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***STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION***

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BELLEVILLE TOWNSHIP

AUGUST 1993





STATE OF NEW JERSEY

COMMISSION OF INVESTIGATION

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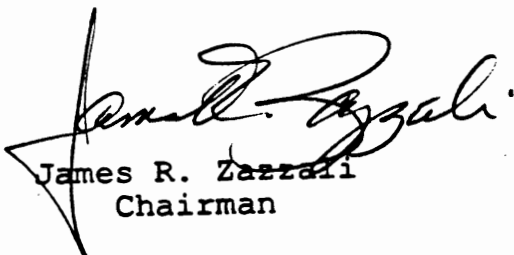
JAMES F. VILLERE, JR.
COUNSEL

August 30, 1993


Governor James J. Florio
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, a report and recommendations on its investigation into irregularities in the government of the Township of Belleville.

Respectfully,



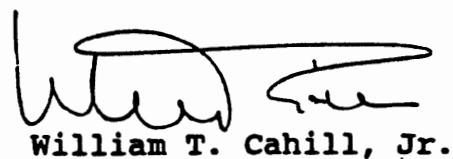
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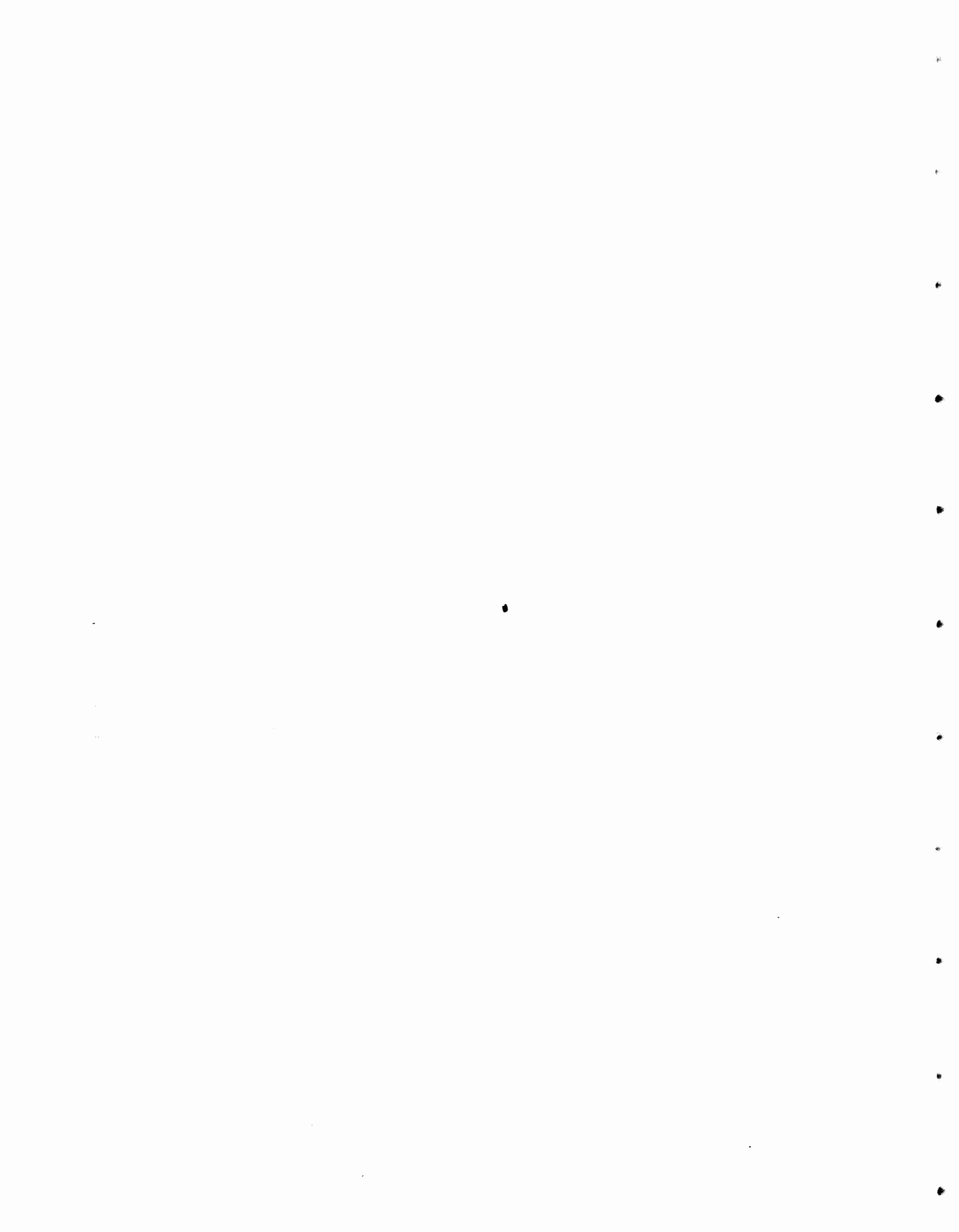
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ERRATUM

On page 34, the next to the last sentence should read:

"Various firefighters estimated the number of hose lengths between 40 and 120 lengths."



INTRODUCTION

This report presents the Commission's findings from its investigation of allegations of mismanagement of the Township of Belleville from 1990 through 1992. On July 1, 1990, Belleville's form of government changed from commission form to the council-manager plan, pursuant to New Jersey's Optional Municipal Charter Law (N.J.S.A. 40:69A-1 et seq.), known as the Faulkner Act. Bertrand N. Kendall was the first township manager under the new form of government. He served from September, 1990 until he was forced to resign in November, 1992.

The Commission did not examine all actions undertaken by Kendall. However, those that were scrutinized were in apparent violation of applicable laws and regulations. The Commission is aware of the disarray which Kendall found in Belleville when he took office - formal financial, purchasing and other administrative procedures were either non-existent or ignored. Additionally, according to Kendall, administrative personnel were not competent. The Commission recognizes that Kendall initiated some improvements during his two years in office. However, in several instances he failed to adhere to even the most basic procedures mandated by law. If he had, many of the problems examined by the Commission would never have developed.

Most significant among the Commission's findings are: (1) the

Township's disregard of bidding laws and the requirements for written contracts and certifications of funds, and (2) the absence of documents memorializing the decisions of Council and directives to the Township Manager.

In the areas examined by the Commission, there was no public advertisement for bids and bidding for certain services. There were no resolutions reflecting the Council's authorization for some acts that were undertaken. There was no certification of availability of public funds prior to obtaining goods or services. There were no written contracts for the purchase of a variety of goods and services. Minutes were not kept of every Council meeting. Where minutes did exist, they were woefully inadequate in reflecting discussions and votes. The Township Clerk's shorthand notes that were transcribed at this Commission's request were inaccurate and incomplete. Furthermore, the tape recordings that were made of meetings proved virtually useless - voices were frequently too soft to be understood and the meetings were so unruly that people were talking and shouting simultaneously and speakers could not be distinguished.

Responsibility for the failure to have the requisite documents must be shared by the Council and the Township Attorney, but primary responsibility clearly laid with Township Manager Kendall. At the time of his hiring, Kendall had 17 years experience as a municipal manager, preceded by two years as a city budget officer.

In 1982, he had served as President of the New Jersey Municipal Management Association and was Northeast Vice-President of the International City Management Association from 1990 to 1992. Kendall certainly knew the requirements for resolutions, certification of funds, public bidding and contracts. With respect to resolutions, Kendall acknowledged to Commission staff that he and the Township Clerk had far more experience than the Township Attorney in knowing when resolutions were required and in drawing them up. Although the Township Attorney's contract required that he "prepare and/or approve" all resolutions, he had no background or training in municipal government and Kendall assumed the responsibility. Kendall asserted to Commission staff that his "practice" was "always" to have resolutions prepared. Nevertheless, the Commission found that in several critical instances he did not do so.

The failure of the Township Manager and Township Attorney to advise the Council members on the need for resolutions and contracts does not completely absolve the members of their responsibilities in this regard. Although newly elected and untrained in the operations of local government, the Council members made no attempt to learn the requirements in a timely manner. They passed numerous resolutions commending local residents for a variety of accomplishments, but passed none for the hiring of some vendors. They frequently passed resolutions to authorize payment of bills to vendors, but did not question the

absence of resolutions or contracts authorizing hiring and services. In addition, some Council members failed to comprehend their proper role in a manager-council form of government, even when they were correctly advised.

