

90
R628
1988 K

SENATE SPECIAL NEW JERSEY HIGHWAY AUTHORITY INVESTIGATION COMMITTEE

INTERIM REPORT
May 2, 1988

MEMBERS OF THE COMMITTEE:

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

The following comprises an interim report of the Senate Special New Jersey Highway Authority Investigation Committee. This document presents the findings and recommendations of the Committee concerning the issue of "Open Public Meetings Act" violations by the New Jersey Highway Authority.

I. Creation of the Senate Special New Jersey Highway Authority Investigation Committee

The Committee was created under the authority of Senate Resolution 122 of 1987 adopted on December 17, 1987. That resolution, included in the Appendix of this report, established a seven member bipartisan committee to undertake a thorough inquiry into the circumstances surrounding the events and actions which led to the Authority's decision to increase ramp and barrier tolls on the Garden State Parkway and to construct new ramp and toll plazas. The Committee was also authorized to conduct an examination of the Authority's management and decision-making structure and any other matters related to the toll increase which the Committee determined to be necessary for its purposes. The Committee was given the legislative investigation powers set forth in chapter 13 of Title 52 of the Revised Statutes, including the power to issue subpoenas.

The Committee was reconstituted, with the same membership, powers and duties, in the 1988 session of the Legislature, by the Senate 1988 Organizational Resolution adopted on January 12, 1988. (See Appendix).

II. Meetings of the Committee

The organizational meeting of the Committee was held on January 28, 1988. Since its organizational meeting, the Committee met on the following dates:

February 16, 1988: This meeting consisted primarily of testimony by the Public Advocate, Alfred A. Slocum, concerning his report, "The New Jersey Highway Authority's Proposed Toll Increase: Report of the Public Advocate on Alleged Violations of the Open Public Meetings Act," issued on January 27, 1988. At this meeting, it was decided that certain documents relating to the Committee's investigation should be subpoenaed from the New Jersey Highway Authority. This subpoena was served on February 23, 1988. In response to this subpoena, a representative of the New Jersey Highway Authority delivered documents to the Committee on March 8, 1988.

March 24, 1988: The Committee compelled, through service of subpoenas on March 3, 1988, the appearance and testimony of Judith H. Stanley, Chairman of the New Jersey Highway Authority; George P. Zilocchi, Executive Director of the New Jersey Highway Authority; Martin S. Fox and Arthur D. Grossman, of the law firm of Fox and Fox; and Thomas Critchley, in-house counsel to the New Jersey Highway Authority. All of the persons subpoenaed were in attendance at the meeting; however, the Committee, on that date, directed questions to Chairman Stanley, Mr. Fox and Mr. Grossman.

May 2, 1988: The Committee approved the findings and recommendations of the Interim Report.

III. Findings: Open Public Meetings Act Violations

As a result of this Committee's review of the pertinent minutes of the public and private meetings of the New Jersey Highway Authority and the testimony provided to the Committee, we issue the following findings:

(1) The Committee finds that the Authority has acted in knowing violation of the Open Public Meetings Act throughout the course of its private deliberations on the proposed toll increase.

During 13 of the 16 closed meetings held since August, 1986, the Authority discussed tolls or short-term financing (an integral element of the toll plan) before finally adopting the increase at its November 19, 1987 meeting. (See Chronology included in Appendix). The Authority failed to disclose the nature of these private discussions as required by the Open Public Meetings Act. These efforts to prevent disclosure of this proposal have been acknowledged in testimony and is reflected in the documents presented to this Committee.

The transcripts of the Committee meetings are replete with examples of the Authority's attempts to avoid disclosure of the toll increase prior to the fall of 1987. One comment by the Counsel to the Authority in his testimony is indicative of the secretive atmosphere which pervaded the actions of the Authority. The following is the dialogue between this Committee's Chairman and the Authority's Counsel:

Senator Ambrosio asked why the closed minutes of April 23, 1987 indicate that the Governor's office is to be contacted concerning a request by the Senate's Independent Authorities Committee for any studies on toll increases:

MR. FOX: Okay. My opinion is that it was the rule of this game-

SENATOR AMBROSIO: What game?

MR. FOX: It was the rule of this situation that the subject of tolls not be publicly discussed before the end of 1987, except possibly as to ramp increases. That's my impression.

(3-24-88 transcript
at p. 62)

(2) The Committee accepts and adopts the Public Advocate's findings and conclusions concerning the violations as detailed in his report dated January 27, 1988 with two exceptions. (See 2-16-88 transcript at p.3X). As further described below, these exceptions concern the scope of the violations and the January meeting with Governor Kean, which the Committee finds violated the Open Public Meetings Act.

The Public Advocate found, in essence, that:

(a) None of the nine exceptions in the Act authorized the Highway Authority to meet in closed session to discuss the toll increase proposal. N.J.S.A. 10:4-12(b).

(b) The Highway Authority violated the Open Public Meetings Act at each of its ten closed sessions when it excluded the public from witnessing its deliberations on toll increases. N.J.S.A. 10:4-12(a).

(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. N.J.S.A. 10:4-13. 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. N.J.S.A. 10:4-13.

(d) Insufficient information exists to determine if the November 30, 1987 meeting held to cure any alleged defects in adopting the toll increase proposal was proper.

