

NJ
10
R424
1988e

PUBLIC HEARING

before

ASSEMBLY COUNTY GOVERNMENT AND REGIONAL AUTHORITIES COMMITTEE

The structure and operation of regional authorities, with special attention given to membership qualifications and the issue of appointment or election of members of regional authorities. The compliance of regional authorities with the Open Public Meetings Act and with the Local Public Contracts Law is also examined.

May 23, 1988
Room 373
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman John E. Rooney, Chairman
- Assemblyman John T. Hendrickson, Jr., Vice Chairman
- Assemblyman J. Edward Kline
- Assemblyman Thomas J. Duch
- Assemblyman George Hudak

ALSO PRESENT:

- Walter R. Kennedy
- Office of Legislative Services
- Assistant, Assembly County Government and Regional Authorities Committee

* * * * *

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

n E. Rooney
Chairman
n T. Hendrickson, Jr.
Vice Chairman
Edward Kline
nas J. Duch
rge Hudak



New Jersey State Legislature
ASSEMBLY COUNTY GOVERNMENT
AND
REGIONAL AUTHORITIES COMMITTEE

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-1596

NOTICE OF PUBLIC HEARING

Walter R. Kennedy, Aide to the Assembly County
Government and Regional Authorities Committee
(609) 292-1596

The Assembly County Government and Regional Authorities Committee will conduct a public hearing on May 23, 1988 at 10:15 a.m. in Room 373, State House Annex, Trenton.

The subject of the hearing will be the structure and operation of Regional Authorities. special attention will be given to membership qualifications and the issue of appointment or election of members of Regional Authorities. The compliance of Regional Authorities with the Open Public Meetings Act and with the Local Public Contracts Law will also be examined.

TABLE OF CONTENTS

	<u>Page</u>
Eugene J. McCaffrey, Sr. Commissioner New Jersey Department of Personnel	1
Peter J. Calderone Assistant Commissioner New Jersey Department of Personnel	2
Bill Mathesius County Executive Mercer County	11
Assemblyman Anthony J. "Skip" Cimino District 14	20
James J. Morley Executive Director New Jersey State Commission of Investigation	25
William F. Rupp, Esq. Solid Waste Action Coalition (SWAC)	32
Louis G. McAfoos, III Assistant Chief Regulatory Officer New Jersey Board of Public Utilities	38
Jeanne M. Fox Director Division of Water and Sewer New Jersey Board of Public Utilities	39
Dr. Eugene Golub Chairman Civil and Environmental Engineering Department New Jersey Institute of Technology	46
Barry Skokowski Director Division of Local Government Services New Jersey Department of Community Affairs	46
Frank W. Haines, Jr. League of Women Voters	56

TABLE OF CONTENTS (continued)

	<u>Page</u>
APPENDIX:	
Statement submitted by James J. Morley Executive Director New Jersey State Commission of Investigation	1x
Internal Memo submitted by Jeanne M. Fox Director Division of Water and Sewer New Jersey Board of Public Utilities	6x

* * * * *

akv: 1-58

ASSEMBLYMAN JOHN E. ROONEY (Chairman): We will now start with the third in our series of public hearings on regional utility authorities, and regional authorities in general. We've had two previous hearings, one was in Bergen County and the other one was in Atlantic County.

In this meeting we're going to consider various aspects of the qualifications of the members of the boards, also the terms of office of the boards. We're going to consider employment under civil service, outside of civil service; generally the constitution of these particular utilities authorities, and any other testimony that can be heard at this time we will hear.

Commissioner McCaffrey, we'll ask to have you up first. You did call me at home yesterday and requested that.

C O M M. E U G E N E J. M c C A F F R E Y, S R.: Thank you very much. I have with me, Mr. Chairman, Peter Calderone, Assistant Commissioner. He may be able to provide some help to us. Pete, do you want to come up?

ASSEMBLYMAN ROONEY: Basically, we were looking at the authorities. I've seen some abuses under the Civil Service System, or in conjunction with the Civil Service System.

Some of my concerns are the unclassified positions; when you have an authority that may have 300 people employed, and then have 45 to 50 to 60 different unclassified people that are on the payroll. And the unclassified sometimes turn out to be the unqualified. Someone jokingly recommended this past week -- and it wasn't too far from fact -- was that maybe we should pass a law that at least 10% of all of these workers be qualified. And then the comment was that that's probably too high. We couldn't fill it.

So, these are some of the comments that we're having come back from various people at various authorities, and we'd like to correct that. So we'd like to have some ideas on how we can do it through the Civil Service System -- through the

Personnel Department -- basically some ideas on what you can see as legislation that we might pass through this Committee that will reform some of the problems and abuses that are rampant throughout these authorities.

COMMISSIONER McCaffrey: With the Chair's permission, I think it might be a good idea for Pete Calderone to bring us up to date on what the law is right now. I think he can do it very quickly.

ASSEMBLYMAN ROONEY: Okay. Good idea.

A S S T. C O M M. P E T E R J. C A L D E R O N E: As the Committee is probably aware, the sewage authorities are not under Title 11A, the Civil Service Law; the MUAs, a good number of them are, and a good number of them aren't.

At one time there was litigation on whether or not MUAs -- because the statute was unclear -- fall under the Civil Service System. What the Legislature had done at that point because of all the litigation, is those authorities that had complied with the law would continue to be under Title 11A, and it's about 23 authorities today. Those that had not joined or had not submitted the proper documentation to be part of the system, were exempt. So you have the sewage authorities not under Title 11A; about half or more of the authorities not under Title 11A. Those that are under Title 11A -- there are 20 or so -- the statute gives them a great number of unclassified positions by statute. The professionals, the managerial, are all unclassified. The clerical support and blue collar workers are in the career service. They would be the ones subject to civil service tenure. So today that's the system. Most of it is not affected by the Civil Service Law.

ASSEMBLYMAN ROONEY: Can you explain the difference on non competitive, when you get into some people that are appointed to positions that really are civil service titles?

ASSISTANT COMMISSIONER CALDERONE: There are a number of entry type positions that have minimal qualifications -- such as clerk typists, laborer -- that fall into what's considered the non competitive career service. What that means is that there's not any testing to get into the system; that the employer, the appointing authorities, do in fact directly hire individuals in those entry type jobs. They go through a three month work test period -- probationary period. At the end of the three months they would in fact, if they are successful, have tenure in the Civil Service System. However, any promotions would be through the competitive process.

ASSEMBLYMAN ROONEY: Is there any thought to recommending civil service for these other authorities that are now outside of any classification?

COMMISSIONER McCAFFREY: Well, as Peter said, we right now have a very unusual situation because of that court decision that was made about 18 months or two years ago, where those authorities that had begun the suit to take themselves out from under the umbrella of then Title 11 -- now Title 11A -- were permitted to remain outside. Those who hadn't bothered to challenge remained in. So it was a very unusual kind of a decision. The one thing this Committee might want to consider is bringing those that were allowed out by court order, back in again. That might give us some more jurisdiction and control.

ASSEMBLYMAN ROONEY: The other thing that happens though, as a result of bringing any new authority in, or any new agency in under civil service, is the problem that you might be compounding the situation. If you had unclassified or a lot of the unqualifieds at that authority and try to change that, the normal turn of events is that when you bring them under the civil service you grandfather everybody in, in those positions. I want to make sure that if we ever did that, there would be a complete audit.

COMMISSIONER McCAFFREY: I doubt that you would ever grandfather unclassified people into classified positions, if that's your concern. I don't think that will happen under any circumstances.

ASSISTANT COMMISSIONER CALDERONE: No, unless the Legislature--

ASSEMBLYMAN ROONEY: I can give you a pretty good example of where it happened.

COMMISSIONER McCAFFREY: Really?

ASSEMBLYMAN ROONEY: Yes. The Bergen County Utilities Authority, when it was done they grandfathered just about everybody in there in their positions, including part-timers.

COMMISSIONER McCAFFREY: Bergen County MUA -- or CMUA, I guess you would call it -- they are under our jurisdiction, are they not?

ASSEMBLYMAN ROONEY: Yes.

COMMISSIONER McCAFFREY: And so is the sewage authority in Bergen.

ASSISTANT COMMISSIONER CALDERONE: No.

COMMISSIONER McCAFFREY: No?

ASSEMBLYMAN ROONEY: The sewage authority is the Bergen County MUA.

COMMISSIONER McCAFFREY: Are they one and the same?

ASSEMBLYMAN ROONEY: One and the same. It's sewage and garbage.

COMMISSIONER McCAFFREY: Okay.

ASSEMBLYMAN ROONEY: This goes back five years ago, when they were taken over. When it was done in civil service just about everyone, including part-timers, were grandfathered into those positions.

ASSISTANT COMMISSIONER CALDERONE: Assemblyman, it would have been, I hope, after an audit that would have showed that they were in career jobs.

COMMISSIONER McCAFFREY: They had some kind of tenured position. When we first arrived on the scene here the rule was that if your county, by referendum sometime ago, had decided to be a civil service county, then every agency created by the county was also civil service. The only exception, as we all know, is Somerset County, who has never joined the system. All of the other 20 counties have.

This court decision that we raised here made that different. There's a different situation there. Now we have sort of half and half; half in and half out. But I don't think you'll find that anybody who is non tenured without at least some permanent appointment in the system at some level, would ever have been grandfathered in in that sense.

ASSISTANT COMMISSIONER CALDERONE: The only difference would be the Civil Service Law, the Title 11A, does provide if somebody was serving in a jurisdiction in a career title -- in this case in the MUAs and CMUAs, would be your blue collar, clerical type jobs -- for at least a year, they would gain tenure into the system in a jurisdiction that subsequently joins the Civil Service System. Those that were in unclassified positions would not be blanketed in.

ASSEMBLYMAN ROONEY: The other thing is many counties are limited as to the unclassified positions that they can have. In MUAs or CMUs I've seen that this is not true. There is no limit to the number. Then when you do the professional or managerial or-- I think there's one other category of unclassified. There's professional and managerial. What's the third?

ASSISTANT COMMISSIONER CALDERONE: Technical?

COMMISSIONER McCAFFREY: Supervisory.

ASSEMBLYMAN ROONEY: Well the supervisory would be managerial. What we're looking at is how do we prevent the filling of these positions, having somebody called the director or deputy director, and winding up with two managers for every

laborer? These are the things that we're looking for guidance from you people on how to limit. We limit counties, we limit large cities, as to the unclassified positions. I believe we should be limiting regional authorities in the same way.

COMMISSIONER McCAFFREY: We limit confidential aides, but there is a difference between the confidential aide and the unclassified. We do limit that in counties by charter and by various reasons. But the statute that they're working under now says that without regard to provisions of Title 11, they may appoint and employ a secretary and such professional technical advisors and experts, and such other officers, agents and employees as it may require; and shall determine their qualifications, terms of office, duties, and compensation. So that's obviously a wide open door.

ASSEMBLYMAN ROONEY: It is.

COMMISSIONER McCAFFREY: There has to be some more specificity in the legislation if that's what you intend to do--

ASSEMBLYMAN ROONEY: That's what we intend to do.

COMMISSIONER McCAFFREY: --which would mean an audit of the authorities to find out exactly what they need. Then you're also going to have to face the problem in the difference of obtaining the qualified help in the various areas. For example, in Bergen County you might have a much tougher problem getting them than you would in Salem or Cumberland where there are unemployment problems to some extent. So that's the compensation. If you try to get into their compensation, then you're really getting into an area where you're pretty much far removed as to making decisions as to what the compensation rate should be.

ASSEMBLYMAN ROONEY: I'm not concerned with the compensation so much as the abundance of people.

COMMISSIONER McCAFFREY: The number of people, yes, okay. I was going to back to your note where you said a range of 10,000 to 50,000 or something in your letter.

ASSEMBLYMAN ROONEY: One of the things that's happened is that they put a spread in there that's an unreasonable spread. I have a bill in, that I've had for quite a while, where I'd like to see them publish the actual figures that they have. If you have a list of employees you publish that list. Well, let me go back one step. If you're in civil service, you publish it by grade and step, and we know what that is. The grade and step is negotiated by the union, and there's no change in that.

