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REPORT OF THE RESULTS OF THE INVESTIGATION INTO THE
GOVERNMENTAL PROCESSES EMPLOYED TO AWARD
STATE FUNDS TO THE LYNDHURST
BOARD OF EDUCATION AND THE LYNDHURST
BOARD OF COMMISSIONERS BY THE NEW JERSEY
DEPARTMENT OF EDUCATION AND THE NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS

TO: ROBERT J. DEL TUFO
ATTORNEY GENERAL

FROM: THE DIVISION OF CRIMINAL JUSTICE
AND
THE NEW JERSEY STATE POLICE

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INTRODUCTION

On January 6, 1993, the State Commission of Investigation (SCI) adopted a report entitled In the Matter of the Rescinding of Supplemental State Aid Awarded to the Lyndhurst School District, Bergen County. The report called into question the manner in which the Lyndhurst Board of Education applied for and received a discretionary grant from the Department of Education pursuant to the Quality Education Act and its amendment in March 1991 (QEA II). The report concerned the manner in which the grant was rescinded and set forth information concerning a subsequent grant to the Township of Lyndhurst which was obtained from the Department of Community Affairs. Attorney General Robert Del Tufo was provided a copy of the report; during February 1993, the Division of Criminal Justice instituted a preliminary review to determine if a criminal investigation was warranted. On March 16, 1993, an investigation was commenced in the Division of Criminal Justice and New Jersey State Police Corruption Investigation Unit.

The investigation was conducted by Deputy Attorneys General, Detectives from the New Jersey State Police and by Division of Criminal Justice State Investigators skilled in accounting. This report contains the product and conclusions of the investigation.

SCOPE AND METHOD OF THE INVESTIGATION

This investigation required an examination of the facts surrounding the inclusion of a \$25 million discretionary fund provision in OEA II. Additionally, the investigation examined the procedures utilized by the Department of Education in analyzing the applications submitted for those discretionary funds. Further, it was necessary to examine the roles and procedures of the New Jersey Legislature's Joint Budget Oversight Committee and its relationship to the Office of Legislative Services and the Office of Management and Budget. The operating procedures of the Department of Community Affairs and its Division of Local Government Services were also reviewed and analyzed.

Among the areas that were the subject of this inquiry are the following:

1. The actions of Lyndhurst public officials in response to the New Jersey Department of Education's computer error in the amount of anticipated state school aid.
2. The actions of members of the New Jersey Legislature in their attempts to induce the Commissioner of Education to direct OEA II discretionary funds to specific school districts for the purpose of aiding specific candidates for political office.

3. The intentions of Lyndhurst Board of Education officials in the drafting and submission of the applications for OEA II discretionary funds.
4. The Commissioner of Education's conduct with respect to adherence to established policies and procedures of the New Jersey Department of Education in the awarding of the OEA II discretionary funds and the rescission of the award to the Lyndhurst Board of Education.
5. The circumstances surrounding the decision by the Executive Branch of State government to authorize the submission of a request to transfer funds to the Joint Budget Oversight Committee, which funds were to be made available to the Township of Lyndhurst.
6. The actions of the Office of Management and Budget with respect to adherence to established procedures in processing a transfer of State funds from the Inter-departmental State Employees Health Benefits account to the New Jersey Department of Community Affairs.
7. The factors surrounding the approval of the Executive Branch request to transfer State funds from the Inter-departmental State Employees Health Benefits account to

the New Jersey Department of Community Affairs by the Joint Budget Oversight Committee and whether such was in accordance with both the Legislature's delegation of authority to that Committee and the New Jersey Legislature's Joint Rule 30.

8. The actions of officials in the New Jersey Department of Community Affairs in the processing of the award of State funds to the Township of Lyndhurst and whether established procedures were followed.
9. The prior knowledge of Division of Law Deputy Attorneys General concerning the transfer of State funds from the Inter-departmental State Employees Health Benefits account to the New Jersey Department of Community Affairs and the award of those funds to the Township of Lyndhurst.

During the course of this investigation, Deputy Attorneys General, New Jersey State Police Detectives and Division of Criminal Justice State Investigators reviewed the underlying documentation upon which the SCI Report was based, conducted interviews, obtained sworn statements, reviewed relevant statements and analyzed relevant statutes and administrative regulations, as well as examined and analyzed other documents and materials. This investigation also required teams of Deputy

Attorneys General, State Police Detectives and State Investigators to travel to other states to conduct interviews, obtain sworn testimony and examine documents.

Fifty statements under oath were obtained from 45 witnesses; (this testimony totalled 3,807 pages.) In addition, twenty-nine other interviews were conducted. Approximately 3,000 pages of relevant documentation were obtained by the investigators, of which 100 documents totalling approximately 500 pages were marked as exhibits. Five hours of tape recordings of Lyndhurst public meetings were reviewed and analyzed. Telephone tolls and personal diaries were reviewed. Finally, when matters involving constitutional and statutory legislative privilege were raised by the Office of Legislative Services and partisan staff, the appropriate legislators were contacted and waivers of legislative privilege were voluntarily provided.

CONCLUSIONS

THE DEPARTMENT OF COMMUNITY AFFAIRS GRANT

1. The New Jersey Department of Community Affairs Grant of \$1.5 million to the Township of Lyndhurst was accomplished without legal authority and is null and void. The funds should be returned to the State.

The Joint Budget Oversight Committee had the legal authority to approve or disapprove the proposed transfer of funds to the Department of Community Affairs for Lyndhurst. The Committee gave no such approval.

There was no vote taken by the Joint Budget Oversight Committee with respect to the proposed transfer; such a vote is required by the Legislature's Joint Rule 30 and the Committee's standard operating procedures. Nor was there any poll taken of all of the majority Democratic or any of the minority Republican members. Further, there was no notice of the proposed transfer provided to the minority members of the Committee by either Senator Laurence Weiss, Chairman of the Committee, or Gerald Silliphant, the Legislative Budget and Finance Officer within the Office of Legislative Services, the non-partisan arm of the Legislature.

2. The Director of the Division of Local Government Services and Deputy Commissioner of the Department of Community Affairs, Barry Skokowski, Sr., knowing the required rules and regulations by which the Division was to execute its responsibilities, did not follow those rules and regulations in the disbursement of state funds to the Township of Lyndhurst. Although the Commissioner of the Department of Community Affairs, Melvin R. Primas, promulgated the relevant rules and regulations, he was neither familiar with them nor did he understand them. He did not ensure that they were followed by the Department.
3. The effort to seek financial aid for Lyndhurst through the inter-departmental transfer and Department of Community Affairs grant was initiated by the Governor's Deputy Chief of Staff, Samuel F. Crane, acting as the legislative liaison for the Office of the Governor. This action was appropriately based on a decision to ensure bi-partisan support for the Administration's then pending supplemental appropriations bill. Bi-partisan support for this bill would have been jeopardized by Senator Gabriel Ambrosio's effort to include a request for aid to Lyndhurst. There was no independent inquiry by the Deputy Chief of Staff or any official from the Department of Community Affairs into the worthiness of the Lyndhurst financial aid request.

4. The Department of Treasury's Office of Management and Budget followed established procedures in processing the \$1.5 million transfer request from the Inter-departmental State Employees Health Benefits account to the Department of Community Affairs. No one in the Attorney General's office had any prior knowledge of, or involvement in, the inter-departmental transfer of funds or the resulting Department of Community Affairs grant to Lyndhurst. The Governor, James J. Florio, had no knowledge of either the inter-departmental transfer or the Department of Community Affairs grant prior to the presentation of the funds to the Township of Lyndhurst. His Chief of Staff, Joseph Salema, was not involved in the inter-departmental transfer and did not participate in the decision-making process that resulted in the Department of Community Affairs award to the Township of Lyndhurst.