(3) This Committee finds that the Authority failed to conduct appropriate de novo action and recommends that the Authority conduct a full public discussion to evaluate the need for the toll increase which took effect on May 1. The Committee further recommends that the Authority should initiate a review of the need for both a ramp and barrier toll increase under full public disclosure.

The Public Advocate found that there was insufficient evidence to determine whether the de novo meeting satisfied the requirements of the law. He therefore recommended that the Authority "reconsider all relevant aspects of a toll increase, including all toll increase alternatives." (See Public Advocate's Report in 2-16-88 transcript at 11X). Clearly, the evidence presented to this Committee demonstrates that the New Jersey Highway Authority engaged in a concerted effort to impose a toll increase on New Jersey's motoring public without the public's input. This violates both the spirit and letter of the Open Public Meetings Act.

Exceptions To Public Advocate Findings

As stated above, the Committee takes exception to two aspects of the Public Advocate's Report.

(4) The Committee finds that all of the private meetings at which the short-term financing proposal, the decision to build a reception facility at the Arts Center site, and the takeover of the State-owned sections of the Parkway were discussed also constitute separate violations of the Act.

The Committee finds that these significant issues were inextricably tied to the toll increase proposal. The Public Advocate found only that the Authority violated the Act on the 10 separate occasions where the Authority specifically discussed the toll increase. (See Chronology attached).

(5) 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.

Although the Act does not specifically relate to the actions by the Governor, a gathering of an effective majority of any public body which is intended to result in formal actions clearly violates the letter and spirit of the Act. The obligation to comply with the Act is not obviated by the simple failure to invite all of the members of the body.

Recommendations: Open Public Meetings Act

1. Penalties. (a) The current penalty provision can be imposed only in the case of a knowing violation. N.J.S.A. 10:4-17. This provision should be amended to state that 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 violation 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.

(c) The fines in the penalty provision should be increased from the current "\$100 for the first offense and no less than \$100 nor more than \$500 for any subsequent offense" to up to \$500 for the first offense and up to \$1000 for any subsequent offense.

(d) The Act should be amended to delete the word "foregoing" from the penalty provision, N.J.S.A. 10:4-17, and to make appropriate technical changes to insure that any violation of the act invokes a penalty. This change would enforce adherence to the Act including honoring requests for notices of meetings upon prepayment of costs by an individual. N.J.S.A. 10:4-19.

2. Removal. The Act should be supplemented to provide that a person should be subject to removal from office for repeated violations of the Open Public Meetings Act. Further, any person or firm paid to advise a public body shall be subject to removal from their position as advisor without further compensation if they give improper advice to that public body and the body does in fact violate the Open Public Meetings Act.

3. Quorum Requirements. The definition of "meeting" under the Act should be clarified to assure that the Act applies whenever an effective quorum of the members of a public body attends a pre-arranged meeting designed to discuss the public body's business. This is not intended to preclude partisan caucuses.

4. Resolutions. The Attorney General should be required to issue "plain language" forms which indicate the information necessary to fulfil the Act's mandates (e.g., a form of the resolution for going into closed session, a form of the schedule of regular meetings of the public body which must be published annually, etc.).

5. Notice Requirements. The Act should be supplemented to provide for adequate notice of meetings to individuals whose rights may be affected thereby, similar to the notice suggested in Rice v. Union County Regional High School Board of Education, 155 N.J. Super. 64 (App. Div. 1977). This will incorporate case law into the proper statutory framework.

6. Exempt Subjects. The exceptions to public discussion under the Open Public Meetings Act, N.J.S.A. 10:4-12(b), must be clarified to eliminate loopholes which permit the conduct of business in private. For example, "anticipated litigation" should require identifiable parties and the subject matter should be identified with particularity before this exemption can be invoked. Further, the subject matter of the litigation should be disclosed to the public, even though the substance of the discussion need not be disclosed.

7. Minutes. (a) All public minutes should be available to the public within a certain time period (14 or 21 days after the meeting).

(b) All minutes taken during a closed session must be released either when the matter is resolved or at the next public meeting of that body, whichever occurs earlier. However, if there are items it desires to remain confidential, the public body must vote to keep these matters private until the next public meeting. (i.e. the body must take affirmative action each time it desires to keep an item confidential). This does not apply to matters which by their nature may be kept permanently confidential (e.g. hospital records).

8. Straw Votes. Consensus votes conducted during a closed meeting must be recorded in the closed minutes. This will ensure accountability to the public for decisions made in private session.

9. De Novo Meetings: The de novo process for reconsideration of a matter should be reviewed to provide clear guidelines for proper remedial actions. N.J.S.A. 10:4-15. Of particular concern is the ability of a public body to improperly delay the public consideration of an issue and thereafter attempt to cure its action by a pro forma meeting.

For example, the Highway Authority improperly conducted private discussions and acted de novo to adopt its proposed toll increase on November 30, 1987.

POSTSCRIPT

This Interim Report represents the Committee's findings and recommendations concerning the application of the Open Public Meetings Act to the actions of the New Jersey Highway Authority. This Committee specifically reserves the right to supplement this report as its investigation continues. Any additional findings and/or recommendations on the Open Public Meetings Act issue will be included in any subsequent interim report or in the final report issued by this Committee to the State Senate.

The Committee's submission of this report to the Senate will now permit us to focus on the impact of the short-term financial proposal approved by the Authority to continue its operations and capital program as a precursor to the toll increase vote in November, 1987.