But in municipal government, and from my municipal experience, we generally publish a salary guide every year. And in some categories you might say that for a clerk typist, for example, you're going to pay from six dollars to ten dollars an hour. That allows you to go out and pick and choose. You might need a clerk typist for one function that's very very simple, but for another function it might be more technical. For the building department or something like that you might require more experience, therefore greater pay. But that was to have accountability.

The reason that we did that, and had these published numbers was to have accountability and let people know what we're paying for; what the ratepayers are paying, what the taxpayers are paying. But what's happened is, they've used this again -- and again, I keep using my worst example, or my best example, my best example of the worst example -- where they've published a range that was from \$40,000 to \$60,000 for one position. Then they said that they could change within that range by simply going to the executive director of the authority, and three members of the personnel committee in the back room, to make changes that could be up to 50% of a person's salary. These are blatant abuses that have to be stopped.

COMMISSIONER McCAFFREY: I guess they all go back to what we all did with authorities over the years, and that is we

used them as governing bodies for buffers. And in using them as buffers to get the job done, we also allowed some things like this to happen. It's a matter of tightening up.

ASSEMBLYMAN ROONEY: It has to be tightened up. There has got to be controls. We've got to have a responsibility and an accountability. Without that, it's almost as if they're playing with Monopoly money. Now, with the garbage crisis the way it is, any of these MUAs that are involved in garbage, your net effect on the taxpayer is so great that-- Chuck Hardwick tells the story about the senior citizen who sent him a budget that went down to the 50 cents at the end of the month. And when they got their new garbage bill, they used to have \$10 a month for garbage, now it's \$40 and \$50 a month for garbage. When you're budgeting to 50 cents, how do you find that extra \$30 or \$40 a month for a senior citizen?

COMMISSIONER McCAFFREY: And again, they're buffered because they're not elected. They are appointed, and they're not subject to the accountability that elected officials are, in many cases.

ASSEMBLYMAN ROONEY: Right. And they're up in this ivory tower, so to speak, and they're spending money, and they're not looking at ways to economize. They figure it's an endless well of money that's available and they just keep throwing it away, I feel. I couldn't believe some of the things I've seen down there, and it's been just recently too.

COMMISSIONER McCAFFREY: There isn't any question. There is a way to accomplish anything in personnel work. It's simply a matter of you want to go in with -- it's a trite saying -- but you want to go in with a scalpel instead of butcher knife too. You don't want to just go in and take all the tools that they need to run the authority away from them. But if there's that much mismanagement and over-hiring, then it should be pretty obvious that some kind of an audit -- if somebody's authorized to do the audit, whether it be somebody

from the appointing authority-- The freeholders appoint these folks, I guess.

ASSEMBLYMAN ROONEY: Or the county executives.

COMMISSIONER McCAFFREY: Or the county executives. I sense there's one behind me somewhere.

ASSEMBLYMAN HENDRICKSON: Yes. He's not very well known. I think his name is Mathesius. (laughter)

COMMISSIONER McCAFFREY: Very sedate and quiet.

ASSEMBLYMAN HENDRICKSON: Yeah yeah, quiet.

ASSEMBLYMAN ROONEY: Non controversial.

COMMISSIONER McCAFFREY: But the control can come from there of course, very easily, if that's the way it's to be done.

ASSEMBLYMAN ROONEY: Well I think that even in certain cases it's beyond the board of freeholders and beyond the county executive. Some of our county executives are looking for veto power over the minutes of these authorities. But I think what we've got to do is tighten up the civil service laws, tighten up the personnel requirements that we're looking at.

COMMISSIONER McCAFFREY: Well one of the things you did -- the Assembly did -- when you gave us this bill was to give us some more flexibility. I would think that this probably would require some people from our staffs to work over some real detailed options, after maybe they've had a chance to do some field work. That might make some sense, to see what we can dig out with your staff and ours as to what's going on, and then maybe offer some legislative options, if that would be helpful.

ASSEMBLYMAN ROONEY: That's what we're looking for. That's what we're here for, is to look at that, and if you have any suggestions whatsoever, get them to me or to Walter. (referring to Aide) This Committee is committed to having reform legislation for the regional authorities, to put them in a position where they're going to be more accountable and more responsible to the public and the ratepayers.

ASSEMBLYMAN HENDRICKSON: Mr. Chairman, I think the Commissioner said it very well when he said take a scalpel and not a meat ax. I think that's really the direction that--

COMMISSIONER McCAFFREY: But I think it's important, as we all know, to make sure they know that we're not out to kill the authority. We simply want to make it more accountable.

ASSEMBLYMAN HENDRICKSON: We don't need to--
(inaudible)

COMMISSIONER McCAFFREY: I'll be glad to ask Peter Calderone to work with Mr. Kennedy, or whoever you ask to work with us on this thing. We'll try to come up with some ideas.

ASSEMBLYMAN ROONEY: This is a major initiative of this Committee this year, and we are serious about doing this.

COMMISSIONER McCAFFREY: I gathered that when I talked to you yesterday--

ASSEMBLYMAN ROONEY: Yes.

COMMISSIONER McCAFFREY: --that you were serious about moving it.

ASSEMBLYMAN ROONEY: The other thing is that if an audit is at all possible in the very near future, I suggest that you start with one of the largest in the State, and probably--

COMMISSIONER McCAFFREY: Mercer County?

ASSEMBLYMAN ROONEY: No, no. (laughter) Try Bergen, the one we were talking about, my worst example or the best example, depending on what perspective-- There are real problems, and I'd like to see it start there.

COMMISSIONER McCAFFREY: Okay.

ASSEMBLYMAN ROONEY: Thank you very much, Commissioner.

COMMISSIONER McCAFFREY: Thank you for taking me quickly. I appreciate it.

ASSEMBLYMAN ROONEY: Yes, and good luck in getting to your next meeting. Do you have anything in writing that you would like to submit?

ASSISTANT COMMISSIONER CALDERONE: We will send it in.

ASSEMBLYMAN ROONEY: Okay. We'll put it in as part of the testimony. I know the County Executive is here from Mercer County. I didn't expect you to be here but--

B I L L M A T H E S I U S: That is the reason I came originally, Assemblyman. It was an effort to respond to the invitation that you so kindly sent respecting the MUAs and the utilities authorities, of which in Mercer County--

ASSEMBLYMAN HENDRICKSON: Just a minute. Could we kind of have him introduce himself? I'm not--

MR. MATHESIUS: Thank you, Jack. I appreciate that.

ASSEMBLYMAN ROONEY: For the record, County Executive of Mercer County, Bill Mathesius. Thank you, Bill.

MR. MATHESIUS: Thank you very much. As I indicated, I was pleased to receive the invitation respecting testimony regarding regional authorities.

I am here to tell you and testify that while there are problems with every form of management that we have come up with in this society, the utility form -- particularly in Mercer County -- has been an extremely valuable one, one that I don't think we could have resolved our garbage situation without. I understand that there are always ways to do things better, and I understand as well that there's been a lot of publicity respecting the unhappiness that some utility authorities bring upon their constituencies, but there are certain advantages that cannot be obtained in really any other fashion; that is by elective proposition or by some other manner of appointment.

Right now in Mercer County, for the Mercer County Improvement Authority I appoint the members with the advice and consent of the Board of Chosen Freeholders. That has worked out very well, and to the extent that there have been political disagreements in the small sense of the word, we have managed to resolve them and had very highly qualified and professional

people appointed, and they were able to defuse much of what would otherwise be the usual things that each one of us as elected officials have to confront; that is, playing to special interests, dealing with special interests, and basically diverting ourselves from the general good to the more specific good.

Every year in Mercer County is an elective year. We have freeholders up for election and reelection -- for the first time election. They will make every effort, as even I must when I run for reelection, to try to deal with the special interest votes. We all do that. That's part of elective politics. We have the pandering going on this year, respecting the MCIA, and we're going to have an investigation about the Authority and what it can do and what it doesn't do. But I'm here to tell you, we would not have the resolution that we have of our solid waste problem in Mercer County, without the Mercer County Improvement Authority. We're able to do that because they were able to absorb much of the political heat, and in turn place a lot of emphasis on getting the job done subsequently with the Board of Chosen Freeholders, who had to approve contracts. We've had the usual sad efforts by the politicians to pander to one or another group. That has been an unfortunate element, but the MCIA has permitted us to survive that.

I think that the appointment process, if done responsibly by the appointing authority with the advice and consent of the approving authority -- if it's done professional with a design to get the best we can for the most important agencies, it can work out. I would like to see the MCIA have more enforcement powers, similar to a board of health, and similar to other DEP type agencies, that will be able to confront some of the problems that they will have to confront when they're dealing with the garbage issues.

It's easy, finally, to-- And I'm not going to belabor this, but I'm here obviously in support of an appropriately used authority. We know the stories that we've read about the misuse. They are to the same extent misused as are people who misuse political office. None of us like to read about that because it paints a broad brush across us as well. But when you have a terrific authority, a very responsible authority, that is able to get together and get the machinery going, you have a very valuable commodity. It would be a shame to throw the baby out with the bath water. When you clean up the act, when you tighten up -- as you've indicated, Assemblyman, that this Committee is interested in doing -- there are some bolts and nuts that can be tightened, but for the most part the system itself provides a welcome cooling alternative to the heat of the usual poristic political process -- if you know what I mean, and I think we all do.

That's basically it.

ASSEMBLYMAN ROONEY: I would have some questions for you. One of the suggestions by another county executive is having veto power over the minutes of the authority.

MR. MATHESIUS: I would personally love that because I believe that-- And I endorse that, and whichever one of my brethren endorsed that, I applaud that because it does give the county executive a bit more authority over what is otherwise a completely autonomous board. However, as with any kind of given authority, it also brings a certain amount of responsibility and it also brings about a different kind of pressure. It's not an all-- It's like the line item veto. There are some very good things about it. The Governor has it, but he also has it to effect in a fashion that he has to deal-- It takes the weight off the Assembly and the Senate. So you do have a transference of the emphasis and the pressure and the abilities to bring special interests to bear. So while I endorse that, I can see that there is a down side to the

minutes veto. And I would hope that if it was obtained -- and I can see more advantages than disadvantages -- I would hope that it would be used sparingly and with a very delicate and judicial hand in exercising it.

ASSEMBLYMAN ROONEY: The suggestion is that we allow the veto power, but with, again, advice and consent by perhaps as much three quarters of the board of freeholders.

MR. MATHESIUS: That would be an excellent midpoint. I think I would endorse that as well. That would prevent a county executive from acting irresponsibly. It would prevent a board of chosen freeholders from acting irresponsibly by overriding it. I think that would be an excellent addition to the present form. It retains ultimately in the elective portion of the government that which should be retained -- the ultimate authority -- and doesn't give away too much.

ASSEMBLYMAN ROONEY: Some of the other things are terms of office. There are five years now, and there are also two alternates. It's up to nine members with two alternates. The suggestions have been perhaps the terms are too long. They outlive the governing bodies who appoint them. And perhaps they should be lessened so that these people would come up for an appointment more often, and therefore up for review as to performance more often.

The other thing is with alternates. I don't think alternates are necessary with a nine-member board. In fact, there's even questions about whether a nine-member board is at all necessary. Maybe it should be seven?

MR. MATHESIUS: Assemblyman Rooney, we have a different situation with the Mercer County Improvement Authority as our county authorities. They are a little bit different. We don't have alternates. I agree with you. I don't see any reason to have alternates. We do have circumstances whereby the terms eventuate out of existence. And with the change in government it doesn't bring a dramatic

shift, but it brings it gently. And I think that's the way to do it. If you have terms of three or four or five years, but you alter them as we do in Mercer County with the Freeholder Board -- three are up for election, then two, then two, then three -- it constantly has an overturning effect. With the appointment powers you can still keep people in business.