The Commission also examined allegations regarding the Fire Department and found that Chief Walter Beresford abused his power and disregarded administrative procedures, rules and regulations, both of his own Department and the Township. The abuses were not isolated but were many and varied. They ranged from the misuse of overtime monies to unauthorized disposition of monies from the sale of Township property.

THE TOWNSHIP MANAGER

248 ADVISORY SERVICES, INC.

The Township's acquisition of a computer imaging system for the Police Department and its leasing of a copier system in 1992 exemplify the problems that occur when officials do not follow procedures and the requirements of law and when they exercise no oversight. The difficulty encountered by the Commission in examining these areas, as well as other issues, was that decisions and authorizations were not properly documented in resolutions and minutes. As a result, the Commission was confronted by conflicting recollections of the participants to the events. Nevertheless, what is clear is that Township Manager Kendall failed to obtain the requisite resolutions authorizing his actions and to scrutinize, either directly or by instructing the appropriate Township employee, the contractual arrangements so as to prevent abuse and fraud. In addition, the Township Council must share responsibility because it failed to demand proper documentation and authorized payment of bills to vendors with no documented authorization for the services.

For both the computer and copier systems, Kendall utilized the services of a consulting company, 248 Advisory Services, Inc., now located in Cedar Grove, New Jersey. The three partners of 248 Advisory Services have been Edmund J. Redsecker, Bruce Quinn and

John F. Morton. The company is one of three corporations within Redsecker-Quinn Associates, Inc., whose Group President is Redsecker, a close friend of Kendall's for the past 20 years. The only occasion when Kendall and Redsecker have done business together was with respect to Belleville.

Rather than engaging 248 Advisory Services solely as a consultant to perform an evaluation and make recommendations, Kendall allowed the consultant to provide the equipment and to become, in effect, the vendor. There was an absence of any supervision or oversight of the activities of 248 Advisory Services. As a result, the company had carte blanche to do as it pleased. Consequently, it provided a computer system through a convoluted arrangement involving several vendors and layers of concealed profits and a copier system under an arrangement that also contained hidden profits. In addition, 248 Advisory Services substituted one of the computer vendors without any amendment to the agreement or notice to Belleville and without passing on the resulting savings to Belleville.

Computer System - The 1992 budget for the Belleville Police Department appropriated \$20,000 for rotary files. Kendall requested 248 Advisory Services to evaluate the need and make a recommendation for a mechanical filing system for paper files, such as incident reports, arrest reports, vehicle towing reports, gun permits and court disposition records. The company did not charge

for this service. In order to assemble a proposal for this purpose, as well as for the copiers, 248 Advisory Services brought in David W. Melendy as a nominal partner. Melendy, who had a 25-year background in purchasing in the private sector, was a partner for approximately six months and was paid about \$600. Melendy recommended a computer imaging system rather than a mechanical system.

At Kendall's request, 248 Advisory Services submitted a proposal dated April 15, 1992. The proposal recommended a "pc-based data management system that will allow the paper files to be disposed of upon their entry into the system." It set forth the following components at a cost of \$19,334:

1. \$10,007 for hardware (486DX PC-1 gb hd; 33 mhz; 8 mb ram; plus 3 workstations and 3 cables), to be provided by **Blue Circle Group, Inc.**, Minnetonka, Minnesota;
2. \$4,869 for hardware (Laser Jet Printer (Hewlett-Packard LJ III) and 2 Hewlett-Packard Scan-Jet II-P Page Scanners-300 DPI, to be provided by **Westwood Computer Corp.**, Springfield, New Jersey;
3. \$3,000 for software (Database), to be provided by **Sanford M. Sorkin Associates**, Upper Montclair, New Jersey;

4. \$558 for delivery and installation to **EGK Computer Systems**, Port Murray, New Jersey, and
5. \$900 to **248 Advisory Services, Inc.**, as the "Advisory and Implementation Contractor."

The proposal was signed by John F. Morton on behalf of 248 Advisory Services, and executed on April 22, 1992, by Kendall as Township Manager. Although the Council's approval of the system is not challenged, there is no documentary evidence that the Council approved the agreement or authorized Kendall to enter into it.

Kendall stated to Commission staff that the project would have been bid if the most costly component had not been under state contract. He relied upon the state contract number given to him by Melendy for Blue Circle Group, which provided the first component in the above proposal. Kendall wrote on the proposal next to Blue Circle Group's name: "STATE CONTRACT #48418." A municipality may purchase equipment from a vendor with an authorized state contract number without first publicly advertising for bids. However, this number is not assigned to Blue Circle Group, which, in fact, does not even have a state contract number. When questioned about the number, Melendy recalled providing it to Kendall, but did not remember from whom he had obtained it.

Presumably, Kendall sought the recommendation of 248 Advisory

Services because of its expertise in formulating a computer system. The basis for Kendall's confidence in 248 Advisory Services is not clear, except that he referred to Melendy as "a computer man." However, Melendy, who is now a real estate agent, stated to Commission staff that neither he nor any of the three partners of 248 Advisory Services were computer experts. Because the company lacked the expertise, it was compelled to utilize other companies to formulate a proposal and purchase the equipment.

To obtain a recommendation for the hardware package, Melendy contacted Edward G. Kilgus, a business acquaintance and owner of EGK Computer Systems, which purchases and installs computer systems. Kilgus formulated the hardware package that was included in the proposal submitted by 248 Advisory Services. It was Kilgus who contacted Blue Circle Group and Westwood Computer Corp. for the computer hardware. Because Westwood was unable to meet the delivery date, Kilgus substituted Computer Clip Board, Springfield, Virginia. (No notice of the substitution was provided to Belleville.) It was also Kilgus who made all the arrangements for the purchase of the hardware and who, using his own personal credit card, paid Blue Circle Group and Computer Clip Board for the items. Kilgus' company then installed the computer equipment. In an interview by Commission staff, Kilgus stated that 248 Advisory Services wanted him to conceal his involvement in the actual purchase of the equipment. Melendy denied so instructing him.

With respect to the software package, Redsecker contacted Sanford M. Sorkin Associates for a recommendation, which was then incorporated in 248 Advisory Services' proposal. Sorkin Associates, in turn, contracted with Marlin Data Corporation, Fords, New Jersey, for the software package. The software was actually purchased by Marlin from Westbrook Technologies Incorporated, Westbrook, Connecticut, with instructions to deliver it to Sorkin Associates.

As a result of Belleville's not bidding the computer project and resorting to a "consultant," which in turn utilized various other companies, a system of layers was crafted at an increased cost of more than \$5,000 to the Township of Belleville. Neither Kendall nor anyone else at his direction sought to substantiate the amounts set forth in the proposal. The Belleville "quotation form" was completed by 248 Advisory Services for each item and contained three telephone quotations for each. However, the forms provided no support for the subsequent selection of vendors because they lacked any information as to the date that the quotations were obtained or the names of the individuals providing the quotations.

The Township issued a check in the amount of \$19,334, dated May 6, 1992, to 248 Advisory Services. Kendall did not require 248 Advisory Services to produce any invoices from the companies actually selling the equipment in order to verify the component costs. 248 Advisory Services retained not only the \$900 fee

specified in the proposal, but an additional \$464.55, for a total of \$1,364.55. 248 Advisory Services issued checks to Sorkin Associates and EGK Computer Services (Kilgus). Although the proposal set forth a charge of \$3,000 for Sorkin Associates, the company charged Redsecker-Quinn Associates only \$2,535.45, comprised of \$1,000 in commission and \$1,535.45 for the software. 248 Advisory Services retained the difference of \$464.55. Sorkin Associates paid Marlin \$1,387.28 and Marlin, in turn, paid Westbrook only \$1,020.50. Therefore, Belleville Township paid \$3,000 for a software package worth approximately \$1,000. To date, Redsecker-Quinn Associates has paid Sorkin Associates only \$1,000, by check dated May 8, 1992, and consequently has enjoyed the added benefit of the \$1,535.45 still owing to Sorkin Associates.

When initially interviewed by Commission staff, both Redsecker and Morton insisted that their company received only the \$900 fee. However, when later confronted with the Commission's analysis of the payments, Redsecker admitted the additional hidden profit. Melendy said he was surprised by the hidden profits, having assumed that the charges listed in the proposals were the actual charges by the vendors, except for Blue Circle Group, whose stated price included a markup for Kilgus.

