

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION



31st ANNUAL REPORT

1999



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The State Commission of Investigation herewith formally submits, pursuant to N.J.S.A 52:9M, its 31st annual report for the year 1999.

Respectfully,

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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; and to recommend appropriate reforms and improvements in laws and in the operations of government. Additionally, the Commission was given an extraordinary mandate: to pursue this all within a framework untainted by political intrusion or favoritism.

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

During 1999, the Commission bolstered its record of exemplary public service with wide-ranging investigations and public hearings that shed light on crime and 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 systemic problems and the need for comprehensive reforms:

✍ COMPUTER CRIME

In an unprecedented project conducted jointly with the Office of the Attorney General, the Commission examined the threat posed by computer-related crimes in New Jersey. The two agencies mobilized combined resources in recognition of the fact that the “dark side” of high technology, ranging from computer hacking and fraud to identity theft, child pornography and bias crime, has grown to such an extent that a unified approach by law enforcement is required

to meet the challenge. A report of this investigation, which included three days of public hearings in February, will be issued in 2000.

✍ WASTE AND ABUSE IN PUBLIC SCHOOL ROOFING

A statewide investigation of public school roof construction projects revealed widespread waste and abuse, including conflicts of interest, subversion of public contracting, improper labor practices and inadequate oversight that place the safety of school children in jeopardy and cost New Jersey taxpayers needless million of dollars each year. Testimony at a two-day public hearing in December revealed that roofing project costs were, in various cases, inflated by as much as 30 percent due to restrictive product specifications and by as much as two-thirds as a result of using private contractors rather than school district employees. If such excess costs could be avoided in projects slated for funding under the \$11 billion school construction program now before the Legislature, a substantial portion of this proposed taxpayer outlay potentially could be saved. The Commission will issue a final report on this investigation, including a series of recommendations for systemic reform, in 2000.

The true measure of the Commission's performance, however, far exceeds the findings and results of investigations completed during the past year. Beyond the public activities detailed in this annual report, the Commission and its staff currently are engaged at various stages in a range of significant investigations related to all elements of the Commission's statutory purview, including organized crime, official corruption, and waste and abuse of government funds. In that regard, 264 Commission subpoenas were served during 1999 seeking access to scores of individuals, thousands of documents and a range of other exhibits relevant to those active investigations. Also, as in years past,

barely a week went by that the Commission did not receive requests for investigative action, assistance or advice from citizens of New Jersey. Commission records include nearly 100 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. One notable example involved the findings of the Commission's school roofing investigation, which were furnished to a range of state and federal agencies, including the Office of the United States Attorney, the Federal Bureau of Investigation, the United States Internal Revenue Service, the New Jersey Division of Criminal Justice and the New Jersey Department of Labor.

In sum, 1999 was a productive year for the Commission in its service to the citizens of New Jersey. Above all, given the fact that savings generated by efficiencies, reforms and improvements resulting from the Commission's work far outweigh its overall operating costs, this agency once again has proven itself to be an effective public investment.

The Commission's public documents, including the full text of reports of investigations, are available electronically via computer at <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 committee’s final report, which confirmed a crime-control crisis in those areas, 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 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,” the panel concluded, “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 between the Commission’s operations and those of prosecutorial authorities.

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 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. Additionally, the Commission's December 1998 report on public pension and benefits abuses presented a veritable catalogue of needless waste and outlined a range of proposed reforms that would save taxpayers additional millions.

The Commission takes particular pride in these 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 HEARINGS — 1999

Regulatory, Ethics and Law Enforcement Oversight:

Computer Crime

In conjunction with the Office of the Attorney General, the Commission undertook an unprecedented effort to evaluate the threat posed by computer-related crimes in New Jersey. A three-day public hearing was held in February to frame key issues and present preliminary findings. This proceeding drew testimony from more than two dozen local, state and federal law enforcement authorities and experts from the private sector who addressed the following key issues:

THREATS TO CHILDREN

While the Internet has proven to be an invaluable educational and research tool, it has also evolved into a means for the abuse and exploitation of children. Law enforcement and private sector experts who testified before the Commission cited repeated instances in which individuals who produce, purchase, trade and sell child pornography have found in the World Wide Web a convenient and camouflaged mechanism for plying their trade. They described the methods by which child molesters stalk their victims over the Internet. Moreover, they pointed out that a wide range of

strictly adult items, including tobacco products and alcoholic beverages, are marketed to children in this fashion.

