

Committee Meeting

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of

SENATE LAW AND PUBLIC SAFETY COMMITTEE

"The Committee has invited former Attorney General Robert J. Del Tufo to respond to the recent testimony of State Board of Education officials regarding the role of the Attorney General's Office in the awarding of State aid to the Township of Lyndhurst"

LOCATION: Committee Room 9
Legislative Office Bldg.
Trenton, New Jersey

DATE: October 13, 1993
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman
Senator Bradford S. Smith
Senator John H. Ewing



ALSO PRESENT:

Anne M. Stefane
Office of Legislative Services
Aide, Senate Law and Public Safety Committee

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625





LOUIS F. KOSCO
Chairman
JOHN J. MATHEUSSEN
Vice-Chairman
JOHN P. SCOTT
BRADFORD S. SMITH
THOMAS F. COWAN
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New Jersey State Legislature

SENATE LAW AND PUBLIC SAFETY COMMITTEE

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REVISED

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY
COMMITTEE

FROM: SENATOR LOUIS F. KOSCO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - October 13, 1993

*The public may address comments and questions to Anne M. Stefane,
Committee Aide, or make bill status and scheduling inquiries to Kathleen
Espieg, secretary, at (609) 984-0231.*

The Senate Law and Public Safety Committee will meet on **Wednesday,
October 13, 1993 at 2:00 PM in *Committee Room 9, Legislative Office
Building***, Trenton, New Jersey 08625.

The committee has invited former Attorney General, Robert J. Del Tufo to respond to the recent testimony of State Board of Education officials regarding the role of the Attorney General's Office in the awarding of State aid to the Township of Lyndhurst.

Issued 10/08/93
Revised 10/12/93 (*Room change*)



SENATOR LOUIS F. KOSCO (Chairman): I think we're going to get started.

SENATOR EWING: I don't hear any sirens outside.

SENATOR KOSCO: Not yet.

SENATOR EWING: Are the State Police escorting him?

SENATOR KOSCO: No, I don't think so. Maybe they got stuck in the traffic.

SENATOR EWING: Okay.

SENATOR KOSCO: We will begin this hearing. I will ask for a role call.

MS. STEFANE (Committee Aide): Senator Smith?

SENATOR SMITH: Here.

MS. STEFANE: Senator Ewing?

SENATOR EWING: Here.

MS. STEFANE: Senator Kosco?

SENATOR KOSCO: Here.

As you know, on September 22 we met and heard testimony from representatives of the State Board of Education about the Attorney General's handling of the Lyndhurst case, in particular the Attorney General's office advocating the settlement of the case without a full investigation by the SCI or Criminal Justice.

John Klagholz, a respected and long-standing member of the State Board of Education, and Ros Novack, the Staff Attorney for the Board, provided testimony that we found shocking in many, many respects. Klagholz told us that the Attorney General's office "went over the line" in his quotations, and was overzealous in seeking to block the efforts of the State Board to investigate possible criminality in the Lyndhurst scandal. Ms. Novack testified to being bullied by the Assistant Attorney General, who wanted the matter removed from the agenda of the State Board meeting.

In an effort to learn more and to provide an opportunity to respond, we scheduled this meeting and invited

former Attorney General Robert Del Tufo. Regrettably, he has declined our invitation.

Had former Attorney General Del Tufo attended, we would have solicited his input and defense to the charges leveled by Klagholz and Novack. In addition, we would have explored several other Lyndhurst issues.

Some of the issues that we were prepared to talk about and were going to ask for some answers on were -- and we'll give you some examples.

In the spring of 1993, then Attorney General Del Tufo decided to initiate a full blown criminal investigation of the Lyndhurst scandal, which culminated in a 158-page report released to the public on August 16, 1993. Newspaper accounts tell us that Del Tufo had already convened a State Grand Jury to hear testimony and decide if indictments should issue in the Lyndhurst scandal. Since the Attorney General's investigation would be expected to conclude prior to the Grand Jury's proceedings, we are suspicious that the motivation behind commencing the investigation was to take the issue off the table during an election year.

The fact that the report exonerates high-level administration officials, including the Treasurer and the Governor himself, while finding fault with middle management heightens our skepticism.

