 to be at the Pennsauken Sewer Authority at ten o'clock in the morning?

A. Yes.

Q. What was your purpose in being there?

A. I was accompanied by Investigative-Accountant Chris Klagholz. We were to review the vouchers of the sewerage authority in reference to S & S Research Company and at the same time I was to interview Mr. Wilmer Webb later that day, approximately one p.m.

Q. Was anyone present with you whenever you conducted the interview?

A. Investigative-Acct. Chris Klagholz.

Q. What did he indicate his employment history was?

A. He stated he was hired at the Pennsauken Sewer Authority in approximately September of 1979. Prior to that he worked at the Maple Shade Water and Sewer Authority for approximately 5-and-a-half years, and prior to that employment he worked at Lindenwold Municipal Utilities Authority for eight-and-a-half years.

Q. Did Mr. Webb make any statements to you during the interview concerning him accepting or being offered any gifts, cash, checks or loans from any chemicals salesman?

A. Yes, sir, he did.

Q. What statement did he make?

A. Initially he denied that he ever heard of or had been offered any gifts, cash, checks or loans; either giving loans or accepting loans. He indicated that to do so would be a conflict of interest.

Q. After he made that statement what, if anything, did you do or say, sir?

A. I stated to him that I didn't believe him and in my opinion he was lying and I proceeded to question him.

Q. Did you have occasion to exhibit to him, sir, what was previously marked as C-15 for identification, that being a reproduction of a check made out to him signed by Mr. Sam Jacobs?

- A. Yes, sir. I specifically asked him if he had received any cash or checks from Mr. Sam Jacobs of S & S Research Company. He indicated he had not. At that time I confronted him with the check that you see on the board and advised Mr. Webb that in my opinion he wasn't telling me the truth.
- Q. What did Mr. Webb say at that point?
- A. He then stated that, yes, he did have an agreement with Mr. Jacobs in which he was receiving 20 percent kickback on any order that was placed to S & S Research.
- Q. Did Mr. Webb tell you where he was when he received that check from Mr. Jacobs?
- A. Yes, sir, he did.
- Q. Where did he say he was?
- A. He stated that he had called Mr. Jacobs, had gone to his residence and at the residence had received that check.
- Q. Did he state whether or not anyone else was present when he received that check?
- A. Yes, sir, he did. He was not entirely certain, but to the best of his recollection he believed that Gustav Weber, the superintendent of the Collingswood Sewer Plant was leaving. He wasn't sure whether he was leaving or entering the apartment when Mr. Weber was leaving.
- Q. Did Mr. Webb admit to receiving any other gifts or kickbacks in any form from Mr. Jacobs on other occasions?
- A. Yes, sir. I asked him if he had received anything else and he didn't know. I advised him again that he was not telling me the truth and, in fact, I told him that he had met Mr. Jacobs at the Pennsauken Diner on Route 130 on occasion where he accepted cash. Mr. Webb denied that. I again told him I didn't think he was telling me the truth and after a period of time he stated that he did accept the cash and

he received the cash in the parking lot of the diner.

Q. Now, turning your attention to May the 14 of 1982 at ten-twenty-four in the morning did you have occasion at that time and on that date to be at the Magnolia Sewerage Authority?

A. Yes, sir.

Q. What was your purpose in being there, sir?

A. I was to serve a subpoena duces tecum upon Michael Iavecchia, the foreman for the Magnolia Sewer Authority.

Q. Upon meeting Mr. Michael Iavecchia did he make any statements to you?

A. Naturally he wanted to know my reason for being there. I advised him the general scope of the investigation that I was conducting in the sewerage authorities, municipal utilities authorities and I was primarily interested at this time with regards to chemical purchases, chemicals salesman and the gifts they were giving.

Q. Did you inquire of Mr. Iavecchia whether or not he knew Sam Jacobs of S & S Research?

A. He stated that he did business with Mr. Jacobs through S & S.

Q. Did Mr. Iavecchia make any statements to you concerning whether or not he had received anything from Mr. Jacobs?

A. Yes, sir. I asked him what Mr. Jacobs gave him. He denied he received anything from Mr. Jacobs and I informed him I didn't think he was telling me the truth, and after a few seconds he indicated that Mr. Jacobs gives him dinners but nothing else.

Q. Did he admit to receiving anything else from Mr. Jacobs?

A. I still indicated I didn't think he was telling me the truth and after a few seconds he also stated he gets a few bucks at the time of sale.

**THE TESTIMONY -- FOURTH DAY
FRIDAY, JULY 30, 1982**

Transition Statement

The final day of the SCI's public hearing began with what Commissioner Francis described as additional evidence of the extent to which mismanagement of authority and municipal sewerage plants had permitted kickbacks and other misconduct:

Today (he said) we will expose yet another scheme by chemical peddlers to unload chemical products of questionable value at exorbitant prices and in excessive quantities -- this time to a municipal sewer department. The Commission first learned about this chemical sales scheme while probing the records of certain local sewage authorities which also had made purchases from this seller. It was discovered that this peddler's largest customer was Brigantine, so we will be focusing on his transaction with this city as a prime example of the wheeling and dealing at the other facilities.

The Brigantine Rip-off

Jack Levin, who sold wastewater treatment chemicals -- chiefly dichlorobenzene -- from his home in Philadelphia and a postal box in Mount Ephraim, concocted one of the most blatant rip-offs uncovered by the SCI's investigators. Although Levin dealt with numerous authorities, his biggest customer was the Jersey shore city of Brigantine. Therefore the Commission utilized Levin's Brigantine scheme as a public hearing exemplar of his chemical peddling activities.

SCI Agent's Overview of Scheme

SCI Counsel Michael Coppola called Special Agent Wendy Bostwick as the first witness in this episode to provide an overview of the Commission's investigative findings in Brigantine. She was aided by a chart which demonstrated that Levin during 1979, 1980 and 1981 was paid for more than 200 55-gallon drums of dichlorobenzene -- a highly carcinogenic pollutant -- that he could not prove was actually delivered to the city. Agent Bostwick's testimony:

- Q. During the course of your employment as a special agent did you have occasion to participate in an investigation concerning chemical sales by Jack Levin to Brigantine?

A. Yes, I did.

Q. Could you give us the focus of that investigation?

A. The focus of that investigation was whether or not the City of Brigantine actually received the number of drums of dichlorobenzene for which they paid Jack Levin.

Q. Directing your attention to this chart,* C-20, entitled "Brigantine Department of Public Works; purchases of dichlorobenzene from Jack Levin trading as Globe Star Chemical and Consolidated Purchasing," could you give the Commission a brief explanation of the chart and, first of all, do you know who prepared the chart?

A. Yes; I prepared the chart.

Q. Can you explain the chart, please?

THE CHAIRMAN: What is that column on the left?

THE WITNESS: The first column on the left represents the sales in 1979, the sales of 55-gallon drums of dichlorobenzene to the City of Brigantine.

THE CHAIRMAN: I see the top figure 71 and then another figure 44 and 27. What significance are they?

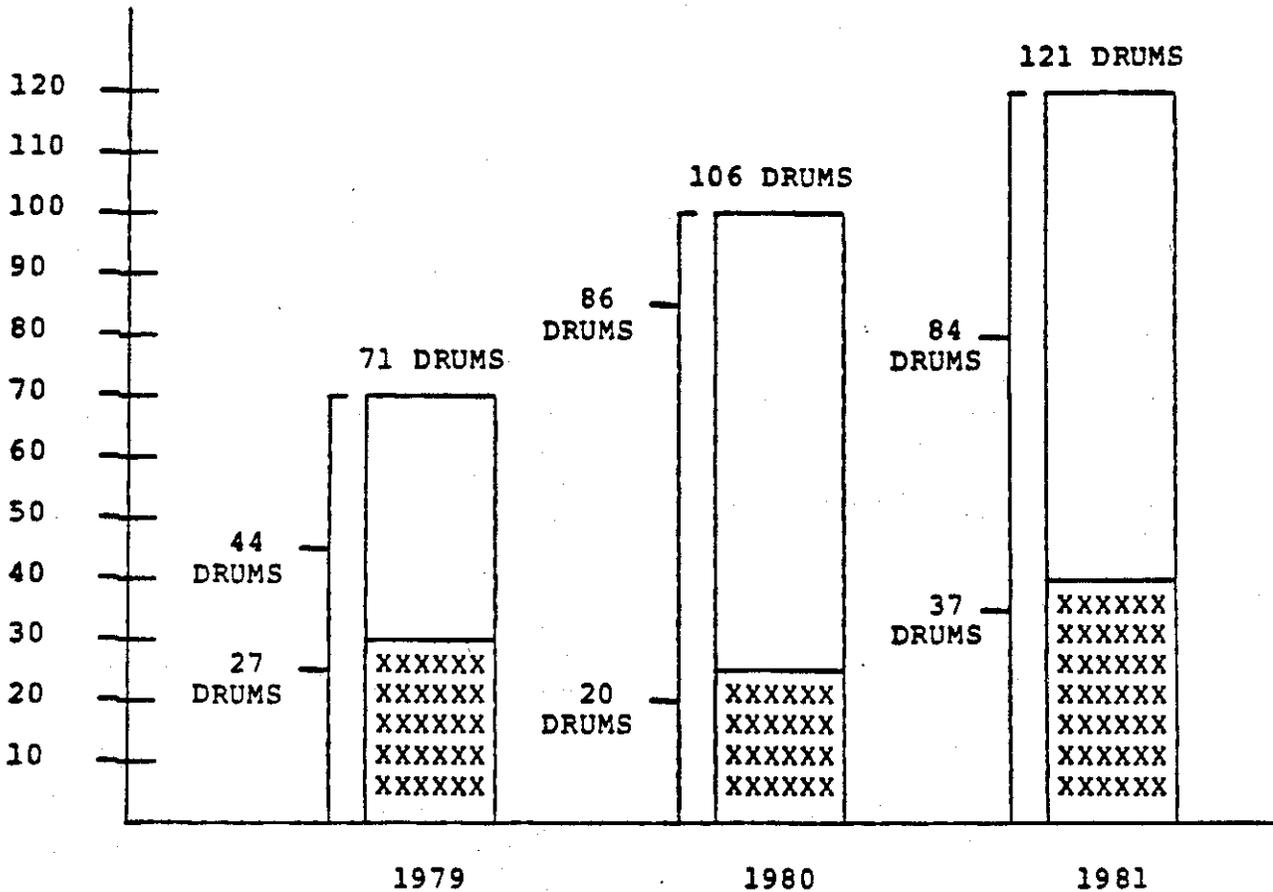
THE WITNESS: The figure 71 drums represents the total number of drums that the City of Brigantine paid Jack Levin through his two companies.

THE CHAIRMAN: What's the 44 drums?

THE WITNESS: The figure 44 drums represents the number of drums for which Jack Levin can provide no substantiation of his purchase of dichlorobenzene for the purpose of reselling that to Brigantine.

THE CHAIRMAN: What's the 27?

BRIGANTINE D.P.W. PURCHASES OF DICHLOROBENZENE
FROM
JACK LEVIN T/A
GLOBE STAR CHEMICAL & CONSOLIDATED PURCHASING



XXX
 XXX

NUMBER OF DRUMS OF DICHLOROBENZENE AVAILABLE TO BE SOLD TO BRIGANTINE BY JACK LEVIN.

DIFFERENCE BETWEEN NUMBER OF DRUMS AVAILABLE TO BE SOLD AND NUMBER PAID FOR BY BRIGANTINE.

THE WITNESS: That represents the number of drums which Mr. Levin can substantiate.

THE CHAIRMAN: As delivered to Brigantine?

THE WITNESS: As purchasing the product for resale to Brigantine.

THE CHAIRMAN: That column means that of the 71 that's charged or paid for by Brigantine only 27 you can find were actually delivered by Levin?

THE WITNESS: Exactly.

EXAMINATION BY MR. COPPOLA:

Q. Directing your attention to the third column in the year 1981 can you tell us what the figure 121 drums represents and how you arrived at that figure?

A. The subpoenaed records of Brigantine show that they paid Levin's two companies for 121 55-gallon drums of dichlorobenzene in 1981.

Q. How much did they pay him for those 121 drums?

A. \$88,179.

Q. Could you explain what the figure 37 drums represents in the bottom of the column, and tell us how you arrived at that particular figure?

A. The 37 drums in the column on the far right, 1981, represent the number of drums for which Mr. Levin can substantiate his purchases for resale to the City of Brigantine. They were arrived at through a review of Mr. Levin's records, the records of his suppliers and Mr. Levin's testimony before this Commission on four previous occasions.

Q. Now, what does the figure 84 represent, and again how did you arrive at that particular figure?

A. That figure represents the number of drums for which Mr. Levin can provide

no substantiation for his purchase of dichlorobenzene for resale to the City of Brigantine.

THE CHAIRMAN: That were paid for by Brigantine?

THE WITNESS: That's correct. They paid \$728.75 per drum, so for those 84 drums for which there is no substantiation, Brigantine paid Mr. Levin \$61,215.

Q. Do you have a conclusion as to whether or not those 84 drums were actually delivered to the City of Brigantine for use in their sewer systems?

A. Yes, I do.

Q. What's your conclusion?

A. That those drums were not delivered.

Q. Could you tell us what you base your conclusion on?

A. There is no substantiation that Mr. Levin either purchased or delivered those 84 drums. In fact, the records of the City of Brigantine contain bills of lading allegedly documenting the delivery of 74 drums of dichlorobenzene and as to the remaining ten drums, there are no bills of lading.

Q. With respect to those 74 -- with respect to the bills of lading that deals with 74 of those drums, isn't it true that those bills of lading were, in fact, fictitious?