CRIMINAL ENTERPRISES

The Commission's hearings demonstrated that the Internet threatens to become an effective tool for criminal groups drawn to it for the promotion and conduct of a multitude of illicit enterprises, including illegal gambling, prostitution, narcotics trafficking and money laundering. Testimony also established that elements of organized crime have begun to employ computer-related technology, including digital encryption methods, in order to cloak their activities and evade detection by law enforcement.

At another level, experts testified that the Internet can be used as a centralized communications and recruitment apparatus for groups and individuals bent on inciting and carrying out hate and bias crimes.

FRAUD

Those who appeared before the Commission testified that the Internet can easily be used to expedite a wide range of consumer and investment frauds, including bogus health-care plans, fake credit repair operations, business opportunity scams and financial "pyramid" schemes. Computer technology also is used by telecommunications thieves who undertake elaborate schemes to defraud telephone customers.

UNAUTHORIZED ACCESS/ESPIONAGE

Law enforcement and private sector security experts described the vulnerability of computer networks to the phenomenon known as hacking, the cyberspace version of breaking and entering which can seriously disrupt an entire computer system and its data. Hacking can also be employed as a means for committing electronic embezzlement and can put at risk the integrity of millions of confidential records, including personnel files, medical and legal documents, proprietary financial information and private credit histories. Expert hackers utilize a variety of techniques to steal passwords so that they and/or their customers can acquire the means to prowl undetected through any computer network of their choosing. Experts told the Commission that disgruntled present and former employees of government and private industry can use insider information to access their employers' computer systems in a myriad of harmful ways.

IDENTITY THEFT/INVASION OF PRIVACY

Experts testified that the proliferation of integrated computer connections worldwide threatens the privacy and security of average citizens as never before. In one demonstration, for example, it was shown that equipped simply with a person's name and home state, an "identity thief" can use directory assistance, commercially available CD-ROMs, proprietary data bases and the Internet to capture a full range of confidential information about that person within a matter of hours.

* * *

Since the conclusion of the hearings, the Commission has undertaken a thorough evaluation of the record and, in conjunction with the Office of the Attorney General, is preparing a final report for issuance in 2000. The report will detail the findings in each major issue category and provide a series of recommendations aimed at improving New Jersey's ability to deal with computer crime.

Waste, Fraud and Abuse:

Public School Roofing Projects

The Commission launched an investigation of public school roofing projects in 1998 based upon confidential complaints and preliminary evidence suggesting widespread waste and abuse. The probe was comprehensive in nature and statewide in scope, involving a review of 115 separate projects in 39 school districts across 13 of New Jersey's 21 counties. Projects examined by the Commission involved a total taxpayer investment of more than \$38.4 million. Evidence of some form of waste and/or abuse was uncovered in more than half of the districts where projects were evaluated. The Commission's findings were aired during a two-day public hearing in December.

Key Findings

Conflicts of Interest and Professional Misrepresentation

School districts across New Jersey have paid millions more than they should have for roof repairs and replacements, in part because projects were riddled from start to finish with conflicts of interest and deception.

- ✍ Project design consultants presumed by district officials and boards of education to be independent experts were secretly compensated by roofing material suppliers. This covert financial relationship forms the basis for a scheme that results in excessive project costs.

- ✍ Thousands of dollars in secret payments were funneled by a major roofing materials supplier to a consultant who repeatedly wrote project specifications favoring the firm's products. The consultant used this money for personal expenses and failed to report it for tax purposes.

- ✍ Key players in the school roofing industry, including a leading roof-design consultant and several contractors, were found to have criminal records while securing contracts at taxpayer expense.

- ✍ Roof inspections were carried out by firms and/or individuals with a financial stake in the project.

- ✍ A leading supplier of roofing materials routinely presented itself as a manufacturer of products bearing its own label. In reality, the firm produced few materials and instead chiefly re-labeled products made by others.

- ✍ School district officials responsible for oversight of roof maintenance enjoyed a social relationship with both a design consultant and a roofing company

sales representative who together cashed in on lucrative contracts in a succession of districts.