If the Attorney General was here, probably the questions that we would ask him would be:

Why would Del Tufo perform a full-blown criminal investigation and issue this report, when the decision had already been made by him to convene a Grand Jury to examine the same subject matter? Why would he be duplicating these efforts?

Unfortunately, once again, he's not here to answer that question.

What precedent exists for pursuing these dual tracks? When and under what circumstances had this ever been done before?

Unfortunately, Del Tufo is not here to answer that question.

How can the report be the result of an exhaustive criminal investigation and not refer to any criminal statute or evaluate any individual's conduct against a criminal standard?

Again, we don't have the answers to those questions, and we hope that we'll be able to try to get some answers to the questions.

There are a number of issues and a number of concerns that this body has. Does anyone else have any questions they might want to submit?

SENATOR SMITH: I have a comment, if I may?

Let me say this: The General's reluctance to appear before the Committee certainly deprives us of the opportunity to hear his side of the story. And considering the very damaging testimony given last month, I would have expected him to jump at the chance to respond.

Apparently, he has not totally ruled that out, and maybe he'll feel more -- he'll feel better about responding once he's done helping to run the Governor's campaign. We'll have to see.

But this whole matter raises a number of concerns for me. Grand Jury proceedings are normally shrouded in secrecy. We have been repeatedly admonished that the Grand Jury is and must be independent and shielded from outside influences. The Attorney General presents the evidence to a Grand Jury. We are concerned that the independence of the Grand Jury has been compromised by the public release of the Attorney General's report, and referral of this report to the Grand Jury. Since the report makes conclusions exonerating high-level administration officials, we are suspicious that its release to the Grand Jury was calculated to affect the outcome.

Now, there are a number of questions that this raises. Has the evidence being presented to the Grand Jury been limited in any way by virtue of the findings and conclusions of the Attorney General's report? The report is replete with page after page of findings exonerating administration officials.

I quote: "Although the Commissioner of the Department of Community Affairs, Melvin R. Primas, promulgated the relevant rules and regulations, he was neither familiar with them, nor did he understand them; hence, no criminal knowledge."

The report indicates that the effort to seek financial aid was initiated by the Governor's Deputy Chief of Staff, Samuel F. Crane, but then goes on to say that there was no independent inquiry by the Deputy Chief of Staff; hence, no criminal knowledge.

The report goes on to state: No one in the Attorney General's office had any prior knowledge of, or involvement in the interdepartmental transfer of funds, or the resulting Department of Community Affairs grant to Lyndhurst; hence, no criminal knowledge on the part of the Attorney General's office, absolving the Attorney General's office of any wrongdoing. This, I think, points out an inherent conflict of interest, because you have the Attorney General's office investigating the Attorney General's office, and making certain conclusions that there was no knowledge or involvement with respect to this matter on the part of the Attorney General's office.

The report goes on to say the Governor, James J. Florio, "had no knowledge." His Chief of Staff, Joseph Salema, "was not involved." Page after page of exculpatory statements in the Attorney General's report. How can the Grand Jury process be independent, fresh, and untainted in light of this Attorney General's report? Has not the report preempted the prerogatives of the Grand Jury to have a full and complete investigation? Has it not limited their scope of review?

I said earlier that there appears to be an inherent conflict of interest here in, number one, the Attorney General's office investigating his own office and coming out with a report. The evidence that we received at the last hearing indicated to us that there apparently was interference, pressure, and influence on the part of the Attorney General's office with respect to the Board of Education in approving this proposed settlement. How can the Attorney General, at this point in time, properly handle a Grand Jury investigation? It's impossible. I think it's clear that we need to have a special prosecutor appointed in this case when there is so much involvement, and rather unusual involvement by the Attorney General's office.

Thank you.

SENATOR KOSCO: Thank you very much.

Senator Ewing?

SENATOR EWING: Mr. Chairman, I've got a statement. I also want to bring up another part of it.

As many of you already know, I think this whole affair stinks. Without going through a whole chronology of events, it seems evident that the former Attorney General, knowing that he would be leaving to work on the Governor's reelection campaign, issued a report attempting to exonerate the Governor and his high officials.