12/16/87 sbf

CM 0022
TR 0030
SR 0030

A Senate Resolution establishing a Senate Special New Jersey Highway Authority Investigation Committee and prescribing its powers and duties.

WHEREAS, The New Jersey Highway Authority has formally voted to increase toll charges on the Garden State Parkway and to construct new toll plazas and ramp plazas; and

WHEREAS, Serious questions have arisen regarding the manner in which the authority conducted its decision-making process leading to these undertakings, including whether the process was undertaken in conformity with the letter and spirit of the Open Public Meetings Act and with full and timely disclosure of pertinent information to the public and the Legislature, and whether the authority undertook certain interim financing measures which dictated an inevitable toll increase; now, therefore,

BE IT RESOLVED by the Senate of the State of New Jersey:

1. There is established a Senate Special New Jersey Highway Authority Investigation Committee to consist of seven members of the Senate, no more than four of whom shall be of the same political party, to be appointed by the President of the Senate.

2. It shall be the duty of the committee to undertake a thorough inquiry into the circumstances surrounding the decision of the New Jersey Highway Authority to increase tolls on the Garden State Parkway and to construct new toll plazas and ramp plazas. The inquiry shall include a review of the nature and timetable of events and actions leading to the decision, an examination of the authority's management and decision-making structure, and any other matters related to the toll increase as the committee determines to be necessary for its purposes. For the purposes of this inquiry the committee shall have all of the powers provided pursuant to chapter 13 of Title 52 of the Revised Statutes.

3. The committee shall issue a report and make such recommendations to the Senate as it shall determine to be appropriate based on an analysis of the facts resulting from the inquiry.

4. There shall be made available to the committee for the purpose of this inquiry a sum not to exceed \$50,000 from such funds as are appropriated by law or as shall otherwise be made available.

Statement

This resolution establishes a Senate Special New Jersey Highway Authority Investigation Committee to review the circumstances surrounding the decision of the authority to increase tolls on the Garden State Parkway.

Authorities and Regional Commissions

Establishes a Senate committee to review toll increases for the Garden State Parkway.

SENATE

1988 ORGANIZATIONAL RESOLUTION

BE IT RESOLVED:

1. That the Secretary of the Senate be directed to inform the General Assembly that the Senate has organized and elected the Honorable John F. Russo of Ocean County, President, and John J. McCarthy of Bergen County, Secretary and has proceeded to business.

2. That the appointment of officers and employees of the Senate by the President, and the payroll for such officers and employees of the Senate be adopted and the Secretary be authorized to authenticate the same as approval officer.

3. That all statements of expenses of the Senate or of the Legislature on account of the Senate be referred for approval and forwarded for payment from the State Treasury as heretofore.

4. That the Committee on Ways and Means be authorized to procure the necessary stationery and supplies for the use of members of the Senate.

5. That unless otherwise ordered, the daily sessions of the Senate shall begin on Mondays at 2 p.m. and on Thursdays at 11 a.m.

6. That for the 1988 annual session there be employed for each Senator, legislative aides, to be designated by him at an aggregate salary as may be provided by law, payable in the same manner as all other Senate employees for the legislative year.

7. That the 1988 Legislative Manual be distributed to the Senate on the same basis as for the 1987 session.

8. That the following Senate Special Committees are reconstituted:
 - a. The "Special Committee to Study Coastal and Ocean Pollution," created by Senate Resolution No. 21 of 1986, with the same membership, powers and duties as heretofore provided;
 - b. The Senate Solid Waste Study Commission, created by Senate Resolution No. 46 of 1986, with the same membership, powers and duties as heretofore provided;
 - c. The Senate Special New Jersey Highway Authority Investigation Committee, created by Senate Resolution No. 122 of 1987, with the same membership, powers and duties as heretofore provided; and
 - d. The Hackensack Meadowlands Development Task Force, created by Senate Resolution No. 103 of 1987, with the same membership, powers and duties as heretofore provided.

9. That the Rules of the 1987 Senate be adopted temporarily as the Rules for the 1988 Senate with the following changes:

- a. Amend Rule 74 as follows:

74. The following Standing Reference, Select, and Administrative Committees, and Joint Committees shall be appointed, by the President, at the commencement of each annual session:

SENATE STANDING REFERENCE COMMITTEES.

1. Aging Committee
2. Children's Services
3. County and Municipal Government Committee
4. Education Committee
5. Energy and Environment Committee
6. Independent Authorities Committee
7. Institutions, Health and Welfare Committee
8. Judiciary Committee
9. Labor, Industry and Professions Committee

10. Law, Public Safety and Defense Committee
11. Natural Resources and Agriculture Committee
12. Revenue, Finance and Appropriations Committee
13. State Government and Federal and Interstate Relations and Veterans Affairs Committee
14. Transportation and Communications Committee

SENATE STANDING SELECT COMMITTEES.

1. Committee on Veterans' Affairs

SENATE STANDING ADMINISTRATIVE COMMITTEES.

1. Intergovernmental Relations Committee
2. Rules & Order Committee
3. Ways & Means Committee

SENATE JOINT COMMITTEES.

