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C O M M I T T E E M E E T I N G

before

SENATE SPECIAL NEW JERSEY HIGHWAY AUTHORITY

INVESTIGATION COMMITTEE

To review and discuss an interim Committee report to the
Legislature and others concerning the compliance by the
New Jersey Highway Authority with the Open Public Meetings Act

May 2, 1988
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Gabriel M. Ambrosio, Chairman
Senator Christopher J. Jackman, Vice Chairman
Senator John A. Lynch
Senator Laurence S. Weiss
Senator Donald T. DiFrancesco
Senator Henry McNamara

ALSO PRESENT:

E. Joan Oliver
Office of Legislative Services
Aide, Senate Special New Jersey Highway Authority
Investigation Committee

New Jersey State Library

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

COMMITTEE MEETING

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New Jersey State Legislature

**SENATE SPECIAL NEW JERSEY HIGHWAY AUTHORITY
INVESTIGATION COMMITTEE**

John A. Lynch
Laurence S. Weiss
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M E M O R A N D U M

April 26, 1988

**TO: MEMBERS OF THE SENATE SPECIAL NEW JERSEY
HIGHWAY AUTHORITY INVESTIGATION COMMITTEE**

FROM: SENATOR GABRIEL M. AMBROSIO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - May 2, 1988

(Address comments and questions to E. Joan Oliver, Secretary,
(609) 984-7381.)

The Senate Special New Jersey Highway Authority Investigation Committee will meet on May 2, 1988, at 9:30 a.m., in Room 424 of the State House Annex, in Trenton, New Jersey.

At this meeting, members of the committee will review and discuss an interim committee report to the Legislature and others concerning the compliance by the New Jersey Highway Authority with the Open Public Meetings Act.

SENATOR GABRIEL M. AMBROSIO (Chairman): Okay. Can we call this Committee to order?

The purpose of this Committee meeting today is to discuss the issuance of an interim report of our investigation of the Highway Authority. The members of the Committee have had a draft of the report for the past several days, and I now have had an opportunity to review it. At this point I would ask any members of the Committee if they have any questions or comments about the report before I ask for a formal vote on it?

SENATOR DiFRANCESCO: I do.

SENATOR AMBROSIO: Senator DiFrancesco?

SENATOR DiFRANCESCO: I did receive the draft report with a cover letter dated April 28, I believe. I did not receive, to my knowledge, a copy of the transcript -- which I do have in front of me today -- concerning the testimony. Before I will vote affirmatively or negatively on any of the issues contained in the interim report, I want an opportunity to review the testimony that has been taken -- in other words, the transcript -- with the findings and with the report, so that I'm comfortable with what I'm doing. I'd like to defer this until next Monday, at which time we should vote on the report. I, therefore, move that we table this until that time.

SENATOR AMBROSIO: Okay. A motion to table takes precedent over any other motion. At this time, I would ask for a roll call. I would ask for a roll call on the motion of Senator DiFrancesco to table the issuance of the report. Would you call the roll?

MS. OLIVER (Committee Aide): On the motion, Senator Ambrosio?

SENATOR AMBROSIO: No.

MS. OLIVER: Senator Jackman? (no response) Senator Lynch?

SENATOR LYNCH: No.

MS. OLIVER: Senator Weiss?

SENATOR WEISS: No.

SENATOR JACKMAN: (enters room as roll is being called) Meeting start?

MS. OLIVER: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MS. OLIVER: Senator Dorsey?

SENATOR DORSEY: No.

SENATOR JACKMAN: It's 10 o'clock.

MS. OLIVER: Senator McNamara?

SENATOR McNAMARA: No.

SENATOR AMBROSIO: All right. At this time the motion to table the report has been defeated. I would ask for any other comments on the report?

SENATOR JACKMAN: What is that? What were we talking about? Wasn't the meeting supposed to start at 9:30?

SENATOR AMBROSIO: Yes, Senator.

SENATOR JACKMAN: Okay. It didn't start at 9:30. I want you to know I'm annoyed. Okay?

SENATOR AMBROSIO: Your annoyance is duly noted, Senator.

SENATOR JACKMAN: And the meeting shouldn't have started until I got back here. What's the motion?

SENATOR AMBROSIO: Senator DiFrancesco? It was to table the report, Senator. It was denied.

SENATOR JACKMAN: Who made the motion?

SENATOR WEISS: Senator DiFrancesco.

SENATOR JACKMAN: I'm with him.

SENATOR DiFRANCESCO: The reason why I asked for the basically one week delay -- for one thing we don't meet until next week -- for the one week delay in voting on the interim report is because I really feel strongly that in order to, for example, come to the conclusion that this report contains on page two, "Findings" III (1), relating to that finding concerning the Authority acting in knowing violation of the

Open Public Meetings Act, I'd have to review the testimony because that's not my understanding nor my recollection. I certainly am not going to support that until I have had an opportunity to review the testimony and then discuss my review of the testimony with the Committee. I'm not against having a working session to review all of this, but if you ask me to vote on the report, I can't vote yes on something like that because that's not the way I read it, or heard it either.