In three checks dated May 8, 1992, June 23, 1992, and November 24, 1992, 248 Advisory Services paid EGK Computer Services (Kilgus) a total of \$15,434. Kilgus retained \$558 as specified in the

proposal to Belleville, plus an additional \$1,790, for a total of \$2,348. Kilgus also initially denied receiving any monies in addition to his fee, but admitted to it when served with a subpoena for his credit card statements to demonstrate his cost for the equipment. Although the proposal set forth an amount of \$10,007 to be paid to Blue Circle Group for hardware, Kilgus paid the company only \$9,115, thereby retaining for himself an extra \$892. Even though the proposal included \$4,869 to be paid to Westwood Computer Corp. for hardware, Kilgus purchased the equipment from Computer Clip Board for only \$3,971, which represented a savings of \$898 that was retained by Kilgus and not passed on to the Township of Belleville.

When apprised of the facts by Commission staff, Kendall reacted to the concealed profits by stating that the handling of the entire matter by 248 Advisory Services was "expedient;" that a "good product" was provided, and that "Belleville was not equipped to oversee [the project] properly." To Kendall, a "small" hidden profit was acceptable.

Copiers - A dispute exists over whether the Council directed Kendall to lease or to purchase copiers. Once again, if the requisite resolution had been passed, there would be no conflict. Pursuant to a subpoena for all minutes, the Township Clerk was unable to produce any minutes to clarify the issue.

Kendall requested Melendy of 248 Advisory Services to evaluate the existing machines, to recommend replacements and to submit cost figures for both the lease and purchase of copiers for comparison. 248 Advisory Services also did not charge for this service. According to Melendy, he simply utilized the telephone book to contact several dealers about performing the evaluation, but only American Office Equipment, Inc. [AOE], Whippany, New Jersey, was able to provide a master service contract for any type of copier. Melendy spoke with AOE's regional sales manager, Timothy Houlihan, who did the evaluation and made recommendations. 248 Advisory Services then submitted a report and proposal to Kendall.

On July 10, 1992, Kendall held a meeting in his office with Melendy, Houlihan and David Moses, a sales representative with AOE. Houlihan informed Commission staff that prior to the meeting, Melendy instructed him and Moses not to participate "too much." Melendy denied giving any such instruction. At the meeting, Kendall executed three documents:

1. An "Equipment Purchase Agreement" with AOE for the leasing of one Ricoh 6750 copier system, two Ricoh 4421 copiers and three Ricoh 4415 copiers, plus sorters and feeders, at a cost of \$652.22 per month for 60 months;
2. An "Office Equipment Maintenance Agreement" with 248

Advisory Services for AOE to be the contractor for maintenance and repair of the machines at a monthly rate of the greater of \$823.78 or \$.023 per copy, and

3. A lease agreement with Eaton Financial Corporation for the specified equipment, with AOE designated as the supplier of the equipment.

On AOE's Equipment Purchase Agreement, which refers to the lease, there is handwritten, "STATE CONTRACT: A51291." In an interview, Houlihan admitted that the handwriting "looks like my handwriting." He related that he had informed Melendy, upon learning that the machines were for Belleville, "[I]f this is for a municipality, we have state contracts in the State of New Jersey and I can give you a better price." Melendy told Commission staff that Houlihan provided him with AOE's state contract number. Kendall stated to Commission staff that the project was not bid because he was advised by Melendy initially, and later by Houlihan, that the machines were under state contract. If Kendall or someone in the Purchasing Department had checked the number, he would have ascertained that the number is valid for AOE, but only for the purchase of certain equipment, not its leasing. Moreover, the state contract awarded to AOE covered only two of the six copiers specified. The contract number was invoked fraudulently to avoid the bidding requirements and to steer the contract to AOE.

There was no valid reason for Belleville to have contracted with 248 Advisory Services for the maintenance which AOE was contractually obligated to provide. Kendall should have demanded that AOE be the vendor. As a result of inserting 248 Advisory Services into the arrangement as a "middleman," Belleville paid an excessive amount in the "per copy cost" of \$.023 set forth in the maintenance agreement. Kendall did not inquire into any arrangement between AOE and 248 Advisory Services and, consequently, did not learn of their Customer Service Maintenance Agreement which specified \$.016 per copy, constituting a hidden \$.007 per copy profit for 248 Advisory Services. This hidden profit amounted to a minimum additional cost to Belleville of approximately \$3,000 per year of the three-year maintenance contract. When confronted by Commission staff with the facts, Kendall stated, "I guess we didn't check the fee schedule enough."

When interviewed, Melendy was unable to explain why Belleville's maintenance agreement was with 248 Advisory Services and not AOE, but stated that it was a "group decision" of the partners of 248 Advisory Services to have the contract that way. He claimed that he did not know who set the \$.023 figure. According to Houlihan, Melendy told him, before entering Kendall's office on July 10, 1992, that there was "no need to discuss" the per copy arrangement. Melendy denied that he did so. Houlihan also asserted that he was not present when Kendall and Melendy executed the maintenance agreement. However, both Melendy and

Kendall insisted that Houlihan was present. In addition, Houlihan stated that when Melendy originally questioned him on AOE's service contract, he responded that it was \$.016 per copy; that Melendy then instructed him to bill 248 Advisory Services for the maintenance, and that 248 Advisory Services would bill the Township. According to Kendall, when Melendy appeared before the Council and was asked about 248 Advisory Services' fee, he stated, "We get a commission from the contractor."

The Commission notes that the Council and new Township Manager recently refused to continue the lease arrangement on the ground that it had not been authorized by Council. The Township negotiated directly with AOE for the purchase of the six copiers specified in the lease agreement and for a service agreement. Belleville now pays only \$.016 per copy in maintenance. The purchase was done through the same state contract number, which did not pertain to four of the copiers. With respect to these machines, the bidding laws were violated. Again, there was a failure to verify the state contract number and the items covered by it.

Finally, no one from the Township supervised the delivery of the leased copiers so as to prevent the disappearance of two machines that were being replaced, one from the Purchasing Department and one from the Recreation Department. According to staff in each department, the machines were in good working

condition. In fact, the one removed from the Recreation Department was only three years old and was under a maintenance contract. Not only were the machines carted off, but no credit was given for them toward their replacements. As a result of the Commission's investigation into this matter, one of the machines was located and was returned by AOE to the Township without any delivery charge; no record exists of the other machine's removal or location and AOE has delivered a comparable copier to the Township, also with no delivery charge.

* * *

In addition to the mismanagement demonstrated by the failure to exercise any scrutiny over 248 Advisory Services' activities, the utilization of 248 Advisory Services was replete with violations of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), Belleville's Administrative Code and sound public management policy. The arrangements structured with 248 Advisory Services astounded officials of both the Division of Local Government Services in the Department of Community Affairs, and the Purchase Bureau of the Division of Purchase and Property in the Department of the Treasury. The violations include the following:

1. Township Manager Kendall accepted the services of 248 Advisory Services to perform evaluations and make recommendations without any charge. The company's motivation was to acquire business in the future, which is exactly what happened. Accepting

a service free of charge violates the intent of the Local Public Contracts Law to promote competitive bidding and to guard against favoritism, improvidence, extravagance and corruption. Allowing a vendor to provide a service gratis might obligate, however subtle the effect, the municipality to the vendor. It is not good public policy. It is immaterial that there is no expenditure of public funds. The fact remains that work is being performed for the municipality. Belleville's hiring of a company to perform evaluations and make recommendations regarding computers and copiers should have been done pursuant to the bidding laws: assuming that the cost of the service was below the threshold amount for public bidding, there should have been a solicitation of quotations (N.J.S.A. 40A:11-6.1),¹ a resolution (N.J.S.A. 40A:11-3) and a written contract or agreement (N.J.S.A. 40A:11-14). The wrong to be avoided is exemplified in this matter when 248 Advisory Services completed its role as consultant and became the vendor - all competition was eliminated and 248 Advisory Services was favored.

2. Township Manager Kendall supplied 248 Advisory Services

¹ Under N.J.S.A. 40A:11-6.1, where public bidding is not required, the contracting agent, prior to the award of a purchase, contract or agreement, must solicit quotations "whenever practicable" and must make the award on the basis of the lowest responsible quotation. (In the Commission's opinion, it was "practicable" to solicit quotations for the evaluation and recommendation of computers and copiers.) However, if not deemed practicable, the contracting agent must file, with the purchase, contract or agreement, "a statement of explanation of the reason or reasons therefor." Neither of these requirements was met.

with the amount budgeted for the computer system. Providing a vendor with the targeted amount, although not uncommon, is highly questionable because it allows the vendor to target its price just below the designated amount as opposed to the lowest possible price. It is not sound procurement policy.