1. Ethical Standards Committee
2. State Library Committee
3. Legislative Oversight Committee

The Revenue, Finance and Appropriations Committee shall consist of ten members, the Independent Authorities Committee and the Judiciary Committee shall each consist of eleven members, all other Standing Reference committees shall consist of five members; the Standing Select Committees shall consist of seven members; the Standing Administrative Committees shall consist of five members; the membership of the Senate on the Ethical Standards and State Library Committees shall consist of four members and the membership of the Senate on the Legislative Oversight Committee shall consist of five members.

b. Further, those rules which are inconsistent with the current method of preparation, form, printing and introduction of bills are temporarily suspended pending the adoption of permanent rules.

10. That the Interim Bill Drafting Manual, prepared and revised from time to time by the Office of Legislative Services, be adopted as the official manual of practice and procedure of the Senate governing the form of bills to be introduced in the Senate and governing the conduct of the preliminary examination of bills proposed for introduction in the Senate required by the Rules of the Senate.

That in order to carry out the aforementioned practice and procedure, Albert Porrone, Legislative Counsel, and such assistants and deputies as he shall assign be designated as counsel to conduct said preliminary examination of bills proposed for introduction and amendments adopted in the Senate under the general supervision of the Legislative Counsel.

11. That His Excellency the Governor be informed that the Senate has organized for 1988 by the election of the Honorable John F. Russo of Ocean County, as President, and John J. McCarthy of Bergen County, as Secretary, and is now ready to proceed to business and to receive any communications he may forward.

12. That the President appoint Senators Jackman,
Feldman, Ewing and Hurley to
wait on the Governor.



New Jersey Senate

TRENTON

MEMORANDUM

TO: Members of the Public

FROM: The Senate Special New Jersey Highway Authority
Investigation Committee

DATE: March 24, 1988

RE: Chronology of Authority actions leading to the
proposed toll increase.

The following is a chronology of Authority actions which led up to the November 19, 1987 vote to increase the tolls on the Garden State Parkway by upwards of 100%. Due to the legally suspect action taken in potential violation of the Open Public Meetings Act, the Authority met again on November 30 and adopted this Resolution de novo. Minutes of the closed sessions of the Authority dating back to August of 1986 indicate that they have planned for this hike since that time. The following information is based primarily upon the minutes of Highway Authority and testimony which has been presented to date.

I have reviewed the closed meeting minutes for every meeting held since January, 1983. Of particular interest to this Committee are the closed meetings dating from August, 1986. Out of the 16 meetings held (until the November 19, 1987 vote), the Authority failed to discuss tolls or short-term financing only 3 times! (Note: a member of the Governor's Independent Authorities Unit was present at every one of these meetings).

(According to Martin Fox, General Counsel to the Authority, the reason for this more "accurate" documentation stems from the presence of a representative of the Governor's Independent Authorities Unit at all closed sessions starting in August, 1986. As the General Counsel, he decided to insure that the minutes of the closed sessions accurately reflected the discussion.)

Jean Steifle, Esq., a member of the Governor's Authorities Unit, attended every closed session except August 27, 1987. James Weinstein, the head of the Unit, attended the meeting in her stead. He also joined her during the March 26, 1987 closed session, one of the key meetings on short term financing proposal.

The general practice of the Authority is to start their monthly meetings with a closed session (ie. items deemed nominally exempt from the Open Public Meetings Act). The General Counsel prepares the closed session minutes: notes are taken contemporaneously during the closed meeting by Arthur Grossman, Esq. as scrivener. Grossman is a partner of the firm Fox & Fox, General Counsel to the Authority. He dictates the minutes to his secretary later that day or on the following day. Martin Fox, Esq. also takes notes during the closed session. The firm takes full responsibility for these minutes and has testified that they are accurate. One copy of the minutes is forwarded to the Highway Authority and one copy is sent to the Governor's Independent Authorities Unit. Although some of the text of these closed minutes have been contested by several individuals, no portion of these minutes has ever been formally changed by the Authority.

AUGUST 28, 1986

Closed Meeting:

During a discussion on the agreement to take over the Department of Transportation sections of the Parkway, a discussion ensued concerning "plans for a proposed toll increase. The Authority's proposal has been submitted to representatives of the Governor who are currently reviewing the proposal." (Minutes pg. 1.) Further, the Executive Director "reported that the proposed toll increases on the ramps would not be sufficient to cover projected construction expenses beyond 1988. The Commissioners agreed that the present construction program was necessary and should be continued. There was also discussion that in a few years, the 1.2 provision in the bond covenants might be jeopardized." (This refers to a covenant in the March, 1986 bond resolution which requires that certain revenue levels be maintained by the Authority.) (Minutes pg. 1-2.)

The minutes state that the Commissioners "unanimously agreed that the dialogue should continue with the Governor's Office with regard to the matter." (Minutes pg. 2.)

This discussion was deemed to involve "contract negotiations" and therefore was not disclosed at the public meeting.

SEPTEMBER 25, 1986

Closed Meeting:

The closed meeting opened with a discussion of the proposed Reception Facility which would replace Celebrity House at the Garden State Arts Center. The Authority's Chief Engineer James Conlon, discussed the plans and model for the building estimated, at that time, to cost about \$5 million (the current cost is approximately \$6.4 million). It was noted that bids for the new facility "will be advertised on September 26, 1986", the next day. However, the Commissioners unanimously agreed that no public announcement of the new building would be made until the next monthly meeting of the Authority, "at which time the construction contract will be awarded." (Minutes pg. 1.) In fact, the award of the construction contract occurred in January, 1987-four months after this agreement.

