

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION



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1997



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February 1998

Governor Christine Todd Whitman
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to
N.J.S.A. 52:9M, its 29th annual report for the year 1997.

Respectfully,

Leslie Z. Celentano

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WHY THE SCI

The State Commission of Investigation was created by law in 1968 to fulfill a unique mission of vital importance to the citizens of New Jersey: to attack organized crime and political corruption; to root out waste, fraud and abuse of taxpayer dollars; to shed light on matters that undermine public justice and public safety; to recommend appropriate reforms and improvements in laws and in the operations of government. The Commission was given an extraordinary mandate: to pursue this all within a framework untainted by political intrusion or favoritism.

Thirty years later, this investigatory and fact-finding mission — as well as the need for an independent, nonpolitical entity to carry it out — remain no less vital.

During 1997, the Commission bolstered its record of exemplary public service with wide-ranging investigations detailing government corruption, waste of taxpayers' money and other abuses of the public trust. In each instance, the citizens of New Jersey were alerted to a range of serious problems and the need for systemic reforms:

- A comprehensive probe of municipal corruption in the Borough of Seaside Heights, Ocean County, revealed patterns of fiscal, administrative and procedural malfeasance so deep as to transform the community's governing body itself into a tool for taxpayer abuse. This investigation, the latest outgrowth of an intensified assault on local government corruption launched by the Commission in 1992, galvanized local reform efforts and led to the

recovery of thousands of dollars in taxpayer funds by various levels of government.

- An investigation of unscrupulous contract-labor providers revealed an underground economy in which millions of dollars in state and federal income taxes and other levies are siphoned from the public coffers every year. This unprecedented investigation resulted in proposed legislative reforms and in heightened oversight at both the state and federal levels.

- Pursuing its statutory authority to provide oversight of the state's law enforcement system, the Commission examined an obscure entity known as the New Jersey Detective Agency and concluded that its members — handgun-carrying civilians who believe they have full police powers — pose a distinct danger to the community. The Commission's central recommendation — that the NJDA be abolished — was endorsed by top law enforcement officials, including the Attorney General and the Superintendent of the State Police.

- An investigation of New Jersey's public school transportation industry revealed a system rife with collusion, questionable bidding practices, poor record keeping and lax oversight. The Commission's findings and recommendations provided a comprehensive framework for reforms aimed at containing the state's school-busing costs, now the highest per student in the nation.

The Commission emphasizes that the true measure of its continuing workload far exceeds investigations completed during the past year. Beyond the public activities detailed in this annual report, the Commission and its staff currently are conducting a range of significant investigations at various stages involving all elements of the Commission's statutory purview, including organized crime, political corruption and waste and abuse of government funds. In that regard, nearly 100 Commission subpoenas were served during 1997 seeking access to scores of individuals, thousands of documents and a range of other exhibits relevant to those active investigations. In a related matter, the Commission also spent considerable time and resources trying to work through a number of new operational restrictions that were inserted into the Commission's enabling statute in 1996 as a result of a special review committee process. These constraints have, among other things, delayed the issuance of a public report detailing the results and reform recommendations stemming from a lengthy investigation of corruption in the City of Orange Township, Essex County.

As in past years, barely a week passed during 1997 that the Commission did not receive requests for investigative action, assistance or advice from citizens of New Jersey. Commission records include more than 140 such citizen contacts via mail and telephone requiring evaluation and response.

Also during the past year, the Commission provided staff advice and assistance to federal, state and local law enforcement agencies in the conduct of various criminal investigations. One notable example involved a probe by the Office of the U.S. Attorney for New Jersey into police corruption and

organized crime in West New York. The investigation culminated in January 1998 with the arrests of ten persons, including the community's former police chief, by agents of the Internal Revenue Service and Federal Bureau of Investigation. In another instance, Commission staff assisted the New Jersey State Police and Division of Taxation in an investigation of motor-fuel tax fraud in Monmouth County. The probe culminated with the arrests in June of two individuals with links to Russian organized crime. Related investigations with these two state agencies continue.

In sum, 1997 proved to be one of the most productive years in the Commission's history. While continuing to find new and useful ways to fulfill its statutory mission in the service of taxpayers, the Commission also confronted the effects of continuing budgetary constraints that have diminished substantially the resources available for difficult and complex investigations. During the past seven fiscal years, the Commission's operating budget has been reduced from \$2.8 million to \$1.9 million, and its staff from 45 to 28 members. This trend should be measured against the status of this agency as a sensible investment of taxpayer dollars. The Commission has demonstrated repeatedly in the past — and will continue to do so in the future — that its operating cost is far outweighed in savings generated by efficiencies, reforms and improvements instituted as a result of its service to the public.

The Commission's public documents, including the full text of reports of investigations, are available electronically via computer and the World Wide Web. The Commission's address on the Internet is <http://www.state.nj.us/sci/>

HISTORY

The Commission was established in 1968 after extensive research and public hearings by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey (the “Forsythe Committee”). That panel was directed by the Legislature to find ways to correct a serious and intensifying problem involving organized crime and political corruption. The panel’s final report, which confirmed a crisis in crime control, attributed the expanding activities of organized crime to “failure . . . in the system itself, official corruption, or both.” As a result, sweeping recommendations for improving various areas of the criminal justice system were proposed.

Two of the most significant recommendations were for the creation of a new criminal justice unit within the Executive Branch, and the establishment of an independent State Commission of Investigation. The Forsythe Committee envisioned the proposed criminal justice unit and the Commission of Investigation as complementary agencies in the fight against crime and corruption. The criminal justice unit was to be a large organization with extensive personnel, empowered to coordinate, conduct and supervise criminal investigations and prosecutions throughout the state. The Commission of Investigation was to be a relatively small but expert body that would conduct fact-finding investigations, bring the facts to the public’s attention, refer its findings to appropriate law enforcement agencies for possible prosecution and make recommendations to the Governor and the Legislature for improvements in laws and in the operations of government.

As the Forsythe Committee stated in the final report of its comprehensive study, this would not be “a ‘crime commission’ alone. There are many occasions when hard-hitting, expert fact-finding is needed without involving the criminal process or implying criminal violations are under investigation. . . .This Commission will provide a significant, independent ‘watchdog’ for the entire system. . . .”

As a result of the Forsythe Committee’s recommendations, the Division of Criminal Justice in the Department of Law and Public Safety and the State Commission of Investigation, structured as an independent agency of the Legislature, were created. New laws were designed — effectively so, as history has shown — to prevent conflict and duplication among the functions of the Commission and the prosecutorial authorities of the state.

The Commission was given the responsibility to maintain a constant vigil against the intrusion of organized crime into society, to expose systemic wrongdoing or governmental laxity via fact-finding investigations, and to recommend new laws and other remedies to protect the integrity of the governmental process. The Division of Criminal Justice and other prosecutorial agencies were given the responsibility to seek indictments or file other charges of violations of law and to bring the violators to justice, where appropriate.