Then on page four you have "Exceptions to Public Advocate Findings." There are two conclusions. One is that all of the meetings constituted violations to the Act, and that's not my conclusion based upon my recollection. Again, it's my recollection. And again, that there was allegedly a violation of the Act because of some meeting the Commissioners had with Governor Kean. I also do not find that that was a violatory act, based upon what I heard, what I know of the law, and I don't profess to be an expert on it.

Let me just point out one thing that we say in our report about what people are supposed to do when they go into executive session. Russ, (referring to Senate Majority Staff Aide) where is that? (looks through papers) We make a statement, I thought, about what a body should do when they go into executive session, and this body didn't do it.

SENATOR AMBROSIO: Where are you reading from, Senator?

SENATOR DiFRANCESCO: I was reading it before. Here it is, page three, (2) (c): "The Authority violated the Act for failure to adopt appropriate resolutions relating to each of the closed sessions in which the Authority discussed the toll increase." It cites the statute: "The resolutions did not state the general nature of the discussions nor the specific statutory exceptions invoked to justify the closed session. They further failed to indicate the time or circumstances under which disclosure to the public would be made." Again, I don't know that that is accurate.

I also know a little bit about what generally is the custom throughout the State with regard to executive sessions. I don't think that this is appropriately stated. I need to know a lot more about that conclusion before I could support that statement in this report.

In other words, I need to have a discussion with this Committee about each and every paragraph of this report. I thought that's what we were doing. We were going to have a working session. If that's what this is, I apologize. But if we're just going to vote on the report, then I can't support it.

SENATOR AMBROSIO: Well, we're going to discuss the proposed report. I might point out, though, that the section that you just read is the finding of the Public Advocate. That's not a finding in this report; that's a recitation of the Public Advocate's finding.

SENATOR DiFRANCESCO: Right, but above that it says, "The Committee accepts and adopts the Public Advocate's findings."

SENATOR AMBROSIO: That's right. That's what this Committee would be doing if it accepts the report. We're here to discuss the report. I might also comment that on the exception to the Public Advocate's report--

SENATOR DiFRANCESCO: Gabe, let me just give you an example before you go on. Any time a public body goes into executive session to discuss a legal matter, let's say a pending litigation, this says-- For example, this statement says, "They failed to indicate the time or circumstances under which disclosure to the public would be made." Those public bodies don't sit there and say, "Okay, we're going to go into executive session because we're going to discuss pending litigation." And even if they mention the name of the case, if they know the name of the case-- Perhaps next week or the week after the public will be made aware of what's going on. Perhaps this case will be concluded in three months. They

don't say those kinds of things on the record at public meetings of public bodies, and I've been to a lot of them. I'm not an expert on the Open Public Meetings Act, but the spirit of the Act is not as stated here.

SENATOR AMBROSIO: Senator, I might point out that the language that you're talking about is directly out of the statute.

SENATOR DiFRANCESCO: I know that. Gabe, I know that.

SENATOR AMBROSIO: And that's one of the recommendations that the report contains, that the Attorney General prepare plain language forms that will be universally used by all public bodies in this State, so that each public body doesn't prepare a different type of resolution. And the language that you're referring to is the statute; that it's exactly out of the statute.

SENATOR DiFRANCESCO: I know what the statute says. I also know what the interpretations of the statute have been by many many municipal and county attorneys. I've been to a lot of meetings where there have been people going into executive session. You might be holding this Authority to a higher standard than has been held throughout the State, generally.

SENATOR LYNCH: Senator DiFrancesco, you're not suggesting that this Authority didn't have an open and notorious, continuous violation of the Sunshine Law?

SENATOR DiFRANCESCO: No, I'm not suggesting that they didn't have violations of the Sunshine Act. I'm not suggesting that.

SENATOR LYNCH: You're not suggesting that there was some color of right to do what they did because of general opinions by attorneys out there who may be handling these things in different ways?

SENATOR DiFRANCESCO: John, let me just say, there is one finding here: "The Committee finds that the Authority has acted in knowing violation of the Open Public Meetings Act

through the course of its private deliberations on the proposed toll increase." That's a general statement. I don't find that conclusion from the testimony, that they acted in knowing-- We heard testimony from the attorney, and we heard testimony from Mrs. Stanley. Did we hear any testimonies from any of the other committee members?

SENATOR AMBROSIO: We heard from the Public Advocate also.

SENATOR DiFRANCESCO: Oh, we heard from the Public Advocate. Of course, the Public Advocate was just giving a legal opinion.

SENATOR LYNCH: And you heard from the attorney who advised the Commissioners. He told them that they were not in full compliance with the way they handled the Open Public Meetings Law, but they were in substantial compliance. He gave them rationale as to why they should go about doing these things.

SENATOR DiFRANCESCO: Yes. He also said that as every member took office he advised them that they didn't do things the right way.

SENATOR LYNCH: Yeah, but then when you turn around--

SENATOR DiFRANCESCO: There's a lot of things he said that I don't necessarily believe to be totally accurate.