3. There were no resolutions passed by the Township Council authorizing: (1) the hiring of 248 Advisory Services to supply the computers and copier maintenance, and (2) the hiring of AOE to provide the copiers. Each project exceeded the 1992 threshold amount of \$10,300, requiring public advertising for bids and bidding and, therefore, a resolution was required pursuant to N.J.S.A. 40A:11-4. Even if Township Manager Kendall correctly believed that a major cost component in each project was to be provided by an authorized state contract vendor, thereby obviating the need to bid the project (N.J.S.A. 40A:11-12), a resolution was nevertheless required for both the state contract portion (N.J.A.C. 5:34-1.2) and the remaining portion (N.J.S.A. 40A:11-3). Kendall acknowledged to Commission staff that a resolution was required for the leasing and maintenance of the copiers, but explained its absence by stating, "This was combat. Nothing was getting done in those few months [that the Council was] trying to fire me." Although there existed enormous conflict between Kendall and members of the Council and Kendall was eventually terminated, the Commission found that Kendall's excuse is not satisfactory. Friction with Council members was hardly a justification to ignore

the demands of the Local Public Contracts Law. Indeed, ongoing conflict with the Council was all the more reason for Kendall to document his actions.

4. The aggregate cost of each project exceeded the threshold amount and was required to be advertised publicly for bids and bid therefor, pursuant to N.J.S.A. 40A:11-4. The state contract number provided by 248 Advisory Services to Kendall on each project was not valid. As both Township Manager and Purchasing Agent, Kendall was obligated to exercise due diligence and verify the numbers and the products. Such verification may be accomplished with a telephone call to the Purchase Bureau of the Division of Purchase and Property. No municipality should rely upon the representation of the vendor who is attempting to sell the goods or services. As a result of the vendors' misrepresentations and Kendall's failure to verify the state contract numbers, the bidding laws were violated and competition defeated. It is noted that a municipality does not execute a vendor contract when contracting with a state vendor. Therefore, when Kendall was asked to sign the agreements for the copiers, he should have been alerted that something was awry and demanded to examine the state "Notification of Award - Term Contract(s)," which also contains the state contract number. Furthermore, when a state vendor is providing goods or services, the purchase order must be issued to the state vendor and not a third party. Here, the purchase order for the computers contained the state vendor number, but was issued to 248 Advisory Services

and not the vendor represented as the state vendor. Again, Kendall erred.

5. With respect to recommending a computer system, Kendall allowed 248 Advisory Services to complete Belleville's "quotation" forms. The completed forms, which contained no indication of who provided each quotation or on what date, did not constitute a reliable source for cost comparison. Further, under N.J.S.A. 40A:11-6.1, it is the contracting agent who must obtain the quotations. This responsibility cannot be delegated to the vendor. For obvious reasons, the company that will be making the purchases should not be providing the quotations. Moreover, no vendor should be permitted to complete government forms.

6. Township Manager Kendall had no authority to execute the agreements for the computers and copiers. Under Belleville's Administrative Code, absent any delegation of power, only the Mayor is authorized to execute contracts. On July 1, 1990, when Belleville instituted the council-manager form of government, the Council adopted its Administrative Code and, by resolution, the By-Laws of the Council. (The Administrative Code (Chapter Two, Article I, §2-1.7) authorizes the adoption of By-Laws by resolution.) The By-Laws (§IV, paragraph 5) dictate that "[t]he Mayor" shall "execute all bonds, notes, contracts and written obligations of the Township on behalf of the Township." The Administrative Code (Chapter Two, Article III, §2-3.2 A (4))

authorizes the Township Manager to "[n]egotiate contracts for the municipality, subject to the approval of the Municipal Council...." The Council never delegated to Kendall the power to execute contracts.

7. Township Manager Kendall executed a lease agreement for the copiers for a five-year period, in contravention of N.J.S.A. 40A:11-15(7) and N.J.A.C. 5:34-3.2, which impose a three-year maximum for leases of equipment.

8. There was no certification by the Chief Financial Officer that public funds were available for each project, as dictated by N.J.A.C. 5:34-5.2. The certification must be in writing (N.J.A.C. 5:34-5.2(a)1.) and attached to the resolution (N.J.A.C. 5:34-5.2(a)3.). No contract may be entered into or executed without a certification of funds. N.J.A.C. 5:34-5.2(a)5.

VEHICLE MAINTENANCE CONSULTANTS

The Commission examined the allegation that Vehicle Maintenance Consultants, Inc., [VMC] was hired by Township Manager Kendall, without the knowledge and approval of the Council, for a one-year period as a consultant to be paid by a monthly retainer. The initial hiring of VMC to perform an evaluation was not disputed. The Commission found that the Council knew that VMC was being hired on a monthly basis as a consultant and, in fact,

approved its hiring. However, what was absent in both instances of VMC's hiring was a resolution, a certification of funds and a contract.

Shortly after Kendall became Township Manager, he contacted VMC's owner, Dennis Meehan, to evaluate Belleville's vehicle maintenance program. Kendall had met Meehan while serving as Village Manager of Ridgewood and VMC was hired to perform services there. Meehan, who has been in vehicle maintenance operations for 35 years and in the consulting business for six years, conducted a maintenance evaluation analysis in January, 1991. At a Council meeting on February 20, 1991, Meehan presented his written report and advised that he could provide consulting services for \$5,000 a year. Meehan's report contained, in part, recommendations to consolidate the two repair garages and to upgrade the vehicle preventive maintenance standards.

According to Meehan, Kendall communicated to him that the Council had approved his proposal and that he should prepare a one-year contract to implement the recommendations. Although Meehan prepared, signed and forwarded to Kendall a contract, which stipulated the monthly payment of \$535 from June, 1991, to May, 1992, an executed contract was never returned to him. Nevertheless, on Kendall's instruction, he commenced providing services to the Township. Meehan, who was advised by Kendall that the contract had been approved, commenced his consulting services

in June 1991 and submitted his first bill on July 1, 1991. Meehan took Kendall "at his word" that there was a contract and "never followed up" when he did not receive an executed contract from the Township. Meehan, who had previously provided consulting services to numerous municipalities, knew that a resolution was required for his hiring and "presume[d]" that Kendall had obtained one. Meehan estimated that he devoted six to 10 hours a month to Belleville.

The hiring of VMC violated several provisions of the Local Public Contracts Law. Although VMC's fee of \$3,000 for the evaluation report was under the threshold requirement for bidding, a resolution authorizing its hiring was necessary (N.J.S.A. 40A:11-3), together with a certification of funds (N.J.A.C. 5:34-5.2), and a written contract was required (N.J.S.A. 40A:11-14). Similarly, when VMC was hired at \$535 per month for one year, the service did not have to be bid because the total amount did not exceed the threshold amount for bidding. However, there had to be a resolution, a certification of funds and a contract. Although purchase orders were issued to Meehan for his initial report and for each month once he began his monthly service, and although a purchase order may constitute a contract under certain circumstances, the fact remains that Kendall did not have the authority to execute contracts and, therefore, the purchase orders were improperly issued.

JEEP CHEROKEE

The Commission examined the allegation that the Township Manager improperly purchased a Jeep Cherokee for the director of the Department of Public Works. The Commission found that the dissatisfaction by certain Council members over the purchase of the Jeep was due primarily to the Council's own lack of knowledge about budget matters. Further, the Commission found that the subsequent handling of the Jeep by the Council and Township Manager Kendall was improper.

The 1991 preliminary budget request for capital equipment submitted by the Department of Public Works [DPW] contained a line item appropriation of \$16,000 for a vehicle for the director, whose contract stipulated the assignment of a vehicle. The request for a vehicle was supported by Township Manager Kendall. Although Council members debated the issue and did not unanimously agree on whether or not to authorize the purchase, they nevertheless approved the 1991 budget, which left intact the total amount proposed by DPW. Council failed to reduce the budget by the amount of the Jeep and, as a result, in effect approved the vehicle purchase. Council must accept full responsibility for this action even if it was the result of unfamiliarity with budget procedures. Therefore, the broad inclusion in the bond ordinance of an amount for "New Dept. P.W. Equipment" constituted the necessary authorization for the Jeep's purchase and a resolution was not

required. Kendall, who may have exhibited poor judgment in light of the Council's indecision, then purchased a Jeep Cherokee from a state vendor for \$15,238. However, he neglected to obtain the necessary certification of funds (N.J.A.C. 5:34-5.2).