Legislation creating the SCI in 1968 established an initial term beginning January 1, 1969, and ending December 31, 1974. The Legislature extended the term of the SCI for five-year periods on four

subsequent occasions: in 1973 for a term expiring December 31, 1979; in 1979 for a term expiring December 31, 1984; in 1984 for a term expiring December 31, 1989, and in 1989 for a term expiring December 31, 1994. On Dec. 28, 1994, legislation took effect extending the Commission's term for a period of 18 months, through June 30, 1996, pending the outcome of a review by a special committee appointed by the Governor, the President of the Senate and the Speaker of the General Assembly. On February 7, 1996, the review committee recommended that the Commission's operating authority be extended for six years, until July 1, 2002. Legislation incorporating this central recommendation was enacted into law with the Governor's signature on June 28, 1996.

The unique and complementary role of the Commission has been noted repeatedly in three separate and comprehensive reviews that have been conducted of the SCI's operations — in 1975, 1983 and 1995. In each instance, the reviewing panel found that the SCI performs a valuable function and strongly concluded that there is a continuing need for the Commission's work. The most recent review report summarized this view, stating, “. . . [I]t is crucial to New Jersey that its citizens have confidence that government on all levels is operating appropriately and efficiently. The SCI is uniquely positioned to expose corruption and mismanagement to New Jersey residents and to make recommendations aimed at improving New Jersey's system of government.”

OPERATIONS

To eliminate even the appearance of political influence in the Commission's operations, no more than two of the four Commissioners may be of the same political party, and they derive from three separate appointing authorities. Two Commissioners are appointed by the Governor and one each by the President of the Senate and the Speaker of the Assembly. It thus may be said the Commission by law is bipartisan and, by concern and action, is nonpartisan. This central construct provides the Commission with the integrity and the independent stature necessary to perform its job in a credible fashion, especially where politically-charged or otherwise sensitive investigations are concerned.

The Commission is specifically invested with the duty and power to conduct investigations in connection with:

- (a) The faithful execution and effective enforcement of laws of the state, with particular reference but not limited to organized crime and racketeering;
- (b) The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
- (c) Any matter concerning the public peace, public safety and public justice.

The enabling statute provides further that the Commission shall, by direction of the Governor or by concurrent resolution of the Legislature, conduct investigations and otherwise assist in connection with the removal of public officers and in the making of recommendations to the Governor

and the Legislature with respect to changes in existing law required for more effective enforcement. The Commission also is empowered to investigate the management or affairs of any department, board, bureau, commission, authority or other agency created by the state, or to which the state is a party.

The statute assigns to the Commission a wide range of responsibilities and powers. It may conduct public and private hearings, compel testimony and the production of other evidence by subpoena and has authority to grant limited immunity from prosecution to witnesses. Since the Commission does not have prosecutorial functions, it is required to refer information of possible criminality immediately to the Attorney General.

One of the Commission's primary statutory responsibilities, when it uncovers irregularities, improprieties, misconduct or corruption, is to bring the facts to the attention of the public with the objective of promoting remedies and reforms. The format for public action by the Commission is based on the complexity of the subject and the clarity, accuracy and thoroughness with which the facts can be presented. The Commission has proceeded by way of public hearings, the issuance of public reports, or both.

Witnesses appearing before the Commission in public and private hearings are protected by the New Jersey Code of Fair Procedure, the requirements of which were incorporated in the Commission's enabling law in 1979. Constitutionally required due process is afforded under the provisions of that code, and the courts have upheld the integrity and fairness of the Commission's investigative

procedures. For example, all witnesses have the right to be represented by counsel when appearing before the Commission at public or private hearings. Additionally, any individual criticized in a proposed Commission report is, by law, given an opportunity to review relevant portions of the report. The individual may then submit a written response which shall be included in the final report. As a practical matter, the Commission always has been careful to evaluate investigative data in private in keeping with its obligation to avoid unnecessary stigma and embarrassment to individuals.

Indictments and convictions which may result from referral of criminal matters by the Commission to other agencies are not the only test of the efficacy of its public actions. At least as important is the deterrent effect deriving from the Commission's very existence, as well as the corrective statutory and regulatory reforms spurred by arousing public and legislative interest. A prime example involved the enactment of legislation in the wake of a 1992 Commission investigation of a massive, organized crime-inspired scheme to evade taxes on motor fuels. According to the state Division of Taxation, that statutory change alone has enabled the state to recover an estimated \$22 million annually in tax revenues.

The Commission takes particular pride in this and in the numerous other investigations and reports which have similarly resulted in taxpayer savings and in improved laws and governmental operations throughout its existence.

INVESTIGATIONS AND REPORTS — 1997

LOCAL GOVERNMENT CORRUPTION:

Borough of Seaside Heights

The Commission undertook an investigation into the operations of the Borough of Seaside Heights, Ocean County, in response to citizen allegations of corruption, waste of taxpayer money and other abuses. The Commission's findings and recommendations were contained in a report issued in March.

The investigation revealed that individuals in the Borough's employ were awarded questionable compensation and special services and, at retirement, lucrative benefits — all at taxpayer expense. Credit cards placed at the disposal of Borough officials were misused. The community's Public Works Department, along with its tools, machinery and supplies, were treated like personal property by its long-time director. Thousands of dollars worth of municipal damage claims were paid based upon falsified paperwork. The Commission found this situation persisted for years due to an utter lack of proper and effective oversight and accountability by the governing body and a systemic pattern of fiscal, administrative and procedural deficiencies.

Summary of Key Findings

IMPROPER ADMINISTRATIVE PRACTICES

- Borough officials ignored ordinances restricting employee compensation for accumulated sick and vacation leave at retirement or separation, and awarded expensive compensation packages that placed a significant fiscal burden on the Borough's operating budget.

- Between 1985 and 1994, the Borough made lump-sum payments or obligated itself to future payments for active, retired and resigned employees totaling more than \$1 million. The Commission questioned the legitimacy of nearly half that amount, including, in one instance, a \$300,000 "golden parachute" awarded a retiring employee in 1993. *This finding prompted the Borough to conduct an independent audit which resulted in a reduction of \$100,000 in this employee's retirement package. In another instance, information provided by the Commission to the Division of Pensions resulted in nearly \$70,000 in reimbursements for excess pension payments.*

- Job titles and financial stipends were juggled in a way that provided one employee with more than \$63,000 in inappropriate salary payments between 1986 and 1996.

- Select employees were singled out for preferential treatment in salaries and employment status. Two Department of Public Works employees received 17 percent pay hikes under circumstances that raised questions about whether proper and equitable procedures were followed. In another instance, a clerical employee — the relative of a Borough official — was granted permanent employment status the first day on the job and immediately made eligible for medical benefits, skipping the 90-day waiting period required for new employees by the Borough’s insurance carrier.