A. Yes, it is true.

Q. If your conclusion is accurate, what would Mr. Levin's gross profit on the sale of dichlorobenzene to the City of Brigantine have been in the year 1981?

A. For the year 1981 Mr. Levin's gross profit would have been in excess of \$80,000.

Q. For the year 1980 what would his gross profit have been?

A. Approximately \$73,000.

Q. And for the year 1979?

A. Approximately \$47,000.

Q. Who submitted the fictitious bills of lading to the City of Brigantine?

A. Mr. Jack Levin.

THE CHAIRMAN: I wonder about the word "gross profit." It seems to me on the testimony that you have given us that the profit only goes to the 37 drums in '81, to the 20 drums in '80 and to the 27 drums in '79, and the rest is pure cheating, is that so?

THE WITNESS: That would be correct.

THE CHAIRMAN: It's not profit, it's cheating?

THE WITNESS: That is correct.

Q. During the course of your investigation did you learn anything about the chemical dichlorobenzene?

A. Yes, I did.

Q. What did you learn?

A. I was told by officials of the New Jersey Department of Environmental Protection that the chemical dichlorobenzene is a priority pollutant and is cancer-causing.

Levin's Dichlorobenzene "Sales"

Jack Levin testified that he owned the Consolidated Purchasing Company headquartered at his residence in Philadelphia and the Globe Star company at a Post Office Box in Mount Ephraim, N.J., that these companies had no employees other than himself and that it was through these concerns that he sold dichlorobenzene to Brigantine from 1978 through 1981. He explained that dichlorobenzene was "used in sewer plants to eat grease and to dissipate certain odors." Since the kind of records Levin kept -- or didn't keep -- were important to the SCI's inquiry, Counsel Coppola asked him about his corporate paper work:

Q. From 1978 to the end of 1981 isn't it true that you did not keep accurate records of those companies; you didn't keep account payables, vouchers, cash receipts or business expense records?

A. Yes, sir.

Q. Isn't it true that you kept terrible business records?

A. Yes, sir.

Q. Isn't it true that you told us your record-keeping system consisted of stacking the paperwork on your desk and when it got real big, you threw it in the trash barrel to make room for the next stack of papers concerning those companies?

A. Yes, sir.

Q. You also told us you did not keep track of your records and in your own words you told us because you were stupid; you told us that, didn't you?

A. More or less.

Levin Quizzed about Amended Income Tax Returns

Q. During those years 1978, '79, '80 you didn't claim the business income on your tax returns at the time that those tax returns were originally filed, did you?

A. I filed amended returns.

Q. Why didn't you claim the business income during the year you earned it?

A. I didn't have an accountant and didn't know what I was doing as far as record-keeping was concerned.

Q. You filed amended returns concerning the income?

A. Yes, sir.

Q. You filled those amended returns after you were served with subpoenas by the State Commission of Investigation in 1981?

A. No. I was in the process of doing it before this investigation.

Q. In 1978 you claimed originally as taxable income \$8,766. Isn't it true that your amended return you reported an additional \$50,809 --

A. I am not sure.

Q. With respect to the year 1979 isn't it true that you originally reported \$6,335 as taxable income and on your amended return you reported an additional \$64,693?

A. I don't remember.

Q. With respect to the year 1980, isn't it true that you originally reported as taxable income \$5,515 and in your amended return you reported an additional \$44,861?

A. I am not sure.

THE CHAIRMAN: Do those figures sound approximately correct, do they, to you or don't you have any idea?

THE WITNESS: I don't have any idea because my accountant is handling all that.

THE CHAIRMAN: You talk to him occasionally, don't you? You know something about what he is doing?

THE WITNESS: I believe it's substantially correct.

Q. Mr. Levin, I now hand you C-166, 167, 168, which are amended tax returns of you and your wife for the years '78, '79, '80. Does that refresh your recollection as to the additional income you reported? By the way, those records were received by the SCI from you.

(Witness confers with counsel off the record.)

A. These are the ones that my accountant made out and I believe they are substantially correct.

Q. It refreshes your recollection as to the additional income you reported?

A. I believe so.

Q. You maintain that you didn't report all of that income because it was a mistake on your part? For instance, in the year 1978 an additional \$50,000; you didn't know you had that money at the time you reported your original income tax figure?

(Witness confers with counsel off the record.)

A. I didn't know how much money I had made during the year because of my not keeping good records, and I didn't have the money to pay them anyhow, so I took the easy way out.

Q. Sir, for the year 1981 the records of Brigantine show you were paid \$88,179 for the delivery of 121 drums of dichlorobenzene. Your previous testimony at the SCI and records of various companies show you had in your possession during that year 37 55-gallon drums of dichlorobenzene for resale to Brigantine. Would it be fair to state that Brigantine didn't get what it paid for?

A. No, sir, that's not true.

Levin Mixed Chemical Solutions In His Garage

Q. Now, you just mentioned that you mixed most of or a lot of the dichlorobenzene yourself?

A. Yes, sir.

Q. You mixed dichlorobenzene. Where did this take place?

A. In my garage.

Q. And tell us the procedure that you used to mix it.

A. Added the chlorobenzene to the drum with an emulsifier, which is soap, and then rolled it into my station wagon and delivered it.

Q. Did you put anything else into the drum other than some dichlorobenzene and some emulsifier?

A. Some solvents.

Q. What about water?

A. A little water.

Q. How much dichlorobenzene concentrate did you put into the drum?

A. Approximately four or five gallons depending on how strong I wanted to make it.

Q. During previous testimony before the Commission you indicated that in a 55-gallon drum you would put one-third dichlorobenzene, which was 18 gallons. On another occasion you indicated you put in 10 gallons of dichlorobenzene. Now, could you tell us what is the most accurate estimate of the amount that you put in?

A. Depends upon on how strong you want to make it.

THE CHAIRMAN: How strong did you want to make it and how strong did you make it?

THE WITNESS: Anywhere between 10 and 18 gallons.

COMMISSIONER FRANCIS: Mr. Levin, what was your test for determining when you finished all this mixing whether it was just right or not?

THE WITNESS: I didn't test it. Only if I got a complaint I would make it stronger. I never got any complaints.

THE CHAIRMAN: What kinds of equipment do you have in your garage, an old tub or something?

THE WITNESS: No. I had a drum and a wooden rack that I used to lay it and roll it into the station wagon.

THE CHAIRMAN: That's to load these drums?

THE WITNESS: Yeah.

THE CHAIRMAN: I am talking about mixing equipment. What did you have there, anything?

THE WITNESS: You didn't need anything.

THE CHAIRMAN: Pretty simple?

THE WITNESS: Yes.

Q. How much did the drum weigh when you had it all mixed up?

A. Approximately 500 pounds.

Q. After you mixed it up what did you do with the drum?

A. Laid it over on its side and rolled it into my wagon.

Q. How did you roll it into your wagon?

A. I had a rack on the floor against the wall at the same level as the back of the station wagon. When you turn the drum down, you have to just roll it right on.

Q. What kind of car did you have?

A. Subaru.

Q. Subaru station wagon?

A. Yes, sir.

Q. You did this by yourself or did you get somebody to help you put it into your station wagon?

A. Myself.

Q. How many drums would you carry in this station wagon at one particular time?

A. I could carry up to two.

Q. Did you take them in your Subaru two drums at a time to the City of Brigantine?

A. Sometimes one, sometimes two.

Q. How many drums do you think over the course of 1981 you delivered in that fashion in your Subaru you were driving?

A. I do not remember, sir.

Q. Apart from your record do you recall yourself in 1981, that was last year, how many drums of dichlorobenzene you delivered yourself to the City of Brigantine?

A. No, sir, I don't recall.

THE CHAIRMAN: You haven't any vague idea?

THE WITNESS: No, sir.

THE CHAIRMAN: Half of what you charged for or one-third of what you charged for?

THE WITNESS: I never thought about it.

THE CHAIRMAN: Think about it now. You have had four sessions with us. Didn't you think about it then?

THE WITNESS: Five sessions, sir.

THE CHAIRMAN: Haven't you thought of it in all that time?

THE WITNESS: No, sir.

THE CHAIRMAN: Think back and give us a figure.

THE WITNESS: I can't remember, sir.

Levin Tries to Account for 84 "Missing" Drums

Q. Mr. Levin, I direct your attention to that chart C-20. You see that number on the bottom 37 in the right-hand column?

A. Yes, sir.

Q. That represents the number of drums that the SCI gave you credit for having in your possession in 1981 to sell to the City of Brigantine. Twenty-six of those 37 came from Phoenix Labs. You bought 26 drums from Phoenix Labs. Eleven came from other suppliers that you previously told us about and that we checked out. We want to know where the other 84 drums came from that you were paid for by Brigantine. Where did you get the chemical? Where did you get the drums?

A. I obviously bought them and made them and had them delivered.

Q. If you obviously bought them and had them delivered, we want to know where you bought the chemical in 1981. It's only last year.

A. I don't know what I had for dinner two day ago. I couldn't remember all the places where I bought dichlorobenzene.

Q. We want you to tell us the names of the places you bought it at.

A. You can buy it at Channel under Drain Ease, which is chlorobenzene, see. I believe I bought from other sources, at conventions, people who had excess where I just paid for it, whose names I don't even know. I think even Lincoln Supply here in the City of Trenton sells chlorobenzene. I think I got some from Philadelphia Chemical Supply on Samson Street in Philadelphia, and odds and ends here and there from so many other places. I couldn't possibly remember them all.

Q. Channel; are you talking about Channel Lumber?

A. Yes, sir.

Q. Which store?

A. I bought it at several different stores. One over here in White Horse.

- Q. Did you buy it from White Horse in 1981?
- A. I think I might have once or twice.
- Q. How much?
- A. I don't recall.
- Q. In what form did you buy it in, concentrated or in 55-gallon drums?
- A. No, sir. It was not in 55. I think they come in two, two-and-a-half gallon cans.
- Q. How many gallons did you buy there, 10, 20, 30 over the course of 1981?
- A. I don't recall.
- Q. Give us your best estimate.
- A. I can't estimate if I don't recall. I bought in too many different places and too many different locations.
- Q. Was it a hundred gallons?
- A. I don't know. I do not recall.
- Q. Lincoln Supply, where is that?
- A. Lincoln Avenue in Trenton.
- Q. What form did you purchase dichlorobenzene from Lincoln Supply in the year 1981?
- A. I don't recall, sir.
- Q. Was it in concentrated form or was it in the final 55-gallon container form where you didn't have to mix?
- A. It was in the concentrated form.
- Q. Did you have an account there?
- A. No, sir. I always paid cash wherever I bought.
- Q. How many times did you go there in the year 1981 to purchase dichlorobenzene?

- A. I don't recall. Maybe once or twice.
- Q. Once or twice. How many gallons did you purchase when you were there on either of those occasions?
- A. I don't recall.
- Q. Was it more than a hundred?
- A. I said, sir, I don't remember.
- Q. Okay. Philadelphia Chemical Supply. Where are they located?
- A. Sansom Street.
- Q. In Philadelphia?
- A. Yes, sir.
- Q. Did you purchase dichlorobenzene again in concentrated form or in the final 55-gallon drum form?
- A. Concentrated form.
- Q. How many gallons did you purchase in the year 1981?
- A. I cannot remember.
- Q. Do you have any idea at all?
- A. No, sir.
- Q. Do you have any records to back up what you are telling us today?
- A. No, sir.
- Q. Other than Channel, Lincoln Supply and Philadelphia Chemical Supply, was there any other source of dichlorobenzene from you in the year 1981?
- A. I don't recall at this time.
- Q. Mr. Levin, you testified before the Commission on four previous occasions prior to today. Why didn't you give us the names of those companies during those previous times?
- A. I didn't recall.

Q. Are you telling us that you are just recalling right now as you are sitting here these additional names?

A. They just came to mind at the time.

Q. Right now?

A. Yes, sir.

Q. If you mixed it yourself according to your own formula at 10 gallons per 55-gallon drum, you would need an additional 840 gallons to make up those 84 drums that were allegedly sold to Brigantine. Can you show us where those 840 gallons came from during the year 1981?

A. No, sir, I cannot. There are too many places and too many sources. I cannot recall them all.

During Levin's 11th hour effort to explain where he obtained the dichlorobenzene for the 84 missing barrels that Brigantine bought in 1981, SCI investigators conducted a telephone check of the retail stores he named. The following testimony resulted:

Q. Mr. Levin, is it still your testimony that in 1981 you purchased dichlorobenzene in any form from Channel? Think carefully before you answer the question because you are under oath.

A. Yes.

Q. Well, we just called Channel and they don't sell dichlorobenzene. Do you have any explanation for that?

A. Yes.

Q. What's your explanation?

A. They don't know what they are selling. It's under the name Drain Ease. Ask them if they sell Drain Ease.

Q. They do sell Drain Ease in one or two-gallon containers and it is not mixable and it is not concentrated. It's like liquid plumber.

A. No, it is not.

- Q. Did you use the Drain Ease that you purchased from Channel in your mixing process and then sell that stuff to Brigantine in 1981?
- A. I don't recall. I really don't recall because I had odds and ends laying all over the place.
- Q. What is the name of the product that you purchased from Lincoln Supply?
- A. I don't recall the name of the product.
- Q. Is it Clobber?
- A. It could have been.
- Q. Is it Wham?
- A. I am not sure. There are so many different brand names. I couldn't be sure.
- Q. Lincoln Supply has also told us they don't sell dichlorobenzene. They sell Clobber or Wham and it's like hydrochloric acid. That isn't something you sold to Brigantine in 1981, is it?
- A. I don't think so.
- Q. That Philadelphia Chemical Company, do you have a better name for that company so we can check it out while you are sitting here?
- A. No, sir.
- Q. We checked Philadelphia Supply and all variations of that name. We can't find it listed anywhere. Do you have any other name you can give us from Philadelphia that you purchased dichlorobenzene?
- A. No. I haven't bought anything from them for quite awhile. I don't know any other name.