When I took over in 1980, we had to wait until we could replace members -- normally this would be the case -- to get a subtle shift of direction as opposed to a dramatic shift of direction. The Mercer County experience was a little bit different because I thought when I came in that we had a rather indolent authority, and it did not go to exercise the powers it was given under the statute. We had an argument as to the nature of the change even as I made the appointments. We went to court. The court found the appointment powers originally exercised to appoint the members was inappropriate, and I got the dramatic shift which was helpful to me. I tried to play the game the same way where you could get a gentle shift, as I did in the Park Authority, and I did with some of the boards of school estimate, the vo-techs, the other authorities that are similar in scope. I did take my time in turning those over, and eventually put members on and kept members on that I think agreed with my gentle vision of the future of the county, and we were able to accomplish a great deal.

The one instance of the Improvement Authority was a dramatic change brought about by an unhappiness that generated into a lawsuit. But I think giving the possibility of that change not sudden like a bucket of cold water, but gently like a bucket of lukewarm water, might be better.

ASSEMBLYMAN ROONEY: The SCI has sent us letters and recommended that there be qualifications set out for members of these authorities; having one member from the financial community, one member from the engineering professions, one member from a management background, and then general members of the public. How do you feel about that?

MR. MATHESIUS: As a former member of the SCI, I'm fond of noting that they do like to recommend things, whether they're practical or impractical. You have as many clown as engineers, and as many clowns in financial operations, as you can find in the lay public. So I think while you might well be able to enhance a board by having a few licenses or not, I don't think that's any real cure. The cure is the responsibility of the appointing authority to exercise excellent appointments, have them approved by the Board of Chosen Freeholders, and having an excellent authority, which we have in Mercer County.

There's a couple of lawyers on the Board. There's other professional people, there is a labor leader in Mercer County, all of whom are extremely competent and very able people. This was not done with an eye toward satisfying one or another political ends, but rather to bring a sense of direction to Mercer County. The Board of Chosen Freeholders, to its credit, at that time was 7-0, 6-1, 5-2 Democrat, they, notwithstanding political concerns, endorsed my appointments, and we now have a picture perfect Improvement Authority. But for the usual wretched excesses of politics today, it will remain the very positive thing that it's been.

ASSEMBLYMAN ROONEY: Well, the SCI also recommended lawyers but I chose to leave that out for good reasons. I have a problem with them being on the board.

MR. MATHESIUS: They can very problematic, sure. I think the percentage of clowns in government is not to be varied by titles.

ASSEMBLYMAN ROONEY: Let's see. Anyone else have any questions? I'm sorry I monopolized--

ASSEMBLYMAN HENDRICKSON: No, no problem, John, but I think we have -- and Bill and I have been at odds over years because we know each other so long -- but I think some of the testimony that our Executive here has given-- I think he's one of the finest. I think this gentleman is a very astute--

MR. MATHESIUS: Thank you, Jack. I'm waiting for the "but" now. (laughter)

ASSEMBLYMAN HENDRICKSON: But, I kind of agree with Commissioner McCaffrey that we take a scalpel to any changes. I don't believe we can make any law so perfect as some of your remarks, because I've been in politics, a few months anyways--

MR. MATHESIUS: I endorse that as well.

ASSEMBLYMAN HENDRICKSON: --and to say broadly that political buffs, or political whatever some of the terms, are not going to always be in some type of influence no matter what type of legislation we put forth, I think is just wishful thinking. You have to depend on the individuals to try to do the best job possible, but even then, and from experience, by the pick of litter we still get many many times, to our chagrin, that whole different-- The job makes the individual is what I'm trying to say. And it either makes the individual on the positive side, or what we say in Ocean County, "They either grow up or blow up."

MR. MATHESIUS: I agree with that, and if I might just embellish on that comment: Certainly a scalpel is needed here. We all have our concerns about the Civil Service Commission, I hope. And I'm sure Gene shares them with everybody. But we have had such an experience when you deal with good people, and people that contribute a hell of a lot of unpaid, unreimbursed hours. The MCIA comes in and they have people just sacrificing a lot of personal life, a lot of professional life, a lot of money making life to come in and deal and not get a red cent out of it, I think they deserve a lot of applause across the board. And to be tarnished by one or another road boards or committees is unfair, and I'm here to tell you that they generally do a very good job, as do most politicians.

ASSEMBLYMAN ROONEY: I tend to agree, but the problem is when you do have that one bad example--

MR. MATHESIUS: It looks bad.

ASSEMBLYMAN ROONEY: --it looks bad for all of us, and especially when it's a major major authority, and it's major dollars that you're talking about. So perhaps, as the previous speaker said, some nuts and fine tuning that might be the way to do it.

What terms of office do you have for your board?

MR. MATHESIUS: They are five-year terms.

ASSEMBLYMAN ROONEY: It's a five-year term? And how many members?

MR. MATHESIUS: There are seven members on the board.

ASSEMBLYMAN ROONEY: Seven? No alternates?

MR. MATHESIUS: They alternate around. They have varying appointment times, and every year one or two will come up.

ASSEMBLYMAN ROONEY: The other suggestion that was made was that possibly on these county boards, such as your type of a board, perhaps even in an ex officio capacity you have one member from each elected level -- one from the municipal level, one from the county level, and one from the State level -- to be appointed on the board. It was a suggestion that could help in getting things done; having a liaison to the local, having a liaison to the county, and also to the State. Is there any value to that?

MR. MATHESIUS: Assemblyman, that sounds great in theory but I don't think it works in practice. If I'm able to bring to this Committee some liaison with the Assembly as County Executive, observing what goes on at the MCIA, that's the way I would like to do it. I don't think you need an appointment per se. Again, the title and the objective of having liaisons I don't think will be necessarily accomplished in the fashion that you described. So I would tend to think that that would tend to complicate more than enhance the operations of the--

ASSEMBLYMAN ROONEY: In Mercer County you're a lot closer to the State than most other counties.

MR. MATHESIUS: That's very true.

ASSEMBLYMAN ROONEY: So it might be slightly different. But we find in Bergen that they really don't even have any idea of what's going on down here. They have no liaison. They've had no contacts, and probably--

MR. MATHESIUS: That is a difference.

ASSEMBLYMAN ROONEY: A big difference. And when you're going for permits with DEP and you have another area where you need something like that, it's a different story. I know that you have a direct pipe line here.

MR. MATHESIUS: Well it is handy to be in the capital county. And we welcome each one of you here everyday. We're pleased to have you here.

ASSEMBLYMAN ROONEY: We appreciate your letting us through the gates. (laughter)

MR. MATHESIUS: We'll try to do something about Route 1 so you can get here even quicker.

ASSEMBLYMAN ROONEY: I wish you would.

ASSEMBLYMAN HENDRICKSON: I'm east and west. Try east and west also. Give us a road.

ASSEMBLYMAN ROONEY: That's part of my problem. Anyone else have any questions? (no response)

MR. MATHESIUS: May I thank you for your courtesies again?

ASSEMBLYMAN ROONEY: Thank you very much. We really appreciate it.

MR. MATHESIUS: Thank you, John.

ASSEMBLYMAN ROONEY: We have Assemblyman Cimino. We always recognize our legislators here because they have other committees to go to. So, Assemblyman?

A S S E M B L Y M A N A N T H O N Y J . C I M I N O : Thank you, John. Thank you very much, Assemblyman. Mr. Chairman, I'm happy to hear that in fact you've been holding these hearings throughout the State of New Jersey. I think it's important. As I know my former colleague in Mercer County just spoke, and I'm sure spoke to the issue of county improvement authorities, and I think that's important. I think that there is a need for some specific solutions to address problems with regard to county improvement authorities.

One of the things that I've heard proposed -- and coming in late I don't know whether the County Executive of Mercer spoke to this or not -- is the question of whether improvement authority members ought to be elective or appointive. Quite frankly, I would come down on the side of appointed. I think the only thing elected members to authorities can do is just start a whole other round of politics, in competition, I might add, with the governing body as well, and I think that could create some very very serious problems. So I would support there being an appointive process.

I also believe that there ought to be a code of ethics; that there ought to be a code of ethics for all authority members and officers. Currently in Mercer there is a code of ethics that impacts on members of the Authority only. I believe it's important that we have a code of ethics; that that code provide for provisions for penalties, for violations including fines, suspensions, and dismissals.

Additionally, there ought to be qualification requirements for members of authorities. There ought to be an engineer on there. I ought to support that there ought to be a lawyer on there, someone with a governmental background, corporate law or bond law, but there ought to be someone there; and a representative of the financial community or a proven academician with credentials in the business administration area.

There ought to be personal disclosure as well for all authority members to prevent any conflict of interest.

There ought to be minimum qualifications for authority employees with supervisory responsibilities; be it the executive director, or the chief engineer, or what have you.

In the past-- I don't look at it as glowingly as Bill does, having been a member of the legislative branch of government in Mercer County. Quite frankly, there were many difficulties, particularly when Mercer was in the process of resolving its solid waste problem. There were many difficulties for the Freeholder Board in obtaining information, bringing that information forward. At times it became a tug and a pull. That kind of a situation should not occur.

Additionally, I think that you've got to be careful with authorities insofar as the ability of them to bond, and the ability of them to grow. They are not subject to all the same laws that county and municipal government are concerned with. They're capable of exercising their own development of debt. There are very very important considerations for government. If in fact those authorities should fail, people who ultimately pick that up are the people of the county or the municipality or whomever. And that becomes an increased and added burden upon them.

I think there ought to be some additional proposals that perhaps ought to be considered.

One, I firmly believe that the terms of members of county improvement authorities should be coterminous, particular in optional counties with county executive form of governments. I believe they ought to be coterminous with the term of a county executive. A new county executive comes in -- I believe not unlike where department directors are concerned - that individual ought to have an opportunity, and ought to have the ability, to put his team in place to work with the improvement authority inasmuch as it is a quasi independent body.

There ought to be a provision for veto of minutes. I think that the county executive as well testified to that. But there ought to be a provision for veto of minutes of county improvement authorities that ought to be done by the county executive. And I believe the boards of freeholders should in fact have an override. I view the override as being one of a simple majority, to override the veto of the minutes by the county executive.

There ought to be a requirement that any projects designated by the board of freeholders to the county improvement authority, that the improvement authority shall submit a detailed report on a semiannual basis back to the board. And if after 60 days, the improvement authority should fail to respond to the board of freeholders, to the legislative branch of government, then the board should be permitted to hire its own individual agent to assess the projects, and back charge the improvement authority on that basis. I think it's absolutely imperative that they have the ability to do that.

Also that county improvement authorities should notify Boards of Freeholders 30 days prior to an appointment of any employee with supervisory responsibilities. It shouldn't be something that's dropped on a board of freeholders at the very last instant. It should be something that they're very well aware of, particularly when it comes down to an executive director or a chief engineer inasmuch as they have a major impact on the development of the authorities.

I also think that there ought to be a requirement for a financial master plan to be submitted to the boards of freeholders on an annual basis. The plan should include the amount of debt, it should include the maturity schedule on the debt for retirement by the authority, and the master plan should be submitted to the board prior to the adoption of the improvement authority budget. That may be a little cumbersome where the improvement authority operates on its own without the

investment of any additional county taxpayer funds. But I do believe in the instances where it does rely on the county board of freeholders, that that master plan ought to be in place. Currently, I believe that Mercer's debt ceiling is up to about 600 million for the improvement authority. There are discussions of it going to as much as one billion in terms of total debt. It's a major major component of county government that is virtually sight unseen, and to a large extent, removed from the accountability process because it's done by a quasi independent authority.

Finally, I would suggest that there ought to be a debt limitation cap put on what improvement authorities ought to be able to do. I believe that they should not exceed 60% of the total county debt limitation, unless and except, there's a waiver by a two-thirds majority vote of the board of freeholders. The reason I say that is because it could very easily become that improvement authorities, utility authorities, municipal authorities, in essence become a shadow government; a government not governed by the people whatsoever. Ultimately as elected officials we must stand the test, in this instance, in the Assembly, every two years; on boards of freeholders every two years. But the fact of the matter is that we must stand to the test each and every opportunity, and allow the voters to either accept this or reject this. It's not the case in a quasi independent authority situation. I think there's a possibility that we could end up with a shadow government.

In the instance where we talked about the Mercer County Improvement Authority, a budget now that's close to \$90 million, the county budget is only \$107 million to \$108 million. Soon the Improvement Authority budget, with the scope of projects that it's entering, could very well encapsulate that of the county budget and be a bigger entity. So I think that there ought to be some greater control brought over those kinds of projects.