- Health and pension benefits were not administered to Borough employees uniformly. Evidence indicates that such decisions were made on an individual basis, regardless of applicable ordinances and state regulations.

- One key Borough employee crafted a special “employment agreement” for herself that called for the payment of \$7,700 for unused sick leave. The only authorization for the payment was a note from the recipient stating that it had been approved by a member of the Borough Council. The “agreement” also called for the employee to receive lifetime medical benefits to which she was not entitled.

- Favoritism governed billing procedures for water usage. Inequitable treatment was applied in determining which residents and business owners were to install water meters and whether those meters were read. Commercial properties owned by a number of

former Borough officials were among those that received favorable treatment.

FRAUDULENT DISASTER/DAMAGE CLAIMS

- In the aftermath of a December 1992 storm, the Borough collected thousands of dollars in disaster relief based upon numerous falsified damage claims filed with both the Federal Emergency Management Administration (FEMA) and with its own insurance carrier. The bogus filings contained inflated and duplicative cost estimates for labor and materials and, in some cases, claims for damage that had been the result of pre-existing conditions. *This finding led to a federal civil action that was settled in December 1997 when the Borough Council agreed to pay FEMA \$160,652, including more than \$125,000 in restitution and damages and a \$35,000 fine.*

ENVIRONMENTAL DEGRADATION

- The Borough for many years regularly engaged in the improper disposal of large amounts of concrete, debris and other materials, including blacktop, brick, fill, and steel reinforcing rods, despite repeated notices of violation from state environmental authorities. The material was dumped along the intracoastal waterway at Seaside Heights and adjoining municipalities in recreational areas used for boating and fishing.

FISCAL MISMANAGEMENT

- The investigation revealed an absence of checks and balances in the Borough's

operating procedures and a lack of internal controls for purchasing and the payment of bills. Borough Council routinely authorized payment of purchase orders without proper certification and documentation.

- Taxpayer funds were employed for a range of questionable expenditures, such as personal lunches, flowers, cards, magazine subscriptions and a cellular phone.
- A review of Borough purchase orders showed that many contained false vendor certifications, including such obviously bogus signatures as those of *Santa Claus*, *Omar the Tentmaker*, *U.R. Stuck* and *Olive Oyl*. All were approved for payment.
- Taxpayer-funded credit cards placed at the disposal of key elected and administrative officials were used to purchase approximately \$2,195 worth of various items and services, including gasoline, meals, automobile rentals, hotel lodging, tuxedo rental, photo finishing and a retirement gift.

MISSING RECORDS

- Borough financial records were discovered missing from a storage area in the attic of the Borough's public works building. Evidence developed by the Commission revealed that on two separate occasions, a Borough employee was observed removing or discarding Borough business records and files at the DPW building after hours.

MISUSE OF PUBLIC PROPERTY

- Substantial amounts of material purchased at taxpayer expense, including windows, tools, bricks, concrete, lumber and decorative stone, were purloined for personal use. Some of this material, shipped through the Borough's Department of Public Works, was stored temporarily in a locked area that came to be known to Borough employees as "the candy room." The misuse of public property was facilitated by an absence of inventory control in the Department of Public Works, which serves as the Borough's leading purchaser of hardware and supplies.
- Certain Borough residents were provided with personal services at public expense. The services included snow removal from privately-owned driveways and lots by Borough employees utilizing Borough equipment on Borough time.

CONFLICTS OF INTEREST

- The investigation revealed a longstanding pattern in which officials of the Borough repeatedly allowed their roles as public servants to blur with their private interests. In one instance, a Borough Council member and a ranking police official attended a dinner meeting to solicit political campaign support from local business owners. Those in attendance included a known associate of organized crime.

FRAUDULENT ABSENTEE BALLOTS

- An examination of irregularities and unresolved issues related to the 1991 mayoral primary revealed wholesale misuse of the absentee ballot process, including the certification of documents containing fraudulent names, suspect addresses, obvious misspellings and errors, and forged signatures.

Referrals, Recommendations and Results

The Commission referred its findings to the following agencies of government for review and whatever action is deemed appropriate: Office of the United States Attorney, Office of the Attorney General, Division of Local Government Services, Division of Pensions and Benefits, Division of Taxation, and New Jersey State Police — Emergency Management Section.

The Commission made recommendations in the following key areas:

- **Revision and Codification of Borough Ordinances and Resolutions**

A review of Borough records and witness testimony revealed inconsistent enforcement of ordinances and resolutions. During the course of the investigation, the Borough undertook a revision and codification of its ordinances. Special attention should be given to insuring that those ordinances and resolutions which are not being enforced are repealed and those that remain are consistently and fairly enforced.

- **Resolutions Documenting Personnel Actions, Retirement Agreements and Employee Contracts**

A Borough ordinance should be enacted requiring that resolutions be adopted by Council for personnel actions such as hirings, promotions and raises. Similarly, retirement agreements and employee contracts should be reviewed by the Borough attorney, approved by the full Council, and memorialized by resolution. Retirement agreements should document the basis for the calculation of economic terms.

- **Adherence to Pension Rules and Regulations**

The investigation revealed instances where the Borough has improperly inflated salaries on which pensions were based through the inclusion of items not permitted for use in pension calculations. Members of bargaining units were not all treated similarly with respect to payment of certain salary components. The Borough should strictly comply with the Division of Pension and Benefits rules and regulations regarding an employee's salary base for pension purposes.

- **Payment Policy for Accumulated Time**

The Borough should place additional limits on payment for unused sick leave upon retirement. The State of New Jersey's policy of limiting payment for accumulated sick leave to a lump-sum representing one-half of the employee's unused sick leave, calculated at the employee's current salary up to \$15,000, should serve as a guide. Such a policy is important because Governmental Accounting Standards Board (GASB), Statement No. 16, dated

November 1992 — “Accounting for Compensated Absences” calls for the measurement of accrued compensation time to be included in the liabilities of state and local governmental entities. Since funds should be reserved annually based on anticipated (future) compensated absences for which employees will be paid, e.g., sick and vacation lump-sum buy-outs, the fiscal burden on a municipality could be considerable.

- **Water Meters**

In order to promote fairness and maximize compliance, the Borough should examine the feasibility of taking responsibility for the installation of the water meters for all customers. If the Borough opts to leave the responsibility to each customer, a deadline for installation should be established and penalties set for failure to adhere to it.

- **Disaster Relief Funding Agreement**

The State of New Jersey should require recipients of disaster relief to execute an agreement incorporating, among others, the following terms: prohibition of duplicate benefits, notification of insurance coverage, and submission of an audit of agreement compliance. The State of Florida’s *Disaster Relief Funding Agreement* could serve as a guide.