CONCLUSIONS

THE DEPARTMENT OF EDUCATION DISCRETIONARY GRANT

1. Paul Muller, Director of Policy and Planning for the Democratic Assembly staff, in consultation with the former Speaker of the Assembly, Joseph Doria, created a "Commitments" list for "lobbying" purposes. The list designated specific Democratic Assemblymen, a Democratic Assembly candidate, local school districts and amounts of

money to be allocated to those districts from the Commissioner of Education's QEA II discretionary fund. The former Speaker used this list as part of an effort to pressure the Commissioner of Education into considering political and campaign related factors when evaluating the QEA II discretionary fund applications. The Lyndhurst School District was not on the list.

2. Commissioner of Education Ellis' decision to individually review the QEA II discretionary fund applications was influenced by the pressure which resulted from his discussions with former Speaker Joseph Doria and former Assembly Majority Leader Wayne R. Bryant. This method of review was contrary to the procedures set forth in the Department of Education's Grants Management Procedures Manual, which were never adopted by the previous Commissioner as formal regulations. Since those procedures were never adopted as formal regulations, Commissioner Ellis retained the authority to modify the procedures.

Commissioner Ellis conducted a thorough review of the applications submitted for QEA II discretionary funds. There is insufficient evidence to conclude that Commissioner Ellis' award determinations were influenced by the

intimidation referred to in the previous Conclusion. There is clear evidence that Commissioner Ellis embarked upon an independent, objective effort to evaluate the applications.

3. The revised application for OEA II discretionary funds, prepared by the Lyndhurst Superintendent of Schools G. Donald Travisano, contained inaccurate representations that education programs were eliminated by the enactment of OEA II. Commissioner Ellis' award of \$1.448 million was based on those representations.
4. Commissioner Ellis's rescission of the OEA II discretionary grant to the Lyndhurst Board of Education was appropriate. Commissioner Ellis responded in a manner designed to protect the public dollars. The Governor's Chief of Staff, Joseph Salema, participated in the exchanges between Commissioner Ellis and Senator Ambrosio as the potential rescission of the OEA II discretionary grant was discussed and asked that Commissioner Ellis afford Senator Ambrosio a hearing on the merits. Thereafter, when the Commissioner informed Governor Florio of his intention to rescind the OEA II discretionary grant, the Governor advised the Commissioner to do what was right under the circumstances.
5. A budget was prepared and submitted for the Lyndhurst Board of Education to the Office of the Bergen County

Superintendent of Schools, which certified the budget, with the intention that it be presented to the voters of the Township of Lyndhurst for approval. Agents of the Lyndhurst Board of Education and the Office of the Bergen County Superintendent of Schools knew that the budget contained an incorrect figure as to the amount of state aid to be received under the category of special education. All concerned relied upon a handwritten note appearing on the budget document to explain the budget's inaccuracy.

6. Former State Senator Ambrosio created a belief in the Lyndhurst Board of Education and the Lyndhurst Board of Commissioners that additional State aid was guaranteed to the Board of Education, which belief contributed to the submission of an inaccurate school budget and an inaccurate application for OEA II discretionary funds. Further, the Lyndhurst Board of Education relied upon Senator Ambrosio's representations, rather than fulfilling its responsibility to communicate with the Department of Education.

RECOMMENDATIONS

1. There should be created by the Legislature of the State of New Jersey, through the enactment of appropriate legislation, an Office of Inspector General in those departments of the Executive Branch that are responsible for the disbursement and/or expenditure of substantial public funds. Each office should be vested with such independent authority as is necessary to ensure that the policies and procedures of the departments are appropriately executed. They should provide for the creation of systems of accountability. The goal of the Inspectors General should be to maintain the public's confidence in the operations of State government. They must diligently preserve the integrity of State government and safeguard the public's funds. This recommendation is consistent with the Attorney General's testimony before the State Commission of Investigation, during which he recommended the creation of Inspectors General within the Departments of Community Affairs, Education and Treasury - the three Departments at the center of the present investigation.

The Assembly, on March 29, 1993, passed Assembly bill A-507, which legislation creates an Inspector General

in the Department of Education. This legislation was sent to the Senate and assigned to the Senate Education Committee on April 15, 1993. The Senate Education Committee has taken no action on the bill as of this date.

2. The procedures related to the evaluation of applications submitted to the New Jersey Department of Education for competitively awarded grant funds, which are contained in the Department's Grants Management Procedures Manual, should be adopted by the Commissioner of Education in a formal regulation of the Department in accordance with the provisions of the New Jersey Administrative Procedures Act.
3. The Legislature of the State of New Jersey should conduct a review of the Joint Budget Oversight Committee, including, specifically, the mechanism by which the Committee approves transfers of appropriations.
4. The Legislature of the State of New Jersey should conduct a review of the policies, procedures and operations of the Legislative Budget and Finance Office.

A "COMMITMENTS" LIST AND ITS RELATIONSHIP TO THE
COMMISSIONER OF EDUCATION'S DISCRETIONARY AUTHORITY UNDER OEA II

On or about January 14, 1991, two bills were introduced in the New Jersey Senate and General Assembly. They were designed to amend the Quality Education Act of 1990 by transferring some portion of funds from OEA and reallocating them to municipal property tax relief. The bills have become known as OEA II and the Supplemental Municipal Property Tax Relief Act. During the legislative process, a disagreement arose between the Senate and the Assembly as to amount of dollars to be shifted. Former Senator Gabriel Ambrosio was part of the leadership working on the legislative package. He testified that the Senate's position was to shift funds from the special needs school districts to the suburban districts as municipal tax relief. The Assembly did not agree, wanting more dollars for school aid and less for tax relief. Senator Ambrosio recalled that he was designated as an arbiter between the two Houses in an attempt to work out a compromise. Part of that compromise was the addition of a \$25 million discretionary fund, with discretion consistent with the purposes of the statute vested in the Commissioner of Education as to the distribution of those dollars. David Rousseau, Director of Fiscal Analysis for the Democratic Senate staff, worked on the legislation. He recalled that the discretionary language was added as one of the Senate floor amendments. Specifically, the statutory language stated:

There is established within the Department of Education a special account into which the State Treasurer shall deposit \$25,000,000. The Commissioner of Education shall utilize the monies in the fund for supplemental state aid to school districts in order to ensure the continuation of educational quality during the period of transition to the new state aid program established pursuant to P.L. 1990, c. 52 (C. 18A:7D-1 et al.). Any supplemental state aid provided to a school district from this account shall not be included in the calculation of the spending limitations established pursuant to section 85 of c. 52 (C. 18A:7D-28).

The bills were enacted by the Senate and Assembly in March 1991, and signed into law by the Governor on March 14, 1991.

During the course of the SCI investigation a document entitled "Commitments - Discretionary School Aid" was provided in materials supplied to the SCI. The document was located in a file maintained by Thomas Corcoran, a former education policy advisor to the Governor's Office. This document contained the names of school districts, dollar amounts, and the names of Democratic members of the Assembly within whose legislative districts these school districts were located and one Democratic candidate for the Assembly.

The "Commitments" list found in Mr. Corcoran's file was the third version of a document created by Paul Muller, Director of Policy and Planning for the Democratic Assembly Staff. At the time this document was being created, Mr. Muller was working directly for then Speaker Joseph Doria. According to Mr. Muller, the document was to show where the Assembly Democrats thought the discretionary money should go. No one instructed Mr. Muller to

prepare the document but, based upon his experience, he knew this type of information should be compiled. Mr. Muller stated there was a desire in the Assembly to keep the shifting of funds among municipalities pursuant to the change from QEA to OEA II as even as possible. With the passage of the legislation arrangements had to be made to get money to the districts that had lost anticipated funding. This was the purpose of the discretionary fund and this list represented a start in the lobbying process. Mr. Muller first drafted the document on May 23, 1991. The document was edited between May 23rd and June 14, 1991, when a second and third page were added by Mr. Muller. On June 15, 1991, the document consisted of four pages, the fourth page being the final version that would subsequently be found in the materials provided to the SCI.