I thank you very much for giving me the time this morning, Mr. Chairman.

ASSEMBLYMAN ROONEY: Thank you very much for your testimony.

ASSEMBLYMAN HENDRICKSON: I know you're speaking exclusively for Mercer County. Wouldn't you feel better if you could separate a garbage or a solid waste authority out from a utilities authority? Now I know very well from past experience that solid waste is under the Public Utilities Commission, for say, a public utility. But I think part of the problem today is the horrendous solid waste problems throughout the State of New Jersey. I don't have to go through it all with you, the space, a problem. And perhaps trying to run both, and trying to get to someplace close to tertiary treatment hopefully with the sewage authority itself, that they should be separated?

ASSEMBLYMAN CIMINO: In this instance, I really don't think that that's necessary. And, Assemblyman Hendrickson, the remarks were based on the experience in Mercer. You're absolutely correct. I think that some of those proposals pertain to any improvement authority or utility authority that could be devised in the State of New Jersey.

ASSEMBLYMAN HENDRICKSON: They're well taken, Assemblyman. They're well taken.

ASSEMBLYMAN CIMINO: But I think that in this instance this can handle this. It's just a question of being-- For instance, in the course of negotiations on benefits -- as all authorities will who handle solid waste -- the board of freeholders should be more intimately involved. The package should not be brought to them as a fait accompli, thereby putting them in a difficult position.

ASSEMBLYMAN HENDRICKSON: I understand. That's one reason I asked for separation. Another reason I asked was because of what you feel is an excess, or the budget is too large versus the freeholders' budget. I agree with a lot of

that. But by separating that out you perhaps might have more control over the budget.

ASSEMBLYMAN CIMINO: You very well may have a better opportunity to control that. That's a point that is well taken.

ASSEMBLYMAN HENDRICKSON: That solid waste is out of sight and going--

ASSEMBLYMAN CIMINO: Yes, absolutely.

ASSEMBLYMAN HENDRICKSON: Thank you.

ASSEMBLYMAN CIMINO: Thank you.

ASSEMBLYMAN ROONEY: Thank you.

ASSEMBLYMAN CIMINO: Thank you very much.

ASSEMBLYMAN ROONEY: We've got a very busy agenda. What I'd like to do is have Jim Morley, Executive Director of the SCI. We already have some written testimony that we have in our May 23 hearing. If you would like to elaborate?

J A M E S J. M O R L E Y: Yeah, Mr. Chairman, the statement which we're provided you with you today is largely a reiteration of the statement we submitted for your first hearing up in Paramus. I will summarize a few points that I think merit highlighting in light of the issues that I've heard touched on by the other people who have appeared here today.

First of all I would like to reiterate the context in which we make these recommendations. These recommendations flowed from an investigation which was conducted by the Commission almost six years ago. Those recommendations are based on an extensive investigative record, which forms the expertise that we think justifies our making those recommendations. But our appearance here today is necessarily confined to that investigative record, and I've heard issues touched on earlier here today that are well beyond the scope of that investigation, and I would not be in a position to comment on, if asked.

At the end of our investigation in 1982, we made recommendations in various areas. There was almost an

immediate response to recommendations concerning the financial operations and the State oversight of utilities authorities. However, there are several areas that we consider to be important areas of needed reform which have not yet been addressed, and obviously from the announcements that your Committee has issued about these hearings, those are issues that you intend to grapple with, and we encourage you in that effort.

Now, let me just highlight a couple of the points from the written statement.

We have recommended, as has already been noted here, that there be limited qualifications for membership on authorities. Not that all authority members have to fit into certain categories, but we think that the work of the authorities, especially in the more technical areas -- sewage and the like -- the more expertise that could be brought to bear on the decision making process, the better the process is going to be. Obviously you want to have as competent a staff as possible, but it certainly cannot hurt to also have another level of expertise, if for no other reason than to be able to evaluate the recommendations of the staff. There may be a tendency on the part of authorities to over rely on the staff members with expertise. Non lawyers have a tendency to over rely on the advice of lawyers. Non engineers may have a tendency to over rely on the opinions of an engineer. And we think that injecting that extra level of expertise at the top, at the decision making process, can't hurt. It may not guarantee success. There are good lawyers, there are bad lawyers. There are smart engineers, and there are engineers who are less bright. But it certainly can't hurt.

We do realize that this suggestion may run into problems when you have a smaller pool of potential appointees, when you have a very small municipality. That's a problem that was pointed out to us by Director Skokowski from the Division

of Government Services. He also points out though that if you are dealing with a pool of appointees which is so small, serious consideration has to be given to whether you should be forming an independent authority for so small a municipality. So maybe that's not a concern.

We have recommended, and continue to recommend, that there be employment qualifications for key personnel in authorities, especially for executive director and others with similar responsibilities for overall administrative supervision of a plant. In our investigation we found people who were utterly unqualified to be running multi million dollar facilities which -- especially again in the area of sewage -- have great potential for environmental havoc if they're not properly operated. There were people running them who were chosen on the basis of nothing more than patronage. Patronage, again, can be good or can be bad. But there are qualified people out there who, even if you do have a patronage process, can adequately fill the bill. Civil Service, we did not consider that as certainly a possibility. It certainly serves the goal of setting up criteria for the qualifications of employees.

Two areas that Assemblyman Cimino touched on, are original recommendations from six years ago, financial disclosure and a code of ethics. We think that there should be a requirement that all authority members at time and a form prescribed by the Division of Local Government Services, submit financial disclosures designed to prevent and to head off conflicts of interest.

We also believe that there should be some enforcement mechanism to make sure that those requirements are met. That enforcement should be assigned to some appropriate agency of State government. There is the Executive Commission on Government Standards, which is a likely choice.

Similarly, we believe that there should be a model code of ethics compiled by the Division to which all authority members and officers must subscribe. There should also be provisions for hearings of alleged violations and penalties for noncompliance, including fines, suspensions, and dismissals.

I do want to emphasize that the recommendations for financial disclosure and a code of ethics does not suggest that the Commission thinks that there is something particularly wrong -- or was at least six years ago -- something particularly wrong in the operations of utilities authorities. The Commission has long felt that there is a need for financial disclosure and a code of ethics at various levels of government, and recommended so in different contexts. As it is now, State government is the only level of government where, by State law, there are mandatorily imposed codes of ethics and financial disclosure. We take the opportunity in this context and the context of utilities authorities to point out the gap that exists on every other level of government, keeping in mind that there are other governmental entities which have self-imposed codes of ethics, but there is nothing that is uniformly prescribed by State law.

Otherwise, Mr. Chairman, I'll rely on the written statement. And to the extent that I can respond, I welcome your questions.

ASSEMBLYMAN ROONEY: We have already looked at your written statement, and we've had our Committee Aide-- He has a request in for most of the items that you've recommended, especially on the code of ethics and financial disclosure. That's long overdue. I was just talking to my aide. I have some information that I think we've been in touch with you in the past on some items that I have a problem with. She has a file that we'd like to discuss with you privately.

MR. MORLEY: Sure.

ASSEMBLYMAN ROONEY: And again it pertains to regional authorities and what happens. Perhaps we'd like to have a better monitoring of the authorities by the SCI, so that it doesn't just happen every seven years or so. It should be on a regular basis, and a regular review as to what's happening down there.

MR. MORLEY: Sure. I'll be glad to talk to you about that.

ASSEMBLYMAN HENDRICKSON: I agree completely with the code of ethics. I think there ought to be a code of ethics in everything that has anything to do with government. Absolutely no problem with that.

I also agree with financial disclosure for elected officers. We pick that. We put our names there. We should then disclose. But I would feel -- and I'll ask you -- that we may not get all the best people to serve on authorities if every time we turn around we're asking them to financially disclose to serve. I'm not sure that in some areas that we would not get the most qualified people when they have to financially disclose. I would believe that we could make the code of ethics so tight on the other hand for everybody, that you have a good handle should they not do their fiduciary duty as a member of any authority.

I know in public service today to go out into the general public, and just because of the feeling of suit-- And even in here, it's always the contention, "Well there shouldn't be politics." I happen to be proud to be an elected official for 28 years. I stand strongly on the derogatory remarks completely, always analyzed to the politician. Now, if we're all going to keep that up, you're not going to have anybody run for political office either because they don't want that black hat. If we get into the lawyers' end of it, how many lawyers are disbarred every year? Okay. Let's get into that. It's never public made. It should be public made. And how much

money is expended on the lawyers that perhaps transgress now and then, from that private fund that they all contribute to, and they're allowed to police themselves.

I'm not trying to be disparaging about anything, but every time I turn around we hear this "politics." There's politics in every part of our lives. I'll be quiet for awhile.

MR. MORLEY: Well, Mr. Hendrickson, as I pointed out there's nothing wrong per se with appointments being made by the political process. I think the concern that the Commission arrived at after looking at this problem eight years ago, was that the political process worked without sufficient concern for the well-being of the authorities. And that is not to suggest that there's anything inherently wrong with the political process or wrong with appointments being made via the political process. But we strongly believe that some parameters have to be established.

ASSEMBLYMAN ROONEY: Just one thing on financial disclosure. It sounds worse than it really is. The financial disclosure that we go through doesn't require that you disclose the dollars and amounts that you receive, only where it's received; if it's over \$1000 in some cases, or any honorariums over \$200. I don't have any problem with that. The fact that someone would disclose that I make over \$1000 from whatever source it might be -- It might even be \$2000 -- I find that in some of these cases somebody might serve as a director of a bank, and that bank then is doing business with that particular authority. I think that's an absolute conflict of interest. If that person is a director and there's money going through his bank, it should be disclosed.

ASSEMBLYMAN HENDRICKSON: I think if you put in a code of ethics, okay, and he doesn't disclose through the code of ethics, you have that. But at a \$1000 level some people may have two and three pages of different areas of their investments, and politically I agree. I don't agree that all

authorities and all other appointed offices, in order to get those people that do not want to disclose, but live to the code of ethics, I don't believe we will get an awful -- just because of the atmosphere in the courts today, and no protection. I mean, it's just a feeling I have. But political office, from committeemen on through -- county committee people -- I have no problem with anybody running for political office. If you want to be an elected official, then disclose. I have no problem with that.

ASSEMBLYMAN ROONEY: Anyone else have any questions? Yes?

ASSEMBLYMAN HUDAK: To carry that even further, you mentioned that you would like to have the SCI look annually at some of these authorities.

ASSEMBLYMAN ROONEY: Some audits perhaps.

ASSEMBLYMAN HUDAK: I don't know if that's necessary too. You're going to get even less people willing to serve on a committee or commission if you're going to do that. I don't see why we can't mandate some kind of self policing policy with the--

ASSEMBLYMAN ROONEY: Well there should be spot audits.

ASSEMBLYMAN HUDAK: Well yeah, but you said annually or whatever. I just think that we're moving in a wrong direction.

ASSEMBLYMAN HENDRICKSON: We got Barry out here. He does a good job.

ASSEMBLYMAN ROONEY: Not on that, because he doesn't have full--

ASSEMBLYMAN HENDRICKSON: No, I know he doesn't. I understand that.

ASSEMBLYMAN ROONEY: That's a whole different ball game.

ASSEMBLYMAN HUDAK: But I think you understand the thrust of my comments.

ASSEMBLYMAN HENDRICKSON: You're absolutely right. I agree with you.

ASSEMBLYMAN KLINE: I think what John Rooney said about we in the Legislature. It states over \$1000, not how much. It's important that you know whether there's any conflicts. I know a lot people who don't want their ex-wives or future ex-wives to know how much they get. (laughter)

ASSEMBLYMAN ROONEY: Or future ex-wives.

ASSEMBLYMAN HENDRICKSON: Only because of the court system.

ASSEMBLYMAN ROONEY: Make sure they know Eddie Kline said that. Anything else, Jim?

MR. MORLEY: That's all I have.

ASSEMBLYMAN ROONEY: I'd like to speak to you later. I should be finished here pretty close to noon, if you'll be around. I'll appreciate it.

MR. MORLEY: Okay fine.

ASSEMBLYMAN ROONEY: Thank you very much.