This issue was deemed to involve "contract considerations" and was not discussed at the public meeting.

The Executive Director also reported that the Authority has adopted "new and improved internal time reporting and auditing procedures." (Minutes pg. 3.) This was reported out at the public meeting. (Note that on February 8, 1988, Governor Kean issued several requirements for the Authority to meet before a barrier toll increase would be permitted; this included the submission of a program for improved financial management and operational control to the Treasurer and the Commissioner of the Department of Transportation).

OCTOBER 30, 1986

Closed Meeting:

This was a critical meeting concerning the proposed toll increase. The Authority's Controller, its Chief Engineer, and Chester Johnson of Government Finance Associates, Inc., (GFA) the Authority's financial consultant, were in attendance.

The Executive Director reported that the Governor's Office and the Department of Transportation were provided with the information concerning "the proposed toll increase. He indicated, based upon the report of GFA, that the Authority might technically be in default under the toll covenant of the bond resolution by 1988 if no toll increase were put into effect. Additional funds from the issuance of bonds will be needed for the Authority's capital improvement program. The bonds would not attract a favorable rating without a toll increase." (Minutes pg. 1.)

Johnson described his report which was attached to the minutes. GFA included nine scenarios for financing the capital construction program; all the scenarios would find that the Authority's financial operations go negative in 1988 without a toll increase. (See Memorandum to the Department of the Treasury dated October 15, 1986, attached to Minutes of October 30, 1986. Note also that copies of this report were sent to the Governor's Independent Authorities Unit).

It "was agreed that the ramp increase should proceed as promptly as possible. It was also agreed that approval should be sought from the Governor's Office for the entire package, including both ramp increases and barrier increases, with the understanding that the implementation of the barrier increase would not be immediate and would require the installation of certain operational requirements." (Minutes pg. 1.)

The General Counsel reported at the public meeting that this decision to proceed on a toll increase was merely a "discussion with Chester Johnson of Government Finance Associates, Princeton, New Jersey, as to financing alternatives open to the Authority as to its Capital Improvement Program" which took place in the exempt session. (See Public meeting minutes at iii). No other mention of this decision (the first toll increase in the Parkway's history) is included in the minutes of the public meetings.

NOVEMBER 20, 1986

Closed Meeting:

This meeting did not include any discussion of issues related to this inquiry.

DECEMBER 18, 1986

Closed Meeting:

During the discussion on the takeover of the State-owned sections of the Parkway, Chairman Stanley reported that "the Governor's Office at this point appears to be opposed to a barrier toll increase but would be in favor of a ramp toll increase in 1987. There was a discussion among the Commissioners regarding the need for the toll increase. It was agreed that the takeover of the State owned sections should be considered in conjunction with the Authority's position on the need for an appropriate toll increase." (This suggests that the Authority desired to negotiate its toll increase in exchange for taking over the State sections of the Parkway.)

The minutes do not include the rationale for discussing this issue in a closed meeting.

On January 7, 1987, the Authority's Executive Director (George Zilocchi) and its four officers: Judith Stanley (Chairman), Lionel Levey (Vice-Chairman), Julian Robinson (Treasurer), Richard Sambol (Secretary), met with Governor Kean in Trenton. Joining them was James Weinstein, head of the Governor's Independent Authorities Unit. *"The sole agenda item was the toll increase."* (See testimony of Julian Robinson before Assembly Independent Authorities Committee, December 21, at page 60).

["George Zilocchi had brought along an easel with several charts. He and the Chairman made the major presentation..." to the Governor. After the 45 minute discussion, Commissioner Robinson testified that it was his "distinct impression that a ramp increase was approved immediately if we wanted to pursue it, but that a barrier increase would not receive the Governor's approval until the end of 1987, and at one point the phrase, 'after November, 1987'--At several points it (this phrase) was used." Id. at page 60-61. Robinson would not attribute this phrase to the Governor directly but indicated that James Weinstein used it. (Robinson also testified that during their closed meetings he "heard our Chairman and our Executive Director during the past year, continually refer to the fact that we cannot raise the barrier tolls prior to the elections of 1987." Id. at page 66.

During George Zilocchi's testimony to the Senate Independent Authorities Committee on December 9, 1987, he commented on the meeting with the Governor: *"I just recall the discussions. I don't recall if we submitted any report or anything to the Governor. I really don't recall that. I just recall the essence of the discussion, and the advice we received."* See Testimony at page 38. Zilocchi further testified that the Governor *"did not approve a toll increase at that meeting. He advised us to do everything possible to avoid it, but to begin the planning process so that we'd be ready to present our facts if the time arrived."* Id. at page 42.]

Public Meeting:

The disclosure of the Governor's position and the suggestion that the toll increase be linked to assumption of the state owned sections of the highway, which was discussed during the closed session, was referred to by the General Counsel simply as *"contract negotiations with regard to the State-owned sections"*. See Public minutes at iii.

The Commissioners unanimously adopted the 1987 Operating Budget. The estimated revenues for 1986 and 1987 were certified as sufficient to meet the Toll Covenant required under the Bond Resolution. (See Resolution 86-285).