Mr. Muller testified there was some concern in the Assembly that there might be insufficient votes to pass OEA II. Mr. Muller described his view of the legislative process in the following language:

...you have to understand that the entire process that we were going through on all of this was with the idea of votes and whatever else moves legislators. We just don't sit down and try to think what would be the best public policy here. We were trying as we were moving this money out of education and over to municipal aid, we're thinking about how this effects our people.

By "our people," Mr. Muller meant the Democratic members of the Assembly.

The first page of the document created by Mr. Muller contains a list of 18 school districts under the heading "Discretionary School Aid." On the far right is an identification of those Democratic Assembly members who represented all but three of the districts. One identified individual was a freeholder and Democratic candidate for an Assembly seat. Between these two columns is a space for dollar amounts. There are only three entries. Below this group is a second group of six school districts under the heading "Desegregation Aid." Beside these districts are the names of the Democratic members of the Assembly who represented that municipality.

Mr. Muller described the districts identified in the top portion of the first page as "...districts that either lost money as we went from Q.E.A. I to II, or there was a need for additional money." As to the purpose for the document, Mr. Muller explained:

...these are the districts that were in all likelihood losing money as we went from Q.E.A. I to II. I worked with this a long time and we knew what was being done. All you have to do is look at your delegation and where money is being lost and, you know, it's a pretty clear map as to what has to [be] done. You don't have to spell things out.

One of the concerns was the political impact on the legislators who represented those areas. Mr. Muller stated, "There isn't a thing we do that isn't political." What made these districts special, according to Mr. Muller, was that they were "...large municipalities in their areas that are obviously represented by

our people and were losing money... You work with this stuff long enough you know where your power base is and the people you have to satisfy."

In the middle of the first page of the document, there appears a notation, "Cohen: WRB committed \$1.3 million??" Mr. Muller testified that someone whom he did not remember told him that a commitment had been made to Assemblyman Neil M. Cohen that school districts within his legislative district would receive \$1.3 million from the Department of Education discretionary aid fund. "WRB", according to Mr. Muller, are the initials of Assemblyman Wayne R. Bryant, former Assembly Majority Leader. Finally, as to the lower half of the first page of the document, Mr. Muller stated that there was no need to specify dollar amounts because State desegregation aid is paid as a fixed statewide percentage.

According to Mr. Muller, the first page of the document, which he described as his work copy, was never distributed to anyone. The second version of the document totalled two pages. The blanks that existed on the first draft as to monetary amounts were beginning to be filled in. The information necessary to fill in the blanks was obtained by Mr. Muller through conversations with other individuals whom he did not remember specifically, but he remembered that they included legislators, staff members and municipal officials, all with an interest in obtaining discretionary dollars. He stated that he did not actively seek the information because individuals were

approaching him with the information. The list also, in part, refers to those districts which were going to lose anticipated money by reason of the enactment of OEA II and corresponded to those Assembly members who needed to be persuaded to vote for the legislation. Dollar amounts were important to Mr. Muller as he began to divide the available dollars. As Mr. Muller further described, there was an attempt to make sure those individuals represented on the list received "...some amount that they felt was reasonable."

Even this list, however, was limited in its scope. According to Mr. Muller, no decision to divide the \$25 million discretionary fund could be made without factoring into the equation the criteria established by the law. Although the criteria were general in nature, Mr. Muller pointed out that the funds would have to be used to maintain quality education. It was further understood that the school districts would have to state their case before the Commissioner of Education. While the legislators would attempt to lobby for the funds, the ultimate discretion was vested in the Executive Branch of government.

The second page of this second version, identified as "Desegregation Aid," was devoted to eleven school districts with the names of the appropriate Assemblymen in a separate column. The first page is entitled "Discretionary School Aid," and is again divided into three columns: The names of school districts, dollar amounts and impacted legislators. The list of school

districts had grown to 28, with corresponding dollar amounts entered for 17.

The Cohen/WRB entry from the first draft also reappears, though in different form, "Cohen - WRB committed \$1.3 million:". The question marks are gone and eight districts are listed, with varying dollar amounts totalling \$1.3 million entered on the document. For those school districts which because of redistricting would no longer be in Assemblyman Cohen's legislative district, the legislators who would then be representing them were identified in the document. Two were Republicans.

Mr. Muller edited the document by entering information as he received it. When questioned as to the Cohen/Bryant entries, specifically, whether he had in some fashion confirmed the existence of a commitment, Mr. Muller responded he assumed he did, but could not be specific as to the source of the information.

One focus of the investigation was to attempt to determine whether the list represented a quid pro quo for the passage of QEA II. Mr. Muller's response during his testimony reflected there were two reasons for the list:

...you keep looking back to the passage of Q.E.A.-II, and the municipal. Also we were coming up to an election. So you also wanted to make sure that these people had some good stories to tell in their districts. So this is not just to get a bill passed, but to make sure that these legislators could go back to their district and say this is what we brought home.

He repeated the importance of the funds to the election prospects of legislators by observing:

...you're looking at this as a quid pro quo for passage of legislation. That's never the only thing you're thinking about. Especially in that atmosphere you were thinking about November of '91.

The information contained within the second version of the document was communicated to Speaker Doria because, as the leader in the Assembly, he would not only review the material, but also make the final decisions as to what information the list would contain. Speaker Doria was the only person with whom Mr. Muller discussed the list. These discussions consisted of reviewing the materials that he had collected.

The third version of the document was produced after consultations with Speaker Doria. The document is now titled "Commitments." There is also a subheading of "Discretionary School Aid." The format remains three columns with the number of school districts having been reduced to twenty. The corresponding dollar column has entries for all but three school districts. The legislators and candidates remain identified in the right hand column. The Cohen/WRB reference has been removed, though the eight "Cohen" school districts remained on the list.

A review of the computer-generated document reveals that the document was last edited on June 14, 1991, at 5:04 p.m. Mr. Muller believed he printed the final version of the list and gave it to Speaker Doria. At that point the list recited the dollar amounts related to the enumerated school districts. Speaker

Doria was to do all that he could to honor those requests. As will be discussed infra, no one has acknowledged receiving a guarantee that their district would be receiving the money contained on the list. Then Commissioner of Education Dr. John Ellis testified that at some point in time he received a telephone call, allegedly from a member of the Assembly whom he does not remember, asserting that one of his districts had been promised \$200,000 in discretionary funds. The appeal by Speaker Doria to obtain these dollars, amounting to \$13,675,000, was made to Commissioner Ellis.

A meeting had been scheduled between Assemblyman Doria and Commissioner Ellis. Mr. Muller believed he printed the document the day of the meeting. Commissioner Ellis' calendar indicates a meeting was scheduled for June 17, 1991, at approximately 10:00 a.m. Mr. Muller recalled the meeting being held in the Speaker's conference room and attended by Speaker Doria, Commissioner Ellis and himself. The Commissioner's calendar indicates that the purpose of the meeting was to discuss educational issues.

Mr. Muller's recollection of the meeting was that it lasted between 15 and 20 minutes. At some point in the meeting, Commissioner Ellis was shown the list by Speaker Doria. According to Mr. Muller, the Assemblyman pointed out to Commissioner Ellis, that "...these are the people that, you know, went to the wall in QEA and a lot of things. You got to help them out." Mr. Muller also recalled the Speaker talking about

the "political atmosphere" and the "...need to help the people in the upcoming election." Mr. Muller recalled the Commissioner responded that he would try to do this, if at all possible. He further stated his recollection was that the Commissioner said: "I understand, I'm certainly going to try to do everything here. If [there are] any problems, I'll get... back to you." Mr. Muller had no recollection of any discussion of any procedures or criteria to be utilized by the Department of Education in awarding the \$25 million in discretionary aid.