SENATOR LYNCH: Don, if you turn around and bid, and you go out with a \$5 million bid specification without ever having it aired out in public session, and you then go and advertise it, do you think there's anybody on that board-- It's a competent board with people of high respect who have all served in various and sundry capacities. Do you think there's any doubt that they didn't know that that was in violation of the law?

SENATOR DiFRANCESCO: Oh, I think there's great doubt that they didn't know it was a violation.

SENATOR LYNCH: A five million dollars bid specification, never been approved at a public meeting, you go out with it?

SENATOR DiFRANCESCO: John, you're assuming that these people, because they may be in business or whatever, know what the statute says dealing with open public meetings. I can tell you that no one really knows until they've really studied it, and it takes a lot of study to remember exactly when you can do this and when you can't do that. I mean, people ask us this at every meeting. People ask me, "Should we be in closed session or should we be in open session?"

SENATOR AMBROSIO: I know everyone wants an opportunity. Senator McNamara did ask first, and then Senator Jackman.

Before I do, I just want to clear up one point that you raised, Don. The private sessions that we are concluding that they violated the Open Public Meetings Act are not all of the private sessions, only the 13 of 16 where they discussed the short-term financial proposal, the decision to build a reception facility at the Arts Center, the takeover of State-owned sections, those meetings. There are 13 specific meetings of the 16. The other thing I'd like to point out--

SENATOR DiFRANCESCO: I'd have to read that to know that. I'd have to read it.

SENATOR AMBROSIO: All right. The other thing I'd like to point out is that in addition to the testimony, we have all of the minutes of all of the meetings -- including the private meetings -- that staff has combed through and that we've had opportunity to examine. So it isn't just based on the testimony of a few witnesses. We have all of the records of the Authority that it's based upon. Senator McNamara?

SENATOR McNAMARA: On page two, on top of the page, March 24, stating that the Committee, "compelled" -- I think that particular word I have a little problem with because I think it's a little strong, which I had mentioned to you earlier.

But then, to drop down to this particular item that you're discussing-- You have to understand, I'm a layman. The majority of the members of this happen to be attorneys. I have a real problem in finding, when we say that they, "acted in knowing violation" because I as a layman, after having a member of the Authority testify here, and in specific answer to questions said that they relied on the advice of their counsel. To me as a layman, we might be making an accusation which is very very strong, because it's a question of perjury. I mean, that member was sworn in to testify before this legalized body.

I think the word "knowing" is a real problem, because I have referred to those minutes, and every single time that you're referring to what the attorney said, he constantly said, "in substantial compliance." Even when it came to after our hearings with the Touche Ross management study of the Authority, he made the statement publicly on advice to the members of that board, that it may have been a small conflict, a minor conflict, but it was substantially within the-- And advised them to go ahead and make that appointment. And they did. Now, do you really think that after everything that has happened since the beginning of this process that they are not relying on that attorney? I mean, I think they're crazy to rely on them. And if anything, it's the attorney that I would be after.

I have a real problem with that particular conclusion and the way that it's stated, because the average person that is going to read that, that is not in the profession of law, is not going to make the fine distinctions that you may be able to make as an attorney. I'm afraid the characters of people that are serving on that particular board are going to be unfairly criticized. And believe me, I'm one of their strongest critics

SENATOR AMBROSIO: I appreciate your comments. Let me just make two comments. First of all, in terms of the "compelled," I might point out that when the Senate Independence Authorities Committee asked for information from the Authority

it was not forthcoming. While I have no problem with the Authority's responding to our subpoenas voluntarily, I have a feeling that the fact that we had subpoena power behind this Committee made it easier to get the documents. As a consequence, "compelled" I think was the appropriate word.

Secondly, this is not a report that finds anyone guilty of perjury. We're not a judicial body. The burden that this Committee, and the standard that it applies in terms of its findings, is not a criminal standard where we find beyond a reasonable doubt. We're going to base it upon all the facts and circumstances, and we do not have to single out the testimony of any witness upon which we base a judgment. This report, in my judgment, does not find anyone guilty of perjury.

SENATOR McNAMARA: We've only had one member of that committee testify before us, and you're making a conclusion. I mean, you don't have to single out anybody.

SENATOR AMBROSIO: But we had all sorts of other documents and testimony from the attorney, and the Public Advocate's report also. Senator Jackman?

SENATOR JACKMAN: I've got on page five -- and I'm going to ask this question -- "Recommendations: Open Public Meetings Act":

"(a) The current penalty provision can be imposed only in the case of a knowing violation," then it gives 10:4-17; this is for the lawyers' edification. "This provision should be amended to state that the penalties apply if the person knew or should have known that their action violated the Act.

"(b) The Committee believes that a member of a public body should not escape penalties for the violations of the Open Public Meetings Act by automatically relying on the advice of counsel. The law should provide that the trier of fact would determine if reliance on the advice of counsel was reasonable."

Now, who in the hell-- If you've got counsel and you're paying him, I would be stupid not take his advice. And after I take it and find out I'm wrong, I'm guilty.

SENATOR AMBROSIO: No, Senator. That's not what we're saying there.