The contracts for the Authority's consultants were extended for one month under the same conditions as stipulated in their previously approved contracts. (Resolution 86- 301.)

JANUARY 22, 1987

Closed Meeting:

Chairman Stanley reported on her meeting with the Governor which was designed "to review the Authority's proposals for a ramp toll increase and a barrier toll increase. After reviewing the relevant facts and figures, the Governor approved of the Authority's proposal for the ramp toll increase which may be implemented immediately. The Governor also approved of the Authority's proposal for a barrier toll increase provided that the Authority not proceed with or implement that increase until the end of 1987." (Minutes pg. 1.)

However, the Chairman also discussed the proposal for the construction of the new Reception Facility. "The Governor approved of the proposal. However, he requested that the Authority take reasonable steps to separate the construction of the center and its cost from the proposed toll increases." (Minutes pg. 1.)

The minutes state that the Governor's representative from the Independent Authorities Unit was not present for the discussion of these items.

The closed minutes include a discussion of the rationale for proceeding with the toll increase which the Authority subsequently adopted:

"The issue before the Commissioners was how to achieve the aforesaid goals consistent with the Governor's directives. There was concern that there might be adverse publicity to the Authority and to the Governor if the Authority sought a toll increase now for the ramps and then approximately a year later sought another toll increase for the barriers. The Commissioners preferred to propose the complete package of a toll increase at one time. To achieve this end and to achieve the goal of separating the cost of the reception center from the toll increase, the Commissioners decided that the toll increase, both ramp and barrier, should be proposed and implemented at one time at the end of 1987. The reception center should be built now to avoid a direct relationship with the toll increase. In order to satisfy the Authority's financial needs during the year 1987 and to achieve these ends, it was decided that the Authority should obtain temporary financing through bank anticipation notes. In addition, this proposal would also allow for the Authority to take over the State owned section without that acquisition being directly tied to the toll increase as well.

During the course of the discussion of this item, the Chairman spoke directly to the Governor presenting the aforesaid proposal. The Governor approved of the proposal." (Minutes pg. 1-2.) (Commissioner Stanley actually telephoned Governor Kean during the closed meeting and reported that the Governor approved of the Commissioners' plan.)

Counsel deemed this discussion "contract negotiations" and therefore exempt from the Open Public Meetings Act, except for the award of contracts for the construction of the Reception Facility which was already on the public agenda. (Note: that the decision regarding the construction of the facility was made at the closed meeting of September, 1986).

Public Meeting:

Chairman Stanley announced the construction of the new Reception Facility and two contracts were awarded, totaling \$4.6 million. (See Resolutions 87-18 & 87-19). It was this proposal that led to the initial review at the Highway Authority by the Senate Independent Authorities Committee.

At this same meeting, Chairman Stanley read the following statement into the public Minutes:

"We agree with the Governor's proposal for a New Jersey Cultural Center. We call attention to the appropriate authorities of the possible use of our already existing 400-acre facility at Telegraph Hill where the Arts Center is located."

The Authority's consultants are reappointed. They are to serve for a term from February 1, 1987 to December 31, 1987.

FEBRUARY 26, 1987

Closed Meeting:

Chester Johnson of Government Finances, Inc. reported on the need for "an infusion of capital this year pending the anticipated toll increase in 1988. He recommended short term financing through the use of bond anticipation notes for a period covering approximately twelve to fifteen months. This method would not involve a rating requirement and more importantly, would not likely involve any significant discussion on the issue of a potential toll increase. On the other hand, long term financing would directly involve consideration of the potential toll increase. It would require going through the rating procedure. During the last long term financing, the rating bureaus indicated that a toll increase would be necessary for the Authority to maintain its rating level. This would be particularly so now in light of the Authority's cash thin position." (Minutes pg. 1.)

Johnson further stated "the overall cost of the private financing would not be much greater than the long term public financing considering all financial factors." (Emphasis added) (Minutes pg. 1.)

Debate followed as the Commissioners weighed short term versus long term financing. Chairman Stanley revealed that the Authority's underwriter for its previous bond issue, *"indicated that perhaps the Authority should pursue the long term public financing."* However, concern was raised that the long term debt "would generate too much visability on the toll increase issue." (Emphasis added). Additionally, the Commissioners wanted to keep the toll increase issue separate from the takeover of the State owned sections. The debate was not resolved at this meeting. Rather, Chester Johnson was directed to *"review the matter further with representatives of the Governor's office and Dillon Read and make a final recommendation."* (Minutes pg. 1-2.)

Further discussion concerning the takeover of the State sections took place later during the closed meeting (Jean Steifle, Esq., the Governor's representative, was not present for this discussion).

MARCH 26, 1987

Closed Meeting:

The minutes indicate that both Jean Steifle, Esq. and James Weinstein, the Director of the Governor's Independent Authorities Unit, were present at this meeting. Chester Johnson stated that the Authority submitted its refinancing plan to the State Treasurer pursuant to the Governor's Executive Order 147. He further stated that the Authority "received a reconfirmation from the Governor of approval for the barrier toll increase provided that such toll increase was not made public until after the first week in November 1987." (Emphasis added). (Minutes pg. 1.)