Manipulation and Subversion of Public Bidding and Contracting

The process by which boards of education award contracts for roof repairs and replacements was found to be rife with abuses that thwart the public's ability to obtain quality work at the most reasonable price.

- ✍ Design consultants/architects, working in secret partnership with manufacturers and suppliers of roofing materials, routinely crafted “proprietary” project specifications favoring a given set of products, thus eliminating competition in the award of contracts.

- ✍ Technical “hurdles” were inserted throughout project specifications to foreclose the possible substitution of less expensive materials of similar or equal quality.

- ✍ Installation contracts were steered into the hands of favored contractors through a variety of means, including inadequate public notice of project proposals, selective offers of preferential pricing and mandatory pre-bid meetings. In at least one instance, the mandatory pre-bid meeting was held the very same day the bid proposal was advertised.

- ✍ In some instances, work on public school roofs was turned over to sub-contractors without approval by the school district and in violation of State Division of Building and Construction rules.

School Safety Issues

A number of unusual and questionable circumstances gave rise to concerns about the safety and structural integrity of public school roof repairs and replacements completed through this process.

- ✍ In some instances, project plans were drawn or merely copied by individuals who were not licensed architects. In others, no design professionals were utilized at all. Drawings lacked the requisite detail and architectural seal, and requisite building permits were not obtained prior to construction.
- ✍ Less expensive and sometimes inferior roofing products were used in place of specified materials. Specified materials sometimes were left out altogether with no substitutions.
- ✍ Structural problems raised in some feasibility studies were not addressed in project plans and specifications.
- ✍ On-site inspections were lax, non-existent or tainted by conflicts of interest.

Improper Labor Practices/Payroll and Tax Violations

In an effort to undercut their competition and maximize profits, certain roof installation contractors engaged in practices that helped them evade and circumvent laws governing proper labor and payroll practices.

- ✍ In some instances, contractors were able to secure school roofing work by submitting low bids secretly conditioned on the fact that their laborers would be paid substantially less than the legally mandated prevailing wage.

- ✍ Certified payroll forms submitted in connection with school roofing projects were found to be replete with phony employee social security numbers and false data relative to hours worked and wages paid.

- ✍ Some contractors failed to make standard employee payroll deductions for income tax, disability insurance and unemployment benefits. These contractors also failed to remit their own contributions toward these benefits.

INADEQUATE OVERSIGHT

The abuses uncovered by the Commission in public-school roofing projects were abetted by the action, and inaction, of school district officials and by lax oversight and guidance at the state and local levels.

- ✍ Ranking school district officials placed millions of taxpayer dollars at the disposal of consultants, contractors and roofing manufacturers without asking the most basic questions about their qualifications and possible connections.
- ✍ District officials in a number of instances okayed questionable contracts even though they had been warned of potential abuses.
- ✍ District officials responsible for roof maintenance struck up social relationships with roofing consultants and sales representatives who secured a share of various districts' roofing business. In several cases, these officials agreed after the fact to act as references for a roofing consultant.
- ✍ New Jersey lacks an effective mechanism at the state level to monitor the public-school roofing industry and to provide school districts with technical training and advice on how to avoid abuses.

Preliminary Recommendations

The Commission's findings will serve as the underpinning for a series of detailed recommendations for regulatory and statutory reform. In general, the following key areas will be given top priority:

Bidding and Contracting

Laws governing bidding and contracting in New Jersey should be subjected to a careful and thorough review to determine precisely what measures are necessary to guarantee fair and open competition in the award of publicly-funded contracts related to roofing and other school construction work.

Selection of Project Design Consultants

Strong and effective rules should be established to govern the selection and conduct of project design consultants with regard to the following issues:

- ✍ Contractor pre-qualification
- ✍ Exemption from public bidding as professional services
- ✍ Availability of written contracts
- ✍ Submission of affidavits of non-collusion
- ✍ Financial disclosure to identify possible conflicts of interest

Local Assistance

A centralized repository of information and resources should be established to provide school districts and other public entities with adequate technical expertise, training and education regarding construction contracting.

Compliance

School districts should be required to provide an independent mechanism to ensure proper inspection and contract compliance by entities engaged in publicly-funded construction projects such as school roof repairs and/or replacements.