- **Greater Oversight of Fiscal Affairs by the Governing Body**

The Commission has repeatedly noted the failure of local government officials to adequately oversee the expenditure of taxpayer money. This point was also reinforced in a

January 25, 1996 Ocean County grand jury presentment covering another municipality which stated, “government officials must bear the responsibility to insure that at all times, the best interests of the public are rigorously safeguarded.” The Commission does not believe, however, that the State has ever been sufficiently aggressive in making sure that municipal officials meet that responsibility. It recommended, therefore, that the Department of Community Affairs be given the tools to monitor more closely this aspect of local government and to act decisively whenever shortcomings are discovered.

▪ **Prohibit Expenditure of Funds for Receptions for Borough Officials/Employees**

Public funding of essentially social events for Borough officials and employees is not appropriate. The Borough should adopt State of New Jersey guidelines for entertainment and official receptions, which severely restrict such expenditures for the benefit of public officials and employees.

▪ **Compliance with Bid Procedures**

The Borough should comply with its Purchasing Policies and Procedures resolution regarding bids and bidding procedures which have not been followed in the past. In addition, because they are essentially fiscal functions, it is also recommended that all duties related to bidding should be transferred immediately to the CFO/Central Purchasing Agent pursuant to a Borough ordinance already in effect.

The Commission made the following additional recommendations regarding bidding procedures:

- An estimate of reasonable cost should be provided before a notice to bidders is advertised.
- The Borough should research additional vendor sources in order to encourage a more competitive bidding environment and eliminate the receipt of single bids. In addition, the Borough should solicit bids in a wide range of periodicals and trade magazines.
- The Borough should eliminate the acceptance of cash deposits in violation of state law. The Borough should also comply with the 48-hour bid deposit rule and establish a consistent policy for the return of bid deposits.
- Where possible, the Borough should eliminate the practice of awarding bids on a per item basis (versus overall low bidder) on the same contract.

▪ **Review Expenditures Charged to Utility Accounts**

Expenditures charged to the Borough utility accounts should be either related directly to the utilities or, in the case of allocated costs, documented, consistent and based upon a reasonable relationship to the utility.

▪ **Implement Inventory Control Procedures/Maintain Fixed Asset Inventory**

To help to control loss of Borough equipment through theft or misappropriation, inventory control procedures should be implemented, fuel logs should be maintained for all Borough vehicles, and the Borough should continue to update and maintain a fixed asset inventory annually.

- **Ban Private Work**

The Borough should not allow employees to do private work on Borough time or permit them the use of Borough equipment to perform such work.

- **Compliance with Local Government Ethics Law**

The Borough's municipal officers and employees should comply with the Local Government Ethics Law.

- **Prohibit Acceptance of Gifts**

The Borough should promulgate a policy prohibiting its municipal officers and employees from soliciting, receiving or agreeing to receive any compensation, reward, gift, employment or other thing of value from any source having any dealing or interaction with the Borough. As a reminder, notice of the prohibition should be provided annually to Borough employees and officials.

- **Limit Political Activity by Police**

Police should be sensitive to involving themselves in solicitation of political support within their jurisdiction from individuals or entities which they encounter in connection with their official duties. Police officials have an obligation to avoid situations where conflicts of interest or appearance of conflicts can arise.

- **Satisfy Outstanding Tax and Utility Bills**

The Borough should enforce the ordinances which require that delinquent taxes, utility bills and assessments be satisfied before permits or licenses are issued. Similar requirements should apply to planning board approvals. Further, the Borough should enforce the ordinance which calls for the suspension of licenses or permits upon failure of a property owner to bring taxes current upon notice from the Borough.

WASTE, FRAUD and ABUSE:

Contract Labor — The Making of an Underground Economy

The Commission undertook an investigation of contract-labor abuses based upon a referral

from the U.S. Department of Labor's Office of Labor Racketeering in Mays Landing. Findings and recommendations were contained in a report issued in September.

The Commission found that elements of New Jersey's agricultural and manufacturing industries have been subverted at taxpayer expense by a lucrative underground economy that benefits unscrupulous contractors trading in cheap, and sometimes illegal, immigrant labor. Millions of dollars in income taxes and other levies go unpaid each year as a result of this enterprise, which also has diverted money from trust funds established to provide Social Security, Medicare, and unemployment and disability insurance for law-abiding citizens. The Commission's investigation, which focused primarily but not exclusively on the state's shellfish and poultry processing industries, also revealed evidence indicating Social Security and welfare fraud.

The central figures in this profitable underground economy are contract-labor providers who supply workers to processing and manufacturing plants. These labor providers include individuals known as "crew leaders" as well as the owner/operators of temporary-help service firms. The crew leaders and temporary-help service firms recruit and, in many instances, transport day laborers and are responsible for fulfilling payroll obligations through lump sums of money disbursed to them by the plant owners under various arrangements.

The Commission determined that in most instances, the contract-labor providers do not supply payroll tax forms to their workers, do not withhold state and federal income taxes,

substantially understate federal employment tax liabilities, and fail to remit adequate unemployment and disability insurance taxes to state authorities, as required by law. Evidence indicates that the unremitted taxes are pocketed by labor providers, who then fail to report these illicit profits as income for their own tax purposes. Moreover, the Commission found that it is common practice for workers to be identified in payroll records with false names and bogus Social Security numbers, and that few checks are made to confirm identities. Many of these individuals do not divulge their true identities because they are receiving some form of public assistance, wish to avoid payment of income taxes and/or are illegal aliens. In some instances, the tracking of contract-labor providers themselves proved difficult because they regularly employ tactics useful in cloaking their activity, such as periodically changing the names of firms and transferring ownership to relatives or friends. This “moving target” phenomenon obstructs the ability of regulatory agencies to carry out sanctions, including collecting fines and restitution, against providers found to be in violation of various state and federal laws and regulations.

The Commission also found several factors at work, particularly in the shellfish and poultry processing industries, that appear to nourish the contract labor system and serve to facilitate the resulting underground economy. First, public demand for products that are reasonably priced fuels intense competition within these industries. Processors are constantly looking to shave costs even if it means entering into questionable labor-supply contracts with crew leaders and temporary-help service firms. Second, existing state and federal laws and regulations governing this system are inadequate or are easily circumvented by operators bent on

unscrupulous activity. Finally, insufficient resources and attention have been devoted to proper oversight and enforcement at the state level.

During the course of its investigation, the Commission conducted extensive inquiries into the background and operations of 25 separate contract-labor providers and their relationships with various segments of New Jersey's agricultural and manufacturing sectors. Thousands of documents were subpoenaed and analyzed, numerous individuals were questioned and extensive field work was conducted in an effort to elicit a comprehensive picture of the functioning of this underground economy. Because of the foreign background of many of the individuals involved, the investigation required the use of language interpreters. The investigation focused on the four-year span from 1993 to 1996. During that period, the 25 labor providers whose operations were examined collected a total of \$44.5 million in gross revenues from 10 businesses in exchange for supplying between 690 and 1,685 workers daily.