Johnson added that *"the short term financing sought by the Authority could be based only upon the approved toll increase for the ramps and not based upon any anticipated barrier increase."* Both the Governor and State Treasurer required that the short term financing not adversely affect the Authority's rating. Johnson reiterates his support for short term financing. Long term financing at this point is not deemed "feasible" if based solely upon revenues from a ramp increase. (Minutes pg. 1). Further meetings with the rating agencies are authorized.

Public meeting:

The General Counsel described this development as *"a discussion with the Authority's financial consultant as to preliminary plans for possible short-term financing for the construction program"*.

The architect who designed the Reception Facility is awarded a contract to design the "Consolidated Operations Facility" to be built at the Arts Center site (Resolution 87-69).

APRIL 23, 1987

Closed meeting:

Under the heading of "Legal Matters", the Commissioners discussed the Reception Facility and the inquiries of the Senate Independent Authorities Committee (Minutes pg. 2). The Authority notes that it received a request for additional documentation: "Most of the documentation requested was fairly routine, However, there was a request for Authority studies on toll increases. This raised concern. It was agreed that this matter should promptly be brought to the attention of the Governor's Office for review and consultation." (Emphasis added).

Johnson further indicated that Moody's "raised a question as to whether there was political readiness to put in a toll increase. It indicated that it would like to be kept abreast of the situation as the Authority proceeds." Standard & Poor's requested a presentation on the Authority's capital improvement program. (Minutes pg. 3.)

NOTE: No toll studies were given to the Senate Independent Authorities Committee prior to its April 30, 1987 hearing. In fact, at this hearing the Committee asked George Zillochi if a toll increase was expected; he responded that there would be no increase in the "foreseeable future". The Senate hearing occurred exactly one week after the Authority's closed session in which their financial consultant revealed that the rating agencies were not concerned about the short-term financing with long-term financing to follow in approximately a year. (Minutes pg. 3.)

Public Meeting

Site development and landscaping design proposal for the Reception facility at the Arts Center site, submitted by Vollmer Associates (the Authority's Traffic Consultants), is accepted. "Under its proposal, Vollmer will provide the necessary architectural services on a cost-plus basis, with a ceiling of \$47,000." The Chief Engineer advises that planned spending on the landscaping is approximately \$500,000. (Minutes pg. XIV.)

MAY 28, 1987

Closed Meeting:

The minutes reveal that Johnson met with member(s) of the State Department of Treasury and "has been instructed to approach several banks in both New Jersey and New York. Tresuary (sic) had indicated that the New Jersey banks should only be the larger banks able to handle the transaction without farming out any portion of it to other institutions." (Minutes

pg. 2.) First Fidelity and United Jersey Bank were the New Jersey banks approached by Johnson. Morgan Guaranty and Chase Manhattan were the New York banks approached. (The financing was ultimately arranged through Morgan Guaranty Trust Company and approved by the State Treasurer and the Governor in August).

The minutes indicate that concern was raised that only two New Jersey banks were considered. *"The Commissioners agreed that a much more concerted effort should be made to do the transaction with a New Jersey bank."* (Minutes pg. 2.) However, no additional banks were solicited by the Authority. (See Public Minutes, August 27, 1987 at v.).

Public Meeting

The Authority approves the payment of \$30,000 to the Governor's Independent Authorities Unit as an annual fee assessed against all authorities for operational expenses of the Unit.

JUNE 25, 1987

Closed Meeting:

Johnson recommends acceptance of the Morgan Guaranty Trust Company's proposal for the short-term financing. He receives authorization to prepare the loan documents and the approvals from the Treasurer and Governor (Minutes pg. 1-2).

Public Meeting:

The Resolution authorizing the takeover of the State sections of the Parkway is adopted. (Resolution 87-139). (Formal closing takes place on July 1, 1987).

JULY 23, 1987

Closed Meeting:

The financial consultant, while discussing the short-term financing, announces that the *"entire proposal has been cleared with Treasury."* (Minutes pg. 2). He further recommends that the execution of the loan agreement be delayed until August or September.

The Commissioners later agreed that the Executive Director *"had performed his duties extremely well"* and recommended he receive a \$10,000 raise. *"It was suggested that the proposed raise be cleared with the Office of the Governor prior to implementation."* (Minutes pg. 3).

Public Meetings:

The Revised 1987 Operating Budget is adopted. (Resolution 87-145). The Resolution which authorizes the payment of \$30,000 to the Governor's Independent Authorities Unit is approved. (Resolution 87-145). A Resolution awarding the purchase of 8 million care tokens and 2 million bus tokens to the sole bidder is authorized. (Resolution 87-150). The total cost is \$839,480.

AUGUST 27, 1987

Closed Meeting:

The meeting opened with a review of the short-term financing arrangement which was now ready for a vote in the public meeting. The financial consultant indicated he had met with the rating agencies and no adverse effect would occur on the rating of the Authority. He stated that Standard and Poor's wanted to meet with representatives of the Authority and the State "later in the year with respect to any proposed increase in tolls." (Minutes pg. 1.)

A discussion ensued on the specifications for a contract for automatic coin machines. (This issue was later questioned concerning the toll increase--did the Commissioners plan on new machines to help with the implementation of the hike?) (Minutes pg. 2). The Commissioners also discussed the token sales program which was designed to eliminate the use of tokens in manual lanes. "This will be required when a discount token will be utilized in the future and efforts should be made now to educate the public." (Minutes pg. 4.) Jerry Neilsten, the Traffic Consultant, also reported that "the public should be encouraged to acquire and keep tokens even after an announcement of any toll increase since this would lessen the impact at the time of the implementation of such toll increase." (Minutes pg. 4.)