When Mayor Marina Perna learned of the purchase shortly after the Jeep was given to the DPW director, she confronted him and demanded the keys, which he relinquished to her. Not only did she err in light of Council's approval of the bond ordinance, but she also violated the Faulkner Act and Belleville's Administrative Code by interfering with the Township Manager's supervisory authority and control over the DPW and its officers and employees.

The Council decided that the DPW director should not have the Jeep. In order not to lose any money by returning the used vehicle to the vendor, Council decided to transfer its title to the library, but did not do so by resolution. The library did not pay for the Jeep, but rather entered into an arrangement with the Township Manager, with full knowledge of the Council, to reduce its following year's budget by the value of the vehicle. This "arrangement" was not proper because a municipality may not condition the following year's budget - each budget year must stand on its own. Therefore, after Kendall was terminated, the new Township Manager properly demanded that title to the Jeep be returned to the Township. Although the library did, in fact, reduce its budget by the value of the Jeep, it still refused to pay

for it. (The library decided not to invade its surplus to purchase the vehicle.) Unfortunately, the failure by Kendall and the Council to adhere to the requirements of law were at the expense of the library.

The new Township Manager gave the library an old, retired police vehicle for its use when he had the Jeep returned to the Township. Title to the police vehicle remains with the Township. The transaction should have been by resolution, pursuant N.J.S.A. 40A:11-36, in order for the Township to have the location of this asset recorded.



THE CHIEF OF THE FIRE DEPARTMENT

OVERTIME PAY

Chief Beresford, who was appointed Acting Chief in March, 1990 and Chief in May, 1990, utilized overtime pay to reimburse firefighters when he directed them to purchase items and to provide services to improve conditions at headquarters. He sought the expertise of those firefighters with particular skills. The Chief's desire to make improvements might be admired, but his methods cannot be condoned. By circumventing Township procedures and failing to obtain advance approval for various improvement projects, Chief Beresford jeopardized the finite funding for overtime. In addition, Chief Beresford authorized overtime payments far in excess of the cost of the service and materials or item in order to compensate for the taxes firefighters had to pay on overtime monies. Invariably, even the net amount of each overtime check exceeded the actual cost for the item or services. Furthermore, Chief Beresford placed his subordinates in the untenable position of succumbing to his authority by receiving monies to which they knew they were not entitled. Chief Beresford's actions were not only against the Township, but also against those whom he was appointed to lead.

The Chief was able easily to abuse the system because his Department lacks a uniform, structured procedure to record overtime

hours and to insure that the Township issues checks for overtime actually worked. The procedures to record overtime under Chief Beresford are defective for several reasons: (1) rather than employing one, simple method, a variety of documents is utilized; (2) no one set of records is uniformly completed by the firefighters or the supervising officers, and (3) no set of records provides for the verifying signature of the deputy chief who supervises the particular shift. The Commission found that: (1) firefighters failed to sign the assignment duty cards as they began a shift; (2) names appeared on daily attendance reports, which were maintained for particular shifts by the deputy chief and designed to record overtime, without the knowledge or approval of the deputy chief on duty, and (3) Chief Beresford's handwriting appeared on daily attendance reports to record the names of firefighters who did not actually work overtime hours. According to a firefighter, on one occasion, Beresford instructed him to match the daily attendance reports against his secretary's overtime records to insure their consistency. The firefighter refused. In interviews by Commission staff, Chief Beresford admitted to his improper authorization of both overtime and compensatory time.

The following are some of the instances of illegal authorization for the issuance of overtime monies:

1. During 1990, at the direction of Chief Beresford, Firefighter Richard Hangge, with the assistance of his son,

wallpapered one of the officer's offices during a two-day period. The cost of the rolls of wallpaper and labor was approximately \$400. Hangge was paid, for himself and his son, through the improper issuance of a Township check. Beresford admitted the fraudulent use of overtime monies for this purpose.

2. Four checks, all dated June 20, 1990, were issued to Captain Vincent Sorrentino: a check for \$587.62, which included payment for 11 hours of overtime (\$358.61 gross) and for "acting capacity" service, which is paid when a firefighter or officer serves temporarily in a superior's position; a paycheck; a biannual check for holiday pay, and a \$250 check for clothing allowance, which is issued biannually. Because Sorrentino had not earned the 11 hours in overtime, he questioned the Chief, who was his close friend at the time. According to Sorrentino, the Chief explained that he had authorized the overtime for Sorrentino in order to reimburse himself for the approximately \$300 that he had expended for the Department. Sorrentino thereupon gave Chief Beresford some cash and the \$250 clothing allowance check, which was endorsed by both men. In an interview, Beresford denied that he ever authorized payment of overtime to a firefighter with the intention of retaining the money himself; that he ever retained such money; that he ever borrowed money from Sorrentino, and that he ever cashed one of Sorrentino's checks. However, when confronted with Sorrentino's check, Beresford identified the endorsement signature as his and offered that he probably cashed the check for

Sorrentino. However, Beresford's attempted explanation is not plausible because he negotiated the check at his own bank, one day after Sorrentino had negotiated the other three checks at his bank.

3. At Chief Beresford's direction, Firefighter John J. Cetrulo was paid two hours of overtime for attending a Christmas party. The following notation appears for him on the Department's daily "Attendance Report" for December 13, 1990:

OK By
Ch. Beresford
FMBA
FOR ATTORNEYS
XMAS PARTY

Cetrulo's name also appears in the overtime book maintained by Beresford's secretary. His name was written after the names entered for overtime on December 14, 1990, one day after he "earned" his overtime.

4. A \$212.82 check, dated January 9, 1991, was issued to Firefighter Christopher Calabrese for 10 hours of overtime that was never worked. The gross amount of the check was \$246.52. According to Calabrese, Chief Beresford had directed him to purchase two punching bags (a "reaction" bag and a "speed" bag) for the Department's weight room and the check was to reimburse him. Calabrese approximated the cost of the two bags at \$160. Calabrese stated that when he questioned the Chief about the overtime check, Chief Beresford retorted, in substance, "You got paid, didn't you? What are you worried about?" Concerned about receiving an unearned

overtime check, Calabrese reported the incident at a meeting of Local 29 of the Fireman's Mutual Benevolent Association [FMBA]. Chief Beresford admitted the incident to Commission staff.

5. A check, dated January 9, 1991, was issued in the gross amount of \$690.25, with a net amount of \$589.11, to Firefighter Michael Cancelliere for 28 hours of overtime. In reality, the check was to reimburse Cancelliere for supplying and installing the carpet in one of the rooms at headquarters and removing the old carpet. Cancelliere's business records listed the cost of the carpet at \$212.51. Cancelliere reported the unearned payment at the same FMBA meeting. In an interview conducted by Commission staff, Chief Beresford also admitted this incident.

6. A check for \$226.07, dated May 8, 1991, was issued to Firefighter Joseph Giuliano for 10 hours of overtime. The gross amount of the check was \$246.52. Giuliano told Commission staff that at Chief Beresford's direction, he purchased five to six boxes of ceiling tiles from the company where he worked part-time. The cost to Giuliano was less than \$200. When Giuliano questioned the unearned overtime, Chief Beresford advised him that the overtime was to pay him for the tiles. Chief Beresford admitted the use of overtime monies for this purpose when interviewed by Commission staff.

At least two individuals in the Department refused to allow

Chief Beresford to issue them illegal overtime checks. According to Robert Reed, a retired captain, in the beginning of 1991, approximately six months prior to his retirement, the Chief asked him to do electrical work in the Emergency Management trailer. Reed did the work, but refused the Chief's offer to pay him with overtime monies. In addition, Captain Joseph LaBruzza told Commission staff that during 1990 and 1991, at Chief Beresford's direction, he provided the Department with various items, including air conditioners, a water cooler, a clothes dryer, a television and a small refrigerator, from his appliance business. LaBruzza made it clear to the Chief that he did not want to be paid with overtime monies. He submitted purchase orders for all items and was paid properly.

As previously noted, several firefighters raised the issue of their receipt of unearned overtime pay at an FMBA meeting. As a result, Firefighter John Wille, president of the Local FMBA, confronted Chief Beresford. According to Wille, the Chief responded, in effect, "Jack, you don't run the Department. I do." Beresford explained to Wille that he operated several accounts and if monies were low in one account, he was able to transfer monies into it from another account.