SENATOR JACKMAN: Well, that's what I read. If I read plain language, "The Committee believes that a member of a public body should not escape penalties for the violation of the Open Public Meetings Act by automatically relying on the advice of counsel." Now what in the hell have I got counsel there for if I'm not going to rely on him? That means to me that you shouldn't have any lawyers at all, and rely only on the laymen.

SENATOR AMBROSIO: Senator, the Open--

SENATOR JACKMAN: Is that what that reads or isn't it?

SENATOR AMBROSIO: Well no. "Automatically" is--

SENATOR JACKMAN: No?

SENATOR AMBROSIO: "Automatically" is the key word. In other words, you have the right to rely on the advice of counsel, but you've got to determine whether or not that advice was reasonable.

SENATOR JACKMAN: Well, how in the hell can I determine? He went to law school. I didn't. He knows the law better than I do. He knows what 4-17 means. I don't.

SENATOR AMBROSIO: But one of the problems is, Senator, that the Open Public Meetings Act applies to the member that's in office and not to the attorney--

SENATOR JACKMAN: Are you a lawyer?

SENATOR AMBROSIO: --and simply allowing an attorney to give you an opinion that clearly violates the Act, we certainly couldn't tolerate.

SENATOR JACKMAN: Well then you should fine the lawyer and not the individual who relies on the counsel's advice. If I have John Lynch as my lawyer, and he sits alongside of me,

and he gives me advice, and then all of a sudden I find out that he violated-- You know, somebody tells me he violated the law, "But you're guilty because you shouldn't have taken his advice." Go ahead, tell me, you lawyers. Go ahead. Come up with an answer to that one.

SENATOR DiFRANCESCO: On that point, following what Senator Jackman was saying, any recommendations in this report concerning changes in the Open Public Meetings Act, I think are premature. I think that we should have testimony from people who have dealt with the Open Public Meetings Act by prosecutor's offices. Every prosecutor's office is charged with investigating these. I personally call prosecutors' offices for their opinions on certain situations. There ought to be some testimony with regard to some of the problems that they've encountered with regard to these sections, so that we perhaps have a broader understanding of what recommendations should be made or should not be made. On that point, I think we're premature.

SENATOR AMBROSIO: Senator, these are not proposals for specific legislation. What we are acknowledging in this report is that changes in the Open Public Meetings Act are necessary. I would assume that in the course of the legislative proposals, and the hearings on those legislative proposals, that type of testimony would be forthcoming. These are not specific proposals. They're general recommendations to the Legislature as to how the Open Public Meetings Act should be amended. I would agree with you that we're going to need more input into how we specifically deal with Senator Jackman's question. But we're clearly saying that advice of counsel, automatically relying on it, will get us all in trouble because you're going to get your attorney--

SENATOR DiFRANCESCO: The Act doesn't say that now, does it?

SENATOR AMBROSIO: It doesn't, but it's apparently been applied that way with regard to the Highway Authority. We're suggesting that that shouldn't be, and that the Legislature should come up with a proposal that gets around that problem. Now, there are no specific recommendations in this report as to how that should be done, but that's what the legislative process should develop. Anyone else?

SENATOR DORSEY: Yes.

SENATOR AMBROSIO: Senator Dorsey?

SENATOR DORSEY: Mr. Chairman, having sat through the testimony, particularly of counsel Mr. Fox and one member of the committee, my feelings about this are very close to that of Senator Lynch. I frankly have sat as an attorney representing public agencies for a very long period of time. And frankly I just find myself aghast at the attitude which the counsel, Mr. Fox, took towards the entire obligation placed upon the body by the Open Public Meetings Law. I have seen municipal bodies in the hinterlands much more concerned with compliance with the Open Public Meetings Law than I found this Authority to be motivated by a responsibility to the public as defined by that Act.

I can't disagree with Senator Jackman or Senator DiFrancesco's comments that perhaps initially the blame must lie with counsel, because counsel had the heaviest obligation -- given his capacity -- in the process, in fact to jerk up an Authority that was not about to live up to the Open Public Meetings Act law. I can only say that counsel's attitude in this instance was an extremely cavalier one, with absolutely no intent on his part to see that his Authority lived up to its obligations. Senator Lynch makes the point about a \$5 million bid that was discussed in private. I mean, I find the thought, as I did when we questioned him, of the justification given for these meetings being held in private on the basis that it was going to involve contract negotiations over the takeover of 13

miles in Union County, to be a total farce. The only disappointment that I have with the report is that it does not deal specifically with the role of counsel.

On the other hand, I do not think-- I wasn't here when the Open Public Meetings Act was adopted. I do not think that the fact that counsel may have acted in a cavalier way, counsel almost by his actions, I think, encouraged this body and its members to think that the Open Public Meetings Act did not apply to them, and that they could in fact escape it on some really tenuous basis. But that can't take away from the obligations from those who sit on these authorities to have some recognition of what this law places upon them. I mean, if a counsel inappropriately, inaccurately, advises a public agency to do something totally illegal, those members cannot come back and divest themselves of responsibility because the advice of counsel was totally inaccurate.