Toward the end of the meeting, Commissioner Ellis was provided with a portion of the list. Mr. Muller described that Speaker Doria ripped off the column containing the names of the individual Legislators before providing the list to the Commissioner, because he did not want the list to fall into the hands of a newspaper, which Speaker Doria characterized as the "wrong hands."

The goal of the meeting, as stated by Mr. Muller, was to have Commissioner Ellis understand that the commitments needed to be fulfilled. As Mr. Muller said, the discretionary language of QEA II had been purposely drafted broadly so these sorts of things could be dealt with.

Commissioner Ellis remembered this meeting, but he was not certain as to the date. It could have been on June 17, 1991. Commissioner Ellis recalled that the Speaker showed him a document that contained a list of school districts, dollars and

names of individuals. As to what he understood the list to represent Commissioner Ellis stated:

[It] constituted what I understood to be legislative agreement or we believe we have made these commitments to provide dollars through the discretionary funds.

Commissioner Ellis further understood the Speaker's request to be that:

I would provide exactly those dollars to exactly those districts as part of my award system.

The list was given to Commissioner Ellis by Speaker Doria but at some point in the meeting he asked for it back. Commissioner Ellis watched as the Speaker folded the list and tore it in half, removing the names of the individuals. After doing that, the Speaker returned the list to the Commissioner who recalled that he was both shocked and amazed by the list. He went on to explain that it was:

The kind of a mild amazement that you know that the legislative process is filled on a continuing basis with various senators and representatives seeking their own district's benefits. That is the system. Importuning or making an appeal for something for your own district is, regrettably, part of the process. But I had not encountered it quite in that raw form before.

The Commissioner also found it to be clear intimidation, "...where someone hands you a list and they expect you to deliver on that list." Commissioner Ellis, however, treated this as an aggressive lobbying effort on the part of the Speaker.

At some point after leaving the Speaker's Office, Commissioner Ellis discarded the document that had been provided

to him. As will be discussed later in this report, Commissioner Ellis testified that it played no role in his subsequent award of the OEA II discretionary funds.

Subsequently, the Commissioner visited Joseph Salema, then Governor's Chief of Staff. A review of Commissioner Ellis' calendar revealed that on June 24, 1991, at approximately 11:00 a.m., the Commissioner of Education was scheduled to meet with Mr. Salema with respect to the OEA II discretionary funds. Commissioner Ellis testified that the Chief of Staff wanted to be kept apprised of the discretionary process as it moved along, to insure that the Governor's Office was not caught off-guard when the awards were announced. While describing the lobbying efforts that were taking place in connection with the discretionary awards, Commissioner Ellis said he told Mr. Salema that Speaker Doria "...even had a list of the districts he wanted funded." The Commissioner recalled that Mr. Salema observed that he was not surprised by the intense lobbying because he was being approached as well. According to Commissioner Ellis, Mr. Salema gave no instructions or advice to him concerning the list.

Based upon the content of Mr. Muller's list, testimony was taken from Assemblymen Cohen, Bryant and Doria. Neil M. Cohen was the first Democratic Assemblyman elected to the General Assembly from the 21st Legislative District in 17 years, when he won election in November 1989. The 21st Legislative District has been described by Assemblyman Bryant as a swing district - a district that might elect either a Democrat or a Republican.

As a member of the Assembly, Neil Cohen supported the OEA II package. He had not supported the original Quality of Education Act of 1990. In OEA II the municipalities in his district fared well on the municipal side by way of aid and did not fare any worse under OEA II on the education side than they had under OEA. Assemblyman Cohen remembered lobbying for more funds on the education side of the equation in the form of discretionary aid. He also knew that there would be an application process. He further recalled that his efforts probably included the mention of specific dollars for specific school districts. He did not recollect to whom the information was provided or in what form.

Assemblyman Cohen recalled that he had spoken to Assemblyman Bryant about the possibility of more aid for the communities in his district. According to Assemblyman Cohen, Assemblyman Bryant informed him that the schools would have to submit applications for the funds. Assemblyman Cohen notified the school superintendents in his district and advised them to prepare applications and submit them.

According to Assemblyman Cohen, there were never any assurances or guarantees by anyone that the funds would be forthcoming. Assemblyman Cohen stated what he did expect was that someone from the Legislature would lobby on his behalf to secure these educational funds.

Assemblyman Bryant stated he never promised anyone they would receive discretionary aid. He pointed out that such a guarantee was not something he would be authorized to make. With

respect to Assemblyman Cohen, Assemblyman Bryant stated: "I'm sure that I probably talked to Cohen about discretionary aid... There's no way I can commit to anyone." What he would have told Assemblyman Cohen, Assemblyman Bryant observed, was that he would assist him to further any properly submitted applications. The Assemblyman noted that such efforts would not normally include anything more than casual comment to members of the Executive Branch of government. Assemblyman Bryant believed that on some occasion he saw Commissioner Ellis and mentioned to him that some members would need discretionary aid for towns with problems.

Assemblyman Doria testified that he had no recollection of the events described by Mr. Muller, but he was satisfied that what Mr. Muller said about sharing the information with him was probably correct. Assemblyman Doria explained his testimony in the context of the function of the Office of Speaker - that Mr. Muller would discuss with him any number of policy issues that came before the Assembly and would ask the Speaker to review materials and make comments.

Assemblyman Doria also explained that while he had no recollection of the "Commitments" list, such a list would serve the purpose of trying "...to get a handle on exactly what type of money was being requested, what the needs were." He stated that members of the Legislature would speak to him about things they needed in their legislative districts because that was part of his role as Speaker. In response to an inquiry concerning the existence and purpose of a "Commitments" list, Assemblyman Doria

pointed out that the final decision concerning discretionary funds rested with the Department of Education. The Legislature could only recommend, suggest and forcefully speak on the issue.

Assemblyman Doria stated that he had no recollection of being provided with the "Commitments" list by Mr. Muller. While acknowledging that he spoke to Commissioner Ellis and probably discussed the OEA II discretionary aid, the Assemblyman did not recall providing Commissioner Ellis with a copy of the document. Assemblyman Doria was also certain that in his discussions with Commissioner Ellis he mentioned that providing monies to certain school districts would also benefit the Assembly members representing those districts. As the Assemblyman observed, "That's part of the political process."

Mr. Corcoran had a vague recollection of receiving the "Commitments" list from an unidentified partisan legislative staff member. Mr. Muller stated that he provided the list only to Assemblyman Doria, who had no recollection of distributing the document. The document the SCI obtained from Mr. Corcoran's file did not originate from Commissioner Ellis because the copy he received had been torn, eliminating the column containing the names of Assemblymen. The copy found in Mr. Corcoran's files contained those names.

At the conclusion of the Doria/Ellis meeting on June 17th, Commissioner Ellis proceeded to an 11:30 a.m. meeting with Assemblyman Bryant. The June 17, 1991, meetings between Commissioner Ellis, Speaker Doria and Assemblyman Bryant had an

importance beyond the consideration of the "Commitments" list. They played a role in Commissioner Ellis' decision to personally evaluate and analyze those applications seeking discretionary aid which were submitted to the New Jersey Department of Education. Both Legislators had individually expressed their concerns to Commissioner Ellis about the operation and management of the Department of Education over a period of time. Some of this criticism was because Commissioner Ellis had retained senior staff members who had been part of the administration of his predecessor, Dr. Saul Cooperman, including Dr. Cummings Piatt, Jeffrey Osowski, and Leo Klagholz. Commissioner Ellis was told these individuals were undermining the policies of the present Administration.