Summary of Key Findings

FAILURE TO PAY STATE/FEDERAL INCOME TAXES

- Contract-labor providers have failed to pay millions of dollars in state and federal income taxes based upon substantial underreporting and nonreporting of gross receipts

by contract-labor providers for corporate, business and personal income tax purposes. Thousands of individual workers supplied by the labor providers have failed to pay state and federal income taxes as well.

FAILURE TO PAY FEDERAL PAYROLL TAXES

- Nearly \$5 million in federal payroll tax liabilities for Social Security and Medicare, excluding interest and penalties, went unpaid by labor providers, all of whom either failed to report or substantially underreported these obligations.

FAILURE TO PAY N.J. UNEMPLOYMENT/DISABILITY INSURANCE

- Most labor providers underreported to the New Jersey Department of Labor both employee wages and required contributions to the unemployment and disability insurance funds. In other instances, no filings were made at all. Records reflect that as of June 1997 there were 67 registered crew leaders with outstanding unemployment and disability insurance liabilities of approximately \$1.98 million, including interest and penalties. These liabilities date back as far as 1988. The Commission found that 12 crew leaders — only five of whom were on the Labor Department's delinquency list — and two temporary-help service firms had combined liabilities alone of more than \$1.35 million for the period 1993-96. This suggests that the actual total amount in unpaid UI/DI liabilities is far greater than officially known.

IMPROPER USE OF EMPLOYMENT CLASSIFICATION

- Some contract-labor providers avoided their payroll tax obligations by designating their workers improperly as “independent contractors,” despite operating in a traditional employee/employer relationship. Treating workers as independent contractors allows an employer to relinquish federal and state income tax withholding or payroll responsibilities beyond the mere filing of IRS Form 1099-Misc. One crew leader was found to have issued more than 3,900 Form-1099s for laborers during 1996 alone.

FAILURE TO OBTAIN EMPLOYMENT VERIFICATION

- The investigation revealed widespread lack of compliance with federal employment verification requirements mandating the completion of a special form, known as an I-9, for each worker. Of 17 contract-labor providers subpoenaed, only four were able to produce I-9s.

CONCEALMENT OF WORKER IDENTITIES FOR ECONOMIC GAIN

- An examination of 650 randomly sampled Social Security numbers of workers employed by eight of the contract-labor providers revealed that only 15 (two percent) were genuine. The vast majority — 493, or 76 percent — were bogus, and 142 (22 percent) could not be positively identified as having been issued to employees listed in the records. In one instance, a labor provider was found to have altered the numerical

order of individual Social Security numbers on more than 100 Form-1099s filed with the IRS. Evidence and testimony demonstrated that workers also sought to conceal their identities to avoid income taxes and/or because they were collecting public assistance in New Jersey or Pennsylvania.

IMMIGRATION VIOLATIONS

- The immigration status of numerous workers employed by contract-labor providers is open to question because few checks are conducted to verify compliance. During a road-stop conducted in South Jersey by an intergovernmental task force that included Commission investigators, it was determined that approximately 30 percent of 79 workers interviewed were undocumented aliens.

INADEQUATE RECORDS

- Payroll, tax and other business records received by the Commission from various contract-labor providers ranged from poor to non-existent. Records that were provided proved to be unreliable. In some instances, this appeared to be part of a deliberate ploy designed to frustrate efforts to obtain an accurate picture of basic items such as gross revenues and the number and identities of workers.

Referrals, Recommendations and Results

The Commission referred the results of its investigation to the following agencies of government for review and whatever action is deemed appropriate: Office of the United States Attorney, Internal Revenue Service, Social Security Administration, U.S. Department of Labor, U.S. Immigration and Naturalization Service, Office of the Attorney General, New Jersey Department of Human Services, New Jersey Department of Labor, New Jersey Department of Law and Public Safety — Division of Consumer Affairs and Division of Criminal Justice, New Jersey Department of Treasury — Division of Taxation, Ohio bureau of Employment Services, Pennsylvania Department of the Inspector General, and the Texas Workforce Commission.

The Commission made recommendations in the following key areas:

- **Recognition of Joint-Employer Status**

A contract-labor provider and the processor or manufacturer using a provider's services should be recognized as joint employers of workers for all federal or state tax and other reporting requirements. In addition, the New Jersey Department of Labor (NJDOL) should be given the authority to hold contract-labor providers and the individuals or entities for whom they provide workers jointly and severally liable for the proper withholding and submitting of state income and employment taxes. Under current state and federal laws, processors or manufacturers, as detailed in this investigation, may be viewed as employers of those workers supplied by labor-contractors. To avoid any ambiguity or uncertainty on this question, legislation should be enacted to recognize and

clearly define the joint-employer status. In addition, any business or industry utilizing contract-labor providers should be required to have a written contract with its labor provider detailing their respective responsibilities for the proper withholding and the remittance of tax liabilities. Both parties to the contract should be required to make it available to state and federal authorities upon request.

▪ **Consolidate Contract Labor-Providers Under One Regulatory Scheme/
Limit Crew Leader Designation**

The investigation revealed that various contract-labor providers, while providing essentially the same type of service, may be operating as crew leaders, temporary-help service firms or completely outside any regulatory system. All contract-labor providers as illustrated in this report should be consolidated into a single legislative scheme under the NJDOL. Adequate resources should be made available to regulate this significant segment of the state's underground economy. The artificial designation "crew leader" or "temporary-help service firm" should not result in a different regulatory scheme for entities providing similar labor forces. As part of a new single regulatory scheme, a complete review should be undertaken of both crew leader and temporary-help service firm requirements and regulations. The designation of crew leader under the Crew Leader Registration Act should be limited to those labor providers who supply seasonal, migrant farm workers to farms for initial-stage, on-site agricultural processing. This unique labor field should continue to be handled by Agricultural Compliance, a specialized regulatory section within the NJDOL.

- **Transfer Collection Functions**

All UI/DI collection functions should be brought under the Department of Treasury, Division of Revenue, to coordinate and facilitate the collection of payroll taxes. The Division of Revenue has the most up-to-date technology for the processing and collection of such payments, which should result in significant cost savings. Overall compliance should be increased with integration of such functions in one office. In addition, UI/DI registration forms should be included in the New Jersey Tax Registration Packet (REG-P) which contains forms needed to register a business with the New Jersey Division of Taxation.

- **Automatic Notification to State Authorities**

Any business registration or license issued in the state should be forwarded automatically to the NJDOL Division of UI/DI Financing and the Divisions of Revenue and Taxation. The Commission found instances where contract-labor providers registered with the NJDOL Agricultural Compliance section for crew leader licensing purposes were not registered with the NJDOL for UI/DI purposes.

- **Expand NJDOL's Statutory Authority**

Changes to the Unemployment Compensation Law should be enacted to give the NJDOL expanded authority as described below.