It is disturbing to me that-- And I have seen local governing bodies, members on it, be much more concerned as to whether or not they were violating the Open Public Meetings Law than it appears that any members of the Authority were. It's not to be pointed out that Mr. Fox was not the only attorney in the room during these meetings. There were various counsel there, and there are in fact members of that Authority who are attorneys. There are members of that Authority who have served on other public agencies. And I think that in terms of the Open Public Meetings Act, their performance in this connection has been really quite deplorable.

My problem with the report in fact is that it does not include some recognition of the failure of counsel. And indeed I think any ultimate recommendation as to an amendment to the legislation must recognize the authority that counsel tends to emanate at those meetings, and place some further additional requirement upon him, where failure to comply with the Act would place some imposition upon him, since members are likely

to follow his lead, and his lead in this instance was extremely poor.

SENATOR AMBROSIO: Thank you, Senator. I might point out to the members of the Committee again that this is an interim report, and in the report we do reserve the right to amend our findings or to supplement them should further testimony or information down the road justify that. I would also ask the members of the Committee to acknowledge that they've gotten the amendments to the report. Have you received them this morning? There's some technical amendments that--

SENATOR JACKMAN: Is that the one where you're going to have plain language?

SENATOR AMBROSIO: Yes.

SENATOR JACKMAN: I think that would be appropriate to put in the whole report.

SENATOR AMBROSIO: Yes, that's in the report, Senator.

SENATOR JACKMAN: Start off with resolutions and put it in plain language, instead of some of the language that we've got in here that to me is-- Well, I don't know. It doesn't make sense.

SENATOR AMBROSIO: Senator, do you have any questions on any specific area?

SENATOR JACKMAN: Just what I told you where you referred to, if I'm a member of a committee, and I'm going to be held responsible because the lawyer gave me advice.

SENATOR AMBROSIO: Okay. Senator Lynch?

SENATOR LYNCH: Yeah, I'd like to address that point, and I think that it probably goes to the heart of this report. We have here a situation where there were clear violations of the Sunshine Act. We have here some analysis of this by Senator McNamara -- who I usually agree with -- and by Senator Jackman -- who I also usually agree with -- that the attorney's advice should be able to be taken by the members of the Authority regardless of whether it sounds reasonable or not,

that somehow they should be insulated. I think what you're doing when you do that is to invite hiring counsel and consultants who are going to tell you what you want to hear, uniformly. Clearly that's the case here.

As Senator McNamara point out, rather than the Touche Ross situation being proof that the Authority was being led around by the attorney, it seems to me that that's clear proof that the Authority members were only using the attorney as a tool to get to where they wanted to go. Namely, after all of these admissions that there were violations of the Sunshine Law, after the Public Advocate's inquiry and findings, after this Committee had met and had gone through in great detail with attorney Fox and Chairman Stanley all of these parts where there were clear admissions that there were violations, immediately after that hearing they go back out and obtain Touche Ross with the attorney saying to the members of the Authority, "There is a conflict, but it's not a substantial conflict. Go ahead and retain them." And they did it. Why? Because they wanted to. They got the information from the attorney that they wanted. There's a clear pattern of that here. That's exactly why you have to change the law.

SENATOR JACKMAN: Then I'm under the impression -- through you, Mr. Chairman -- that lawyers just sell themselves for the basis of a client, and take money on false pretenses. Their advice doesn't mean anything. They're not adhering to the law. Who can interpret the Sunshine Law better than a lawyer, because it's got paragraphs in there, and it says line 4-17-- Well, what in the hell have I got a lawyer for if you're telling me now the lawyer is just taking money under false pretenses and only giving them advice they want to hear? Holy Moses, what a law practice. I lose my faith in lawyers. I'm better off going to court and throwing myself on the mercy of the jury.

SENATOR WEISS: The lawyer.

SENATOR JACKMAN: No, the jury, never the lawyer. No, you don't mean that. I know you don't. How can you? You mean to tell me that those lawyers that sat before us only did what they were asked to say, and they took the money under false pretenses?

SENATOR LYNCH: I don't think I used those words at all, Senator.

SENATOR JACKMAN: No, no, but you--

SENATOR LYNCH: Senator Jackman, I didn't use those words, and I'm not here to be cross-examined by you. I didn't use those words at all. If you want to debate this issue in another forum I'd be very glad to, but this is not-- (inaudible)

SENATOR JACKMAN: Well to me--

SENATOR AMBROSIO: Senators, just a minute.

SENATOR JACKMAN: No, I apologize--

SENATOR LYNCH: There are 30,000 lawyers or better in this State, and I'm not going to defend those 30,000 lawyers. But I do suggest to you that there are an awful lot of attorneys who represent boards, who tell the boards what they want to hear.

SENATOR JACKMAN: Okay, then--

SENATOR LYNCH: That's why you have to put some removal from insulation to those boards, that they can simply rely upon the advice of counsel, even though they know this advice is askewed.

SENATOR AMBROSIO: Senator Jackman, I might point out--

SENATOR JACKMAN: I don't know. You're not going to cut me off this time. I'm going to say what he says here.

SENATOR AMBROSIO: Okay, go ahead.