Both Assemblyman Doria and Assemblyman Bryant conceded that they criticized Commissioner Ellis' performance as Commissioner of Education. Assemblyman Doria believed that some of the mechanisms the Commissioner was using to implement OEA II were questionable. He did not believe that Commissioner Ellis understood the educational problems facing the State and Assemblyman Doria wanted the Commissioner to take more of a leadership position in the field of education in New Jersey. From the Speaker's perspective, Commissioner Ellis was not in control of his Department.

Assemblyman Bryant testified that he had concerns that senior staff had been kept on after Governor Florio took office. The prior administration, according to the Assemblyman, had taken

a policy position contrary to what became the New Jersey Supreme Court's decision in Abbott v. Burke. With a new administration and a switch in policy, Assemblyman Bryant did not believe the prior appointed officials were capable of implementing that philosophical change. Assemblyman Bryant was speaking primarily of the Deputy Commissioners within the Department of Education. Assemblyman Bryant testified that he probably talked about Dr. Piatt with the Commissioner, as well as the fact that, based on information he had received, he believed some of the holdover appointees were undermining Commissioner Ellis. Assemblyman Bryant also recalled advising the Commissioner to get control of his Department and that he ought to assure himself that the management part of the staff was on his team.

Commissioner Ellis' recollections of the meetings of June 17, 1991, were that once more he was presented with criticisms of his Department. He recalled that complaints concerning Mr. Klagholz, Mr. Osowski and Dr. Piatt were being continually raised, as were allegations that his Department was "...not being responsive to the Governor's program." He also recalled that the discretionary funds were mentioned but he does not remember in what context. Commissioner Ellis testified that Speaker Doria said to him:

[t]he people in your department are undermining you and you are trusting them too much and you ought to get on top of your department and take -- take the kinds of action that you need to take.

Commissioner Ellis' recollection of his conversation with Assemblyman Bryant is more vivid than Assemblyman Bryant's recollection. Commissioner Ellis recalled that Assemblyman Bryant was very forthright during the meeting. According to Commissioner Ellis, Assemblyman Bryant complained that Dr. Piatt and Mr. Osowski were planning on thwarting the Governor's agenda. Assemblyman Bryant then told Commissioner Ellis he knew the discretionary applications were being read and scored. Commissioner Ellis recalled he did not know that the scoring had started - Assemblyman Bryant knew something he did not. According to the Commissioner, Assemblyman Bryant told him to get control of the process and "...make the decisions in a proper fashion" himself.

As the Commissioner sat in the meeting with Assemblyman Bryant, he recalled that Assemblyman Bryant suggested to him that "Piatt's henchman" had:

...taken that processing away from you and they are going to come out and the special needs districts are going to get shafted. You are going to have a problem with it, you have to get on top of it yourself and make the proper decisions yourself and not let those guys undermine you.

Commissioner Ellis stated that he attempted to explain during both meetings that the final decision on the use of the funds rested with him. This, he recalled, did not placate either Assemblyman because they believed that Commissioner Ellis would have no choice but to approve the recommendations presented to him based upon the complexities of the issues. Commissioner

Ellis testified that the final surprise at the Bryant meeting was being told that Dr. Piatt was thinking of leaving the Department. This was something of which the Commissioner was unaware. Commissioner Ellis found his experience with Assemblyman Bryant that day to be "...disconcerting to say the least and intimidating... to sit and have your department characterized that way." When Commissioner Ellis left Assemblyman Bryant's office he had formed the opinion that he was "... putting faith in a deputy that probably wasn't playing square..." with him. Commissioner Ellis contacted Dr. Piatt but did not recall whether he spoke to Dr. Piatt in person or by telephone. The content of the conversation was to advise Dr. Piatt to collect the discretionary fund applications and return them to him. Commissioner Ellis decided to make the decision on the award of the discretionary funds himself. He informed Dr. Piatt: "If I am going to take the heat, I am going to make the decisions."

Dr. Piatt testified, before the SCI, that Commissioner Ellis telephoned him on June 17th and directed him to have the applications collected. Dr. Piatt further testified that Commissioner Ellis had placed the telephone call from his car phone, after having met with Mr. Salema.

Commissioner Ellis' recollection did not coincide with Dr. Piatt's. Commissioner Ellis stated that he neither met nor spoke with Mr. Salema after his meetings with Speaker Doria and Assemblyman Bryant. An analysis of Commissioner Ellis' car telephone billing records for June 17, 1991, reveals that there

were no telephone calls placed to Mr. Salema's office. The only activity on the Commissioners' car phone for June 17, 1991, was a series of three telephone calls placed to the Commissioner's office between 3:50 p.m. and 3:59 p.m.

It previously was suggested that Commissioner Ellis' actions were inappropriate in that he did not evaluate each application on the merits prior to making an announcement of the awards on July 22, 1991. The evidence developed during the course of the investigation establishes both that Commissioner Ellis was to be the final arbiter in the process and that he, in fact, conducted an exhaustive review of a total of 116 applications over a five week period.

The decision to go it alone was contrary to the Department's Grants Management Procedures Manual, in that the manual required a panel of readers in competitively awarded grant programs, a policy put in place by Dr. Cooperman in response to a scandal that occurred within the Division of Vocational Education. However, this manual was never adopted as a formal regulation by Dr. Cooperman. Therefore, it could be modified or suspended by a subsequent decision of the Commissioner of Education. Additionally, the statutory language previously cited, by which the Legislature created the discretionary fund, provided the Commissioner with a broad grant of authority. An internal document created by Dr. Piatt's staff memorializing the process that was going to be employed in this matter, clearly

acknowledges that the Commissioner retained the authority to make the final decision.

Under the procedures developed by Dr. Piatt with respect to this fund, the evaluation of all the applications by the three members of the Reading Panel was to be completed within a two week period between June 10 and 23, 1991. A third week would be utilized to resolve any conflicts among the panel as to the worth of the individual applications. The results of the Reading Panel's reviews were to be provided to the Commissioner during the week of June 28, 1991. The readers had been provided the applications on June 14, 1991. They were to have finished the first round of reviews by June 17th. Two members of the reading panel had not completed reviewing their respective groups by that date, resulting in the exchange of applications being delayed to June 18th.

Commissioner Ellis stated in this regard that he requested additional information from the Department's Division of Finance which he employed in his review process. The specific information related to the 1991-92 equalized tax rate, pupil enrollment and the 1991-92 cost per pupil for each applicant. This investigation has obtained and reviewed the documents by which this information was provided to the Commissioner. That it was prepared and delivered to the Commissioner has been confirmed through interviews with Department personnel. The Commissioner testified that he also contacted the offices of the 21 County Superintendents of Schools to obtain additional information in

support of the grant applications, and, in several counties, a ranking of those applications. An examination of Commissioner Ellis' work sheets corroborated his contact with a majority of the 21 county superintendents. These worksheets contain Commissioner Ellis' contemporaneous notations of the rankings provided by several of the county offices. Additionally, the worksheets also contain the names of most of the individuals contacted by the Commissioner. Dr. Ellis specifically recalled that only one county failed to respond to his request for more information.

The investigation examined the process of Commissioner Ellis' review, the utilization of the criteria and the resulting awards. Commissioner Ellis provided to investigators many of his work sheets. He explained that he had ranked the applications from high to low. By this process he discovered he would need \$61,400,929, far beyond the \$25 million available, to fulfill the applications he deemed worthy. Through refinement and further analysis he was able to reduce these awards to \$31,564,000. The announcement of the awards on July 22, 1991, represented, in his view, the culmination of careful analysis and hard work.