The Executive Director reported that seven (7) proposals were received from public relations consultants to "assist the Authority from time to time as and when such services were needed. He stated that the proposal of Ailes Communications, Inc. was deemed to be in the best interest of the Authority." (Minutes pg. 3-4.)

Public Meeting:

The short-term financing plan is formally approved. The adopted Resolutions include acceptance of the Governor's and Treasurer's Approval letters, authorization to accept Morgan Guaranty's proposal, a supplemental resolution to the Parkway Revenue Bond Resolution, and the hiring of Carella, Byrne, Bain & Gilfillan, Esqs. as Bond Counsel. (Resolutions 87-167, 87-168, 87-169, and 87-170).

(Attached is a staff memorandum which outlines the financing plan in more detail. The memo is not based on a review of the actual documents which were not available at that time (September 21, 1987) the information was provided by the Authority staff and consultants.

Ailes Communications, Inc., New York, New York, is hired pursuant to its proposal dated August 14, 1987, for "*Patron Attitude Research, Marketing and General Public Relations Services*". Resolution 87-184. The fee is \$300.00 per hour for an "*account team*" comprised of four individuals. (A News Tribune article dated February 10, 1988, quotes Judith Stanley and states that the Ailes firm received \$49,000 between September 21 and December 30, 1987. This article is attached).

In an unrelated area, a Resolution is adopted by the Authority which accepts a proposal of Vollmer Associates, New York, New York, for design of widening of the Patcong Creek Bridge (Resolution 87-180). The contract amount is \$484,500.00 payable in a lump sum. The Resolution states that this proposal was solicited by the Authority (not bid) and the award was "*deemed in the best interest of the Authority*". Vollmer also serves as the Traffic Consultant to the Authority.

SEPTEMBER 23, 1987

Closed Meeting:

An item entitled Midlantic National Bank is excorciised from the closed minutes and is stated to be anticipated litigation and not made public. Midlantic is the Trustee for the Authority bondholders (1986 issue).

OCTOBER 22, 1987

Closed Meeting:

The minutes indicate that Dick Ailes was present during the closed session discussion on the proposed toll increase which was subsequently adopted: the 50¢/35¢ discount token for barrier tolls and 25¢ toll for all ramps.

This matter was stated to involve "*matters utilized in protecting the safety and property of the public where disclosure could impair such protection as provided in the Open Public Meetings Act*", and was not reported during the public session.

The Authority also approved raises for certain management personnel during this meeting. Discussion occurred during the exempt meeting and formal action took place at the public meeting.

NOVEMBER 19, 1987

Closed Meeting:

The minutes indicate that Jean Steifle, from the Governor's Independent Authorities Unit, arrived late to this meeting bearing the Governor's and Treasurer's prior approval letters authorizing the proposed toll hike. The General Counsel reviewed the documents and procedures with the Commissioners. The Governor's approval letter specifically reserves his right to grant prior written approval before final adoption of the toll hike by the Authority. The formal Resolution to amend the toll regulations is discussed as well.

Commissioner Sambol suggests that the Authority should consider engaging only one general engineering consultant who would be prohibited from otherwise submitting proposals on specific projects. *"The matter will be further considered at the time the Authority enters into its contracts with consultants."* (Minutes pg. 4.) This item was excluded from the public meeting as involving contract matters.

Public Meeting:

The Commissioners voted unanimously, without discussion, to adopt the first toll increase in the Parkway's 33-year history. Members of the public and press were told that a briefing on the issue would be held approximately one hour after the meeting ended. Since no discussion of the toll increase had occurred in public up to this time, the press questioned the Commissioners as to the process for adopting this increase.

At the press conference which followed, the General Counsel was questioned repeatedly about the Open Public Meetings Act. He indicated that he gave oral opinions on the subjects which were exempted from the Act.

This meeting was subsequently deemed void by the Authority at its November 30 meeting at which the Commissioners readopted the resolution approving the toll increase.

NOVEMBER 30, 1987

Closed Meeting: Not currently available.

Public Meeting:

The Authority reenacted the agenda from the November 19 meeting with the exception that a presentation was made to justify the toll increase. (This presentation is summarized in the Public Minutes at xvi-xxxviii) The Commissioners voted unanimously to adopt the increase.

DECEMBER 17, 1987

Closed Meeting: Not currently available.

Public Meeting:

The Commissioners adopted a Resolution indicating that Net Revenues for the 1987 year are sufficient to comply with the Toll Covenant (Resolution 87-272). The Resolution also states that the proposed toll increase will provide sufficient funds to meet the Toll Covenant for 1988. This Resolution is required annually pursuant to the 1986 Bond Resolution.

The Commissioners also adopted six (6) Resolutions which were subsequently vetoed by the Governor. Principal among these was the Operating Budget for 1988. (This action forced the Authority to operate on a "working budget" pending further review by the Governor).

JANUARY 27, 1988

The Public Advocate issues a report which states that the New Jersey Highway Authority has repeatedly violated the Open Public Meetings Act. This comes 13 days after the tolling expiration of the period which would have allowed a challenge to the action taken improperly by the Authority.