Made Contribution to Brigantine GOP

- Q. You had \$91,000 in cash in your hands in the year 1981. Did you give any of

that money or any other money you had from any other source to a Mr. Lakes?

A. No, sir.

Q. Mr. Lakes is who, will you tell us?

A. I believe he is superintendent of public works in the City of Brigantine.

Q. He was the person you primarily dealt with in that city to sell your chemical dichlorobenzene?

A. Yes, sir.

Q. Did you ever make any contributions to any political party to the City of Brigantine through Mr. Lakes in the year 1981?

A. I believe, to the best of my recollection, I think once.

Q. What was the amount of the contribution?

A. I don't recall. I think it was \$50.

Q. Who did you give the check to?

A. To the City of -- Republican Club of City of Brigantine.

Q. Who did you give the check to, Mr. Lakes?

A. I don't recall whether I mailed it in or gave it to him. I am not sure.

Q. How did the conversation come up the first time you decided to give political contributions to the Republican Club? Was it through Mr. Lakes?

A. I am not sure. I think I got a letter from a fund raiser asking for a contribution.

Levin Operated Under Other Names

Q. Why did you use the name Sam Williams when your name was Jack Levin?

- A. I thought it would be a more ethnic name to use in business.
- Q. The name William Ogden, is that name familiar with you?
- A. Yes. I think I used that once. I was experimenting with names.
- Q. Only once?
- A. I think so.
- Q. Think a little harder. Is it possible that you used it 26 times, since I will tell you right now we have 26 vouchers from Brigantine with the name Ogden on it?
- A. I don't recall, sir. I know I used it, but I don't recall how many times.
- Q. Why did you have to use three names, Sam Williams and William Ogden and your own name?
- A. I think I liked the name Sam Williams better. I think it sounded more ethnic. I stopped using one and started using Sam Williams.
- Q. In other words, you were concerned about the ethnic background associated with the name, so you used the name Sam Williams?
- A. Yes, sir.
- Q. That was your only reason?
- A. Yes, sir.
- Q. Did you tell Mr. Lakes that you were using a fake name for that reason?
- A. I don't recall telling him anything.
- Q. When you dealt with the people at Brigantine, what name did you use to introduce yourself?
- A. I don't recall. I got very confused. I am only a one-man operation and doing everything myself.

Q. Are you telling us you didn't know who you were when you were dealing with Brigantine?

A. Sometimes I didn't. Sometimes I would put the wrong name down on the wrong voucher.

Q. Why was it necessary for you to use the names Globe Star, Consolidated Purchasing, Jack Levin, Sam Williams and William Ogden in your dealings with William Lakes in the City of Brigantine to sell the same chemical during the years '78, '79, '80 and '81? Why did you have to do that.?

A. It's a very simple explanation. I started out using one company name for chemicals and another chemical name for other odds and ends and they got intertwined and I got confused through my own ignorance.

Q. When did you become confused because of the use of the two company names?

A. I became confused when one day I didn't realize what name I am supposed to sign on what voucher and so I reorganized my company.

Levin Didn't Know His AAAs, BBs and CCCs

Levin claimed he devised an alphabetical system that he used on chemical sales vouchers to denote the manner in which the drums were delivered to Brigantine. He was hard pressed to explain his system, however, as the Commission questioned the use of fictitious bills of lading in connection with his alleged "delivery" of 77 drums to the City.

Q. Now, prior to the year 1981 you were familiar with the common carrier, a real common carrier known as AAA Trucking, were you not?

A. Slightly, yes.

Q. Did you in 1981 ever use AAA Trucking to supply dichlorobenzene to Brigantine from your house?

A. Never from my house. I didn't use any shipping companies from my house.

Q. In a prior session before the SCT you were shown a packet of AAA delivery

tickets, bills of lading?

A. Yes, sir.

Q. That represent a total of 48 drums that were delivered to Brigantine or allegedly delivered to Brigantine in 1981. Were these bills of lading false?

A. I don't think so.

Q. Well, they are all AAA Trucking Company listed; they all have AAA Company listed above the carrier. I will tell you that we went to AAA carrier and we asked them specifically about these bills of lading and they told us they were all phony. They are not their bills of lading; that the salesman listed on these bills of lading did not exist and that they did not make the deliveries of the 48 drums. What do you now about these phony bills of lading?

A. They are not really phony in that respect, sir. I made them out because I delivered that merchandise.

Q. Why did you use AAA?

A. I think I testified previously that the reason I was trying to straighten out in my own mind in getting a system. If you notice, I didn't put AAA Trucking. I just put three A's. On some invoices I didn't put anything. On some invoices I put self-delivery. I was going to use a system where I used three AAA when I delivered myself, three B's when I used somebody's wagon, when I borrowed a van; three C's for something else. I got confused: In that respect you might say phony. In actuality they were not because that was merchandise that was delivered.

Q. Are you saying that with AAA they represent in your system the deliveries you made yourself?

A. I think so, but I think also the three A's might have delivered some stuff for me that year.

Q. Here's one that's taken from this packet.

THE CHAIRMAN: Taken at random?

MR. COPPOLA: Yes, Mr. Chairman.

Q. It says AAA Trucking. Could you say why it says AAA Trucking since your system only included the letters AAA and not Trucking?

A. Probably a fraudulent slip [sic]. Just tried to fill in names so it would look more business like.

Q. Why did you have to have any system at all since you were delivering the goods? Why didn't you put in delivered by Sam Levin or Sam Williams or William Ogden?

A. Sometimes I did many times.

Q. I represent to you that -- not on these tickets -- where you have AAA listed as the carrier, that represents 48 drums, 48 drums?

A. Yes, sir.

Q. You didn't do that on these tickets?

A. I wasn't thinking. Like I said, I am only a one-man operation.

Q. Were these tickets used in this fashion with the knowledge of Mr. Lakes from Brigantine?

A. No, sir. He had nothing to do with them.

Q. Didn't he on some occasions actually sign his name to the delivery slip?

A. I imagine so. I never paid any attention to whoever signed it.

Q. What I am asking you is, at the time -- during the occasions that he signed his name to the delivery ticket was there ever a conversation about the information that is on the ticket, AAA Trucking?

- A. No, sir. All he was interested in was that the merchandise was there.
- Q. So there was no conversation about AAA Trucking at the time he signed the slip?
- A. I don't recall.
- Q. The AAA ones were delivered by you in your Subaru?
- A. It could have been in my Subaru, could have been in the van.
- Q. Whose van was that?
- A. Whose ever I borrowed. I don't recall whose I borrowed.
- Q. Can you give us any idea whose van you borrowed during the year 1981?
- A. Mostly from Jack's Products.
- Q. On those occasions that you borrowed the van from Jack's Products who would drive the van?
- A. Me.
- Q. Who would load the dichlorobenzene onto the van at your garage?
- A. Me.
- Q. Who would unload it at Brigantine?
- A. Normally me.
- Q. When you were unloading it at Brigantine, was anybody there?
- A. Sometimes.
- Q. Did anyone see you unload the dichlorobenzene from the van or your Subaru?
- A. I never paid any attention.
- Q. Could you explain your system of AAA one more time? It was AAA and then BBB?

THE WITNESS: You mean the system that I was going to try to do? I was going to put three AAA on all the delivery -- on the deliveries I made. Put BBB on when I delivered by a van and CCC delivered by a carrier, but I never carried it through because I got all confused.

Q. Are you saying that BBB, then, would be associated with a delivery made by the van?

A. Yes, but I never followed through on it.

Q. I will tell you that we never found any delivery tickets in the City of Brigantine with the carrier BBB on it, but we found some tickets with the name Maislin, which is a trucking company; it's called Maislin Transport. Is that name familiar to you?

A. Yes. I got constant bills from them all the time.

Q. We have some Maislin Transport delivery tickets that represent a total of 26 drums. The people from Maislin had told us that these are not their bills of lading and that they didn't fill out these bills of lading, and they did not make the deliveries that represent the delivery of 26 drums. They did make some other deliveries for you but not for these 26 drums. What do you have to say about these tickets?

A. I probably used it to fill in a delivery ticket when I was making a delivery of my own. I wasn't very organized.

Q. Why would you have to use the name of Maislin Trucking? Why didn't you use the name of BBB or CCC to follow your system?

A. My system was never implemented. I took the name that popped into my mind.

- Q. It was not BBB, but Maislin Transport?
- A. Probably because I got a bill from them recently and it was on my mind.
- Q. That's the only explanation that you can give is that it is the first name that popped into your head?
- A. Yes. That's the honest explanation.
- Q. Were you trying to mislead anybody by using the name Maislin Trucking Transport or AAA Trucking?
- A. No, sir. I just wanted my form to look as legitimate when it is delivered by a trucker as when it is delivered by myself.
- Q. Why did you have to make it legitimate since you were delivering the product and it's the product that counts?
- A. That's correct.
- Q. Why did you have to make something look legitimate?
- A. I wanted to make it look like a proper form rather than an amateur delivery slip.
- Q. For what purpose?
- A. For my own idiosyncrasy. I was trying to upgrade my image to make it look more businesslike.

COMMISSIONER FRANCIS: Did you do this upgrading of this system after you received a subpoena from the SCI?

THE WITNESS: That had nothing to do with it.

Levin's Testimony Referred to Attorney General, U.S. Attorney

- Q. Mr. Levin, in conclusion, your method of operation included the following: The use of aliases, the use of two company names, one with your house listed as the business address, the other with a post office box as its

address, delivered dichlorobenzene. The use of fake delivery tickets with fictitious carriers and people on it. no business records to specify. You claimed you used your garage to store and mix chemicals that have been identified as cancer-causing. Isn't it true that you did all of that so you could be paid for dichlorobenzene that you never actually delivered to the City of Brigantine?

RICHARD SLAVITT, Counsel to Witness:
I am instructing my client not to answer that question.

MR. COPPOLA: On what grounds?

MR. SLAVITT: You have drawn conclusions that there's been no testimony to. You are testifying that stuff has not been delivered. You are testifying that chemicals are carcinogenic. We have no idea whether it was or not. So you have drawn your conclusions, Mr. Coppola, but I don't think my client should have to answer that question.

MR. COPPOLA: I have no further questions.

COMMISSIONER FRANCIS: Mr. Levin, while you are here, I think you ought to know and Mr. Slavitt ought to know the Commission has determined that a transcript of your testimony will be ordered and will be sent to the Attorney General's Office for review as to whether criminal prosecution is warranted for fraud, at least, and perhaps other offenses. The transcript will also be sent to the U.S. Attorney's Office for review as to possible income tax violations. I would suggest that you talk to your counsel immediately after leaving this chamber and if there is any change in your position or you wish to change your testimony in any way, that Mr. Slavitt talk to counsel for the Commission and maybe with our schedule we can allow an opportunity for you to come back.

Public Works Superintendent's Story

The Commission next turned to the actual purchaser of Brigantine's dichlorobenzene in an effort to track down the 214 drums that the city paid for but which Levin could not prove he delivered. This final witness of the Brigantine episode was Harold W. Lakes, the city's public works superintendent and former water and sewer superintendent. Excerpts from his testimony follow:

Q. In the course of your employment have you had occasion to order chemicals including dichlorobenzene?

A. Yes, sir.

Q. Could you tell us for how many years you have been ordering dichlorobenzene?

A. Dichlorobenzene has been ordered for the City of Brigantine since I have been in charge.

Q. You have been in charge since 19 what?

A. '75, I believe.

Q. Now, in 1981 didn't dichlorobenzene make up the bulk of the chemicals that were used in the City of Brigantine sewer system?

A. The bulk of it, yes, sir.

Q. Have you heard anything bad about that chemical prior to the end of the year 1981?

A. I had heard that the D.E.P. wanted to refrain from using it, yes, sir.

Q. In 1981 or at any time prior did you attempt to find out from the state whether or not this was a harmful chemical?

A. No, sir.

Q. Why didn't you try and find something out about it?

A. Because I had nothing official from the state. I didn't consider it dangerous.

THE CHAIRMAN: When did you first hear that there might be something defective or non-usable about that chemical?

THE WITNESS: It's been rumored, sir, for about four years, I guess.

THE CHAIRMAN: Back in '76, '77?

THE WITNESS: Somewhere in there, yes, sir.

Q. Although you have heard rumors about this product since 1976 you never attempted on your own to check it out?

A. No, sir.

Q. When you were first asked by the SCI how much dichlorobenzene was used in 1981, you really didn't know, did you?

A. No, sir.

Q. During 1981 did it ever cross your mind to determine how much was actually being put into the sewers?

A. No, sir.

Q. You didn't have any sort of a control to help you to determine how much was being used?

A. The control was at the discretion of the men using it. If they needed a little bit more, they would use it.

Q. You didn't know how much was being used?

A. I had an idea how much was being used, yes.

Q. Did the town want to know how much was being used since they were spending in 1981, \$88,000 for the product?

A. No, sir.

Q. Did they ever request you keep records concerning its use?

A. No, sir.

Q. Did you have to account to anyone for the use of that product in the year 1981?

A. No, sir.

Q. Tell us how the product actually made it into the sewer system, how your employees used the product in 1981?

A. Dichlorobenzene is diluted in water and put in through a drip system into the lift stations and treatment plant.

Q. We have been told by others in the field that odor can be effectively controlled by scheduled periodic maintenance, which would consist of wash-outs of the pumping stations with water under a high pressure hose. I should ask you did you know about that procedure?