On July 22, 1991, five weeks after the Commissioner undertook the review process, the Department of Education announced the awarding of \$24,909,000 in discretionary funds to 57 school districts located throughout the state. On July 26, 1991, as a result of the discovery of three other applications the awards were amended and the number of districts obtaining

funds was increased to 58. An analysis of the OEA II discretionary awards confirmed Commissioner Ellis' assertion that 78% of those funds were distributed to 24 of the State's special needs districts. Through his allocation of funds Commissioner Ellis was able to provide awards to 58 of the 119 school districts that applied for discretionary funds.

In comparing the twenty districts on the "Commitments" list provided to Commissioner Ellis by Speaker Doria on June 17, 1991, to the list of grantees released on July 22, 1991, this investigation ascertained that only three of the school districts, Lawnside, Newton and Roselle, received the same amount of funding as appeared on the "Commitments" list. Seven of the listed districts did not submit an application. Plainfield, which had not been listed with a corresponding dollar amount, received \$150,000. The remaining nine school districts received \$8,965,649, which represented 70.5% of their original requests totalling \$12,725,000. The "Commitments" list provided to Commissioner Ellis represented only those school districts of interest to the Assembly majority. Lyndhurst was not on the "Commitments" list, since Lyndhurst was a problem for Senator Ambrosio and the "Commitments" list was an Assembly list created by Mr. Muller.

THE AWARD AND RESCISSION OF THE DEPARTMENT OF EDUCATION DISCRETIONARY FUNDS TO THE LYNDHURST BOARD OF EDUCATION

On or about March 19, 1991, the Board of Education of the Township of Lyndhurst received its state aid figures through the Bergen County Board of Education. This information provided crucial revenue information needed by the Board of Education to complete the preparation of its 1991-1992 budget. Receipt of this data had been delayed during enactment of OEA II. Shortly after receiving these figures Joseph Abate, then School Business Administrator for the Lyndhurst Board of Education, and Rosemary Vaccari, Finance Officer and Board Secretary, discovered that an error had been made concerning the amount of special education aid the school district was to receive. The error consisted of calculating the special education aid to Lyndhurst as though 1,860 students were eligible for this aid when the accurate number should have been 186 students. This computer error was inadvertently made at the Department of Education. Based upon the error, the projected state aid to Lyndhurst was increased by \$1.7 million.

The preparation of the Lyndhurst school budget had begun by early December 1990. According to the testimony of Mr. Abate and Mr. G. Donald Travisano, Superintendent for the Lyndhurst Township School District, the special education aid received by the school district from year to year varied little because the number of students qualifying for such aid did not significantly change. During the budget process the excess \$1.7 million was

not anticipated, planned for or committed by the Board of Education for any program.

The district had been receiving reports concerning the effect OEA II would have on its state aid from Senator Ambrosio. Based upon information he had been receiving, Senator Ambrosio believed Lyndhurst would be receiving a total of \$5 million. His information was based, in part, upon Department of Education figures which included the computer error. It was conceded by Lyndhurst Board of Education officials that they had committed no funds and had not relied in any way upon the mistaken special education aid. After discovering the error Mr. Abate directed Rosemary Vaccari to contact the County Board of Education and ask that they look into the matter. She spoke with Joseph DiMinno, Administrative Assistant, who contacted Sohair Obilwaga at the State Department of Education, an assistant to Mel Wyns, Director, School Finance. Within 48 hours of this inquiry, Mr. Wyns provided the County Board of Education with the corrected special education aid figures with accompanying instructions to be sure that the corrected aid figures be used in the Lyndhurst Board of Education's budget. The corrected figures were then forwarded to the school district prior to Mr. Abate's completion of the proposed school budget for the 1991-1992 school year.

Shortly after the incorrect school aid information was discovered, Mr. Travisano contacted Senator Ambrosio and advised him of the error, that the error had been confirmed and that as a result of the error Lyndhurst's state aid would be reduced by

\$1.7 million. After learning of this error, Senator Ambrosio contacted members of the Senate Democratic staff in order to ascertain whether the OEA II aid figures were part of the actual legislation which had been passed. Senator Ambrosio was under the belief that the total aid to Lyndhurst was part of the actual legislation and, accordingly, Lyndhurst should receive the total amount of aid regardless of the computer error. Senator Ambrosio had been issuing press releases which contained the amount of the monies Lyndhurst was to receive and the correction of the error resulted in a school aid figure which did not comport with Senator Ambrosio's expected funding for Lyndhurst. After learning of the error Senator Ambrosio undertook an intense lobbying effort with the goal of obtaining for Lyndhurst the full amount of money he believed OEA II was intended to provide, notwithstanding the fact that the amount had been based upon an error made by the Department of Education when preparing its aid figures.

Mr. Salema testified he received a telephone call from an angry Senator Ambrosio, after which he telephoned Commissioner Ellis in an attempt to have Commissioner Ellis begin looking into the problem. Senator Ambrosio did not recall telephoning Mr. Salema. He recalled contacting, and briefly speaking with, Commissioner Ellis. Commissioner Ellis testified Mr. Salema contacted him by telephone and told him that Senator Ambrosio was irate about money not being provided to Lyndhurst. Mr. Salema asked Commissioner Ellis to check into the problem. He asked

Commissioner Ellis to telephone Senator Ambrosio personally and assure him that the problem would be looked into.

Commissioner Ellis telephoned Senator Ambrosio almost immediately after his conversation with Mr. Salema. According to Commissioner Ellis, Senator Ambrosio was angry and critical of the Department of Education. He told the Commissioner that he had voted for QEA II, as revised, with a specific amount of money to be included for Lyndhurst and that his assumption was Lyndhurst deserved all of the money described in the computer printout regardless of any error. The specifics of the mathematical error and its relationship to special education were not discussed. Commissioner Ellis apologized to Senator Ambrosio and promised to check into the problem.

Both Senator Ambrosio and Commissioner Ellis agreed that in their first telephone conversation no commitments were made to provide Lyndhurst with the full amount of the state aid. Senator Ambrosio asked Commissioner Ellis to telephone Lyndhurst School Superintendent Travisano. Commissioner Ellis telephoned Mr. Travisano who related to the Commissioner the nature of the computer error, but that conversation did not involve much detail. Commissioner Ellis testified that Mr. Travisano told him that he (Travisano) had spoken to Senator Ambrosio who assured him that they were entitled to all of the money.

Commissioner Ellis then spoke to his staff in order to establish the facts surrounding the error. He described the goal of his inquiry when he stated:

What - the point I was trying to establish is that when I was looking at the - at the issue, I wanted to ensure absolutely that Lyndhurst was or was not entitled to the money. Legislation is very complex. It is clear that a computer printout is not the basis on which monies get distributed, rather, the laws are, and the laws have to be followed and all the formulas put into the computers and updated and accurately filled according to whatever time sequence is prescribed.

But legislation is complex. Sometimes there is some footnote language or some other component that notwithstanding this, certain other provisions obtained. Therefore, I wanted to be sure that the department was not simply reacting on the basis of surface information but had detailed information that would enable us to say with authenticity, 'Yes, they are,' or 'No, they aren't' or whatever we ought to be able to legitimately say.

The results of the inquiry were communicated to Commissioner Ellis in a meeting which took place two days later with Robert Swissler, Assistant Commissioner, and Mr. Wyns. As testified to by Commissioner Ellis:

The information provided was that there was an error made in special education. A zero got added to their number of 186 and it made 1,860, and special education is funded very generously in New Jersey so that a tenfold escalation of special education students was an astronomical addition to a budget. They stated that any --

Q. 'They' meaning?

A. Robert Swissler and Mel Wyns, and I cannot any longer separate which of the two said what, but my sense of what they said was, 'Anyone should recognize that that magnitude of error couldn't be justified. You ought to be able to see it right off. But - and the district should have known they weren't entitled to that much additional money.'