This report was issued after the Grand Jury had already begun its deliberations. It was convened reluctantly, and only after the SCI released its report and the Special Prosecutor's bill was introduced, further calling attention to the administration's atrocious behavior in this matter. This is contrary to customary legal practice. I give the Attorney General's report no credibility whatsoever. In fact, it appears to me that the Office of Attorney General was abused for cynical political purposes; for example, to get this mess off the table and hope it would go away for this election.

The recent action by Acting Attorney General DeVesa appears to confirm this insofar as he is attempting to hold someone accountable for illegal transfer of funds, and thereby retrieve the good name of the professionals who work in the Department of Law and Public Safety. However, even this action, which doesn't go far enough, cannot repair the damage to the credibility the Attorney General must have in order to maintain the confidence of the people of this State.

As I said previously, I think nothing will be proven definitely until we get a special prosecutor. There certainly is an appearance of an obstruction of justice by the Attorney General's office.

Now, with the Grand Jury proceedings being shrouded in secrecy, we've repeatedly admonished them to conduct a criminal investigation into the timing of the release of that investigation, particularly in light of its findings and conclusions. Given the fact that Del Tufo joined the Florio campaign within a week of issuing his Lyndhurst report, we are skeptical as to whether the report conclusions exonerating Florio are credible.

I'd like to know why did Del Tufo wait until the spring of '93 to commence the investigation, when his office -- his own office -- had known over a year that potential criminal fraud had taken place by virtue of the falsification of the application for the discretionary education grant? Why did the Attorney General's office not immediately commence a criminal investigation when requested to do so in 1992 by the State Board of Education? Why did the Attorney General's office resist the State Board's suggestion of an SCI investigation? Why did the Attorney General only act after the SCI report was released and the special prosecutor bill was introduced? What integrity can the Attorney General's report have when it was authored and publicly released by then Attorney General Del Tufo only a week prior to his actual departure from office to join the Florio campaign?

These are questions that clearly have got to be answered, and as long as I'm alive, I'm sure we're going to keep fighting to make sure we get to the bottom of this rotten mess.

Thank you.

SENATOR KOSCO: Thank you, Senator.

I think it's clear that the actions on the part of the Attorney General -- not showing up at this Committee hearing -- show that the answers are probably not going to be coming forth until, for some reason, after the election. I don't know what the reasons are. We're concerned about something that affects the State of New Jersey; we're concerned about millions of dollars at a time when the State of New Jersey is trying to pay attention to every single dollar that's spent. Why that Department feels that over a million dollars is not very important to address--

When a report is issued such as this, and released to the public when it's supposed to be going to the Grand Jury leads me-- It appears to me that Dhe purpose of the document may have been to influence that Grand Jury. And if so, is that proper? Could that possibly be an obstruction to justice?

We have a lot of questions that have not been answered. We are trying to get the answers to the questions. We have the questions; unfortunately, we don't have the answers.

Our next step is to petition, ask, and try very, very hard to get the State Assembly to address the issue of a special prosecutor. It's already passed this House. And our next step is to try to get that special prosecutor as quickly as possible, and to pursue this so that we can conclude it, so that the people of the State of New Jersey can have confidence in the highest law enforcement body of this State; that is, the Attorney General's office -- supposedly a nonpolitical office.

Does anyone have anything they would like to add? Any questions?

SENATOR EWING: Do we have any indication when the Grand Jury might come up with a report, or isn't he allowed to put that out, even?

SENATOR KOSCO: I don't know.

MR. PAULSEN: (Senate Majority Staff Counsel): We don't have any indication at present, no.

SENATOR KOSCO: We have no indication at all at present.

SENATOR EWING: Is there any way we can find out?

MR. PAULSEN: We could certainly inquire.

SENATOR EWING: Are we allowed? I mean, you know, are you allowed to inquire?

MR. PAULSEN: We can certainly inquire.

SENATOR KOSCO: Could we send a request over to them?

SENATOR EWING: I would like to recommend to the Chairman, then, that he write to the Acting Attorney General and find out when we might expect it. It will probably be, what, November 4 or 5, or something?

SENATOR KOSCO: All right. That will, unfortunately, conclude this hearing without the answers. It does not conclude our actions. We will continue to pursue it.

Thank you very much for being here, Senators. We will continue this later.

(MEETING CONCLUDED)