ASSEMBLYMAN HENDRICKSON: Very good.

MR. MORLEY: Thank you.

ASSEMBLYMAN ROONEY: At this time I have someone who has traveled a long way from my county, Bill Rupp. He's the attorney for SWAC, the Solid Waste Action Coalition. Bill, thank you for coming.

W I L L I A M F. R U P P, E S Q.: Thank you, Mr. Chairman.

ASSEMBLYMAN ROONEY: Just a word of introduction. They've been monitoring the utilities authority in our home county, and have come up with some--

ASSEMBLYMAN HENDRICKSON: He's also a past president of Rotary, so we have--

ASSEMBLYMAN ROONEY: Oh, okay. So we don't need any further introduction.

MR. RUPP: Thank you, Mr. Chairman.

ASSEMBLYMAN HENDRICKSON: We'll take the four way test. (laughter)

MR. RUPP: I'm here this morning to address my comments to the budget process and the review of that process. Bergen County has been for some time within a rate averaging system that has been administered by the Hackensack Meadowlands Development Commission. The rate averaging system was initially implemented back in 1982. The Bergen County ratepayer is essentially faced with a Catch-22 situation. Since we are included in a rate averaging system, the rates included in that system are referred to the Board of Public Utilities for determination of reasonableness for inclusion in the average rates. However, under the Municipal and County Utilities Authority Law, as well as the provisions of the Solid Waste Utility Control Act, the rates which the county and municipal utility authorities charge their own ratepayers are not within the jurisdiction of the Board of Public Utilities. The net effect of this has been to put the ratepayers within the counties which are within a rate averaging system at a severe disadvantage.

Prior to 1984, the Bergen County Utility Authority had established a rate which had not been included in a rate averaging system. The effect of this was to have the Bergen County ratepayer pay not only the local facility rate, but to pay into the rate averaging system. That meant that Bergen County ratepayers were paying more than the other ratepayers within the other counties located within the rate averaging system. That's directly contrary to the reason we had rate averaging in the first place. The purpose of rate averaging is to have a uniform rate within a region, so that there would not be violation of a waste flow directives by having operators go to a cheaper facility.

In 1984, as a result of the coalition of Bergen County municipalities, the BCUA - the Bergen County Utility -- rates were finally included in the rate averaging system. Because of the jurisdictional problem, however, every year we've had to

participate in petitions before the Board of Public Utilities to review the reasonableness of those rates, and we had to file a lawsuit in the Superior Court. In the event a portion of that rate was found unreasonable by the Board of Public Utilities, we then had to go to court and hope that the court would in turn adjust the rate downward for the Bergen County ratepayers.

We find ourselves in the exact same position today that we found ourselves in prior to 1984. The Bergen County Utilities Authority does not have its full rate included within a rate averaging system as of this moment. However, Bergen County ratepayers are continuing to pay into the rate averaging system established by the Hackensack Meadowlands Development Commission. There are petitions pending before the Board of Public Utilities for a four county rate averaging system involving Bergen, Passaic, Essex and Hudson. There's a proposal by the HMDC for a two county rate averaging system involving Hudson and Bergen. And there's an application by Hudson for a 21 county, or a statewide rate averaging system.

We believe that as long as a municipal or county utilities authority is included within a rate averaging system, the budget of that authority should similarly be subject to Board of Public Utility review. That would place within one forum the entire question as to the reasonableness of those rates. There is a hearing process established by the Board of Public Utilities, normally resulting in a referral to the Office of Administrative Law, where all parties are given a full opportunity to review the budget, to make comments on it, and to introduce evidence. That is not available under the current structure of utility authority budget, which, after a public hearing -- which, I might add, having attended several, are, at least from the ratepayers' point of view, highly perfunctory.

We do not have right now the opportunity to really look into and review those rates. And some of the very abuses that this Committee has been addressing, in fact can be attributable to the budgetary process and excessive personnel. There's no way in the budgetary process that the ratepayers themselves can really address that issue effectively. That issue can, however, be addressed before the Board of Public Utility hearing, where in fact testimony can be brought out that the budget is unreasonable because of a top-heavy administrative structure.

We're asking for some relief because of the statutory dichotomy, the no man's land we're in; where the Board of Public Utilities has said, "Yes, we have to determine its reasonableness for inclusion in the rate averaging system, but we don't have jurisdiction to tell the authority that it can't charge its own ratepayers that rate."

ASSEMBLYMAN ROONEY: Bill, I just want to say to the Committee before we get into it-- There was a rate averaging here and perhaps some of your testimony should be directed to that Committee, but as I attended it I found that that rate averaging is going nowhere, since people that have the low rates are opting out of it, and it's becoming optional. As far as I'm concerned, it's not worth supporting. What we have to do is get -- what the last part of your presentation -- was get the budgetary process corrected, get the BPU rate review corrected, and it has to be done based on the utility authorities or our Regional Authorities Committee. I think the rate averaging is one thing, but it just points out the budgetary problems.

The reason I had you come up first is, we're going to hear from the BPU next, and right after that I hope Barry Skokowski will make some comments directly applying to this on how we can change the process to correct the problems that we're seeing in Bergen. It may also be in other counties. You're monitoring Bergen, and that's your Committee.

MR. RUPP: Presumably, this would apply to all other counties included in that rate averaging system I mentioned.

ASSEMBLYMAN ROONEY: Within the rate averaging system.

ASSEMBLYMAN HENDRICKSON: You know, I have a big problem with rate averaging. All you're really asking is those heavily used ones to lower their rate and spread it out someplace else in the State. Okay? That's what I feel it is. So I don't see rate averaging at all, because I have a problem over the years with the major utility sewerage authorities not taking a real businesslike attitude on a set-aside for repair and replacement of worn-out facilities. I have a problem with the combined sewerage overflows. I have a problem with industrial waste going into those, only because I'm a shore legislator looking at that ocean, that we have in complete violation of the environment not taken and bit the bullet in order to do the proper thing with the sewers. Now we're looking into the surplus and everything else to help the larger municipalities, and they're going to have to be helped. I don't have any problem with trying to help, but there has to be a tremendous infusion of money into about 11 to 12 sewage authorities, sewage treatment facilities in order to clean up the environment for the future generations of this great State.

And that isn't even a part of this rate setting. If you're going to start to rate set it, then that's going to have to be on a set-aside for the amount of money again, on the infusion of the replacement.

ASSEMBLYMAN ROONEY: Jack, this is basically garbage and this is the--

ASSEMBLYMAN HENDRICKSON: Well it's also with garbage, because some of the counties are going to go the same way.

ASSEMBLYMAN ROONEY: Well, let me explain. And again, I testified before the rate averaging committee. One of the things in Bergen is that the HMDC -- which is the major dumping

grounds -- 75% of it was located in Bergen County. And we wound up taking the garbage from four counties, counties that had no geographic relationship--

ASSEMBLYMAN HENDRICKSON: Beyond a few hours, I understand.

ASSEMBLYMAN ROONEY: But I just want to point out that we in Bergen County would have had capacity for years and years to come in HMDC, if we had not taken Essex and Passaic. Hudson was entitled because 25% is in Hudson County. So we've been dumped on for these past years, and our capacity has been used up by other counties. Ocean is in a unique position. You still have landfills. You still have cheap garbage dumping.

ASSEMBLYMAN HENDRICKSON: Well, we've been dumped on.

ASSEMBLYMAN ROONEY: But you have your capacity down there. What we're saying is, now we're in a position and we're dumping-- We were dumping 3600, 3700 tons a day of garbage in Bergen County, and what happens is, Passaic County goes out and they place 600 tons a day. I can go place 600 tons a day of garbage anywhere within the regional area, in the New York metropolitan area. I can get a landfill to take that. I can't get anybody to take 3600 tons a day. So what we're into is, we have a massive problem. We're the ones that have to place that garbage, and we're straddled with the problems of the past. We don't have the capacity--

ASSEMBLYMAN HENDRICKSON: We've been into it for years.

ASSEMBLYMAN ROONEY: I know. I just have to say that the rate averaging was a solution. If it were 21 counties it would be great because then we could spread the misery, but we've been taking the misery for too long in Bergen County.

ASSEMBLYMAN HENDRICKSON: See, I believe that we should have set up legislation to penalize those counties -- and we are in the process -- that have not done their duty.

MR. RUPP: Mr. Chairman, if I can just respond to Assemblyman Hendrickson's comments? I'm not here necessarily to call for rate averaging. It is of interest to note, however, that the Attorney General's office has just issued an opinion to the Board of Public Utilities which essentially says that the Department of Environmental Protection, in conjunction with the Board of Public Utilities, may, without consent, impose an interdistrict rate averaging system.

ASSEMBLYMAN HENDRICKSON: Interdistrict?

MR. RUPP: Inter, not intra. Intra was originally established. This is between counties now. What I'm asking for is some relief, given that there are rate averaging systems involved. The way the statute currently reads, it exempts the BPU review of those rates for a county and municipal utilities authority, and yet requires BPU approval for inclusion of those rates within the rate averaging system. That's the statutory dichotomy. If you're going to have rate averaging, I think you have to correct that statute. That's the Solid Waste Utility Control Act. If you correct that statute I think most of the problem will be resolved. Thank you.

ASSEMBLYMAN ROONEY: Thank you Bill. Thank you very much for coming.

ASSEMBLYMAN HENDRICKSON: Thanks. Are we going to get any of that in writing?

MR. RUPP: I will submit my comments in writing.

ASSEMBLYMAN HENDRICKSON: Thank you.

ASSEMBLYMAN ROONEY: Thank you very much. The Board of Public Utilities is represented by Jeanne Fox and Lou McAfoos. Is there another chair around here, Lou?

L O U I S G. M c A F O O S, I I I: (from audience) That's all right, Assemblyman. I can sit--

ASSEMBLYMAN ROONEY: You can sit back while--

MR. McAFOOS: You can hear me if you need to.

ASSEMBLYMAN ROONEY: Okay. I hope we can get you on tape.

ASSEMBLYMAN HENDRICKSON: You've got the expert up front, right?

J E A N N E M. F O X: Oh no. Lou's been there 14 years. I've only been there six and a half.

ASSEMBLYMAN ROONEY: See, the junior executive.

MS. FOX: I'm the Director of the Water and Sewer Division at the Board, and I thank you for inviting me here.

The Board regulates for water and sewer utilities approximately 100 -- a little bit less than 100 -- private water and sewer utilities, and approximately a dozen municipal water systems. We only regulate water systems that serve without the boundaries of that municipality, if they serve over 100 customers, if they get over 25% of the revenues from outside, or if their rates are different for the inside customers than the outside customers. At this point in time, really the only water and sewer that we serve, are owned by municipalities. We do not have jurisdiction, or at least have not asserted jurisdiction over any MUAs or authorities.

ASSEMBLYMAN HENDRICKSON: I believe that I've been in touch with you and some others on a small water company in Barnegat, New Jersey, that had I think 48 customers and had to go through the process of rating and repairing the pumps and the whole bit in order to justify it. Now you just said under so many, that you only had jurisdiction on certain ones.

MS. FOX: That's outside the municipality. If it's a private system, we regulate all private water utilities and all private sewer utilities. The Legislature determined in Title 40 that if you have over 1000 customers, over 25% revenues of differential rates, that the Board would regulate municipal water systems, water departments. It's not the MUA section. It's in the other part of Title 40.

ASSEMBLYMAN HENDRICKSON: Sorry I broke in.

MS. FOX: Feel free. There are approximately I guess 200 authorities, different types of authorities -- MUAs and other authorities. We don't really know much about them. We don't really have any dealings with them. In the solid waste industry, I think you know more about it than I do as to how we relate to that. But it's really only when there's a franchise involved and the county authority comes in for a franchise does the Board have jurisdiction.

It's clear that the Board has the authority over municipal water systems if they serve, like I said, with those three criteria outside. It's unclear legislatively, statutorily, whether we have authority over municipal water systems that serve MUAs that serve outside the municipality. So we have not asserted jurisdiction over those authorities.