Kendall told Commission staff that the Essex County Prosecutor's Office had apprised him and the Township Attorney of allegations of overtime abuse by Chief Beresford. As a result,

Kendall questioned the Chief in the presence of the Township Attorney. Beresford admitted to Kendall that he had firefighters perform work for the firehouse and that he paid them with overtime monies. Kendall admonished Beresford that the practice was wrong and ordered him to cease it immediately. Kendall took no disciplinary action against Beresford at that time because he assumed that the Prosecutor's Office would pursue some action against him.

BRASS HOSE COUPLINGS

The Commission found that Chief Beresford failed to turn over to the Township, for deposit in its revenue account, monies that he received from the scrapping of brass couplings removed from old fire hose.

Shortly after Beresford became Chief, and as part of a concentrated effort to clean up fire stations, old hose, which had been replaced over the years, was disposed of. Most of the fire hose was two and one-half inches in diameter with a brass coupling at each end. During several shifts, firefighters cut the brass couplings from old hose. These couplings were in addition to those cut over the years and stored in an open shed behind headquarters. Various firefighters estimated the number of couplings between 40 and 120 lengths. The Department maintained no records regarding the removal of hose from service or its disposition.

On the instruction of Chief Beresford, Firefighter Mark Rossi, who, as owner and operator of a roofing and siding business was familiar with the disposal of scrap metal, carted the couplings to a scrap dealer. Each two and one-half inch coupling had a weight of approximately five pounds and a 1990 value of \$.60 to \$.70 per pound. Applying a value of \$.65, the couplings generated an amount between the bare minimum of \$260 for 40 lengths to \$780 for 120 lengths. Rossi told several firefighters that he gave the money to Chief Beresford.

In an interview, Chief Beresford related that Rossi gave him no more than \$100 and that he relinquished it to his secretary for transmittal to the Township. The secretary, Ceil Escott, denied receiving the cash and stated that the first time that she heard about hose couplings was during the Commission's investigation. Escott explained that on the few occasions when she has received cash, she has transmitted it to the Finance Department for deposit in the "Miscellaneous Revenue Not Anticipated" [MRNA] account with a MRNA receipt form. Examination by Commission staff of all MRNA receipts and records maintained by the Finance and Fire Departments produced no receipt or record of the approximately \$100 claimed by Chief Beresford. There is no evidence that Chief Beresford turned over the money to the Township.

The Commission notes that Rossi's conduct in this regard was revealed through the interviews of other firefighters. Rossi was

the only firefighter who refused to cooperate with the Commission. In his initial interview, Rossi was evasive, often responding to queries by saying, "Now that's a difficult question to answer. I'll have to think about it and get back to you."

SICK LEAVE

Chief Beresford failed to adhere to procedure in 1992 when he allowed Captain Kenneth Taras to utilize continuous sick leave, without any medical justification, during the four months prior to his retirement on September 1, 1992. The Chief did not require of Taras the mandatory doctor's note setting forth a reason justifying continued sick leave. Further, Chief Beresford obstructed the Commission's investigation of this incident and attempted to have evidence manufactured.

Belleville's administrative regulations allow a retiring firefighter, who has accumulated 208 sick days, to receive one-half of his annual salary. Captain Taras had 286 sick days at the beginning of 1992. In February, he announced his intention to retire in September of that year. Prior to May, Taras requested and obtained the Chief's approval to take sick leave prior to his retirement date. Chief Beresford never sought or required a medical reason or doctor's note. Taras, who never submitted such a note, commenced sick leave on May 1 and continued on sick leave until his September 1 retirement.

When first interviewed by Commission staff regarding Taras' use of sick leave prior to retirement, Chief Beresford stated that Taras went on sick leave with a medical diagnosis of hypertension; that he requested that Taras obtain a doctor's note to substantiate the medical reason, and that Taras provided the necessary note. However, immediately following this interview, Chief Beresford telephoned Taras. (The Commission learned of the telephone conversation from both Taras and a firefighter whom Taras contacted immediately after receiving the call.) Beresford advised Taras that he happened to peruse Taras's personnel file and noticed that it did not contain a doctor's note for the sick leave that he had taken prior to retirement. When the Chief asked Taras the nature of his illness, Taras reminded him that there had been no illness. When he asked if Taras had a doctor's note, Taras replied that he never went to a doctor in connection with the sick leave. Chief Beresford then requested Taras to see a doctor in order to obtain a note to justify the sick leave already taken. Taras told the Chief he would not do this and persuaded him not to pursue the matter. He made no attempt to obtain the note.

Chief Beresford's disregard of Township and Department regulations in carving out an exception for Taras was made all the more egregious when he lied to Commission staff and when he asked Taras to fabricate evidence. The Township had to pay Taras his salary while on unauthorized sick leave and also pay another firefighter the "acting capacity" differential to fill Taras'

captain position during the four-month period.

Similarly, the Commission found that in 1991, Chief Beresford intended to give a retiring deputy chief more than 50 sick days in order to allow him to retire with the necessary 208 sick days to obtain one-half year's salary. On Beresford's instructions, his secretary falsified Department records by erasing previously used sick days. When a captain learned of this and warned Beresford of the consequences, the Chief instructed his secretary to restore the records. The Commission's examination of the records confirmed the extensive erasures and the re-entry of the sick days. In an interview, the secretary, Ceil Escott, confirmed Beresford's instructions and her actions.

PURCHASING

Chief Beresford crafted his own system to have the Township pay for goods and services acquired for the Fire Department. Township procedures require that a department head submit a requisition to the Finance and Purchasing Departments, prior to any purchase, in order to insure that monies exist for the purchase, to encumber the monies and to obtain approval for the expenditure. Once the purchase is approved, a purchase order is prepared and the item obtained. This system existed when Beresford became Chief but he ignored it.

Chief Beresford acquired items, such as carpet, ceiling tiles, wallpaper, a television set, a VCR and a vacuum cleaner, without first submitting requisition forms obtaining approval for the purchase and obtaining purchase orders. After acquiring the items, he submitted invoices that were back-dated. The Commission identified several 1990 invoices that were back-dated to 1989. In addition, several items were obtained on the same day in 1990 and recorded on separate invoices that were each submitted on a purchase order a month apart. Beresford admitted the practice to Commission staff and explained that his purpose was to have 1990 bills paid with remaining 1989 budgeted monies.

When interviewed, Kendall stated that after he became Township Manager, he was apprised of Beresford's disregard of purchasing procedures and his Department's overexpenditures. Beresford was admonished.

SALE OF FIRE TRUCK

Township procedures were also breached, and favoritism demonstrated, in the sale of a 1958 Mack Pumper, Model B, fire engine to the nephew of a captain in the Fire Department. There was no national or local advertisement for the sale of the truck and no solicitation of bids, although proper procedures were followed with respect to the sale of all other retired fire trucks. An exception to the rules was made for Frank Gingerelli, M.D., the

nephew of Captain Carmen Vicari.

During the summer of 1990, Captain Vicari apprised his nephew, a collector of antique vehicles, of the opportunity to purchase the 1958 Mack fire engine. Gingerelli submitted an offer of \$1,000 in a September 13, 1990, letter that was delivered to the Fire Department by Captain Vicari. Although Gingerelli received no response to the offer, his interest in the fire truck continued and he periodically inquired of his uncle the status of the sale. Captain Vicari continued to inform him that the Department was not yet ready to sell the truck. At his uncle's suggestion, Gingerelli submitted a second letter, addressed to Chief Beresford and dated September 9, 1991, with the same offer of \$1,000. Chief Beresford then notified Township Manager Kendall, by letter also dated September 9, 1991, of "a bid to buy" the 1958 Mack fire engine:

It is double what we could expect anywhere else and I would recommend we act as soon as possible. As you can see the bid was made almost one year ago but Dr. Gingerelli is still very much interested. [emphasis supplied]

Kendall told Commission staff that he believed that the engine had been advertised nationally; that there were several bids, and that Gingerelli's bid was the "best" price. Kendall asserted that he had no knowledge of Gingerelli's relationship to Captain Vicari and labelled Beresford's failure to inform him "a serious error."

Captain Vicari informed his nephew that the "bid" had been

accepted. Gingerelli's September 26, 1991, check for \$1,000 was delivered to Chief Beresford by Captain Vicani, who then drove the fire engine to Gingerelli's home. Title to the vehicle was transferred to Gingerelli by the Chief on June 12, 1992.