SENATOR JACKMAN: Even though you guys are lawyers, you're not going to throw a layman in the middle all the time and leave me here. I read English. It says here that when I take the advice of counsel I can be fined, because I shouldn't

be insulated. It says, "The law should provide that the trier of fact would determine if reliance on the advice of counsel was reasonable." How in the hell do I know if it's reasonable or not if the lawyer gives me that advice?

SENATOR AMBROSIO: Senator, I think what came out very clearly in the testimony of Mr. Fox in particular, was that when he was asked whether or not they could go into closed session on a particular issue, he told them that he didn't think they could. They asked him to find a reason to go into closed session, and he came up with another reason. Very clearly the Authority has the responsibility of complying with the Act, and they've got the primary responsibility. And simply turning to a lawyer and saying, "Give me a reason for me not to comply with the Act," should not relieve them of responsibility.

SENATOR JACKMAN: I can buy that.

SENATOR AMBROSIO: That's all this report is saying.

SENATOR JACKMAN: That's not what the report says.

SENATOR AMBROSIO: In terms of advice of counsel. You simply haven't got the right to turn to the lawyer and say, "Give me some reason, no matter what it is," and get off the hook.

SENATOR JACKMAN: Was that in the testimony?

SENATOR DiFRANCESCO: You don't need a change in the law for that, Gabe.

SENATOR AMBROSIO: Well, that's what we're recommending, a change in the law to do that.

SENATOR DiFRANCESCO: I have further comments on that.

SENATOR AMBROSIO: Sure.

SENATOR DiFRANCESCO: With regard to the exceptions to the Public Advocate's finding, again where it says, "The Committee finds that the January 7, 1987 meeting of an effective majority of the Authority Commissioners and Governor Kean violated the Open Public Meetings Act," I think that the

Committee to a great extent is relying upon Mr. Fox's testimony in that regard--

SENATOR AMBROSIO: And Mrs. Stanley's.

SENATOR DiFRANCESCO: --and he was not at the meeting.

SENATOR AMBROSIO: Mrs. Stanley testified at that meeting.

SENATOR DiFRANCESCO: Yes, I know that. Now, there were other people allegedly at this meeting, and I think that on that score we should at least have the benefit of the direct testimony of the people that are at the meeting, because we have to come to the conclusion that this was a gathering which is attended by all of the members of a public body -- or a majority -- held with the intent on the part of the members of that body present to discuss or act as a unit upon the specific public business of that body. So in order to make that conclusion, I've got to know what all the other members are going to say. I just can't rely on what Mr. Fox has in the minutes of a meeting he has not attended.

SENATOR AMBROSIO: Well first of all, that's not what the report bases it on. We have the minutes of the closed meeting that specifically confirm that. We also have the testimony of Chairman Stanley as to who was at the meeting, and the subject matter of the meeting.

SENATOR DiFRANCESCO: Gabe, I want to hear from all the members of the body that were at the meeting. I don't just want to hear from one. You should be doing the best to get all of the testimony, not a part of the testimony. I know this is an interim report, but on that score I cannot come to that conclusion unless I've heard from everybody, and I've only heard from two people, one of whom was not at the meeting. Just because he concluded this and he concluded that about a meeting he wasn't present at, doesn't give me anything directly.

SENATOR AMBROSIO: Senator, I'd just like to read a section--

SENATOR DiFRANCESCO: If you're going to read from the minutes--

SENATOR AMBROSIO: No no, from the minutes.

SENATOR DiFRANCESCO: It's not important to me. I want to hear the direct testimony.

SENATOR AMBROSIO: Let me tell you why--

SENATOR DiFRANCESCO: Who prepared the minutes?

SENATOR AMBROSIO: Well the minutes were voted on and accepted--

SENATOR DiFRANCESCO: Who prepared the minutes?

SENATOR AMBROSIO: The minutes were prepared by the attorney--

SENATOR DiFRANCESCO: Who was not present at the meeting.

SENATOR AMBROSIO: --and were voted on by the Authority without objection.

SENATOR DiFRANCESCO: Gabe, I know that. I know how people vote on minutes, Gabe, please. I mean this is--

SENATOR AMBROSIO: And Chairman Stanley reported on her meeting--

SENATOR DiFRANCESCO: Do we vote on minutes?

SENATOR AMBROSIO: What do you mean, "we"?

SENATOR DiFRANCESCO: When we meet as a body, do we vote on minutes, or do we waive the reading of the minutes every single time?

SENATOR AMBROSIO: We waive them. But this was a closed meeting.

SENATOR DiFRANCESCO: These minutes are voted on-- Every public body votes on minutes, and everything like that, Gabe, and you know they don't all read them all of the time. Come on. Let's be realistic about this. There's nothing wrong with asking these other members to come forward and testify, just as you asked Judy Stanley to. I've read a lot of statements by one member of the body in The Star-Ledger time

and time again about how things were all wrong, etc. We never heard from him. We never asked him to testify. I have no idea what he would say, but we should hear from all of them if we're going to make these kinds of allegations.

SENATOR AMBROSIO: But there was no question about the fact of the meeting, where it took place, when it took place, and who was there, and what was discussed. There's no question whatsoever.