The major impact that my Water and Sewer Division has with authorities is when you have sewer treatment being done for a private sewage company by a county authority, and the sewer company gets billed by the authority, those rates go into effect quickly. What happens is, the sewage company ends up eating the cost, or absorbing the cost, for the nine months time approximately it takes for the Board to process a rate increase application. That's really the major impact that we have.

We will be having some more purchased water. There are some private water companies that purchase water from the State Water Authority and from some other authorities, and the same type of situation occurs.

In house, the Board is considering by a generic proceeding the possibility of having a -- if you want to call it a pass-through -- but a proceeding where a water authority or a sewage authority's costs to a private water or sewer company can be put through quicker than the nine month full-blown rate case. The Board is considering that now.

Currently, I said it was unclear whether the Board has jurisdiction over MUAs who serve outside the boundaries, and the Board hasn't taken any position on this, except that it has an asserted jurisdiction. There's no formal opinion ever issued by the Board on why they should not exert jurisdiction.

There have been several court cases that discuss this. Several of them were with the State Supreme Court. One in 1967 considered Morris Township. In that case the Court clearly said that the Board had jurisdiction over a single municipality if it has customers outside of its municipal boundaries. That established very quickly that the Board would have authority over any municipal systems that serve outside, but that's a single municipal system.

Another case that was in 1972, called South Lakewood Water Company. It was a matter involving again a single water system, but the Supreme Court said the MUA law -- this is the first time it spoke to the MUA -- gives the Board no power with respect to such an authority except when it proposes to sell water at retail in another municipality. That court case could be read to say the Board could exert jurisdiction over an MUA -- a single MUA -- if it sells water retail outside. It wasn't a decision, and our Chief Regulatory Officer has told me that he believes that based on the facts it could have gone either way, and the Supreme Court was using the equities of the situation.

Finally, there was just recently a case this year with the Passaic Valley Water Commission. The Superior Court found that this Water Commission is owned by three municipalities. There are 20 municipalities that purchase water from that water commission. Part of the case was that these other municipalities who don't have a piece of the Commission, felt that the money going back to the Commission that was excess shouldn't be allowed; that they were in fact helping the taxes be reduced in these three cities. The Superior Court said that

there was a question that he believed whether the Board had jurisdiction over the water rates charged to non residential customers, when the water supply was owned by more than one utility. He thought that those plaintiffs should petition the Board to see whether the Board thought they had jurisdiction or not. That Superior Court decision was upheld by the Appellate decision, but no municipality has come to the Board asking us whether we would have jurisdiction over a situation where this Passaic Valley Authority -- which is not an MUA -- that water commission, because they are selling water at retail to other municipalities, whether they should be regulated by the Board.

There are reasons for the Board not regulating MUAs. And I think what it comes down to is -- and again this is not the Commissioners' point of view, this is from my discussions with our legal staff and from the bureau chiefs within my division -- the public needs protection to assure that they get safe, adequate and proper water at reasonable rates, and we need to protect them against arbitrary and unreasonable decisions. That's why the Board regulates private utilities, because there is no control that voters can have in any way, and that's why the Board regulates municipal systems, water systems that serve outside the municipality. Government's role is quality service at adequate rates.

It's possible that the Legislature has done this for instance in the part of Title 40 that says we regulate the municipal systems with those criteria, because they want the lowest common level of government that can possibly control the rates for utility service to control that. The Board is certainly not the lowest common government unit possible. If the Board had jurisdiction over MUAs for instance, it would be much more costly, and it would be paid for by the customers. It would be much more time consuming and much more cumbersome for those water systems or sewer systems.

For instance, rate case expenses and time delays-- Rate cases take, as I said, about nine months on the average. The Public Advocates's office is involved. There's all types of requirements that are set forth that are really established over the last 76 years or so because we're regulating private companies. For instance, we have a uniform system of accounts, and it's a very detailed thing. I am not an accountant, but municipal systems do not use the uniform systems of accounts. For the dozen or so municipalities we now regulate, it's a problem for them. Municipalities are on a cash basis generally, and when you're on a cash basis, depreciation is not allowed. So in these municipalities we now regulate we have to convert their depreciation that they take on their books into debt service. We give them principal and interest, and work all of that out. It's a very complicated accounting procedure because they have different accounting methods than how we regulate the private utility companies.

We would have to do assessments on these systems. The Board is funded by assessments on utilities that we regulate. We assess the municipalities that we regulate. So there would be increased costs in assessments to the MUAs.

And finally, the Board's staff-- My division now is currently about 35 people. We regulate a little bit under 100 utilities. So if we're regulating a lot more, we probably have to double -- more than double -- triple in staff size, which would be a substantial cost to the State and create more of a bureaucracy in this State.

So finally, we regulate municipal water departments with those three criteria -- any one of those criteria -- but probably trying to keep it at the lowest governmental denominator it might very well be an overkill for the Board to regulate something where there's some other options available, as I heard discussed earlier this morning.

ASSEMBLYMAN ROONEY: So you're not recommending you expand your scope at all at this time as to regulation?

MS. FOX: Well the Commissioners, I think, would do whatever the Legislature obviously told them to do. There are reasons, and I've heard many this morning, as to why some more control is needed over MUAs and authorities. It might well be that if the authorities serve outside the government body, and sell water or sewer outside that government body that they're representing, you might want to consider that. But probably to add 200 plus MUAs to our jurisdiction wouldn't enhance the service to those customers.

ASSEMBLYMAN ROONEY: What about Mr. Rupp's point, where you have kind of a dichotomy here of legislation where you're regulating and you're not regulating the rate averaging? Can you answer Mr. Rupp's problem?

MS. FOX: I know the Board is now considering the rate averaging situation in the four counties, and I think it's at the Office of Administrative Law now.

MR. McAFOS: (inaudible comment from audience)

MS. FOX: I really don't know too much about it. Lou knows a little bit more about it.

ASSEMBLYMAN ROONEY: If the legislation comes out as I heard it's going to come out, it's going to be worthless because it's optional.

MS. FOX: The BCUA, based on the Solid Waste Utility Control Act -- which is, I think, 48:13A -- it excludes BCUA from regulation. We have had some legal advice that the typical MUA Authority Law would also exclude them from regulation. It isn't just 13A. So that would be another problem, unless specifically 13A was changed and it could override it, because Title 40 doesn't really clearly speak to no Board jurisdiction. The HMDC is regulated as a public utility, and that's, I think, partially why they do the rate averaging.

ASSEMBLYMAN ROONEY: All right. It's still a fuzzy issue to me, and I sat on that board for five years of the

BCUA. I still don't understand all of the problems with it. I do understand some of the reasons for the problems and how we got there. Is there anything the BPU can recommend in legislation that might help you?

MS. FOX: Specifically BCUA, HMDC?

ASSEMBLYMAN ROONEY: No, no, just overall. Well, you can take those as an example, also anything else that you can recommend.

MS. FOX: To me there's a difference between what you might want to do in solid waste and what you might want to do with the other MUAs of water and sewer, just because of the competitive nature of solid waste, and the monopoly situation with the water and sewer, although the landfill sites are monopolies. The water and sewer pipes aren't on wheels, so--

From my shop, I would ask you to be aware of what you're doing if you just change the MUA laws, because that would impact on water and sewer. There might be a more narrow way to deal with it, as you were talking earlier this morning, than putting it under Board jurisdiction.

Specifically concerning what was just talked about, I could ask the Commissioners-- They have not been able to discuss this. One has been out for awhile. But you might want to have a specific letter targeted to them with specific questions, or the Solid Waste Division Director might be able to--

ASSEMBLYMAN ROONEY: Perhaps you can refer Mr. Rupp's questions to them, and I can get a copy of his testimony; because it does seem like a real problem. It's a dichotomy where they're regulated and they're not regulated. They're rate averaged and it's--

MS. FOX: Well, the Board doesn't believe they have -- I don't think -- the legal authority of dealing with the BCUA's rates.

ASSEMBLYMAN ROONEY: Well then come back to us and have us change it if that's required. That's what we're here for. If there's legislation that would solve that problem, that would make it more accountable, more responsible, we want to hear about it. We want to get problems like this resolved.

MS. FOX: I do have a memo that -- this is an internal memo because it hasn't gone through the Commissioners yet -- that was done by the legal office for me, that I can give to you.

ASSEMBLYMAN ROONEY: All right. We'll make copies of this for the Committee and have it attached to the record.

ASSEMBLYMAN HENDRICKSON: Appreciate that.

ASSEMBLYMAN ROONEY: We thank you for coming. Any questions from the board? (negative response) All right. We're going to hear Barry Skokowski.

Is there anyone else to testify today?

D R. E U G E N E G O L U B: (inaudible response from audience)

ASSEMBLYMAN ROONEY: NJIT? Thank you, Gene. What we may do, is if we run too long -- because we have a 12 o'clock quorum call -- if we run into a problem we can extend the hearing until our next meeting which will be in June. In the meanwhile, I think we have enough information to start on legislation. We've already talked to Walter. Barry?

B A R R Y S K O K O W S K I: Good morning everyone. It's a pleasure to be here again. I apologize for not making your Committee hearing in Atlantic City, but my boss told me to stay in Trenton that particular day, to be very honest with you.

I have talked to Jim Morley and others regarding the situation with local public authorities. I advised him at our meeting last Friday that I definitely support a code of ethics. I think it's a minimal requirement I support it, by the way, not just for authorities but for municipalities and counties. I think you've got to treat everybody as local governments rather than just one type.

I also support financial disclosure. As a division director, I am required to comply with the State standards. The executive branch may be a little different than the legislative. We report our income with parameters, say 10,000 to 20,000, 20 to 30, up, up, and up; and you list any property you own, and you list if you have any bonds or contacts with local governments; and any second job or wife's job, ex-wife jobs. (laughter)

ASSEMBLYMAN ROONEY: I love it. A lot of ex-wives out there.

MR. SKOKOWSKI: I think it's a very good idea. We get a lot of calls in the Division of Local Government Services from local governments asking about a code of ethics and financial disclosure. There is nobody to forward them to, and I would support strengthening the Division on Ethical Standards to get involved in this particular area.

As to membership composition, I think I have a little bit of a different twist. I think that the membership and the major employees of every authority should have certain training in their area of expertise. Now obviously you can't do it in every particular area, but going back to the early '60s, the Legislature passed a bill for certified municipal finance officers. At the time you specified the five courses that a person would have to take in order to become a certified municipal finance officer. That is run by the Bureau of Government Research at Rutgers for all these years, and indeed the Legislature funds it to the extent of \$75,000 annually. So the local governments don't have to pay a lot of costs. I think a system like that for local public authorities is really quite appropriate. Coincidentally, Saturday I took the family to the mall and I ran into Ernie Reock, who is the director of this program. I just mentioned it to him in passing, and I said, "Would you have any trouble if I said that regarding your institution?" He said, "No, not at all." Okay?

ASSEMBLYMAN ROONEY: Absolutely.

ASSEMBLYMAN HENDRICKSON: I had the pleasure of being prime sponsor of his districting bill four or five years ago.

MR. SKOKOWSKI: I think he's well-qualified. Everybody knows him and has the highest respect for the man, and I would like his agency to be involved. I also think that we would work with him like we do with the finance officer courses in providing a format and the type of materials they need to review and understand the law.

I also think that we should do -- again, I'm just copying what Ernie Reock does, and that is sponsor a training session like they do for newly elected mayors and council members, for authority members. Let them go and spend a half day or two learning about what their responsibilities are. I think that is, unfortunately, sadly lacking.

ASSEMBLYMAN HENDRICKSON: How about legislators.

ASSEMBLYMAN ROONEY: Most of them don't learn anything while they've been down here anyway. (laughter)

MR. SKOKOWSKI: Of course you did talk to Gene McCaffrey and Bill Mathesius about the employment qualifications. I can only concur that that is necessary. There should be a job description for the executive director, and some minimum education or training or experience requirements. I think that's almost a way of doing business automatically.