During the same time period, Township Manager Kendall directed Dennis Meehan of Vehicle Maintenance Consultants, Inc., to advertise nationally for the sale of retired fire trucks. According to Meehan, when he was looking at the 1958 Mack during one of his visits to the Fire Department, an individual present told him that "someone in the town or department wanted [the 1958 Mack] or made an offer" for it. As a result, Meehan did not pursue anything with the truck. Meehan, who has experience in collecting antique trucks, commented to Commission staff that the 1958 Mack was "a collector's type truck," "an unusual type truck," and had value as an antique.

Both Chief Beresford and Captain Vicari opined in interviews that \$1,000 was an excellent price for the fire truck. Research undertaken by Commission staff, however, has disclosed that the sale price of comparable fire engines, which were advertised nationally and sold as antiques, has ranged from \$6,000 to \$23,000, depending on the truck's condition and other factors. Engines with "open cabs" and bearing an "old name" favorite, such as the one sold to Gingerelli, are in high demand among collectors of antique fire apparatus. According to the Society for the Preservation and

Appreciation of Antique Motor Fire Apparatus in America, Syracuse, New York, all Mack fire trucks are "very collectible" because they are no longer manufactured and a Model B Pumper is "a classic in any condition."



ADDITIONAL FINDINGS

During the period of time under investigation, the Commission found a lack of accountability in many of Belleville's administrative procedures, most notably in the financial and purchasing areas. In addition, there were no written policies. Many of the Commission's findings were similar to conclusions set forth in 1992 reports prepared at the direction of the Township of Belleville by M. C. Cortese & Company, Certified Public Accountants of Roseland, New Jersey. Cortese & Company performed an extensive analysis of Belleville's financial and purchasing systems and produced comprehensive and specific recommendations. With respect to purchasing procedures, Cortese & Company found the absence of "an adequate separation of duties and responsibilities" and of a "sound program of internal financial controls to ensure for fundamental system integrity." It described the purchasing system as "susceptible to manipulation and other abuses." Specifically, the three quotations required for purchases below the threshold amount for bidding were not consistently obtained and quotation forms were not uniformly maintained in the purchasing files. Expenses were improperly transferred from one account to another. Purchases were made frequently without regard to fund availability and appropriateness. Requisitions were processed and purchase orders issued when account balances were insufficient, thereby resulting in recurring overexpenditures. Finally, there were no restrictions or dollar limits placed on the use of petty cash

funds. As a result of its analysis of Belleville's financial system, Cortese & Company found that administrative personnel lacked the technical training necessary for their areas of responsibility; a conflict of interest existed in the Township auditor also functioning as its accountant (in violation of its own Administrative Code, which requires the appointment of "an independent auditor to make an annual audit of the municipal accounts and financial records"); a current inventory of fixed assets was not maintained; there was no short-term investment or money management policy, as a result of which funds were maintained in non-interest bearing accounts; payroll was distributed in advance, in direct contravention of Division of Local Government Services requirements, and the cumbersome manual filing and information retrieval systems in the Treasurer's and Clerk's offices should be computerized.

* * *

The Township of Belleville, not unlike many other municipalities, has certain positions that are treated neither as employees nor "professional services." Although part-time, these positions provide full employee benefits. The positions of municipal court judge, township attorney, legal assistant, municipal prosecutor, municipal public defender and municipal physician receive salaries plus pension benefits and health insurance. In addition, the Township is responsible for matching

Social Security and Medicare payments. Treating these part-time, "professional services" positions as employee positions is very costly for the Township. For example, for these six part-time positions for 1992, Belleville paid \$3,868.04 in pension costs, \$35,674.68 in medical insurance costs, \$10,530.45 in Social Security and Medicare costs, \$2,692.08 in dental insurance costs, \$1,497.60 in group life insurance costs and \$255.84 in unemployment insurance costs, for a total of \$54,518.69.

* * *

For years 1990, 1991 and 1992, Belleville Township had overexpenditures and/or expenditures without appropriations as follows:

1. For 1990, there was an overexpenditure of Budget Appropriation of \$27,630.42, and \$16,522.23 in expenditures without appropriations;
2. For 1991, there was \$145,903.79 in overexpenditure of Budget Appropriation, and
3. For 1992, which has not yet been audited, there were overexpenditures of budgets of \$123,952.42, and overexpenditures of ordinances of \$197,093.75.

* * *

For many years, from the commissioner form of government to the present, one local company has handled Belleville's printing. Each year, the printing costs have exceeded the threshold amount for bidding, but the service has never been bid. In addition, there has never been a resolution, a certification of funds or even a contract.

* * *

Bertrand N. Kendall's contract with Belleville Township included expenses for his attendance at professional conferences. The contract ceased when Kendall was terminated on September 9, 1992. Nevertheless, Kendall authorized the issuance of a "hand check," dated August 3, 1992, for his attendance at a conference sponsored by the International City Management Association in Reno, Nevada, from September 13 through September 17, 1992. The check was written for \$543, which included the registration fee of \$390 and conference events of \$153. Kendall stated to Commission staff that he was aware of attempts by some Council members to terminate him and, therefore, he did not seek the Council's approval for the conference. The Commission notes that the "hand check" never appeared on any bill list that was submitted to the Council for approval.

* * *

The use of "hand checks," which is unavoidable at times, prevents the proper appropriation and certification of funds and should be used sparingly. Historically, Belleville utilized an inordinate number of "hand checks." In addition, the Commission found numerous instances where these checks were not included on subsequent lists of checks submitted to Council for its approval. The practice has been curtailed under the present Township Manager.

* * *

From 1990 through 1992, the Township Manager was assigned a municipal vehicle for commuting and business purposes. However, the Township failed to include this benefit on Kendall's W-2 form and, as a result, he paid no federal income tax for his personal use of the vehicle.

* * *

In the past, the Township of Belleville has expended public funds for municipal employees' entertainment and alcoholic beverages at holiday parties and picnics.

* * *

Belleville has no system for Council members or employees to review telephone bills and to reimburse the Township for personal telephone calls. The Commission discovered instances in 1992 and 1993 where the Township paid for such telephone calls, including some to Europe.

* * *

The Township Clerk, who has held the position for approximately 20 years, maintains in her office all records related to the operation of the Council. The office is cluttered and its contents are in disarray. There is no system by which the resolutions, ordinances, minutes, contracts, bid packages, bonds, election records and other materials are filed. In response to the Commission's subpoena for various documents, records were not easily retrieved and there was no assurance that all records in a particular category were being provided.

RECOMMENDATIONS

The Division of Local Government Services, Department of Community Affairs, is mandated to

exercise State regulatory and supervisory powers over local government, assist local government in the solution of its problems, and plan and guide needed readjustments for effective local self-government. [N.J.S.A. 52:27BB-6]

It serves as the watchdog over the activities of municipal government. However, the Division lacks the resources to address fully the monumental task of overseeing and correcting the purchasing, financial, personnel and other aspects of local government. The Division's staff has been reduced from 104 in 1989 to 56 at present and, as a result, is ill-equipped to fulfill its responsibilities to the state's 567 municipalities. While recognizing the fiscal constraints of state government at this time, the Commission emphasizes the important role served by the Division of Local Government Services and urges that its funding be enhanced, when appropriate.

* * *

Council members are effective only when they are knowledgeable about their responsibilities and duties and operate within the dictates of the law. The Commission's investigation of Belleville highlighted the problems that may be created when Council members lack experience and education in municipal government.

Belleville's Council members, who took office on July 1, 1990, without any background in municipal government, made no effort to learn and apply the apposite laws and regulations. Unfortunately, their failure to do so is not uncommon. Absolute reliance on the Township Manager or Township Attorney was an abdication of their responsibility and is no defense. The Council members of Belleville did not avail themselves of extant opportunities to acquire training. In addition to the lack of expertise exhibited by Council members, the Commission's investigation also revealed a lack of training and knowledge by key administrative personnel, including those in such important areas as finance and purchasing.

The Commission strongly urges that all municipalities take advantage of the introductory, technical assistance and continuing education courses designed by the Center for Government Services at Rutgers University's School of Planning & Public Policy to promote technical competence and professionalism among local government officials and employees. Each year, more than 600 courses and seminars are conducted throughout the state. Further, on-site programs can be individualized for particular local governments and technical assistance provided on demand. Every newly elected municipal official should attend the course entitled "Powers and Duties of the Municipal Governing Body," which is provided in cooperation with the New Jersey State League of Municipalities and is conducted once a year at seven locations throughout the state. Other training courses include programs on public purchasing,

public management and financial management. Professional training programs are also provided for municipal attorneys and municipal clerks. Further, municipalities should have representatives attend the seminars offered throughout the state by the Division of Purchase and Property on the proper use of state contracts. It is incumbent upon every governing body to insure that its employees are properly trained.