Mr. Wyns and Mr. Swissler advised the Commissioner that Lyndhurst was not entitled to the extra money and had the error not been caught at that point in time, Lyndhurst eventually would have had to repay the money. The action to be taken by the Department of Education as a result of the meeting was to "follow the law" and to correct the figure. Commissioner Ellis testified that he consulted with the Division of Law which also supported his conclusion. Commissioner Ellis then telephoned Mr. Salema to advise him of the conclusions. Mr. Salema did not recall this conversation.

According to Commissioner Ellis, during this conversation Mr. Salema asked Commissioner Ellis about what options were available to remedy the situation. He recalled Mr. Salema raising the possibility of the use of the Commissioner's discretionary funds which were established under OEA II. Commissioner Ellis, himself, had been considering the possibility of the use of discretionary funds to assist Lyndhurst, but he had not communicated his thoughts concerning that remedy to anyone. Commissioner Ellis told Mr. Salema that the use of discretionary funds was a possibility. Mr. Salema told Commissioner Ellis to call Senator Ambrosio and tell him the Department would do what it could to help.

This telephone conversation predated the Department of Education's establishment of criteria for the disbursement of discretionary funds. In the mind of the Commissioner, at least during this period of time, the use of discretionary funds to

assist Lyndhurst was a potential source of additional funds within the Department of Education. As he testified, "...it is clear that a discretionary fund was authorized to deal with continuing -- to continue the quality of education and anomalies that exist in the law."

Commissioner Ellis telephoned Senator Ambrosio. The versions of this telephone call as testified to by Commissioner Ellis and Senator Ambrosio differ materially. According to Commissioner Ellis, he told Senator Ambrosio that the numbers on the computer printout were not what needed to be followed, but, rather, the legislation and the formulas were what must be followed. According to Commissioner Ellis, Senator Ambrosio became irate and argumentative, saying that he had promised the money to his district and "...he wanted me to know in no uncertain terms that he was going to get it." He told Senator Ambrosio that there was no legal authority to accept the error as a basis for payment of monies, but then said to the Senator: "The only place where there are available funds that I could redress the problem is in the discretionary funds. I said the district can apply for discretionary funds." Senator Ambrosio continued to argue that Lyndhurst was entitled to the monies. Commissioner Ellis told him, "Well, the only -- the only authority I have to deal with the problem at all is through the discretionary fund process."

According to Commissioner Ellis, Senator Ambrosio then asked him to telephone Superintendent Travisano and tell him that he

needed to apply for discretionary funds and to explain to him the error. Commissioner Ellis called Mr. Trivisano and explained:

Yes, I told him, 'You guys weren't at fault.'

- Q. What... what else did you communicate to him and what did he say to you when --
- A. He said, 'That is good.' He said, 'I am glad you found that out.' And then I said, 'But that it -- that is the good news.' I don't know if I did good news and bad news. But I said, 'The bad news is, I can't correct it. The law is the law.' I explained -- I also said, 'I have explained this to Senator Ambrosio. He doesn't accept this. He continues to say you are going to get your money, that you are entitled to it and that he is going to see that you get your money, and I have told Senator Ambrosio that I can't. We do not have the authority to give it to you. The only authority I have is the discretionary funding, the discretionary money. You may apply for a discretionary grant. This is the only access we have to deal with the problem of OEA II,' and I said, 'You can apply for discretionary funds and I will try to help you if I can,' and he said, 'Well, that is -- that is great news. He said, 'At least I have got -- I can have a way to solve the problem, and I said, 'Well, I hope so,' or something like that.'
- Q. Do you recall him saying that is great news to you?
- A. (Nodded affirmatively)
- Q. Do you remember those words?
- A. Yes, I think he did say, 'Well, that is great news,' or, 'That is good news,' or something like that.
- Q. What else was said in that conversation?
- A. That was it. We did -- and may I say, we didn't -- we didn't discuss how the discretionary grant was to be applied for, what was in the discretionary grant. We didn't go into any details at all about --

just that that was a process that was available to him, he could apply for discretionary funds, and that was the only basis that I had available to me that was within my authority to deal with any of the problems he had.

- Q. Did you tell him that you would try to deal with the problems that he had?
- A. I said I would try to help you, 'We will help you if we can,' but I wanted to distinguish that from saying, 'You will get a grant or you are guaranteed these dollars or there is no question you will get these monies, just put anything in and I will award it.' No way did that occur.
- Q. As you know the testimony before the State Commission of Investigation has put you, Senator Ambrosio and Mr. Trivisano at loggerheads with respect to the nature of that conversation?
- A. I am well aware of that.
- Q. And, in fact, during our interviews with both of those individuals, both have maintained still that your conversation with them during that conversation, during those conversations, that you had committed to them funds which would assist them in that error. Your testimony here today is that is not true?
- A. That is -- that is my testimony. My testimony is, I described to them the only legal way in which I could assist the district was through the discretionary fund process. They were eligible to apply for it and I would try to help them.

Senator Ambrosio's recollection of the same telephone conversation with Commissioner Ellis was as follows:

The next thing I remember, I got another call from the commissioner telling me that he reviewed the problem; that, number one, the money, in his judgment, he's been advised, is not in the bill; that he cannot give this money back to Lyndhurst out of the original

bill because the computer printouts are not part of the bill.

Now, I never pursued that because he then went on to say, however, I have \$25 million available in discretionary money. I'm going to correct that error in a discretionary grant to Lyndhurst out of that money.

Senator Ambrosio then recalled asking Commissioner Ellis to telephone Superintendent Trivisano. Senator Ambrosio testified that he praised Commissioner Ellis on how quickly the issue was resolved.

Shortly thereafter, Mr. Trivisano telephoned Senator Ambrosio to say that he had just received a call from the Commissioner. He told Senator Ambrosio that "[h]e's going to give us the money." Senator Ambrosio did not recall whether Mr. Trivisano utilized the term "discretionary funds" but Mr. Trivisano was under the belief that the Commissioner was going to exercise some initiative to give Lyndhurst the money. According to Senator Ambrosio, there was some discussion that Lyndhurst would need to complete forms to obtain money, but that the forms were ministerial in nature and Senator Ambrosio was under the belief that discretionary monies would be committed to Lyndhurst.

Mr. Trivisano's recollection of the telephone call he received from Commissioner Ellis was that the Commissioner explained that it was the Department's error, that Lyndhurst should not suffer from the error and that Commissioner Ellis would see that Lyndhurst would get the money. Mr. Trivisano did not testify to any discussions concerning the Commissioner's discretionary funds. It is clear that both Commissioner Ellis

and Senator Ambrosio recalled discussions concerning the use of discretionary dollars.

There is some independent corroboration of Commissioner Ellis' testimony that the discretionary aid was not committed, but was suggested as only a possible remedy. On April 11, 1991, less than one month after the incorrect state aid figures were discovered by the Township of Lyndhurst, County Superintendent M. Ray Kelly forwarded by facsimile a memorandum to Assistant Commissioner John Mulhern at the Department of Education. Mr. Mulhern's primary responsibility at the Department was to oversee County and Regional Services. He reported directly to Commissioner Ellis. The memorandum stated that "Senator Gabriel Ambrosio has contacted Joseph Abate in Lyndhurst informing him to use the corrected state aid figures and that the monies will be available through the Commissioner's Discretionary Fund." The memorandum posed four questions from Mr. Abate concerning the manner in which the funds could be applied for. The matter was discussed with Commissioner Ellis and the result of that discussion was a handwritten response by Mr. Mulhern on the memorandum which stated:

He should be told he may apply for these funds and that the proposal guidelines will be out next month. However these are grants open to anyone and the money is limited compared to the requests anticipated. Mr. Abate should not assume that making application means that funds will be granted.