The other issue that the SCI talked about in their report -- and I was a witness back six years ago on their behalf -- is the fact that somebody at the State level should pre-qualify chemical vendors, in the sense that make sure that the proper materials are indeed ordered, delivered, etc. I don't mind that idea as long as it doesn't involve me. (laughter) But more importantly I think the issue is how do you legislate morality? Okay. That's the issue. I don't know how you do that. That is the toughest thing. If you're going

to do something wrong, everybody will find a way to do it. They may get caught, but they're going to find a way. I would like to see that issue addressed, possibly with some management audits of local authorities like we do with distressed cities. It's a requirement of the Legislature. We have to go in and not just look at their books but look at their management practices. I think that possibly is an alternative to trying to regulate everything.

ASSEMBLYMAN HENDRICKSON: Mr. Chairman? Don't you feel that it's more important to look at the management policies? With good management policies they have a good bottom line, but with bad management-- I think of the two, the management policies are the most important.

MR. SKOKOWSKI: I think that they do go hand in hand, but I do think management is one thing that is the most elusive to look at and we don't do. Admittedly we don't do that, and I think we should.

I also want to talk to you about the issue of authority debt. Since 1983 we have been doing more and more work with local public authorities. And we've got to look at New Jersey's credit rating in a very serious matter. New Jersey has a AAA bond rating because we look over our local governments. We also have to look over what's call "overlapping debt." That's the issue caused by the fact that if an authority is within your county -- like I live here in Mercer County, so I was listening very carefully to Bill talk about the MCIA -- and we have to look at the obligations and the ability of all of the communities in the county to afford these bills. I think that's an issue that we must protect because we can see if there is a problem developing. I know when an authority project -- and all projects, by the way, have to be authorized by the local finance board -- we look at overlapping debt. In certain areas of the State we are concerned, and we try to put the kibosh on them. I think that's really a critical issue.

I also think that for local public authorities, and indeed some local governments, municipalities, and counties, there should be an agency that has more power vis-a-vis the Open Public Meetings Act, because sometimes meetings are put together rather hastily. Also, we do know that newspapers are not required to publish the notification of a local public meeting. It's their option. So you never know if you're even trying to comply if indeed you will comply until you read the paper a couple of days in advance, which is upsetting to some people.

I also think that when there is a public hearing by a local authority that will send the bill to the municipal governments, the authority should notify each of the local governments within its jurisdiction, that there indeed will be a hearing that could involve a subsequent bill for services rendered, because that way they can't say that they oppose anything if they don't know about it.

Otherwise I want to tell you that we do have a situation that you may have heard about or may not have, and that is that I would like to work with your aide -- with your permission, Mr. Chairman and members -- on changing the budget oversight for fire districts. There is a conflict in the fire district law -- which is interpreted by the Attorney General to be a local public authority -- and the voters' rights to review that budget, and our own review of it. That's a nagging problem that I think this Committee will hopefully address. It's a little too much detailed to get into right now, and I know you're busy, but I would like to work with Walter or whomever, and get something going.

ASSEMBLYMAN HENDRICKSON: I agree with the oversight, fantastic-- (inaudible)

ASSEMBLYMAN ROONEY: We've notified the Speaker that we'll probably be here until about 12:15, so we'll try to get us signed in for the quorum call.

ASSEMBLYMAN HENDRICKSON: Very good. That's why I think you're a good Chairman.

ASSEMBLYMAN ROONEY: Just in case. Anything else, Barry?

MR. SKOKOWSKI: No.

ASSEMBLYMAN ROONEY: Well, anything directed to the problems that Mr. Rupp had, budgetary problems that he was speaking of? Any suggestions to correct his problems?

MR. SKOKOWSKI: I listened carefully to his comments, and I do think the rate setting by the BPU and the budget review by us admittedly is not coordinated, because: Number one, we don't have the authority to say "You have too much money in your budget because you have too many people on board." We don't have that authority. By suggesting the management review and audits, I think that's the way to achieve that goal. It's not perfect, but at the same time we're looking at the worst of problems with authorities, and we have to recognize that there are many good, legitimate, excellent authorities out there doing one heck of a job saving us taxpayers a lot of money.

ASSEMBLYMAN HENDRICKSON: Ocean County-- (inaudible)

MR. SKOKOWSKI: I think the idea of taking the political heat for siting a resource recovery plant or something else is a matter of reality. Come on.

ASSEMBLYMAN ROONEY: Of course. We appreciate your testimony. Thank you very much, Barry.

MR. SKOKOWSKI: Okay.

ASSEMBLYMAN ROONEY: NJIT? Mr. Brannigan couldn't make it?

DR. GOLUB: He said he was going to meet me here.

ASSEMBLYMAN ROONEY: Ah, and he didn't.

DR. GOLUB: He didn't make it.

ASSEMBLYMAN ROONEY: Okay. Just state your name again for the record.

DR. GOLUB: Good morning. My name is Eugene Golub. I hold the position at NJIT of Chairman of the Civil and Environmental Engineering Department. As well as being an academe, I'm also a civil engineer, and in addition to teaching I also do consulting and research in the water resources management area. My comments are based on my experiences serving on various boards, and also on making presentation to those boards.

From what I've observed, what it eventually comes down to when one serves on boards is eventually the individual member will be making a decision on some issue before that board. More and more of late, those issues are becoming more sophisticated technologically, and more difficult. Eventually when the board members makes his decision, or her decision, it's based on the information that's been presented to the board. That information would contain technical reports that have been prepared by the board's staff or the board's consultants, contradictory reports that have been prepared by other interest groups before that board, public testimony that is sometimes valuable, sometimes confusing, and very often emotional, and also pressure that sometimes is applied by special interest groups, either publicly or privately.

Within this environment, when the board member comes to make a decision they have to evaluate the very complex issues that have been placed before them. And all too often they will rely on staff recommendations. We tend to believe staff because we feel they're more impartial, if not always more competent. Somehow it always seems that the opposition has more money and is able to hire better consultants than the boards themselves are able to. An alternative in the decision making process is the board member may decide on issues that are more local rather than regional, which they're supposed to be representing, because they understand their local issues and sometimes the regional issues have not been clarified to the extent that they need to make that decision.

What I would like to suggest -- and I think I heard it before from some other people testifying this morning -- is the board's effectiveness can be improved if some of the members, not all necessarily, but some of the members have professional competence in some of the areas that the board will be interacting with. Those would include engineering, management, science, finance, law, and government. The particular advantage of this type of member is not just that individual's ability to evaluate, let's say as an engineer, the technical reports in front of them, because there would be only be one or two out of the total board that would have that expertise. It's rather that their individual presence on the board will cause the staff and consultants and opposition to perform at a higher level. They're going to be challenged to present information that will be at the highest level within their profession.

Also one other component. The professional expertise adds one more check and balance to this system. In addition to the competence of the staff, you have someone else who is reviewing it who is knowledgeable in that particular area. I'm not suggesting that the individual board member would be practicing their profession, but rather they will be ensuring that the other board members are informed and the people that are presenting are knowledgeable and presenting good information to that board.

One of the other things that's assumed and usually not said because it's assumed, but I think it needs restating-- More important than just the professional competence, all members of a board should be individuals of high repute and stature, with a record of real accomplishments in the community. And perhaps these people should be screened as thoroughly as you'll screen your professional that you'd be hiring.

One other point, I guess somewhat of a small advertisement for the universities. The State is spending multi hundreds of millions of dollars for a State university and college system. There are thousands of faculty involved with great expertise in all areas. And one of the key missions of all institutions of higher learning is public service. And that's an area that perhaps should be tapped for these various boards and authorities, both as members and as advisors.

Thank you for your attention.

ASSEMBLYMAN ROONEY: Thank you. One question I have, since NJIT is basically an engineering school -- I probably should have asked this also from the Director of Personnel -- but if you're hired in the State of New Jersey as a so-called "Project Engineer," is there a requirement that you be an engineer from an accredited engineering institution?

DR. GOLUB: You mean if I'm hired as an outside consultant or representing the institution?

ASSEMBLYMAN ROONEY: No, no. If you are hired as an employee of any State agency, or any agency.

DR. GOLUB: Oh, you mean of NJIT, let's say the faculty in my Department?

ASSEMBLYMAN ROONEY: Let's say you're just hired as an engineer for a utility authority, and your title is given "Project Engineer." I think somewhere in the law -- I haven't been able to check it, but somewhere in the law -- if you're hired as an engineer, if you call yourself an engineer, you must be an engineer. I don't know if it's licensed, but let's say you graduated from an engineering school.

DR. GOLUB: You cannot use that word if you are not a licensed engineer.

ASSEMBLYMAN ROONEY: All right, P.E., licensed P.E. Even if you graduated from NJIT with a mechanical engineering degree it doesn't automatically give you a license.

DR. GOLUB: That is correct. In order to get the license you must sit through the engineering training exam, you must then get four years of experience -- supervised experience -- and then you must sit for the second exam.

ASSEMBLYMAN ROONEY: So in order to be a project engineer in the State of New Jersey, you would have to be a licensed P.E.?

DR. GOLUB: I believe that's correct, yes, to take responsibility.

ASSEMBLYMAN ROONEY: That's what I'm getting at, because I just ran across an instance where when a person was hired he wasn't even from an accredited engineering school.

DR. GOLUB: That could be embarrassing.

ASSEMBLYMAN ROONEY: Again, my best example of the worst example. Anyone else have any questions?

ASSEMBLYMAN HENDRICKSON: Just quickly, since we know there's many many more good authorities than there are bad authorities in the great State of New Jersey, and with your proposal you're not only limiting the membership, but I believe very parochial. And I don't quite agree with-- It's very sophisticated now. I do agree that the sophistication is commensurate with the quality of life at the time they served. Twenty years ago, those people serving dealt with some problems within their educational capabilities. Today in this sophisticated society, we have an awful lot of good people out there, with an awful lot of background in many many facets of life, and I think they're more important to serve publicly than taking the parochial view just for teachers that are coming out of an engineering school.

DR. GOLUB: I thought I was clear on that. I said I think some of the board members should have technical expertise to help with the board.

ASSEMBLYMAN HENDRICKSON: I don't have any problem with that.

DR. GOLUB: But the most important thing is that the people be -- as you described them -- people of standing in the community, with experience and-- (inaudible) There's absolutely no question.

ASSEMBLYMAN HENDRICKSON: I think they do that overall but I made the comment a little while ago, sometimes the job makes the person. Sometimes, again in Ocean County, what we say is okay, they either grow up or blow up, even after that taking of the pick of the litter.

DR. GOLUB: Understood.

ASSEMBLYMAN ROONEY: Anyone else? (no response) We have another person that wishes to testify. Can I have your name please?

F R A N K W. H A I N E S, J R.: Frank Haines.

ASSEMBLYMAN HENDRICKSON: Well-known Frank Haines.

ASSEMBLYMAN ROONEY: Frank, who do you represent?

MR. HAINES: Today, sir--

ASSEMBLYMAN ROONEY: Oh, the Taxpayers Association.

MR. HAINES: My name is Frank Haines. I'm a citizen from Ewing Township, a taxpayer of Ewing. I'm a retired association executive. I worked with the New Jersey Taxpayers Association for over 34 years. Today I've been asked if I would speak very briefly for the League of Women Voters, with whom I am doing some volunteer work.

Just to get it on the record, the League is very much interested in studying all authorities. One of their state projects this year -- as I think you know, Mr. Chairman -- is a study of the intrastate and local and regional authorities. Although they have no position as yet because the reports and findings are not due until the end of the year, they wanted me to report to you that they are very much interested, and have long supported open public meetings of all public bodies, opposed to dual office holding as it relates to multiple units of government, and feel that any changes for strengthening the

authority responsibility to the citizens and appointed officials is much merited.

With that, I won't take any more of your valuable time, but just to put it on the record for the League.

ASSEMBLYMAN ROONEY: Thank you very much. I had the pleasure of being the guest speaker at our League in my area, and we opened their eyes I think to some of the problems of regional authorities. I hope the League will be continuing their pursuit. They're going in the right direction.

MR. HAINES: I can assure you they will.

ASSEMBLYMAN ROONEY: Thank you very much, Frank.

ASSEMBLYMAN HENDRICKSON: The shortest testimony I've heard.

ASSEMBLYMAN ROONEY: Anyone else at this time wish to be heard? (no response) I just want to inform the Committee that there will be one more letter that will be coming in, and it will be the Utility Authority Workers. They have advised us that they will send a written letter in for our benefit. I'll ask Legislative Services to include that letter when it does arrive. I was hoping that the Authorities Association would be here to testify, and in lieu of that perhaps we can request that they send some testimony in that may be also included as part of the hearing. Yes, BPU?