In addition, newly elected officials should avail themselves of the materials and technical assistance offered by the New Jersey State League of Municipalities. Its publication explaining the Faulkner Act should become the handbook of every new official of a municipality operating under a Faulkner Act form of government. It is only when Council members under the council-manager plan understand their proper role that the manager will be able to execute his duties without any unnecessary interference.

Apart from the foregoing formal training programs and publications, a municipality must set forth its procedures in a manual and must assume the responsibility of indoctrinating newly promoted department heads. Belleville must immediately establish procedures, or strengthen the ones that exist, in financing, purchasing, personnel matters and other areas and record those procedures in a manual that is distributed to all concerned.

* * *

Belleville's repeated disregard of the requirements for public bidding, obtaining quotations where bidding is not mandated, resolutions, certifications of funds and contracts constituted egregious violations of the Local Public Contracts Law. It served to derogate the statutory policy designed to benefit the taxpayer by promoting and securing competition, by insuring adequate controls over the awarding of contracts, by preventing the overexpenditure or improper expenditure of public funds and by thwarting favoritism, improvidence, extravagance or corruption. It is incumbent upon every municipal manager, governing body and municipal attorney to know the legal requirements and processes in awarding contracts. There must be no less than rigid adherence to the mandates of the Local Public Contracts Law.

* * *

The improper use of state contract numbers by municipalities has become prevalent throughout the state. Responsibility rests not only with the vendor who misrepresents the items or services covered under his number or who fraudulently provides another's authorized state contract number, but also with the municipality that fails to verify the number. The vendor's interest in obtaining business is clear. Although the convenience and ease attendant to accepting a state contract number may cause a municipal official to neglect to confirm the number, the official is subverting the intent and mandates of the Local Public Contracts

Law, which is designed to protect the public by insuring the lowest responsible price. When provided with a state contract number by a vendor, the municipality must verify the number, either by contacting the Purchase Bureau of the Division of Purchase and Property or by subscribing to the Cooperative Purchasing Program, which is operated by the Division of Purchase and Property and provides municipalities, on an ongoing basis, with the contract Notices of Awards that they wish to receive. Belleville had been a member of the program, but was deleted on July 1, 1991, for non-payment of its subscription fees for 1990 and 1991. Furthermore, municipalities must take the additional step of insuring that the particular state vendor is offering the lowest price of those offered by other state vendors for the same goods or services.

* * *

Belleville's Council has chosen to ignore the recommendations of M. C. Cortese & Company, which the Council retained at a cost of \$11,750.75 to conduct an analysis and make recommendations. The Commission urges the Council and Township Manager immediately to review and assess the recommendations and implement them as quickly as practicable. One of the first undertakings must be the formulation of a procedures manual for purchasing and finances. It is only through the implementation of the recommendations that Belleville will advance toward a professional operation and one that insures integrity.

* * *

The municipal clerk serves as "secretary of the municipal corporation and custodian of the municipal seal and of all minutes, books, deeds, bonds, contracts and archival records of the municipal corporation." N.J.S.A. 40A:9-133e(1). The clerk is the "coordinator and records manager responsible for implementing local archives and records retention programs...." N.J.S.A. 40A:9-133e.(6). Belleville's Township Clerk has not performed these responsibilities in a competent manner. Not only is she unable to retrieve easily the vast amount of records scattered throughout her office, but no one else is able to locate any public document in her office. She serves the interests of neither her employer nor the public. The Commission recommends as her top priority the organization of her office and the documents within her custody. This action is made all the more imperative in light of her eligibility for retirement.

* * *

Pursuant to state law (N.J.S.A. 40A:9-133e.(2)) and Belleville's own Administrative Code (Chapter Two, Article IV, §2-4.O.A.), it is also the function of the Township Clerk to serve as Clerk of the Council and to keep the minutes and records of the Council's proceedings. Belleville's Administrative Code (By-Laws of the Council, Article II, §2.) also requires the Clerk to index

the minutes and ordinances. Belleville's Township Clerk has failed to fulfill her responsibilities. Not even the broad mandate of the Open Public Meetings Act (N.J.S.A. 10:4-14) that a public body maintain "reasonably comprehensive minutes of all its meetings" was met. It is imperative that minutes of the Council's meetings be maintained in all instances and that they accurately reflect all subjects under consideration, the votes taken on all decisions and who was in attendance. In addition, the tape recordings of meetings must be securely maintained and steps taken to insure that the tapes clearly record the meetings. If Belleville's Council is unable to conduct itself in a manner conducive to producing clear tapes and to operate a tape recording system sufficient for that purpose, then it should utilize a stenographic service to record the sessions. The Commission repeats the recommendation made in its report on Solid Waste Management by the Bergen County Utilities Authority that the requirement of N.J.S.A. 10:4-14 be made more specific.

* * *

The Commission urges Belleville, as well as other municipalities where the practice exists, to reconsider its financial arrangement with certain professionals, such as the municipal judge, attorney and physician, who receive full benefits in addition to a salary and/or retainer. These positions should be treated as "professional services" and the burdensome monetary

benefits eliminated.

* * *

Every municipality must hold its officials and employees accountable for personal telephone calls. Belleville must institute a system whereby its officials and employees review telephone bills and reimburse the municipality for personal calls.

* * *

The expenditure of public funds for municipal employees' alcoholic beverages and entertainment at picnics and holiday parties is not sound policy and should not be permitted. Municipal officials must be cognizant of their role as caretakers of the public's purse strings and must not abuse this trust. Municipal employees and officials should fund their own entertainment.

* * *

Belleville Township must maintain a complete inventory of fixed assets by department. In addition, procedures should be instituted to record the removal of equipment from service and to insure their proper disposition. The sale or disposition of a municipality's property must comply with the requirements of N.J.S.A. 40A:11-36.

* * *

The Fire Department must institute a streamlined procedure, with adequate controls, to record firefighters' time off and time earned. For example, a carbonized form consisting of an original sheet and one copy, to be completed by the firefighter and initialed by the shift supervisor, could be used to document overtime, "acting capacity," sick leave and vacation. The form would be forwarded for final approval to the Chief's office, where the original would then be transmitted to the Department of Finance and the copy returned to the firefighter. Belleville Township should also examine the procedures existing in its other departments to insure that time earned and time off are accurately recorded.

* * *

The Commission's investigation uncovered several areas that warrant referral to other state agencies for review and any action that may be appropriate. The Commission will refer to the Attorney General's Division of Criminal Justice the misrepresentation of the state contract number by 248 Advisory Services, Inc., for the sale of computer equipment; the activities of 248 Advisory Services, Inc., EGK Computer Systems and Sanford M. Sorokin Associates in connection with the sale of the computer system; the misrepresentation by American Office Equipment Co., Inc., of its

state contract number; the activities of 248 Advisory Services, Inc., in connection with the service agreement for the copiers, and the conduct of Fire Chief Walter Beresford. In addition, the Commission will notify the Division of Purchase and Property of the misrepresentation of state contract numbers by 248 Advisory Services, Inc., and American Office Equipment Co., Inc. The Commission also urges Belleville Township to consider instituting a suit against 248 Advisory Services, Inc., which acted as Belleville's consultant in a fiduciary capacity, for the misrepresentations concerning the cost of the computer system and the service agreement for the copiers. Finally, the Commission recommends that the Township take appropriate disciplinary action against Chief Beresford.

ACKNOWLEDGMENTS

The Commission acknowledges the cooperation and assistance provided by the Department of Community Affairs, Division of Local Government Services, particularly Deputy Commissioner Barry Skokowski, Sr., who also serves as Director of the Division of Local Government Services, Deputy Director Howard Izes and Chief Joseph A. Valenti of the Bureau of Local Management Services, and the Department of the Treasury, Division of Purchase and Property, in particular Assistant Bureau Supervisor Enrico G. Savelli of the Purchase Bureau.

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This investigation was conducted under the direction of Counsel Ileana N. Saros, who was assisted by Senior Special Agent Richard S. Hutchinson, Special Agent Grant F. Cuzzupe and Investigative Accountant Jeanne M. Jackson.