- ❖ Authorize the Commissioner of Labor to require the posting of adequate security by contract-labor providers to guarantee the payment of state income and employment taxes. The security should be in the form of cash, indemnity bond, letter of credit or other form of security and/or collateral deemed appropriate by the Commissioner of Labor. Authority should be given to the Commissioner of Labor to promulgate regulations concerning the amount and manner of the posting of the security, which should be substantial and scaled to the dollar amount of the contract-labor provider's payroll.

- ❖ If an employer has no assets in New Jersey, or if it appears that it is not possible to find in this state assets of the employer sufficient to pay the entire balance of contributions or other amount owed, the NJDOL should be granted the authority to issue, collect or enforce a certificate of debt. The NJDOL should be granted the authority to designate agents or retain counsel for the purpose of collecting, outside the State of New Jersey, any unpaid contributions, assessments, interest or penalty which may have been assessed under the act against an employer who has assets outside this state. The NJDOL should be authorized to request that the Attorney General bring suit in any other state to collect any contributions, assessments, interest or penalty legally due under the act.

- ❖ The maximum penalty for criminal violations of the act should be increased from a \$1,000 fine and/or imprisonment for 90 days to a fine of \$5,000 and/or imprisonment for one year.
- ❖ The NJDOL should be authorized to serve writs of execution in order to avoid the need to rely upon county sheriffs to do so.
- ❖ The NJDOL should be granted the authority to garnish the wages of an individual or officer of a corporation for unpaid contributions, assessments, interest or penalty owed by the corporation.

- **Comprehensive Audits**

The NJDOL should conduct more comprehensive state employment tax audits relative to contract-labor providers. Records of both contract-labor providers and those processors or manufacturers utilizing their services should be reviewed simultaneously to verify the accuracy of the wage reports submitted by contract-labor providers.

- **Expand Employee Verification Programs**

A new federal employee verification program known as the Basic Pilot program should be expanded and made available to New Jersey employers. Basic Pilot, an electronic on-line system, can verify the employment and immigration status of all newly

hired employees. It would permit employers on a voluntary basis to obtain free information concerning the employment eligibility of new hires through both the Social Security Administration and the Immigration and Naturalization Service. Basic Pilot is presently slated for implementation in five states: California, Florida, Illinois, New York and Texas. The program should be expanded to include New Jersey employers because non-citizen prospective employees currently can avoid scrutiny of their employment status simply by indicating they are citizens on Form I-9. In addition, the NJDOL should monitor the success of this program, advocate its implementation in New Jersey, and consider mandating its use by all contract-labor providers. Finally, given the magnitude of lost revenues under the present system, the Department of Treasury should evaluate a program of financial incentives for participating employers.

WASTE, FRAUD and ABUSE:

New Jersey School Busing Industry

At the request of State Senator Gordon A. MacInnes, the Commission examined certain allegations that the state's public school busing industry has been subverted by unscrupulous busing contractors who have engaged in a variety of improper acts, including collusion, bid rigging and fraud. Findings and recommendations were contained in a letter issued in December.

Summary of Key Findings

- **Conditions which foster and permit collusive bidding and related abuses are prevalent throughout New Jersey's school transportation system.** Commission staff was told that collusion is "built-in," reflective of the fact that bus company owners routinely refuse to submit bids in districts where others already are operating. It is understood within the industry that some form of retaliation will result if this informal system of customer allocation is violated.
- **Trends in pupil transportation in New Jersey reflect the appearance and growing dominance of large, multi-state bus companies that are both under-**

bidding and buying out smaller competitors. These large companies often are the only entities capable of providing service to larger school districts through bulk bids, which require a company to serve all of a district's routes.

- **Many school district transportation programs involve vendors selected through an extremely narrow bidding process.** District transportation coordinators told Commission staff that, despite efforts to solicit bids, they often receive no more than a few or only one. On the other hand, the Commission found instances where only select vendors were solicited for informal quotes, rather than all of those located within reasonable proximity to the bus routes. Lacking comparative data, district officials are unable to determine the reasonableness of single bids. One school district reported having had a single bidder in 35 years. Another engaged a solitary bidder for 27 years. In some instances, special arrangements were noted between bus companies and school districts or municipalities which favored the successful vendor over would-be competitors. In an effort to encourage competition, one local official actively solicited bids from prospective transportation vendors within a 50-mile radius only to receive a single bid — from the district's longtime lone bidder.
- **Insufficient training is provided to local district officials responsible for handling transportation contracts.** As a result, many transportation coordinators are ill-equipped to handle the responsibilities of their jobs.

- **Poor record keeping by some school districts and special services transportation offices has contributed to lax oversight.** There are no enforcement procedures for lack of record keeping compliance, and the offices of county superintendents, in general, provide little or no independent review of the bid process.

- **Costs have been driven up in some instances by the failure of local district officials to take advantage of obvious economies in transportation arrangements.** For example, a busing program in one school district was awarded on a bulk basis, rather than a per-route basis. The latter would have resulted in savings of more than \$1 million in just the first year of the contract.

- **Violations of the state’s Administrative Code and applicable statutes were noted.** A DOE audit of one district, for example, revealed numerous violations, including the awarding of contracts for non-public transportation in amounts that exceeded what is allowed for aid-in-lieu-of-transportation payments; the awarding of “temporary” routes for periods longer than the allowable 90 days, and in amounts in excess of the bid threshold; the cancellation of routes that later were reinstated without competitive bidding; the awarding of temporary routes without solicitation of bids; and the separate awarding of contracts on a “to-and-from” basis rather than “round trip.”

Referrals, Recommendations and Results

The Commission made the following recommendations for consideration as part of an overall effort to provide an environment that fosters competition, minimizes costs and reduces the likelihood of collusion:

Regionalize Pupil Transportation

- New efforts under the direct supervision of DOE should be undertaken to regionalize pupil transportation. Legislation enacted during the Commission's investigation, commonly known as the *Regionalized Public Transportation Services Act, Laws of 1997, Chapter 53*, provides an initial framework for regionalizing transportation of county vocational and special education pupils.
- Artificial boundaries, such as county lines, should not be used to determine regionalized busing areas. Multiple transportation regions, for example, might serve a single county. In other instances, more than one county should coordinate pupil busing in a single regionalized network.
- The state's DOENET computer system should be utilized as a computerized routing system to assist in coordinating routes among school districts.

Tiering and Consolidation of Busing

- Maximum advantage should be taken of tiering of bus routes, flexible school opening/closing times and coordinated calendars and schedules of public and nonpublic schools. Further, consolidation and streamlining of extracurricular, athletic and other special transportation needs should be undertaken. Methods include combining sports teams or separate groups on one bus and utilizing small vans where practicable.