SENATOR DiFRANCESCO: Because Judith Stanley testified to it.

SENATOR AMBROSIO: No, because everybody, including the Governor's office, confirmed that such a meeting took place.

SENATOR DiFRANCESCO: But before you can come to the conclusion that that violates the Open Public Meetings Act, you have to reach a further conclusion -- not that they were sitting around the Governor's office. Just because they're sitting around the Governor's office doesn't mean they violated the Open Public Meetings Act.

SENATOR DORSEY: It may well mean that.

SENATOR DiFRANCESCO: It may and it may not. It depends on what's going on at that meeting. We have to know what's going on through the testimony of the people that were there. Since I only heard from one person, how would I know really? I have the best evidence? No.

SENATOR JACKMAN: Gabe, how many times did five or six of the Majority leaders and the other people walk into the Governor's office and discussed subject matters? Was that a public hearing?

SENATOR AMBROSIO: No. It's not subject to the Act. Plus there wasn't a majority of the Legislature there. But there was a majority of the Authority there discussing Authority business.

SENATOR JACKMAN: There was a majority?

SENATOR AMBROSIO: Yes, there was.

SENATOR JACKMAN: That's a different story.

SENATOR AMBROSIO: Anyone else? Senator McNamara?

SENATOR McNAMARA: I can't agree with the first thing with the knowing violation. That is a more major hangup. I somewhat can understand what Senator DiFrancesco was saying about that particular meeting, but there was a majority of the people there and that's reasonable; through everything we've heard, that they were there. So that's not my problem.

But when I get back down to the "Recommendations" number two on page five, "Removal--" By whom is my concern?

SENATOR AMBROSIO: Again, Senator -- and I know you've expressed that concern to me directly -- the removal procedure is going to have to be determined by the legislation that comes out of this report, if such legislation is forthcoming. The point that the report is stressing is that any public official who continually violates the Act, is subject to removal in a manner to be decided on by the Legislature.

SENATOR McNAMARA: Okay. And in number six then I would also add a word of caution that where we suggest that "Further, the subject matter of the litigation should be disclosed to the public," I'd like tighter language--

SENATOR AMBROSIO: Absolutely.

SENATOR McNAMARA: --and I guess if through the legislative process that would happen I would like that to be noted as a recommendation of this Committee. Because I think, again, we could be opening Pandora's box.

But we get back to that one particular point which is-- You know, I'd hate to vote no on the entire findings based on page two, III. (1), when we say that it's a "knowing violation." When I read through those minutes, it's again the attorney constantly talking about substantial compliance. I know that you may find as an attorney that that is totally incomprehensible that anyone knowing anything about the Open Public Meetings Act would in fact believe that they were not in

violation. But you have to believe that the majority of our society does believe-- Well, of course attorneys have dropped rather rapidly down the scale of credibility, but the majority of people that go to attorney do rely on what they say. And when they say to an attorney, "Is there a reason?" or, "How can we have a closed session?" the attorney simply can say, "No."

I think the finding is too broad from the testimony that we've had and from reading through it, because every single time-- Every comment that I've read of this particular attorney, it's colored with, "It's substantial compliance."

SENATOR AMBROSIO: Senator--

SENATOR JACKMAN: Gabe, can I ask a question?

SENATOR AMBROSIO: Yes.

SENATOR JACKMAN: Isn't there a saying that a fool acts as his own lawyer when he goes to court, if he doesn't have a degree in law? A fool represents himself, is that true?

SENATOR AMBROSIO: That's true.

SENATOR JACKMAN: Well then if I have a lawyer, and he gives me advice, and I accept it, then I shouldn't be a fool.

SENATOR AMBROSIO: Except Senator -- and there is precedent in this State on this, where you can commit violations of the law based upon advice of counsel, and that that does not exclude you from prosecution. If you go to a lawyer and you say, "I want to launder this money," and he tells you how to do it--

SENATOR JACKMAN: Oh no, no, no. You're asking him to take care of something that's important. I'm asking for advice. I'm not talking about money now, fraud. We can use a million ways. I'm asking you a question, I'm a Commissioner, I'm sitting here as State Senator, and I have a lawyer to give me advice on some law that we're going to enact. Who puts it together -- laymen, or do lawyers put it together?

SENATOR AMBROSIO: Well, basically Senators put it together.

SENATOR JACKMAN: No, no. You know when it comes down to law, who looks up the law, the lawyers or the layman? You know the layman (sic) looks up the law, you know that. That's what we got lawyers on our staff for, to look up and make sure that we don't enact legislation that's going to be in conflict.

SENATOR AMBROSIO: Senator, that's why we're using the term, "reasonable reliance." You've got a right to rely on your lawyer and his advice, but not blindly. You've got a duty to at least question whether or not that advice makes sense to you, knowing of your obligation to a public authority. That's all we're saying here.

SENATOR JACKMAN: Okay.

SENATOR AMBROSIO: Okay. Anyone else. (no response)
At this time I would entertain a motion with regard to the report including the amendments that have been submitted.
Motion to adopt?