A. Yes, sir.

Q. Did you ever consider using it?

A. Yes, sir.

Q. Did you use it?

A. We had -- we used it very scarcely in the past. Because of manpower and workload we didn't have the time to put in.

Lakes said he "guessed" that Brigantine had been dealing with Levin's Globe Star Chemical Company since "sometime in the '60's" -- but this was refuted by the Commission. His testimony continued:

Q. Who was in charge of ordering dichlorobenzene in May of 1976?

A. Me probably.

Q. I show you what has been marked C-161; it's an exhibit. It's a voucher from the City of Brigantine to Globe Star Chemical, dated May 4, 1976, and we have been told by the accounting department at Brigantine that this is the first time that Globe Star Chemical was ever used. Would you like to look at this voucher? I think it is signed by yourself also.

A. Yes, sir.

Lakes also testified that he associated Levin only with Globe Star and that he didn't know Levin also operated Consolidated Purchasing of Mount Ephraim. Lakes testified he made all of Brigantine's dichlorobenzene purchases from Consolidated "strictly through the mail" and that he never met or talked to anyone connected with Consolidated. Even though he split the City's dichlorobenzene purchases evenly between Globe Star and Consolidated, Lakes testified that he never tried to get a cheaper price from either supplier.

Lakes also indicated he knew nothing about New Jersey's statutory requirement to subject purchases above certain dollar amounts to competitive public bidding. His testimony on this subject:

Q. In the year 1979 \$51,741 was paid to Globe Star and Consolidated, Jack Levin, by Brigantine for dichlorobenzene. The figure in 1980 was \$77,247. The figure in 1981 is \$88,179. For those years -- well, for those years what was your understanding of the bidding laws with respect to chemicals?

A. I didn't know what the bidding laws were.

COMMISSIONER FRANCIS: Let me interject again. Did the Authorities Association take any steps to put out any paper to help explain what the bidding laws were to any public works department or sewerage authorities that you are aware of?

THE WITNESS: Not to my knowledge, sir.

Q. Were any of the sales bid of dichlorobenzene?

A. Not to my knowledge.

Q. Did the City of Brigantine, anybody in the accounting office or whatever ever give you an explanation of the bidding laws or ever question you about the sale of this product in reference to the bidding laws during the years '79, '80 and '81?

A. No, sir.

Q. Was it ever a topic of discussion in any meeting that you may have attended or any conference or any memo that you may have received, again the topic of discussion being bidding laws with respect to these amounts of money?

A. Not to my knowledge, sir.

Q. What is the procedure now followed in Brigantine with respect to dichlorobenzene and whether or not it should be bid?

A. They are bid.

Q. Did that procedure come about as a result of the SCI's investigation into the purchase of dichlorobenzene?

A. Partly, plus the fact that we have a new administrator and he is asking for bids on all the items.

Q. Do you still order dichlorobenzene or do you still -- are you still responsible for ordering chemicals for the public works department?

A. I am not responsible for ordering, no, sir.

Q. Do you supervise anyone who does do that?

A. Yes, sir.

Q. Do you now have an understanding of the bidding laws?

A. Yes, sir.

Q. Who advised you?

A. A vague understanding.

Q. Who advised you?

A. The city solicitor.

Q. That's a recent practice?

A. Yes, sir.

Lakes Can't Account for \$6,700 Cash Deposits

Q. Mr. Lakes, a review of your personal banking records for 1981 showed cash deposits in an amount of \$6,700. Previously you were asked about that figure and you were not able to give an explanation for the source of those particular cash deposits. Can you give us an explanation at this date as a source of the \$6,700?

A. 1981 I made a loan against my pension plan. My wife had a settlement on an insurance claim.

Q. Mr. Lakes, the settlement on the insurance claim was not included in the \$6,700. We have allowed for it already is what I am telling you.

A. Sir, I cannot account for deposits, cash deposits in my account.

Q. Did any of that money come from Jack Levin?

A. No, sir.

Q. There was a check dated May 21, 1978. Do you know what check I am talking about for \$760?

A. It was showed to me once before, yes, sir.

Q. It's made out to William Lakes in the amount of \$760. Could you tell us -- and it's from Jack Levin. Could you tell us what this check was for?

A. Yes, sir. I had done some work for Mr. Levin on his trailer and I had made a personal loan to him.

Q. What was the amount of the personal loan?

A. \$300.

Q. Would you please describe the circumstances of the loan?

A. Mr. Levin was in Brigantine and he approached me in the diner and asked me if I could loan him some money; he was short.

- Q. Did he tell you what he needed the money for?
- A. No, sir.
- Q. And what did you say to him?
- A. I said I would have to go home and talk it over with my wife and that's what I did.
- Q. What did your wife do?
- A. She said for me to loan it to him and I gave it to him.
- Q. Where did you get the money from?
- A. She had it.
- Q. Was this cash or a check?
- A. Cash.
- Q. How long were you gone? How long a time did it take you to talk to your wife, get the money and get back to Mr. Levin?
- A. 15 minutes.
- Q. What was your financial situation in April of 1978, if you recall?
- A. Not the best, but not the worst either.
- Q. During that time period didn't you have some overdrafts from your bank account?
- A. They tell me I did. I don't remember.
- Q. Why did you loan him that amount of money?
- A. It's what he asked me for and I had no reason to doubt the man would pay me back.
- Q. Was he a personal friend of yours?
- A. No, just an acquaintance.
- Q. Did you get any piece of paper, promissory note?

- A. No.
- Q. It was simply his word?
- A. Yes, sir.
- Q. And he did pay you back?
- A. Yes, sir.
- Q. Did you have to request that he repay you? In other words, did you have to go after him at all?
- A. No. He said he would pay me the money back whenever he paid me for the work I did for him.
- Q. What about this work; can you tell us about that?
- A. It's insulation of pipes in a trailer that he had somewhere down around Sea Isle City or Cape May.
- Q. Purely insulating the pipes?
- A. I had to remove some of the interior walls and repair the pipes and insulate the pipes.
- Q. What type of place was it?
- A. It's a mobile trailer.
- Q. Did you send him a bill for the work?
- A. No, sir.
- Q. How much would that be, \$460?
- A. Yes, sir.

Lakes Didn't Mention Loan Until Later

- Q. The first time you told us about it, didn't you tell us the whole \$760 was for work?
- A. Yes, sir.
- Q. And, then, isn't it true that you had to call us back and tell us that it was

some portion of it that was due to a loan?

A. Yes, sir.

Q. During the time gap while you were refreshing your recollection as to the \$760 did you speak to Mr. Levin?

A. No, sir.

Q. Any conversations with him about it?

A. No, sir.

Q. When was the last time you saw him?

A. I believe the last time I saw him was Flag Day. That's it.

Q. This year?

A. Yes, sir.

Q. Any conversation about this investigation?

A. No, sir.

Never Saw Levin or AAA Trucking Make a Delivery

Q. Did you see any deliveries?

A. I seen some. I don't know which ones you are referring to.

Q. You never saw Jack Levin actually make a delivery, though?

A. No, sir.

Q. What documents did you sign as to deliveries that you received personally?

A. Same documents I signed when I didn't see them delivered personally.

Q. What would they be?

A. Either delivery slip or an invoice.

Q. How were those deliveries made that are supposedly reflected on the bill of lading?

A. By truck.

Q. Would that be a common carrier?

A. The ones that I seen delivered, yes, sir.

Q. Did you ever see Jack Levin drive anything into your work area and deliver dichlorobenzene?

A. No, sir.

COMMISSIONER DEL TUFO: Did you ever see AAA Trucking make a delivery?

THE WITNESS: No, sir.

Q. Is it fair to state that you actually didn't see the drums come off the trucks in all circumstances?

A. Yes, sir.

Q. Where is your office located in relation to the drop-off area?

A. In the front of the building. The drop off is in the back of the building.

Q. Was there someone who brought the delivery tickets into your office?

A. Yes, sir.

Q. Would that be the truck driver?

A. Truck driver or Mr. Levin would come in with a delivery ticket.

Q. When Mr. Levin came in with the delivery tickets, did you ever check them to see the information that was on there, the trucking carrier?

A. No, sir.

THE CHAIRMAN: He is asking if you ever checked them against the receipts that you signed?

THE WITNESS: I never checked the drums against the delivery receipts.

Although Levin said that he had often delivered two drums at a time by means of his Subaru car, Lakes testified he had never witnessed such a delivery and no employee had ever reported such a delivery.

The Commission also questioned Lakes about Levin's testimony that he had often loaded the 500-to-600-pound dichlorobenzene drums on to a vehicle and unloaded them at Brigantine by himself. The testimony continued:

Q. How difficult do you think it would be to unload a 55-gallon drum of dichlorobenzene from the vehicle?

A. I don't know, sir.

Q. Do you have any idea?

A. I imagine it would be a little difficult.

Q. Do you think you could do it?

A. I don't know.

Q. Do you think Mr. Levin could do it?

A. Again, sir, I don't know.

THE CHAIRMAN: How much weight is in one drum?

THE WITNESS: Approximately 5 or 600 pounds.

Q. Does it ever occur that there is a full drum of dichlorobenzene that has to be moved?

A. Yes, sir.

Q. How is the drum moved when it's in the work area to some other place?

A. Usually moved by a front-end loader or a tail-gate truck.

Q. How many people, employees are involved in moving the barrel around to help the front-end loader or get it onto the truck you spoke of?

A. One person can put a drum on tail gate of a truck or the bucket of a back loader.

Q. How do they do that?

A. Up-ending the barrel and rolling it in.

Q. Could you do that?

A. Not today.

Q. Could Mr. Levin do that, in your opinion? You do know him; you have seen him.

A. I imagine he might be able to do it. I don't know.

THE CHAIRMAN: He didn't have the right to use your mechanical equipment at that plant, did he?

THE WITNESS: No, sir.

Q. You never let him use any of your mechanical equipment?

A. No, sir.

Q. Could one person move those drums around?

A. One person can move a drum of material yes.

THE CHAIRMAN: Roll it or pick it up?

THE WITNESS: They can roll it. They can load it to a truck and move it to another location.

THE CHAIRMAN: Move it up an incline?

THE WITNESS: No, sir.

THE CHAIRMAN: Have to come downhill?

THE WITNESS: I would say, yes, sir.

Q. Do you recall testifying previously before the SCI that it would take a fairly decent size person to move a 55-gallon drum?

A. No, I don't remember saying that.

- Q. Would it refresh your recollection for you to look at your prior testimony?
- A. What I am saying is if the person is in good physical condition he can move a 55-gallon drum. I cannot now because I have a bad back.

THE CHAIRMAN: I think you would agree that one man without mechanical equipment can't move a drum from the ground of a floor or a garage into a car all by himself, can he?

THE WITNESS: I wouldn't think so, sir. I don't know.

THE CHAIRMAN: Unless he was Tarzan or the equivalent.

Lakes Admits He Never Checked On Deliveries

- Q. With respect to the times that Mr. Levin came into your office with delivery tickets, is it fair to state that you didn't go out to make sure that the dichlorobenzene was actually delivered?
- A. It is fair to state that, yes, sir.
- Q. You testified that you never saw him unload anything; you never saw him drive anything. At the time when he came into your office with a delivery ticket, why didn't you go out to make sure that the drum was actually there since there was no way that he himself could do it?
- A. I have no answer for that, sir, why I didn't. I have no answer for that. If he were to come into the office and have something to be unloaded, I could have signed it and called somebody on the radio and asked them to come down and unload it. I don't know particularly on each instance.

THE CHAIRMAN: With Levin particularly you recall that?

THE WITNESS: I can't swear to that, sir.

Lakes and Fictitious Bills of Lading

Q. Do you recognize those as delivery tickets and vouchers for the City of Brigantine?

A. Yes.

Q. Documenting the delivery of a certain amount of drums?

A. Yes, sir.

Q. Does your signature appear on the first one?

A. Yes, sir.

Q. Is it true your signature means that you acknowledge receipt of the freight?

A. Yes, sir.

Q. The first ticket, the first delivery ticket, is the carrier indicated as AAA?

A. Yes, sir.

Q. That trucking company AAA carrier has told this Commission that they do not use that type of form. They made no deliveries to Brigantine in 1981. They have no truck drivers by any of the names that are set forth on those tickets. Do you have any explanation as to why your name appears on a delivery ticket with AAA carrier on it when they did not make the delivery?

A. Sir, all I can say is the delivery was made that I signed for. I do not and did not check the carrier on the slip.

Q. Those were tickets that were brought into your office by Jack Levin; is that true?

A. I don't know if this was or not, sir.

Q. Would you look at it and see if there is anything on there that would refresh your recollection. He told us that he made those up and presented them to the City of Brigantine. The first one has your name on it.

A. Yes, sir. I can't say that he brought this in himself or not.

Q. Do you have any idea who delivered those drums if, in fact, they were delivered, keeping in mind that they are fictitious and AAA didn't make the delivery?

A. No, sir.

Q. Mr. Lakes, I show you what has been marked C-186. Those are delivery tickets that have Maislin Transport set forth on them as the carrier. We have been told by Maislin again that those 26 drums that those tickets represent were not delivered by Maislin. Is that the first time you are seeing those tickets?