Improve Overall Quality of Transportation Coordinators

- High priority should be given to the selection of qualified individuals to serve as transportation coordinators. The DOE should establish minimum qualifying standards for these positions. The Pupil Transportation Supervisor Program, sponsored by the DOE, should be expanded and required of all transportation coordinators to enhance their skills, provide them with tools necessary to perform their jobs effectively and efficiently, and prepare them in advance for changes in the industry.

Improve the Bid Process

A number of bidding issues that directly, yet independently, impact the cost of pupil transportation should be addressed in conjunction with regionalization and upgrading the position of transportation coordinator:

- A pre-qualification process utilizing a model administered by the DOE should

streamline bid proposals. Establishment of a central repository of duplicative parts of bid proposals (proof of insurance, bonding, and ownership) should cut costs and improve efficiency. Uniform statewide manuals for such requirements as accident procedures and insurance should be established. A statewide method of pricing bids should be developed to aid in price comparisons and to provide uniformity in proposals. Utilizing different pricing structures, such as per diem and annual pricing, only obfuscates cost analysis.

- Rules and regulations should be uniform and consistently enforced. Unreasonable or excessive fines and penalty practices impact the bidding process because vendors factor those costs into their bids.

- Every effort should be made to build more time into both the bidding and the implementation processes to foster competition and competitive prices.

- Vendors should be paid within a reasonable amount of time (45 days or less) to prevent inflation of bid prices to compensate for slow payment practices.

- Cost-of-living increases should serve to contain costs better than the 30% cap on increases above the original contractual agreement currently in place on renewed contracts. Instances were noted where, upon renewal, contracts reached the 30%

increase rapidly and then were continually renewed for many years without an increase, thus suggesting the awards and early increases were inflated.

- Where applicable, the process of obtaining quotes should not be used to parcel out work to favored vendors. All bus companies within a reasonable distance should be contacted to submit quotes.

- Awarding transportation contracts for multiple years, rather than bidding on an annual basis, should be pursued. A vendor may be more likely to bid and to submit a competitive price if the contract will be in place for several years since considerable costs and investment may be involved.

- In order to foster competition and to minimize conditions that breed collusion, routes should be bid in packages that may be performed efficiently. “All-or-none” proposals tend to limit competition to only the largest bidders. Smaller companies may not have the resources available to meet an entire district’s transportation needs.

Debarments

- A number of individuals who were the subjects of earlier law enforcement probes remain in the school transportation business in New Jersey, and the Commission is concerned that their continued presence may serve to undermine the integrity of the

industry as a whole. Exclusion of potential bidders or contractors to satisfy integrity and performance concerns presently involves a convoluted system governed by a state executive order, criminal statutes and local policies. In its September 1992 report, “Local Government Corruption”, the Commission recommended the creation of a comprehensive, well-enforced system of debarments, suspensions and disqualifications. Under this proposal, individuals or companies that have violated standards of integrity or performance would be barred from publicly funded pupil transportation jobs.

Maintenance of a Fleet of Publicly Operated Buses

- Vendors may submit more reasonably priced bids if districts or regions possess some measure of publicly-owned transportation. Bidders will be aware that they are not the only option. Moreover, the contracting entity will have more information as to repair costs, etc. Maintaining an in-house fleet might also result in the negotiation of concessions from bus drivers, thus providing for an alternate, cost-effective means of transportation supplied by the contracting entity itself. Such an alternative would be particularly helpful in a regionalized approach because the publicly operated transportation service may well be able to provide a competitive alternative to single or excessive bids.

Subscription Busing

- Where appropriate, consideration should be given to the offering of subscription

busing at an annual fee to those students who live less than the minimum distance from schools for which school districts are required to provide transportation. This practice should maximize the efficient use of buses, provide a safe means of transporting the pupils to school, and provide revenues to offset overall transportation costs.

LAW ENFORCEMENT OVERSIGHT:

New Jersey Detective Agency

Based upon citizen complaints, the Commission examined an obscure entity known as the New Jersey Detective Agency (NJDA) that has existed for more than a century in the shadow of legitimate law enforcement. A report of the investigation, including a recommendation that the NJDA be abolished, was issued in December.

The NJDA's 25 members are all civilians but believe, like police officers, that they are authorized to exercise full police powers — to make arrests, conduct investigations and provide backup assistance — at any time and at any place. They wear uniforms and carry credentials bearing the New Jersey state seal. Most of the members carry handguns without permits. Unlike a genuine law enforcement agency, however, the NJDA is accountable to no one. Moreover, most of its members lack adequate, up-to-date training in firearms handling and in basic law enforcement techniques. In essence, the Agency constitutes a completely autonomous entity and stands as an anomaly in today's stratified hierarchy of law enforcement at the state, county and local levels of government.

The 1871 charter establishing the NJDA was intended to supplement a statewide police system that, at the time, had proved inadequate for the protection of citizens and the detection

and investigation of crime. That charter, together with similar measures, afforded civilians the means to hire pursuers or detectives to investigate criminal activity, apprehend offenders and recover stolen property. These legislative acts typically were acts of incorporation and not statutory mandates for the establishment of police agencies or for the hiring of police officers — steps that were left to local and county authorities. Clearly, in granting the NJDA charter, the Legislature did not create 25 additional police officers in the state to ferret out crime on their own, selectively enforce the laws of the state as they deemed appropriate and report to no public official.

Today, New Jersey's law enforcement system has evolved into a multi-layered, highly supervised structure of municipal, county and state agencies composed of professionals. Neither the NJDA nor its members are recognized in any statute, rule or regulation as being involved in police work or the administration of justice. To suggest that the citizens of this state are served by a group of 25 unsupervised, largely untrained individuals exercising police powers is contrary to the measured efforts over the decades to create a professional law enforcement system. Moreover, it is ludicrous to suppose that legislators in 1871 intended commissioned detectives to possess whatever police powers would develop over future centuries.

Current NJDA members range in age from 40 to 74 years and have held their commissions for between two and 48 years. In the exercise of police powers, members said their primary involvement has been the voluntary backup of police on the highways. Those members who

function actively under their NJDA commissions operate essentially as private detectives — outside the parameters of the Private Detective Act of 1939. Twenty members admit to carrying handguns without permits, even though they are not covered by any statutory exemption under the state's gun-control laws.

The NJDA is an autonomous group where membership is frequently passed from father to son. Members dictate the content of their governing by-laws; who receives a commission; whether and how a member is disciplined; whether a member is expelled, and how to interpret their powers under the 1871 charter. Unless members happen to be retired police officers, they have no formal police training. The few training courses that have been offered to members in recent years have not been mandatory. No governmental agency or official exercises any supervision over the membership. The role of state officials is purely ministerial, limited to issuing commissions to new members when notified by the Agency.

NJDA members lack a uniform understanding of the operation of their agency, the application process and how funds are expended. They also hold conflicting views on the extent of their powers, except to recite in broad terms the powers to arrest, investigate crime and carry a weapon. The explanation of their powers is transmitted by word of mouth from member to member.