SENATOR LYNCH: Moved to adopt.

SENATOR AMBROSIO: Moved by Senator Lynch. Second?

SENATOR WEISS: Second.

SENATOR AMBROSIO: By Senator Weiss. Roll call?

MS. OLIVER: Senator Ambrosio?

SENATOR AMBROSIO: Yes.

MS. OLIVER: Senator Jackman?

SENATOR JACKMAN: Abstain.

MS. OLIVER: Senator Lynch?

SENATOR LYNCH: Yes.

MS. OLIVER: Senator Weiss?

SENATOR WEISS: Yes.

MS. OLIVER: Senator DiFrancesco?

SENATOR DiFRANCESCO: I cannot vote yes.

SENATOR JACKMAN: Are there going to be changes made to the recommendations that I made? That's why I'm abstaining, because if you're leaving the same language in there, I can't in essence accept it because you're telling me that a lawyer's advice doesn't count.

SENATOR AMBROSIO: Senator, just to address that, the final version of any legislation is going to be subject to the approval of the Legislature. These are general recommendations that we're doing now. Obviously the full Senate, the Legislature, and the Governor has to concur on any changes that we make. Senator DiFrancesco?

SENATOR JACKMAN: Okay, then.

SENATOR AMBROSIO: You're changing your vote to yes?

SENATOR JACKMAN: I'll go yes, with the provision that what I suggested, that my lawyer is going to be the guy that I'm accepting from. If I can't depend on him--

SENATOR LYNCH: See, that's not on the table. There is a motion to adopt this report the way it is. You didn't move to amend the report.

SENATOR JACKMAN: As is? Oh, I'm sorry. If it's as is, without my correction, I abstain.

SENATOR AMBROSIO: If you had a specific request for a change, Senator, we would consider it, but at this point we're moving on the report as it is.

SENATOR JACKMAN: Okay.

SENATOR AMBROSIO: Senator DiFrancesco?

SENATOR DiFRANCESCO: While I do agree with some of the conclusions of the report, I cannot agree with all -- as I have already enumerated -- and therefore I will vote no.

MS. OLIVER: Senator Dorsey?

SENATOR DiFRANCESCO: I vote yes.

MS. OLIVER: Senator McNamara?

SENATOR McNAMARA: I agree with the majority of the findings of the report, but because of that one specific "knowing violation," I can't support the report. I'll vote no.

SENATOR AMBROSIO: The report is released four to two, with one abstention, with the amendments.

I would ask at this point-- We have a couple of other housekeeping items before we adjourn. We have a new list of subpoenaed documents that are requested. I would ask that someone make the motion that we issue the additional subpoena.

SENATOR WEISS: So moved.

SENATOR AMBROSIO: Second? (motion is seconded by unidentified member of Committee) All in favor? You want to see what the list is? Russ, do we have the list of the subpoenaed items that we're looking for? Joan has it. (pause while Senators look through the list) We'll do a roll call on the issuance of those subpoenas.

Anyone have any questions on the subpoena?

SENATOR LYNCH: I have one.

SENATOR AMBROSIO: Yes.

SENATOR LYNCH: Did we already subpoena the 1099s?

SENATOR AMBROSIO: Yes, we have.

SENATOR LYNCH: Have we received them?

SENATOR AMBROSIO: We've received some of them, not all of them as I understand. We're still in the process of obtaining them.

SENATOR LYNCH: It's going to be a long process.

SENATOR AMBROSIO: Roll call on the subpoenas?

MS. OLIVER: Senator Ambrosio?

SENATOR AMBROSIO: Yes.

MS. OLIVER: Senator Jackman?

SENATOR JACKMAN: Yes.

MS. OLIVER: Senator Lynch?

SENATOR LYNCH: Yes.

MS. OLIVER: Senator Weiss?

SENATOR WEISS: Yes.

MS. OLIVER: Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes.

MS. OLIVER: Senator Dorsey?

SENATOR DORSEY: Yes.

MS. OLIVER: Senator McNamara?

SENATOR McNAMARA: Yes.

SENATOR AMBROSIO: Members, we have one more item. We're going to hold another meeting on May 18. I would ask that the Committee authorize me as Chairman to issue subpoenas for the next round of witnesses, for the list to be determined between now and the 18th. I will confer with the Highway Authority counsel to determine what witnesses will be available. I will indicate at this time that we intend to call as our first witness, the Executive Director, Mr. Zilocchi, on that occasion.

SENATOR JACKMAN: What time?

SENATOR AMBROSIO: How's that?

SENATOR JACKMAN: What time?

SENATOR AMBROSIO: Ten o'clock.

SENATOR JACKMAN: Ten o'clock. That's on a Wednesday?

SENATOR AMBROSIO: Yes. I would ask for a motion to authorize me to issue subpoenas for the next round of witnesses.

SENATOR LYNCH: So moved.

SENATOR AMBROSIO: Second?

SENATOR JACKMAN: Second.

SENATOR AMBROSIO: All in favor? (affirmative response from Committee members) Okay, the meeting stands adjourned.

(MEETING CONCLUDED)