A. The first time this question about it as far as Maislin goes, yes, sir.

Q. Could you tell us what you have to say about those? Well, they are phony delivery tickets?

A. Sir, I don't know.

Q. Some of them have your name on it?

A. Yes, sir.

Q. I believe at least eight deliveries have your name on the delivery ticket itself.

A. No idea, sir.

Q. And you sign the delivery ticket?

A. Yes, sir.

Q. Without checking at the time that you signed it that the chemical was, in fact, delivered to the plant?

A. Yes, sir.

COMMISSIONER DEL TUFO: Are you still employed by Brigantine, Mr. Lakes?

THE WITNESS: Yes, sir.

COMMISSIONER DEL TUFO: Don't you think it's part of your obligation to check to make sure the materials were delivered to the site? Yes or no?

THE WITNESS: Yes, sir. It probably is my obligation. Especially if I sign the ticket.

Q. To sum up, Mr. Lakes, you didn't keep track of the amount of chemical that was put into the system; you didn't have to account to anybody in the city. You had some information to make a conclusion on your own that the chemical product was harmful. We have delivery tickets that represent \$54,000 that were paid to Mr. Levin in 1981 that were phony. Do you have anything to say about those facts?

A. Sir, the fact is the amount of chemicals that was delivered is the amount of chemical that was applied to the lift stations and whatever we used it for.

Q. You don't know that for certain because you didn't keep track of how much was being used and you never made sure the stuff you paid for you received because you didn't look to see if it was in there?

A. My men told me what they were putting in the lift stations, how much volume they were using.

Experts Testify On Authority Reforms

The final public hearing session was highlighted by a series of expert witnesses who testified about the problems uncovered by the Commission's inquiry and suggested how these problems might be resolved. As with all other hearing witnesses, the Commission had spent considerable Executive Session time with the experts prior to the public hearing.

Dr. Joseph V. Hunter

Professor Hunter is chairman of Rutgers University's Department of Environmental Science, with an extensive background in water pollution and in water and wastewater analysis. He has

had practical experience in wastewater sampling and treatment and has for some years taught evening college courses on preparing for S-1 licensure as a sewerage plant operator. As a result, Dr. Hunter's testimony focused on sewerage treatment and plant operational problems:

Q. Is the key to the physical operation of the plant the licensed operator?

A. Yes.

Q. Is the education and licensing by this state of operators sufficient to insure that qualified people are operating the multi-million-dollar sewage treatment plants in this state?

A. It is initially. The operators in passing the license have to pass examinations and they have to have a certain number of years of experience, and the courses that they take give them a certain number of years of experience and credit for those courses. But, unfortunately, that is about where it ends.

Q. Are there any continuing educational programs?

A. There are some, but most continuing education now has just about started. It's not something which has been going on for any long period of time, and it, unlike some of the other courses in which they are taking things for the license, these would be only taken by the interest of the operators themselves. They are not mandatory and nobody has to take them.

Q. Are there any continuing educational programs that are demanded by the state?

A. Not that I know of.

Only Few Chemicals Needed to Treat Sewerage

Q. Are you familiar with the chemicals used in sewage treatment plants?

A. Yes, I am.

- Q. Generally speaking, are few chemicals needed to operate a plant?
- A. Yes.
- Q. What chemicals are those that are needed?
- A. The primary chemical that is needed in almost every wastewater treatment since disinfection is mandatory in New Jersey in most cases is, of course, chlorine.
- Q. What other chemicals?
- A. There it depends now on some -- the rest become somewhat more special circumstances. In other words, chlorine is almost always required. The other ones may be required for certain specific types of problems.

Enzymes Are of "Minimal Value"

- Q. Dr. Hunter, what is an enzyme?
- A. Enzyme is an organic catalyst which is usually, normally, although we can construct some of them, formed by living organisms for the purposes of their cell growth and metabolism.
- Q. And what do enzymes do? What can they be used for?
- A. They all do the same thing; they speed up the rate of chemical reactions. In other words, they make a chemical reaction go quite rapidly that would normally go quite slowly.
- Q. Do you have any opinion as to whether enzymes are of any value to the operation of a sewerage treatment plant?
- A. I would think they would be of minimal value.
- Q. Doctor, we have received testimony from an Arthur Cohen, an individual who is a blender of chemicals, and also his

employee, Daniel Deter. The testimony was, in essence, that the enzymes that were sold by Mr. Cohen were a combination of eight pounds of salt to two pounds of enzymes. Could you comment on that combination?

THE CHAIRMAN: As to its use in a sewage plant?

A. There is absolutely no use and no purpose to the salt in that, if we want to talk about the salt first, the salt could not help any process in the plant and most assuredly could possibly have an adverse effect on some processes in the plant. The only role that the salt could play in such an instance would be as a filler.

Q. Just to take up space?

A. Yes, so that for a given dollar you receive a greater mass of material so you think you're getting more.

Q. Doctor, yesterday an individual known as Jack Israel, in justifying his sales of enzymes under a State contract for automobile parts and supplies, claimed that enzymes could be used to clean drains and traps from automotive greases and oils. Could you comment on that?

A. I would be -- I would doubt extremely whether or not enzyme preparations would assist in degreasing hydrocarbon-type greases.

Dichlorobenzene "Useless" In a Sewerage Plant

Q. Is dichlorobenzene a carcinogen?

A. It is toxic. I don't remember seeing data that necessarily, necessarily, linked it to cancer. Okay. It's a fairly toxic material.

THE CHAIRMAN: How much use has it in a sewerage plant or sewerage system?

THE WITNESS: I would not think of any use that you would ever put it to.

THE CHAIRMAN: No use at all?

THE WITNESS: No, because if you wanted to deal with odor control, if something was coming into the plant and it had an odor, why employ a masking agent that is toxic indoors to mask an odor when you can employ an oxidizing agent to get rid of that particular odor if that problem arises? And there are oxidizing agents, like chlorine, peroxide and permanganate, which will work under those circumstances for septic sewage.

Suggests an Advisory Panel for Plant Operators

Q. Doctor, do you have any recommendations to this Commission regarding this investigation?

A. Well, to a large extent, one of the major problems that we have is one of education and one of a wastewater treatment plant operator realizing that it is very difficult for him to run controlled experiments to really prove something is of value to him to a wastewater treatment plant. That leaves the average operator susceptible to any snake-oil salesman that comes around.

So my suggestions would be that there would be some type of advisory group for operators when they come down to some of these particular problems. The Environmental Protection Agency does have a trouble-shooting manual, but it's this thick, and most operators would not have the expertise or even the time to try to go through something like that, considering all the other things that they have to do. So my suggestions would be, first of all, to have either with the state or at the university, or at both, some kind of advisory group for operators when people like this come around and things like this occur, that they can get some, say, advice from people who have no stake in the matter whatsoever.

Secondly, inasmuch as operators only really have to take the examinations and so on at the beginning of their career, it would probably be of some assistance if some kind of requirements were made for continuing education so that they would, can be continually upgraded so that they will be right on top of the state of the art. Right now it is up to the discretion of the operators. Many of the operators are on top of things and will go to all the meetings of the state associations and so on. But it's right now on a voluntary basis, and, in general, voluntary things usually don't work out too well or we wouldn't have automobile inspection.

Walter Zizik, South Monmouth Regional Sewerage Authority

The next witness's expert testimony was based on a wide ranging academic and practical background in every phase of sewerage authority operations. Walter Zizik's experience included service since 1958 as executive director to five sewerage authorities, one of which he served twice, and including his present post as project coordinator at the South Monmouth authority. The Commission was interested in his evaluation of the autonomous authority concept: Following are excerpts from Zizik's testimony:

- Q. Do you, as someone having a long period of involvement with the various aspects of municipal utilities authorities and sewerage authorities, have an opinion on the authority as a public entity?
- A. Yes. In these first ten or twelve years of my employment it developed that the form of government that an authority is set up under does not have the checks and balances that we normally experience in our form of government as we know it.

For instance, there are absolutely no rules or regulations governing the setting or keeping of a budget. A budget can be overexpended with impunity without any consequences. Just so long as the bondholders are satisfied they can receive their debt service, then there is really no control over what an authority can or may spend.

There is no control or no body to which a private individual may petition should he feel aggrieved at the rates he is being charged, and this, I believe, is contrary to our form of government.

Q. And yet the use of the facilities in an area is mandated. Is that correct?

A. In the field of water and sewage, yes. There are other authorities, of course, where Garden State Parkway Authority, if I don't like their toll, I don't have to use their road. If I have a sewer, and the only game in town is the sewer authority, I must connect to their sewer system and pay their fees.

Q. Do authority board members fully involve themselves in the operations of the authority?

A. I think that is a question of the members who are appointed to the authorities. I have definitely seen members getting very much involved. Frankly, the ones I have worked with, with the exception of one, did get so involved. However, in general, I don't think they do.

Q. Can you give us your opinion as to the percentage of authority board members in this state that are competent board members?

A. With the condition that you qualify competency, I would have to say that 50 percent or thereabouts, in my opinion, should not be members of authorities.

Q. Do board members place too much reliance on their consultants?

A. Board members must place reliance on their consultants, if nothing else than not to be second-guessed. Certainly if an attorney for an authority advises the authority that what they are doing is illegal, it would be foolhardy for the authority to fly in the face of such advice. Certainly if their consulting engineer advises that they should not do a certain thing, or advises contrary that they should do a

certain thing, they would be foolish to fly in the face of that professional advice.

I believe, however, that the problem comes in that many authorities do not have competent executive staffs who would be able to independently review what recommendations are coming from the consultants to be able to give a completely unbiased or owner-oriented opinion.

Q. Would you agree, then, that authority board members should not place total reliance on their consulting staff?

A. I think the authorities should have in staff and house an experienced engineer, experienced in water treatment if it's a water authority, sewage treatment if it is a sewer authority, who has the ability to review what the engineer is doing, as a second opinion if for no other reason.

Q. Mr. Zizik, do politics have any influence in the operation of authority boards in the selection of consultants?

A. Very much so.

Q. Can you give us any examples?

A. Well, the most recent example is my demise at Middletown Township. I had a contract for three years that would have expired in 1976. The politics changed, and it doesn't really serve any purpose to at this time say what it went from and to, suffice it to say it changed, and immediately, why, the engineer, the attorney and the auditor were replaced, and I was told, as unobtrusively as possible that I should look for another position because I would be replaced as soon as my contract expired. Fortunately, I was able to beat them to it.

Q. Would you agree that generally few chemicals are needed to run and properly operate a plant?

A. Relatively few, yes.

Q. Do you know what dichlorobenzene is?

A. Yes. It is, in effect, a disinfectant and a odor-masking agent.

Q. Do you use it at the South Monmouth Regional plant?

A. No, sir.

Q. Why not?

A. We have an odor problem and we use hydrogen peroxide and that very effectively without any problems handles the odors.

Q. Do you use enzymes?

A. No, I don't.

Q. Why not?

A. I don't feel that a properly designed and properly operated treatment plant requires the addition of enzymes to aid in the process of bacterial action. There is sufficient bacteria in the sewerage that should not require any acceleration.

Q. Is there any central repository of information about authorities in the state, the number of authorities, the rates that they're charging, technical information?

A. No, there is not.

Q. Would that be helpful?

A. Yes, I think it would be helpful both from the point of view of we in the field and certainly those people in the State of New Jersey, other agencies. For instance, let's assume that all of a sudden chlorine was to be discontinued because of its effect on the environment. I think it would be nice if the state would be able to send a mailgram to each and every authority in the state of New Jersey, but obviously they can't, because I don't think they have a registry of them.

Zizik Urges Nonpartisan Election of Authority Members

Q. Do you have any recommendations to this Commission?

A. One. It would be my recommendation, the manner in which authority members are chosen be changed from being appointed by the governing bodies of the municipalities to a non-partisan election by the people of the municipality, in a similar vein as boards of education are elected. I don't know if that's going to be the answer because I understand that the board of education election does not draw too much of an interest. But, at any rate, if then the people are going to complain, and they haven't voted, then I think I would have, at least, the ability to say, well, you know, you had your chance at the polls. Right now, each individual authority member is not accountable to the voting public other than through the council that appointed him or her.

Q. Could you continue, please?

A. Surely. If, in fact, the first alternative of electing members rather than appointing is not viable or not possible, I would then suggest that the state set certain qualifications for authority members...I would sincerely hope that the state set certain minimum qualifications for the hiring of the authority's chief executive officer...I believe that each authority should have a full-service bookkeeper on staff to perform all bookkeeping functions so that the auditor can then truly make an independent audit that can, in fact, produce a certified audit...I firmly believe that bonds sold by the authority should only be sold under competitive bidding, similar to local government bonds...I think that there should be a uniform method of accounting set up...I think no place during the discussion I have heard or read about has one important function come to the fore and that is the

selection of the trustee bank...Lastly, I would strongly recommend that authorities be placed under some type of control similar to what municipalities are under, preferably under Division of Local Government.

N.J. Authorities Association Leader

Although the leadership of the Authorities Association of New Jersey had not been supportive of the Commission's inquiry and public hearing, Mrs. Gail Quabeck, the association's president, was called to testify about her organization's activities and views. Her opening statement and excerpts from her testimony follow:

My regret is that your format will not permit this Commission to know, as I do, the hundreds of dedicated public servants, who as members of this association have been, and will remain, dedicated to the single goal of a more effective utility operation for the people of this state. To this end, this association has developed extensive and effective liaison with state and federal regulatory agencies and their personal. To this end, this association has sought audiences before any public, proper public forum such as any legislative committees to make known its views. Instead, and to our dismay, we are called before this investigative agency, an agency which initiated these hearings by charging that authorities are operated without accountability and without oversight. We who have actual responsibility for the operation of these authorities know that these charges are not true and we know that the contemptible practices revealed here are neither widespread nor typical. This association will support any legislation which strengthens and protects the financial base of authority operations, but we will continue to oppose all legislation which, in the name of accountability, effects a wholesale transfer of local decision-making to Trenton while, in fact, doing very little to make these authorities actually accountable.