Commissioned detectives have been reluctant to engage in actual police work. The services performed by those members who earn an income as commissioned detectives are not unique to them, but are provided by private detectives, security guards or off-duty police officers.

The Commission's review of records subpoenaed from the NJDA for the past seven years disclosed a record-keeping system in shambles. Records that should have been maintained, such as application files, personnel files and training records, were rarely kept. Numerous records have been lost because there is no orderly system for the transfer of records when new officers are elected. The financial records of the Agency are so incomplete and in such disarray that it is impossible to conduct a proper financial audit.

NJDA members present a unique problem for law enforcement. Not only do they create confusion for the general public as to their true identity, but the acts of some members have served to compromise police action. A number of members claimed that they routinely stop along the highways to back up police officers on motor vehicle stops. Such action poses a threat to police officers, who are not familiar with commissioned detectives and must then be concerned about their security from a second source. The danger is even greater when a commissioned detective has no background as a police officer and, therefore, has not been trained in proper procedures for providing backup.

The Agency's prior by-laws prohibited members "by word, deed or action [from] in anyway obstruct[ing] the implementation of any law enforcement action executed by law enforcement personnel in the performance of their duties." Although this provision was omitted in the current by-laws, the new rules and regulations contain as a violation of the rules of discipline "[r]efusing to cooperate fully with any investigation conducted by the Agency or any other governmental entity." During the Commission's investigation, reports were received of incidents where members acted contrary to these proscriptions. For example, during the surveillance of a business location, investigators with the Division of Criminal Justice questioned an individual who appeared to be watching them. The individual identified himself as a commissioned detective, but refused to reveal who had hired him or why he was there. In another instance, when Division investigators sought to interview a witness in a criminal case, the witness disclosed that he had already been interviewed by "the State." It turned out that a commissioned detective, working on behalf of the defense, had interviewed him.

The opportunity for the public to confuse commissioned detectives with police officers, especially members of the State Police, is substantial because commissioned detectives identify themselves as "state" detectives and, at times, wear uniforms with patches containing the words "POLICE" and "NEW JERSEY STATE DETECTIVE." Commission staff reviewed statements obtained by local police from private citizens who stated that they had been interviewed in a criminal matter by an individual, a commissioned detective, who identified himself as a State Police detective. Even if he had not done so, these incidents exemplify the likelihood for

confusion. Moreover, during the Commission's interview of one commissioned detective, who was never a member of the State Police, he referred to himself twice as the "State Police."

According to State Police records, 24 NJDA members have registered more than 200 handguns and only one member has obtained a permit to carry a handgun. Twenty members admit to carrying handguns without permits. Although members claim they are exempt from the permit requirements of *N.J.S.A. 2C: 58-4*, they are not.

In 1905, the Legislature enacted the first regulations governing the possession and use of weapons. Chapter 172 made possession of weapons, in the absence of a permit from a governing body, a misdemeanor offense. It further provided:

Nothing in this act shall be construed to prevent any sheriff, deputy sheriff, police officer, constable, state detective, member of a legally organized detective agency or any other peace officer from carrying weapons in the discharge of his duty....

Specific exemptions for commissioned detectives, denoted as "State detective[s]," as well as exemptions for members of legally organized detective agencies, continued in the revised laws until 1924, when both categories were deleted. In 1938, commissioned detectives, together with detective agencies, reappeared in the law of enumerated exemptions. *N.J.S.A. 2:176-43*. Subsequent amendments to the law continued to include commissioned detectives, although reference to detective agencies was omitted in the 1963 amendment to *N.J.S.A. 2A:151-43*. In the 1966 statutory amendment, the Legislature deleted the category of commissioned detectives.

When the Legislature enacted the New Jersey Code of Criminal Justice in 1979, *N.J.S.A. 2C:1-1 et seq.*, it included extensive gun-control laws, which our Supreme Court has characterized “as a ‘careful grid’ of regulatory provisions.” Under the Code, it is illegal for a person to carry a handgun unless he or she first obtains a permit issued by a Superior Court judge or falls within one of the enumerated exemptions from the permit requirement. As the Supreme Court has noted, the issuance of permits constitutes “the most closely-regulated aspect of gun-control law” and “[v]ery few persons are exempt from the permit requirement.” Commissioned detectives are not specifically named or encompassed within any category of exemption from the criminal provision for carrying a handgun without a permit.

The Commission was informed that all members qualify with their handguns twice each year in accordance with the Attorney General’s requirements and procedures and that the Agency maintains records of their qualifications. Based upon the Agency’s qualification records subpoenaed by the Commission, documentation began in 1992, but was haphazardly maintained each year thereafter. According to Agency records, most members did not qualify in some years; in other years, most did not qualify twice a year, and in two of the years, a number of members were “qualified” by an individual who was not certified as an instructor by the Police Training Commission. In addition, one member told Commission staff that, upon becoming a member and informing the president that he did not intend to carry a weapon, he was directed to submit his prior qualifications for inclusion in the Agency’s records. The Commission examined these

records and discovered that the dates were altered to make it appear that he had qualified at the time of his commission and in the subsequent year.

The Commission concluded that while the NJDA long ago may have served a valid function to augment law enforcement in New Jersey, it fulfills no legitimate purpose today. On the contrary, the Agency's existence poses a distinct danger to the community — a danger recognized by a full spectrum of key law enforcement officials. The NJDA is a tragedy waiting to happen.

Referrals, Recommendations and Results

The Commission recommended that the Legislature repeal chapter 457 of the Laws of 1871. The state's chief law enforcement officer and every organization representing the leading law enforcement agencies throughout the state are unanimous in the opinion that the NJDA is archaic and has no place in today's system of criminal justice. The Attorney General, the New Jersey State Police, the New Jersey County Prosecutors' Association, the Sheriffs' Association of New Jersey and the New Jersey State Association of Chiefs of Police set forth their positions in written statements urging the repeal of the 1871 charter. *Legislation to effect the repeal was introduced in the Assembly on February 19, 1998.*

At the same time, the Commission referred this matter to the Attorney General, with the recommendation that he consider seeking a judicial declaration that the 1871 charter is repugnant

to the comprehensive law enforcement scheme established by the Legislature and, therefore, has been repealed by implication.

It was further recommended that, in the interim, the Attorney General immediately notify NJDA members that they enjoy no exemption from the requirement for obtaining a permit to carry a weapon under *N.J.S.A. 2C:39-6* and, therefore, must cease carrying firearms. The Attorney General should also notify members that the use of red emergency lights on their motor vehicles violates the law.

Referral was also made to the Secretary of State, with the recommendation that NJDA members be notified that they must cease replicating all or part of the Great Seal of the State of New Jersey and discontinue utilizing any item that bears the seal.

In addition, the Commission's findings were referred to the Division of Taxation, New Jersey Department of Treasury, and the Internal Revenue Service for whatever action is deemed appropriate.