MS. FOX: (from audience) From my experience with civil service and our engineers that have worked for me, they do not have to be a P.E. to be an engineer. I have engineers who are civil service engineers that graduated from an accredited engineering school that are not P.E.'s. I just wanted to-- (inaudible)

ASSEMBLYMAN ROONEY: I think the law is very clear though in New Jersey. It may be obscure as far as finding it and referring to it, but when push gets to shove, in order to say you're an engineer or be hired as an engineer, you have to be a P.E. licensed.

MR. McAFOS: (from audience) If you hold yourself out as a-- (inaudible) --engineer on a contract basis, individually, you've got to have a P.E. license.

ASSEMBLYMAN KLINE: I think he's right.

ASSEMBLYMAN ROONEY: I think we'll have to get that clarified.

MR. McAFOS: (inaudible comment from audience)

ASSEMBLYMAN ROONEY: All right. I think we can end our testimony.

(HEARING CONCLUDED)

APPENDIX



State of New Jersey

COMMISSION OF INVESTIGATION

28 WEST STATE STREET
CN 045
TRENTON, N.J. 08625
(609) 292-6767

RY S. PATTERSON, II
CHAIRMAN
JAMES R. ZAZZALI
ARRY H. EVENCHICK
W. HUNT DUMONT
COMMISSIONERS

JAMES J. MORLEY
EXECUTIVE DIRECTOR
ROBERT J. CLARK
DEPUTY DIRECTOR
HELEN K. GARDINER
ASSISTANT DIRECTOR
JOHN O. DAVIES
EXECUTIVE ASSISTANT

COUNSEL
CHARLOTTE K. GAAL
CAROL L. HOEKJE
WILLIAM DIBUONO
ILEANA N. SAROS

May 23, 1988

Statement Before Assembly
County Government and Regional Authorities Committee
by James J. Morley, Executive Director

The State Commission of Investigation conducted an investigation of county and local sewerage authorities which concluded with a public hearing in July, 1982, and a subsequent report, with recommendations, to the Governor and the Legislature. At that time several bills were pending in the Legislature to empower the State to control project financing by authorities and to monitor their internal financing conduct. Due in part to the Commission's recommendations for enactment of this critically important reform legislation, the proposal soon became law. However, the Commission proposed other reforms which were overlooked but which warrant enactment.

Testimony at your committee's previous public hearings has confirmed that much concern still exists about the qualifications and conduct of authority members. The Commission's recommendations in 1982 included several that targeted the political bias, cronyism and deplorable lack of technical knowledge among authority members regarding the complex financial and operational problems of their facilities. In order to assure that basic

decisions of these authorities were founded on both integrity and expertise, the Commission urged then -- and reiterates here -- several proposals that should be implemented. These include:

Membership Composition

The Commission recommends that each authority's membership be required to include an accredited engineer and at least one other member who is 1) a lawyer with an acknowledged professional background in governmental, corporate or bond law, or 2) a fully qualified representative of the financial community, or 3) an individual with proven academic credentials and experience in business administration. Equally important, no local or county governing body should appoint its own members to an authority and no political party should have a majority of more than one vote on such agencies.

Mandate Employment Qualifications

Minimal but nonetheless exacting qualifications should be mandated by the Division of Local Government Services for appointment of executive directors or others with similar responsibilities for overall administrative supervision of an authority plant. A college education, with an emphasis on business administration or engineering, should be necessary, as well as a specified amount of previous working experience in sewerage and/or utility operations. Significant work experience at a similar facility should be acceptable as an alternative

Financial Disclosure

The Commission recommends that all authority members be required at a time and in a form prescribed by the Division to submit personal financial disclosures designed to prevent conflicts of interest. Further, the enforcement of this proposal should be assigned to an appropriate agency empowered to levy substantial fines, against both the affected member and the authority itself, for non-compliance.

Code of Ethics

A model Code of Ethics should be compiled by the Division to which all authority members and officers must subscribe, with provisions for hearings of alleged violations and penalties for noncompliance, including fines, suspensions and dismissals.

Technical and Professional Training

Provision should be made by the Division for technical assistance and training of appropriate authority members and administrative and operational staff executives in connection with new statutory requirements for uniform accounting and financial reporting, as well as with related existing laws such as the Local Public Contracts Act.

Prequalify Chemical Products

The Commission initially recommended that the Division establish a list of pre-qualified vendors of chemicals deemed essential for the adequate operation of treatment and purification facilities. However, subsequent inquiries have indicated that more feasible controls over the quality of chemicals purchased by sewerage utilities would result by prequalifying such products themselves to provide a technical guide for authority purchasing agents and to protect them from unscrupulous vendors of "snake oil" concoctions. The task of drafting and updating a pre-qualification list of acceptable chemical products could be delegated to an already functioning governmental testing laboratory or unit (for example, in the Division of Purchase and Property, in the Department of Environmental Protection or at Rutgers University) which would devise testing procedures and set minimal standards.

Almost six years ago, the Commission made the following critique of the lack of qualifications for membership and the low standards of conduct that prevailed for most county and local utility authorities:

The Commission was appalled by public hearing testimony that demonstrated the inferior quality of appointments by certain local or county governmental entities to the

authorities these entities created. The hearings demonstrated that an appointive process based too often on political connections rather than on merit generated sorely inadequate upper-level policy guidance, ineffective managerial controls and blind reliance on often incompetent staff. The testimony also confirmed that the absence of any requirement for public accountability shielded misconduct that some authority members participated in at worst or closed their eyes to at best.

While there has been some improvement since then, the Commission believes that its critique remains applicable to many authorities. Indeed, the agenda suggested by your committee's hearing notice supports our concern. The Commission therefore hopes that this hearing will generate renewed efforts to further protect the public from misconduct by authorities by enacting more rigid requirements than presently exist for the open, honest and professionally intelligent operation of such entities.

BOARD OF PUBLIC UTILITIES

MEMORANDUM

TO: Jeanne M. Fox, Director
Water and Sewer

FROM: Joseph Haldusiewicz
Regulatory Officer

DATE: May 18, 1988

TELEPHONE NO. x 4567

SUBJECT: Board Jurisdiction over Municipal Utilities Authorities

Pursuant to your request for any preliminary research concerning the Board and municipal and/or county utilities authorities (MUAs/CUAs) I have prepared a memorandum of an issue that was recently before the Board. As of the date of this writing, the matter has been transmitted to the OAL for initial disposition.

The matter concerns a recent assertion by an CUA that pursuant to the Municipal and County Utilities Authorities Law, it is not subject to the rate setting or other regulatory jurisdiction of the Board. The entity was a county utility authority established pursuant to N.J.S.A. 40:14B-1 et seq. The statute establishing municipal and county utility authorities grants those authorities the ability to set their own rates N.J.S.A. 40:14B-22.1 and N.J.S.A. 40:14B-23. A close examination of N.J.S.A. 40:14B-68 reveals that the Legislature intended to make the authorities complete and independent insofar as the rates they establish. The statute states:

This act shall be construed liberally to effectuate the legislative intent and as complete and independent authority for the performance of each and every act and thing herein authorized, and a municipal authority shall not be subject to regulation as to its service charges by any other officer, board, agency, commission or other office of the State...(emphasis added).

It should be noted that nowhere in the exclusionary section in N.J.S.A. 40:14B-68 is the BPU mentioned. One is left with the obvious conclusion that the Municipal and County Utilities Authorities Law must be construed to impart upon the authorities so created "complete and independent authority for the performance of each and every task therein authorized." Darrah v. Township of Evesham, 111 N.J. Super 62, 65 (App. Div. 1970).

6x

Memorandum

May 18, 1988

To: Jeanne M. Fox

Re: Municipal Utilities Authorities

Pg. 2

In Darrah the Superior Court, Law Division, rendered summary judgment declaring a municipal ordinance authorizing construction of sewers as local improvements to be unlawful and the municipality and its utilities authority appealed. The Appellate Division held that where an MUA had been created, powers conferred upon it by statute were exclusive, and local assessments could not be utilized to recover the cost of sewer extensions.

Further, the statute which confers upon the Board its authority over solid waste collection and disposal, N.J.S.A. 48:13A-1 et seq., specifically exempted sanitary landfill facilities operated by municipal and county utilities authorities. "This act shall not apply to sanitary landfill facilities operated by an authority created under P.L. 1946, C. 138 ((C. 40:14A-1 et seq.) or P.L. 1957, c.183 ((40:14B-1 et seq.) (N.J.S.A. 48:13A-6.1)."

It is clear that when a municipal corporation, county or local establishes an authority, it transfers certain powers to that authority. The authority then has "the exclusive right to deal with the pertinent subject matter to the exclusion of any other body, public, governmental or otherwise." Darrah at 66. Additionally, it appears clear that when a utility authority, county or municipal, sets rates, which affect only its constituent municipal or county boundaries, they are immune from BPU regulation.

There is no denial that the Board is the body most responsible for public utility regulation in the State. The Legislature delegated "general supervision and regulation of, and jurisdiction and control over all public utilities" to the Board. N.J.S.A. 48:2-13.

In trying to reconcile the two statutes -- N.J.S.A. 48:2-13 and N.J.S.A. 40:14B-1 et seq., a comprehensive approach to the problem is revealed. There can be no doubt that the Legislature meant to charge the Board with the duty of regulating, inter alia, water utilities. For example, the Board is empowered to decide who is qualified to hold a franchise after considering whether or not the franchise is in the public interest. N.J.S.A. 48:2-14. The Board is also empowered to "fix just and reasonable ...rates...which shall be imposed...by any public utility." N.J.S.A. 48:2-21(b).

7x

Memorandum

May 18, 1988

To: Jeanne M. Fox

Re: Municipal Utilities Authorities

Pg. 3

The statutes evidence an awareness of government's delegated responsibility to the Board over the regulation of utilities. Yet the anomaly exists with respect to utility authorities and their rate setting abilities. One is left with the conclusion that the Legislature meant to exempt rates established by municipal authorities from the Board's rules and regulations although this exemption should be construed as narrowly as possible.

The inconsistency of the statutory scheme becomes readily apparent by a review of the case law. In In re Petition of South Lakewood Water Co., 61 N.J. 230 (1972) the Court said:

It is significant that so far as we can see, the municipal utilities authority law gives the Board no power with respect to such an authority except when it proposes to sell water at retail in another municipality (not here involved). N.J.S.A. 40:14B-20(6). (at 249-250).

See also Jersey City Incinerator Authority v. Department of Public Utilities, 146 N.J. Super 243 (App. Div. 1976) wherein the Court held that "when in the past the Legislature has intended to give PUC jurisdiction over a function of a local government, it has indicated that intent by the enactment of a specific statute." (at 253). The Court, therefore, concluded that the Board had no jurisdiction to compel a municipal authority to continue to operate its incinerator. Id. at 256.

Based upon a review of the statutory and case law on this subject, it becomes clear that an MUA, unlike a county improvement authority (N.J.S.A. 40:37A-103), is not under Board jurisdiction for the aforementioned reasons. Therefore, this may be an area for legislative reform if it is determined that the Board intends to attempt assertion of jurisdiction over these entities. However, based upon specific legislative and case law, such action may be unwise.

8x

Memorandum

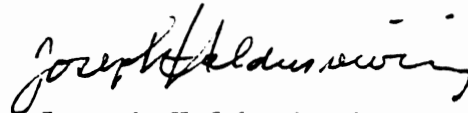
May 18, 1988

To: Jeanne M. Fox

Re: Municipal Utilities Authorities

Pg. 4

It has been determined that MUAs have been involved with the Board in the past. Specifically, in Bergen County, Cape May County, Union and Sussex Counties. MUAs, in some instances have requested franchises for solid waste within the respective authority's area. These include, Union and Sussex Counties. I have attached a memorandum concerning Board jurisdiction over MUAs prepared by the Department of Law and Public Safety.



Joseph Haldusiewicz

JH:tm

Attachment

c: Louis G. McAfoos, III

9x