EXAMINATION BY COMMISSIONER FRANCIS:

Q. In fact, your association is a trade association, is it not?

A. That is correct.

Q. It's a lobbying group?

A. In addition to many other things, yes.

Q. What steps has the association taken to document that the practices described here are neither typical nor widespread?

A. We have not taken any steps, but we certainly have a proven record through the past years of the efforts that we have made to stimulate discussion, education; we have presented conferences, we have newsletters, and I think that we have gained a reputation for promoting professionalism in the industry, and I am willing to stand on that reputation at any time.

Q. Let's talk a little bit about your association. Are all the members of the association municipal utilities authorities and sewerage authorities?

A. No, sir, they are not. Associate members are not.

Q. Who are some of the associate members of the association?

A. Engineering firms, attorneys, bankers, industry suppliers.

Q. Accountants?

A. Accountants.

Q. Underwriters?

A. Underwriters, yes.

Q. Engineers?

A. Correct.

Q. Chemical companies?

A. I believe we may have one.

Q. Would some of those engineers that are associate members be engineers who are hired as consultants by the association -- by authorities?

A. Certainly.

Q. Would some of the underwriters be people who do the underwriting for a bond issue for an authority?

A. Certainly.

Q. Would some of the financial advisers be people who were hired by an authority?

A. Certainly.

Q. So that those people who are associate members may not at all times have the same interests at heart that the authority does; isn't that true?

A. That may be true in some cases, yes. However, I think it's very important to point out that the associate membership does not control or set policy for the Authorities Association. Policy is set by a board of directors, and their membership on that board of directors is very limited to four out of twelve directors.

Q. Is Malter International an associate member?

A. I believe they may be.

Q. Is Mayo, Lynch an associate member?

A. Yes, they are.

Q. Is Kupper Engineering an associate member?

A. Yes, they are. We have a hundred and sixty some associate members, so the few that you have named certainly are not representative of the entire hundred and sixty.

Q. How does that compare to the number of full members?

A. We have 81 authorities as members.

- Q. So you have twice as many associate members?
- A. That's correct.
- Q. Is Mr. Porro, or has he been, counsel?
- A. Yes, he has in the past.
- Q. He was one of the founding members of the association?
- A. I believe he was one of them, yes.
- Q. Now, I understand that the association conducts seminars on various problems --
- A. Yes, we do.
- Q. -- that an authority might encounter in its business?
- A. That's correct.
- Q. And you send out a newsletter?
- A. Yes, we do.
- Q. And you take positions on legislation?
- A. Yes, we do.
- Q. Is there anything else you do?
- A. We do a wide variety of things. We take surveys, statewide surveys on user charges and salaries. We have conferences, as you mentioned, but I think it's important to note that those conferences cover a wide range of things from the latest technological development, to new legislation, to labor relations, to new regulations, and we try very hard to educate our membership in every way that we can to any new developments.
- Q. Do you know, does the association -- I say "you," talking about the association -- does the association know how many municipal utility authorities and sewerage authorities

there are in the state of at the present time?

- A. No. As a matter of fact, we have been asked to provide that information to the Department of Community Affairs, which we found a rather strange request to a trade organization inasmuch as every time an authority is created and every time even a new member is appointed or reappointed, this information is filed in Trenton. Obviously, no one has been keeping track of it. I know authorities, many authorities, that for twenty years of their existence have filed this information as well as their audit report every year.

The Secretary of State is provided with a copy every time a member of an authority is appointed, and bond counsel reviews. This has been done at any bond closing. It seems to me there's some lack in the state level that they haven't been able to accumulate this data; perhaps lack of staffing.

Q. Do you know what the amount of Federal grants to authorities has been from 1970 to the present time?

A. I would have that information in my office. I don't have it with me, certainly.

Q. We had a witness here testify that it was in excess of \$1,500,000,000 in Federal grants from 1970. Would you dispute that?

A. I would have no reason to dispute that. I believe you probably have that information correctly.

Q. Do you know the amount of state grants to authorities from 1970 to the present time?

A. I don't have that data with me, no.

Q. Would you disagree with a witness who said that it was in excess of \$150 million?

- A. I wouldn't disagree if it was a witness who has that information.
- Q. Do you know what the amount of bond proceeds that have been generated by bond issues by authorities from 1970 to the present time?
- A. No, I don't. I don't think as president of this association I'm expected to have all that data at my fingertips.
- Q. I'm looking for help and for information, Mrs. Quabeck. Do you know what the total amount of user charges from 1970 to the present time are?
- A. No, sir.
- Q. In any event, you would not quarrel with a conclusion that authorities receive by way of grants from state and Federal governments, and generated by bond issues and by user charges, enormous sums of money?
- A. I would agree with that.
- Q. Would you agree that these bodies which receive enormous amounts of money have little or no regular ongoing supervision by a state or Federal regulatory body?
- A. With regards to financial control?
- Q. Yes.
- A. I would agree with that, and we have never taken any other position. We have supported the idea that there should be more fiscal oversight and development of reasonable financial controls over authorities and we have never opposed that concept. On the contrary, we have made every effort to participate in the development of such program.

Authorities Association's Views on Oversight

- Q. How, for example, would you help to insure that there was greater financial

responsibility and greater financial oversight? Would you, the association that is, for example, encourage the use of a uniform accounting system?

A. Absolutely. We have supported that. I believe that's in your records. We submitted an agreement that we reached to proceed and cooperate in every way in the development of that. Our agreement with Mr. Skokowski was that that would have to be a logical first step. From there, when that uniform accounting was in place, we would like to cooperate in developing further financial controls. He agreed with us that it would be extremely difficult to come up with any reasonable financial controls until we had that uniform system of accounting in place.

Q. And these uniform accounting reports would go to some state regulatory body?

A. That's correct.

Q. Would the association also agree that, if some state agency is to receive uniform audits, it ought to have the power to do something about what's shown or not shown in those audits?

A. I certainly think we would support further steps that would give them power depending upon what power you're talking about. The only legislation that we have seen to date has gone far beyond any legislation that could be considered reasonable.

Q. So that you are at least in agreement that there ought to be a uniform system of accounting, and that those audit reports ought to be filed with a state regulatory body?

A. Very definitely.

Q. And you are also in agreement that the state regulatory body that has those reports ought to have the power to do something about what's disclosed in those reports. Isn't that so?

A. That's correct.

Q. So your quarrel, really, then is with the extent to which a state regulatory body could do something about what's shown in finances of an authority?

A. Yes. Our quarrel was with a specific piece of legislation --

Q. Well, okay. I don't want --

A. -- which was far beyond what you're discussing.

Q. Mrs. Quabeck, let me interrupt for a second because I don't want to get hung up in any dialogue between us or with you, the association and the Commission, on a specific bill. What I am really trying to do is find out what we can do to correct some of the problems that we have seen here during these hearings, so if we can for purposes of this question put aside specific legislation.

A. I find that difficult, though.

X X X

Q. You have agreed with us that a uniform system of accounting ought to be instituted. Isn't that so?

A. That's correct, we support that.

Q. You agree that ought to be filed with a state regulatory body. Isn't that so?

A. Yes.

Q. You agree the state regulatory body receiving that report ought to have the authority to do something about it. Isn't that so?

A. Yes, within reason.

Q. So that I conclude, and I am hoping you will agree with me, that the only quarrel you really have, then, is the extent of that authority over --

A. That's correct.

Q. -- a particular municipal utility authority?

A. Yes, yes.

Q. Is there presently within the state any body that an authority can go to, say, a new authority or an authority that is encountering problems with which it has had no previous experience, any state body it can go to get help, such as the municipal government can go to the Division of Local Government in the Department of Community Affairs?

A. I should think they can go to the Division of Local Government, Department of Community Affairs.

Q. But, in fact, no such body exists at the present time; isn't that so?

A. No such body that --

Q. No such capacity exists now in D.C.A.?

A. Evidently that must be true if they don't even have a census of authorities.

X X X

Q. Would you agree with me that many members of municipal utility authorities and sewerage authorities receive their appointment on political rather than the basis of merit?

A. I'm sure that's true.

Q. Has the association done anything about that?

A. No, sir.

Q. Would you agree that many of the chief executive officers of authorities receive their appointments on a political basis and they are unqualified for that job?

A. I couldn't make a statement as to how many are qualified or how many are not. I certainly would agree that I'm

sure a lot of them are political appointments, just as there are in many other levels of government. This is certainly not unique to authorities, and it is also true of state authorities as well as local authorities. There are appointments, many of them political. It does not necessarily mean they are not qualified individuals.

- Q. Would you agree that many of the authority members have little or no experience in running authorities with the kinds of dollars we're talking about and the kinds of technical problems that an authority deals with?
- A. That many do not have? I really couldn't make a statement to that effect. I don't know how many may or may not have experience. I am acquainted with some who have a great deal of experience and expertise in that area.
- Q. Has the association found that many of the operators of sewage treatments plants have little or no experience or knowledge of the chemicals they are using to treat wastewater?
- A. I really have no knowledge of that. I know that our association has taken a very active role in several committees to develop licensing requirements and regulations, and we certainly are always encouraging any kind of participation we can at our conferences and seminars from people who do have expertise in various fields.
- Q. Has the association found that many authorities lack any kind of inventory controls or other system which would enable the authority to know whether excess amounts of chemicals have been purchased or chemicals purchased which are totally useless for treatment?
- A. No, I would have no information on that. I don't think a trade association such as ours with no full-time staff can be expected to undertake those things.

Q. Has the association looked into the question of whether authorities are paying excess spreads or excess commissions to underwriters for bond issues?

A. No, sir, we have not.

Q. Have you looked into the question of whether people are working as both financial advisers to an authority and to the underwriters for that authority?

A. No, sir, we have not. When you say we have looked into, if you mean have we conducted a survey or an investigation, that is not our function. Some of these things that you're discussing are certainly topics at our seminars, and information that comes from our seminars is published in newsletters, but we are not an agency that would undertake surveys or things you suggest. I'm really not sure what you mean when you say have we looked into.

Q. Well, you told us before about the surveys you have taken, including one on user rates. I'm trying to find out whether you have conducted any inquiries, surveys, or taken any steps to find out whether, let's change it a little bit, on a number of different levels, whether authority members understand bond issues or whether they have been subject to a situation where excessive commissions have been paid.

A. I know that -- I have not undertaken a survey, no. But we certainly had on our program not too long ago a very extensive program on one of our seminars on bonding. We have not undertaken a survey. I don't know how you would take a survey to find out if people understood it, anyway.

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What the Authorities Association Would Support

Q. Let's go back to the question of solvency. Would you agree that if a system of uniform audits, uniform

reporting audits is instituted, and that goes to a state regulatory body, that there then ought to be some mechanism for that state regulatory body finding out whether there are danger signals in that financial report that would cause alarm?

A. Absolutely. We fully support that, yes.

Q. And further beyond simply recognizing those red flags, the state regulatory body ought to have authority to do something about that?

A. I would agree with that. Again we come down to the same thing as before; it's the question of the amount of power.

Q. The degree?

A. And degree.

Q. How far they can go thereafter?

A. That's correct. We feel very strongly, we don't feel power should be given to the Local Finance Board which would substitute their judgment for the judgment of elected officials in counties and municipalities.

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Q. Generally, would the association support the same kind of oversight of municipalities and counties that exists now, that same review of authorities? In other words, authorities would be subject to the same kinds of review as municipalities and counties?

A. As I think I told you in a closed session, I'm not an expert in county law or municipal law. I don't know exactly what that review entails. However, I don't think we would oppose similar reviews. If you're talking about budget review and that type of thing, we probably would not. We would probably support that.

Q. And would you place the same responsibility, the same accountability on authorities that presently exists for municipalities?

- A. Probably I would, yes.
- Q. Would you agree that, as far as financial matters are concerned, municipal utility authorities ought to be subject to the same kinds of supervision that a municipality is?
- A. Probably, yes, but there again, you're making a general statement and I don't really know exactly what type of supervision or controls you're talking about. I don't feel that I'm qualified to answer those questions.
- Q. Okay. Has the association, then, ever undertaken to make any kind of a comparison between the supervision and accountability provisions that exist for municipalities and counties --
- A. Yes.
- Q. -- compared to --
- A. Yes, sir.
- Q. -- authorities?
- A. We have in connection with our examination and study of the proposed legislation.
- Q. Well, then, I would think you would be able to answer those questions as to whether or not the association would agree that authorities ought to be subject to the same kinds of financial accountability as municipalities are.
- A. I'm only familiar with the controls contained in this legislation which we examined. But you ask a very general statement. There are all sorts of controls over municipalities that weren't touched upon in this legislation. I'm just not acquainted with those.
- Q. Can you tell us, Mrs. Quabeck, what the association would support? I have heard you say that you would support the uniform system of accounting; that you would support that information

being filed with some state regulatory body; and that you would support giving that state regulatory body some authority to do something about what they see in those financial reports.

A. Yes.

Q. Anything else beyond that?

A. We supported that as a first step, and we reached agreement with the Division of Local Government that, once the uniform system of accounting was in place, there should be then from that developed, we called it, a red-flag system of warning of those municipalities which may be on the verge, authorities which may be on the verge of financial difficulty. We were unable to obtain or elicit the information from the Division of Local Government of exactly what steps they would take from there on in. However, they agreed that they could really do nothing further with control until this system was in place. So the agreement, which I believe we filed a copy of it with you, was that this should be in place for a year or two and from that point we would work to develop further controls.

Q. I venture to say on my own behalf, and maybe other Commissioners would agree, that we may be in more of a hurry than that.

Would you agree that the public interest, in fact, demands the kind of oversight we're talking about to protect the public interest in view of the tremendous sums of money that are involved with authorities?

A. I would certainly agree that there should be financial controls, yes.

THE CHAIRMAN: Madam, you said at the outset that there were many authorities, sewage authorities and many, many members of those authorities doing outstanding work. I want you to know that in our announcement of these hearings we made that same statement; we made it four or five times during this pro-

ceeding, and we fully, fully agree that there are very many authorities that do an excellent job and many fine excellent people serving those authorities. We want no misunderstanding of that.

THE WITNESS: Thank you. We do appreciate that. Unfortunately, this is not always what the media picks up, which is why I felt it important to make that point.

THE CHAIRMAN: That's why we repeated it so many times.

State DEP Supports Authority Oversight

Arnold Schiffman, Director of the Division of Water Resources in New Jersey's Department of Environmental Protection (DEP), testified that regulatory oversight of authorities should be undertaken without sacrificing safeguards against water pollution. He testified in part:

Q. To what extent does the New Jersey Department of Environmental Protection regulate and supervise the day-to-day activities of sewerage authorities and municipal utilities authorities?

A. We do not supervise the day-to-day activities other than in terms of compliance with our permits to discharge pollutants to the waters of the state.

Q. Does the New Jersey Department of Environmental Protection supervise construction grants?

A. Our responsibility is in several areas. We supervise the planning aspects to make sure that what is built needs to be built; we supervise the design of the facilities since Federal and state dollars are paying for them; and we do supervise items such as payments, change orders, and general areas dealing with what we call the construction phase.

Q. Would you agree that your supervision is only to a limited extent?

A. In the construction phase, yes. In the planning and design, it's of a substantial nature.

- Q. Does the Department of Environmental Protection have any position regarding whether there is a need for oversight of authorities, the areas that need oversight and the body which should conduct that oversight?
- A. The department has always had a concern about the fiscal issues that have been raised here, and would certainly support the need for oversight in the manner that's been discussed here previously. I would have one caveat, one concern only, and that is; any body at the state level that regulates the fiscal aspects of a sewerage authority, that there be something that specifically says that dollars shall be made available to meet the terms and conditions of permits and orders issued by the department so that we don't have to have a situation where we are polluting the waters of the state, we order it corrected and another government agency says, well, there's a problem in approving the necessary expenditures.

Sewerage Plant Construction No Longer Closely Monitored

George R. Goldy, chief of the DEP's Bureau of Construction Control, called for restoration of his bureau's once effective construction inspection system at sewerage plant sites. His testimony:

- Q. And what are your duties?
- A. My duties are to oversee the Step III construction phase of the Federal, the projects that are built with the Federal and the state grant funds.
- Q. Do you have any engineering background?
- A. Mechanical/industrial engineering. I am a graduate of Drexel University.
- Q. When were you hired by the D.E.P.?
- A. In 1971.
- Q. What position and what duties did you have with the D.E.P.?

A. In 1971, when I was hired, I was a senior environmental engineer, and my duties at that time were the review of plans and specifications for new sewerage facilities.

Q. Did you become involved in the inspection group of the D.E.P.

A. Yes, I did. In 1972, February to be exact, I was asked to form an inspection unit to inspect the Federal and state-funded project. This was at the request of the then Commissioner, Mr. Richard Sullivan, who wanted the inspection of these sites once a day.

Q. When was the last year that that group operated?

A. The last year that that group operated was 1980. The last full year was 1979.

Q. During the last full year how large was the staff of that group?

A. The staff of the group in 1979 was, beside myself, was three engineers, 27 construction inspectors, and two environmental inspectors.

Q. In the last full year of the operation of that group what, if anything, did that group do regarding sewerage authorities and municipal utilities authorities?

A. In the last full year of operation, 1979, we performed in excess of 18,600 construction inspections, and in excess of 2700 environmental inspections.

Q. When you say inspections, what specifically was done?

A. This was when a representative of the construction group visited each construction site on a daily basis during the course of the construction of the project, of each contract of the project.

Q. Were these inspections announced?

A. They were not.

Q. Were they on a daily basis?

A. Yes, sir.

Q. How many problems did you find?

A. Problems by our definition were, when we visited the site, if we saw something that was not in accordance with plans, the plans and specifications, it was a problem at that time. During the course of the year we found 137 recorded problems. The year I'm speaking of, of course, is 1979. Of this 137 problems, 70 became violations. When a violation notice is written, the grantee, the engineer, the Federal E.P.A. are all notified formally and it does put the grant funds in jeopardy.

Q. What do you mean by "violation"?

A. A violation is that when something is not being built according to the specifications and the drawings, we have, of course, the right to go in there and to tell them to go back and correct it because we did, of course, approve these specifications and drawings prior to their starting construction.

Q. Did there come a time when your construction control group was disbanded?

A. That's correct.

Q. Why was that?

A. In August of 1980 the group was moved to the enforcement section of our division. It was moved at that time because the division was reorganized and the construction effort was put into enforcement and the inspectors in that particular section were given much broader responsibilities.

Q. How many inspections are now conducted of municipal utilities authorities and sewerage authority projects?

- A. In 1981 there were 381 construction inspections performed by the inspectors from the enforcement section.
- Q. This is from a 1979 number -- the number was 18,000?
- A. That's correct, sir.
- Q. What group are you presently in charge of?
- A. I am still in charge of the Construction Control Group, which, of course, is now staffed by twelve engineers.
- Q. Does that group conduct any inspections of municipal utilities authorities and sewerage authority projects?
- A. We conduct under the delegation agreement one formally announced inspection per quarter. We do get out there as frequently as time will allow during the quarter. However, it is far from a daily basis.
- Q. And these inspections are pre-announced, are they not?
- A. The quarterly inspections are, yes.
- Q. When your inspection is pre-announced, what are your changes of finding anything wrong?
- A. Very slim.
- Q. Is there a need for day-to-day inspection of municipal utility authority and sewerage authority construction projects?
- A. In my opinion, yes, sir.
- Q. Do you have any recommendations for this Commission?
- A. I recommend that they, very strongly, that they consider re-establishing a state inspection unit to oversee the construction of sewerage facilities in this state, both funded and non-funded.

- Q. What was the cause of the problems, the violations that you observed in the years that you were conducting the 18,000 inspections?
- A. The cause of the violations that we were conducting can be attributed almost across the board because the projects and the quality of the construction on the project is contingent upon the competency of all the participants, both from the grantee and/or the engineer and/or the contractor, and one of the factors that we found, of course, as a contributing factor was the part-time authorities that are in the state. I do not believe, in my judgment, that the authority members in applying for a grant many times realize the complex procedure that they are involving themselves in.

Enactment of Authority Oversight Legislation Urged

The final witness of the Commission's public hearing was Barry Skokowski, director of the Local Government Services Division in the State Department of Community Affairs. Skokowski, who had testified at the start of the proceedings, was questioned about his recommendations for statutory regulation of authorities by the SCI's Executive Director James T. O'Halloran. Excerpts from Skokowski's concluding testimony follows:

- Q. Have you and your staff conducted a study and compiled a report of recommendations with regard to MUA's?
- A. Yes, sir.
- Q. Would you give the Commission, please, the benefit of your recommendations?
- A. Yes, sir. I recommend that legislation be enacted similar to the concept espoused in Assembly Bill 144 and Senate Bill 1516 and 1517. I say similar in concept. There are technical changes that we would obviously like to see made.

But the concept in those bills if enacted would give oversight responsibilities to New Jersey's Local Finance Board and the Division of Local Government Services in the Department of Community Affairs. Some of the

proposals in the pending bills of great significance include the following: And by the way, I should point out, these proposals are very similar to those proposals that effect municipal and county governments and they are not new, and where they are new I will identify them for your review and consideration, if that's okay with you.

One. We recommend a provision as in Senate Bill 1517 that would allow the director of the cognizant state agency the power to summon local authority members and employees in order to review financial practices where warranted. There are safeguards in existing statute and appeal procedures to make sure that that would not occur for minor reasons or to be of any small nature. The practices would have to be quite severe.

The bills before us would also require the filing of local authority budgets with the cognizant state agency and would recommend, I would recommend, the filing of authority resolutions involving financial affairs.

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I further recommend the public bidding of bond issues similar to the requirements for municipal and county governments outlined in N.J.S.A. 40A:2 et seq. An authority, however, should be granted an exception to the public bidding requirement only if it can demonstrate that another funding method was less costly and correct.

I further recommend the establishment and maintenance in the cognizant state agency of an official registry of local authorities, of their creation. I should point out that every square inch of the state of New Jersey is incorporated and we know where the governments are. Unfortunately, we don't have that same situation with local authorities.

Additionally, I recommend that financial advisers be prohibited from also serving in the capacity of underwriters for the same authority, and, of course, vice versa.

Also, there should be appropriate disclosure of fees paid, underwriting spreads, and expenses of bond counsel and other fiscal advisers.

I also believe that we should enact legislation that would require expeditious state approval when an authority has to renew temporary financing instruments.

I further recommend the implementation of a code of ethics for officials of local authorities.

I also recommend that the state provide technical assistance and training to local authority officials regarding the about-to-be-promulgated requirements of the accounting and financial reporting that we are working on right now.

SCI's Concluding Statement* Promises Continuing Probe

Chairman Lane brought the four-day public hearing to a close with a statement which promised continued surveillance and a timely submission of its proposed reforms to the Governor and the Legislature. The Chairman said, in part:

While these proceedings are at an end, our investigation of regional, county and local authorities, and sewerage authorities in particular, will continue with full force and vigor. In fact, as a result of public reaction to the highly professional press coverage of the events which transpired in this chamber, the SCI has already received on a confidential basis a number of new leads to managerial and operational misbehavior at authorities other than those exemplars cited during the course of this public forum. Meantime, the

*The Commission prefaced its closing commentary with a public tribute to Commissioner John J. Francis, who wound up his term at the SCI at the conclusion of the public hearing. Speaking for his fellow commissioners and the SCI Staff, Chairman Lane noted that Commissioner Francis had since 1979 "played an extremely active and effective role in many important investigations and has devoted many hours at the SCI at great sacrifice to himself and to his law firm. This Commission and the people of the state of New Jersey are deeply indebted to him for the wisdom and dedication which he brought to us and for his assistance to the SCI in bringing about needed legislative changes. We are indeed sorry to see him leave. We have all enjoyed very much our association with John Francis over these years and wish him continued success in his career."

Commission will, within a few weeks, submit to the Governor and the Legislature a detailed documentation of its own corrective recommendations.

While I can only suggest at this point the problems our proposals will attempt to resolve, I can say unequivocally that our recommendations will be aimed at a single overall objective; that is, to remove the curtain of secrecy around authorities that has enabled so much of the misconduct disclosed at our hearings to proliferate.

An illustration of the need for urgent action to make sewerage and other local authorities more publicly accountable for their conduct is immediately at hand in this legislative chamber. There are a number of bills pending in the State Senate that, if enacted, would authorize the distribution of almost \$100 million in additional grants to improve, reconstruct or replace local sewerage and public utility facilities, with no adequate system yet in place to assure that these taxpayer dollars will be properly spent.

One of these bills, Senate Bill No. 24, would authorize a seventy-five-million-dollar Local Water and Sewerage Facilities Bond Act to halt what it declares to be a "steady deterioration" of aging facilities. We can only wonder, in view of the litany of transgressions recorded at these hearings, whether much of this costly deterioration can be attributed to managerial deficiencies and operational misconduct of the closed-door authorities who run these plants.

Further, there is Senate Bill No. 1421 which would disburse more than \$15 million from a 1980 Natural Resources Bond Issue to certain local government entities, including some of the very authorities whose misdeeds have been confirmed by testimony at our hearings.

This bill, for example, would allocate almost \$3 million to the Cape May

County Municipal Utilities Authority. We recorded testimony only the other day about the manner in which this same authority spent excessive sums of money for a sewerage plant site in the basis of inflated values established by a totally unprofessional appraiser who saw no conflict of interest in serving both the authority which bought the land and the seller. This same bill would also hand over more than one-half million dollars to the Western Monmouth Utility Authority, the same authority cited by witnesses at this hearing as having secretly arranged a bond issue financing deal that, as the alleged result of a one-hundred-thousand-dollar bribe, generated excessive profits of additional hundreds of thousands of dollars to the underwriting company. And there is yet another money bill, Senate Bill No. 790, appropriating almost \$1,500,000 to establish an annual subsidy for regional, county and municipal utilities and sewerage authorities in the form of a cash reimbursement for up to two percent of their operating and maintenance expenses. While this particular bill says it would require any subsidized authority to be accountable for the way it spends these funds, there is absolutely no provision for assuring that such accountability will be achieved. Based on the misdeeds of the sewerage authorities cited at these hearings, this bill could mean only that another million and a half dollars of taxpayer dollars could be literally flushed down the drain.

The Commission does not oppose these proposed legislative appropriations. There probably is an urgent need for the rehabilitation of many of the older utility and sewerage plants in various localities in this state. However, based on our investigation of local sewerage facilities and on the dismaying evidence of authority misbehavior recorded at these hearings, the SCI strongly questions the propriety of handing out more millions of dollars of public funds without first establishing a centralized

governmental mechanism for guaranteeing that these tax dollars won't be squandered or stolen.

What kind of governmental mechanism is needed to make the authorities at issue here more accountable to the public? We have heard a series of expert witnesses whose testimony has included dozens of suggestions for more stringent oversight of the construction, financing and operation of sewerage authority facilities.

State Local Government Services Director Skokowski and former State Treasurer Goldman have endorsed legislation pending in this Senate chamber and in the Assembly down the hall which would empower the state to assume supervisory controls over local authorities to the same extent that the state now regulates the budgets, the general spending and the debt limits of all counties and municipalities in New Jersey. The SCI is in full accord with these views and will, in a subsequent detailed report, specify which provisions of such bills as Assembly No. 144 and Senate Bills 1516 and 1517, or which combinations of the contents of these and other similar bills, will in our opinion best assure that sewerage and other local authorities are operated for the benefit of the public they are supposed to serve rather than for the self-serving special interests of politically partisan authority members, of untrained and even dishonest plant operators and of unsupervised and unqualified contractors and financial and other technical consultants.

Let me reiterate that we realize, of course, that many local sewerage authority facilities are properly managed and operated. However, our public hearings have illustrated, by means of testimony given under oath, that there also are too many black-sheep authorities doing business in this state in a manner which violates even the most minimal standards of propriety and integrity.

No local authority that is behaving itself and properly serving its taxpaying public can logically object to laws that will require all authorities to be more candid and open in the manner in which they finance their plants, appoint key personnel and authorize, record and audit their day-to-day operational expenditures.

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In summary, the Commission has demonstrated throughout four days of extensive public hearing testimony the multitude of ills that plague sewerage authorities. In this final public hearing statement we have indicated the course we intend to pursue both in connection with a full exposition of our recommendations and a continuation of our investigation. The law which governs the operation of the SCI requires that we submit recommendations to the State Senate and Assembly within 60 days after the conclusion of a public hearing. We plan to transmit such recommendations well within that deadline. We hope our lawmakers will view these proposed reforms with the same sense of urgency that we ourselves feel. The Commission plans to work as assiduously in pressing for expeditious enactment of its reform proposals as it has in exposing the problems they would resolve to public view.

Finally, the Commission wishes to commend the hard work and professionalism of its staff members who have contributed so much to the SCI's investigation and hearings. In particular, we want to publicly recognize the valiant efforts of our lawyers, Mike Coppola, Bob Geisler, Jim Hart, Gerry Lynch; our investigating team's special agents, Wendy Bostwick, Joe Corrigan, Bob Diszler, Mike Goch and Dick Hutchinson; our investigative accountants Art Cimino, Honey Gardiner and Chris Klagholz; and our secretaries, Cheryl Calcese, Carol Nixon, Emma Raywood and Diana Vanderhoff. They have done a magnificent job and we thank them for it.

RECOMMENDATIONS IN DETAIL

Preface

The Commission's recommendations on county and local authorities were submitted to Governor Thomas H. Kean and to the Legislature on September 22, 1982. Transmittal letters to the Governor and to Senate President Carmen A. Orechio and Assembly Speaker Alan J. Karcher stated as follows:

This Commission respectfully submits the enclosed draft of recommendations based on its public hearings July 27-30, inclusive, on the subject of county and municipal sewerage and utility authorities. This transmittal is in accordance with the statute governing the Commission's operations, N.J.S.A. 52:9M-1 et seq, which states in Section 9M-4:

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

Under that provision the deadline for transmitting these recommendations is Sept. 28. This time frame prevents us from including our full report on the public hearing with this enclosure. Although that report may contain more details, the enclosed draft represents the Commission's essential proposals for making local authorities more accountable to the public and to the taxpayers they are specifically created to serve.

You will note that the draft is prefaced by a brief summary of the Commission's views on the need for implementing these proposed reforms as expeditiously as possible. The Commission also suggests in the draft that the cost of funding these proposals need not necessarily add to state government's current budget problems.

The Commission of course is prepared to cooperate fully in any discussions of these recommendations and in connection with any subsequent decisions to implement them.

Recommendations

The Commission's recommendations address 1) pending legislation, 2) bond financing, 3) State assistance to authorities both of a general and fiscal nature, 4) upgrading of authority membership standards, 5) upgrading of authority executive staffs, 6) expanding the Division of Environmental Protection's construction monitoring obligations, 7) penalties for noncompliance, and 8) funding state oversight of authorities.

Pending Legislation

S-1517 and A144: The Commission recommends the enactment of Senate Bill #1517 or Assembly Bill #144, except that it is opposed to a provision empowering the State Division of Local Government Services' Local Finance Board to dissolve an authority.

The Commission agrees with the declarations of legislative intent in these bills that State approval of project financing by authorities and State supervision of their internal financing conduct is necessary "in order to assure their financial stability and integrity." These bills would carry out such legislative intent by requiring:

- State approval of the creation of an authority.
- State approval of project financing.
- State approval of annual authority budgets.
- State approval of financial audits and other fiscal reports to be submitted with prescribed uniformity.

These legislative provisions are in accord with the Commission's belief that the State should exercise the same successfully tested supervision over local authorities as it has had over the financial conduct of counties and municipalities since the 1930s. The Commission therefore also subscribes to other provisions of this legislation that would empower the State to take effective remedial action to resolve local authority financial emergencies.

As for the legislative provision empowering the State to dissolve an authority, the Commission regards this as unnecessary and impractical. The Commission does, however, support provisions that would empower a local governing body, or bodies, to dissolve an authority of its or their own creation, subject to certain stringent conditions specified in the bills, including the honoring of outstanding bond covenants and other contractual obligations. In such circumstances, the State Local Government Services Division

would automatically assume a dominant monitoring roll under its present, long-established powers to regulate the financial affairs of counties and municipalities.

Authority Bond Financing

The Commission recommends that local authorities be required to adhere to all of the competitive public bid procedures laid down by the Local Bond Law (N.J.S.A. 40A-1 et seq), except that the State Local Government Services Division may at its discretion permit an authority to negotiate the sale of bonds. The Commission notes that both S-1517 and A-144 would permit negotiated offerings under close monitoring by the Division's Local Finance Board. The Commission believes that State supervision of authority financing should be supplemented by additional regulatory requirements for negotiated bond transactions, including:

-- Submission by an authority of the names of prospective underwriters to the Local Finance Board.

-- Identification by an authority of all other key individuals or entities involved in a bond sale -- including but not limited to paying agent, trustee, auditor and financial advisor -- to the local Finance Board prior to the actual transactions.

-- Filing with the Local Finance Board of a transcript of all details of any negotiated financing, including an accounting of the disposition of proceeds and the amounts and methods of payments of fees and/or commissions. Such a filing should be structured according to a standardized format prescribed by the board and should be a public record.

The Commission recommends that the Local Finance Board promulgate a regulation prohibiting a financial advisor or any other advisor to an authority from serving in any capacity as an underwriter, or vice versa.

The Commission recommends that the Local Finance Board proscribe the payment of fees on a per-bond basis or any other basis that could provide incentives for promoting a larger bond transaction than might be necessary. Fees to bond counsel, financial advisors and other professionals acting on behalf of an authority should be paid on a per-hour or per-project basis.

The Commission recommends that the approval of the Local Finance Board be required

before an authority can renew any temporary financing instrument.

State Assistance to Authorities

The State Division of Local Government Services should provide assistance to local authorities of a form and nature relevant to their particular needs, problems and obligations, including:

1 - Code of Ethics

A model Code of Ethics should be compiled to which all authority members and officers must subscribe under oath, with provisions for hearings of alleged violations and penalties for noncompliance, including fines, suspensions and dismissals.

2 - Standard Audit Guide

A Standard Audit Guide to enable authorities to comply with State requirements for uniform accounting and financial reporting should be promulgated and continually updated. This manual, which is presently being developed, should accommodate the particular financial concerns of various types of authorities and should reflect the requirements of the accounting profession, the investment community and all related Federal and State laws and regulations. Such a manual should include an early warning system for detection of impending financial or operational crises of authorities.

3 - Technical and Professional Training

Provision should be made for technical assistance and training of appropriate authority members and administrative and operational staff executives in connection with new statutory requirements for uniform accounting and financial reporting as well as with related existing laws such as the Local Public Contracts Act. A training program should also be instituted for Division officials and employees who will be responsible for assessing uniform authority financial reports and budgets, particularly from the standpoint of detecting threatened fiscal or operational emergencies.

4 - Registry of Authorities

An official Registry of Authorities, which should include their type, the extent of short-term and long-term indebtedness, user fees or charges, the total of the most recent annual budget and estimates of revenues and expenditures, the number of employees by title or job classification, and the most recent annual salaries of executive directors and licensed plant operators, should be established and maintained. A registry filing fee of \$50 should be assessed. All fees in connection with this registry requirement should be applied against the cost of establishing and maintaining it.

In order to increase the stability and integrity of project and operational financing of local authorities, the State Local Government Services Division should:

- 1 - Offer bond financing advisory assistance to authority members and staff executives including but not limited to the preparation and distribution of guidelines explaining all facets and procedures of debt financing. Such guidelines should emphasize areas of potential error and/or abuse in undertaking bond financing transactions.
- 2 - Periodically distribute a continuously updated list of pertinent technical publications, including those of the New Jersey Municipal Finance Officers Association.
- 3 - Expand the free technical debt management assistance currently available to local governments to encompass the specific concerns of authorities.

Upgrading Authority Membership Standards

The Commission was appalled by public hearing testimony that demonstrated the inferior quality of appointments by certain local or county governmental entities to the authorities these entities created. The hearings demonstrated that an appointive process based too often on political connections rather than on merit generated sorely inadequate upper-level policy guidance, ineffective managerial controls and blind reliance on often incompetent staff. The testimony also confirmed that the absence of any requirement for public accountability shielded for too long the misconduct that some unqualified authority members participated in at worst or closed their eyes to at best.

Membership Composition

The Commission recommends that, in the event the State assumes responsibility for the creation of authorities, any new authority's membership be required to include a professionally accredited engineer and at least one other member who is 1) a lawyer with an acknowledged professional background in governmental, corporate or bond law, or 2) a fully qualified representative of the financial community, or 3) an individual with proven academic credentials and experience in business administration.

Financial Disclosure

The Commission recommends that failure to comply with a statutory requirement that authority members submit personal financial disclosures designed to prevent conflicts of interest at a time and in a form prescribed by the State Division of Local Government Services be subject to mandatory fines of a substantial nature against both the affected member and the authority itself. Copies of such disclosures should also be filed with the appropriate office of the Division.

Upgrading Authority Executive Staff

The Commission recommends that the quality of executive directors, plant operators and other key administrative, professional and technical staff employed by authorities be upgraded by the following Division actions:

Mandate Employment Qualifications

Minimal but nonetheless exacting qualifications should be mandated by the Division for appointment of executive directors or others with similar responsibilities for overall administrative supervision of an authority plant. A college education, with an emphasis on business administration or engineering

should be necessary, as well as a specified amount of previous working experience in sewerage and/or utility operations. A proven career background with a facility should be acceptable as an alternative to the requirement for a specialized educational background.

Requalify Licensed Operators

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

Expand Training Programs

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

Require Purchases by Competitive Bid

All authority employees with responsibility for purchasing materials essential to the operation of sewerage or utility plants must be required to subject all such purchases to competitive public bids.

The Division should establish a list of pre-qualified vendors of chemicals deemed essential for the adequate operation of treatment and purification facilities.

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

State DEP Construction Monitoring

The Commission recommends the immediate restoration of the DEP's former construction inspection service and the resumption of this unit's responsibility for monitoring publicly funded projects on an unannounced, daily basis. The Commission points out that

since this service was curtailed in a reorganization process in 1980, according to testimony at its public hearing, there were only 381 construction inspections during 1981, compared to 18,600 construction inspections and more than 2,700 environmental inspections during 1979, the last full year of the department's former inspection service.

Penalties for Noncompliance

Audit Filing Delays by Authority Members

The Commission recommends that fines of \$100 daily be assessed against authority members if they delay, without just cause, the filing of annual audits beyond the prescribed four months following the close of a fiscal year. These fines would be a personal liability of the individual authority members affected.

Audit Filing Delays by Authority Auditors

The Commission recommends that fines of \$100 daily be assessed against any authority auditor who fails, without just cause, to comply with the Division's annual audit filing deadline. Such fines would be a personal liability. In addition, the facts of such noncompliance should be referred to the Board of Certified Public Accountants for hearing action and possible sanctions by it.

Funding State Oversight of Authorities

The Commission recorded public hearing testimony indicating that, under present state budget limitations and restraints, state funds would probably not be available to pay the cost of proposed state oversight of authorities or to restore the previous system of monitoring authority construction grants. However, because of the importance of its recommendations to the taxpayers of New Jersey in general, and the captive clients of authorities in particular, the Commission felt it had an obligation to at least suggest how its recommendations to make authorities more accountable to the public could be financed on a self-supporting basis.

Department of Environmental Protection

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

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

State Division of Local Government Services

The Commission heard public hearing testimony which indicated it would cost upwards of \$250,000 a year to fund the legislative proposals requiring Division supervision of the financial affairs of authorities.

The Commission's recommendations would require the state to provide valuable professional guidance -- financial advice, technical assistance and training programs -- that would improve the stability and protect the integrity of all authorities in New Jersey. These proposed services by the Division would otherwise be obtainable by authorities in most instances only at great cost. Therefore the Commission feels that a fee system should be enacted that would enable authorities to share in the cost of funding these services to them with minimal financial dislocation.

A Self-sustaining Fee System

The Commission recommends as the most reasonable method of developing a self-sustaining financing of its reforms the levying of yearly fees against individual authorities according to a schedule that reflects an authority's size, its need for various State services and other considerations.