Both Senator Ambrosio and Mr. Abate were shown the April 11, 1991, memorandum and questioned as to conversations they might

have had with each other or Dr. Kelly which may have generated its creation. Neither had any recollection concerning the matter. Mr. Mulhern said that he was certain he would have sent this response to Dr. Kelly, Mr. DiMinno or Mr. Marbaise at the County but did not recollect specifically to whom it was sent. Dr. Kelly did not have a recollection of the matter. It appears that the handwritten response to Dr. Kelly's memorandum was either never communicated to Lyndhurst officials, lost or no one is willing to admit they received the communication.

Additional corroboration is found in Commissioner Ellis' testimony wherein he stated that all of these discussions took place prior to the preparation of Department of Education guidelines for discretionary grants. Had he intended to award Lyndhurst discretionary funds he could have created the guidelines with that award in mind and tailored the guidelines to this specific situation.

In his conversations with Senator Ambrosio and Mr. Travisano, Commissioner Ellis was solicitous, apologetic and attempted to communicate his willingness to assist Lyndhurst in whatever way he could. Mentioning his discretionary funds in these conversations may have caused Senator Ambrosio and Mr. Travisano to believe money would be available. Commissioner Ellis may not have intended to be as definite concerning the awarding of the funds as is related by Senator Ambrosio and Mr. Travisano who are both adamant as to their belief that a commitment of those funds was made. It cannot be concluded in

any definitive way whether or not the Commissioner actually made a commitment of funds. As persuasive as the response to the April 11, 1991, memorandum may be to support Commissioner Ellis' position, a statement made by Commissioner Ellis on that same day may support the testimony of Senator Ambrosio. On that day, Commissioner Ellis was told that Mr. Travisano had claimed that Commissioner Ellis had promised the money to Lyndhurst. Commissioner Ellis was reported to have said "If the damn superintendent kept his mouth shut." Witnesses to that statement could not place an interpretation on it, but on its face it appears to suggest annoyance that Mr. Travisano was commenting on a promise alleged to have been made by Commissioner Ellis. Otherwise, one might have expected Commissioner Ellis to exclaim that the statement by Mr. Travisano was not true. Commissioner Ellis had no recollection of making this statement but surmised any such comment would have been in the context of communications to the press.

In addition, it was clear to Mr. Wyns shortly after the error was made that Commissioner Ellis was attempting to find a way by which Lyndhurst could keep the \$1.7 million. Senator Ambrosio continued to advise Lyndhurst officials that such a commitment had been made and those officials relied upon Senator Ambrosio's representations that money would be forthcoming. Mr. Travisano also continued to believe that this money would be forthcoming. As time progressed and the money was not

forthcoming answers were sought by Lyndhurst from Senator Ambrosio rather than from the Department of Education.

Mr. Abate professed no recollection of any conversations concerning the April 11, 1991, memorandum requesting guidance regarding discretionary funds. After being shown the memorandum his testimony proceeded as follows:

- Q. First of all, had you ever seen that memorandum before?
- A. No.
- Q. Would you indicate, please, where the information came from?
- A. Dr. Kelly, Bergen County Superintendent.
- Q. Did you talk with Dr. Kelly with respect to use of discretionary aid fund monies for Lyndhurst Board of Education?
- A. I don't think so.
- Q. Did you ever tell him that Senator Ambrosio and you had discussed the matter?
- A. I don't recall a conversation with Dr. Kelly.
- Q. What about with respect to Senator Ambrosio?
- A. What was the question?
- Q. Do you remember discussing the matter with Senator Ambrosio?
- A. Not until July or August of that year.
- Q. Did you have any discussion with Mr. DiMinno or Mr. Marbaise prior to July 1991 as to the availability or mechanisms associated with discretionary funds?
- A. I just don't recall.
- Q. How does your name get on this memorandum?
- A. I have no idea.

Q. How does Senator Ambrosio's name get on this memorandum?

A. I have no idea.

Mr. Marbaise and Mr. DiMinno both assumed that the contents of the response from Mr. Mulhern would have been, as a matter of course, communicated to Mr. Abate. The memorandum was not prepared in a vacuum and contained specific questions directed to the Lyndhurst situation. It is remarkable that Mr. Abate had no recollection concerning such an important matter. As the School Business Administrator and the preparer of the budget documents, sources of income should have been extremely important to him, especially an intangible and as yet unconfirmed source of income like a \$1.7 million discretionary grant.

The first budget was prepared by Mr. Abate, executed by Mr. Travisano and submitted to the County for approval by Mr. Abate on March 27, 1991. Notwithstanding the receipt of the corrected aid figures prior to the preparation of the budget, Mr. Abate prepared the budget utilizing the incorrect and inflated state aid figures. The budget was submitted to the County Board of Education where it was approved for publication with the knowledge that the figures were incorrect. The reasons for the submission by the Township and approval for publication by the County of this inaccurate budget on March 27, 1991, are the subject of varying testimony, but relate to the belief by Mr. Travisano and Mr. Abate that the Township would eventually receive the \$1.7 million from the Department of Education. The

circumstances surrounding the County approval to advertise that budget were provided by Mr. Abate and Mr. Angelo Izzo, a consultant hired by the County to assist with the budget process, who represented the County at the time the budget was brought to the County by Mr. Abate. Their respective accounts differ in material ways.

On page four of the supporting documentation for the Annual School District Budget Statement a hand written asterisk was placed next to the proposed expenditure dollar amount relating to special education. The state aid referred to in this expenditure contained the inaccurate state aid figure. At the bottom of the page a handwritten entry reads "Computer data entry operator (State Department) error in special and supplemental education. Approved by Commissioner J. Ellis."

According to Mr. Abate, he submitted a budget to the County containing the improper state aid at the direction of the County. Mr. Abate did not recollect who at the County directed him except to say that it would have been Mr. DiMinno or Mr. Marbaise and that the conversation probably would have taken place with the finance manager Ms. Vaccari. Ms. Vaccari agreed with Mr. Abate's allegation that the direction came from the County. Notwithstanding the fact that he had already obtained the corrected figures, Mr. Abate prepared a proposed budget utilizing the incorrect and inflated figure. He testified he planned to "iron that out" when he went to the County office, and further testified he was being directed to use inaccurate information.

As he stated "My position was if they were directing me to use those figures, I need it to be noted, someone had to clearly understand that it had to be highlighted on the budget because the figures weren't going to work." They would not work because the source of income information in the budget for the special education aid was inaccurate.

Mr. Abate testified he was neither told the reason he was directed to use the wrong figures nor did he ask for a reason prior to submission of the budget. When asked why he didn't ask, he responded "[b]ecause I was planning on asking definitively and resolving it at the meeting in the County." The meeting at the County office took place on March 27, 1991, at which time Mr. Abate met with Mr. Izzo. Mr. Izzo did not know the background of the matter and had no knowledge of any previous conversations concerning the error and potential remedies. Mr. Abate did not talk to Mr. Marbaise or Mr. DiMinno, did not seek information concerning why he had been directed to use improper figures and merely told Mr. Izzo to speak to Mr. Marbaise or Mr. DiMinno "...to see if they would help facilitate the situation." When asked whether he spoke with either Mr. Marbaise or Mr. DiMinno at the meeting, Mr. Abate's testimony was as follows:

Q. Did you ask to speak with them?

A. Yes.

Q. Did you speak with them?

A. No.

Q. Why not?

A. It was an unusual year.

Usually what we do, we sit in a small conference room like this. They take individual budgets.

That year, state-aid figures came out late. There was a large room in the county office. There were a number of county office people there handling a number of districts simultaneously. They were in the same room as we were in, but they were far away.

Q. How far away?

A. Twenty feet diagonally, no more than that. Maybe 40.

Q. That would have been a difficult thing for you to walk over to where they were and say: Look, you're asking me to put false information into a form here?

A. No. What I asked them, if Mr. Izzo would go talk to Mr. Marbaise and Mr. DiMinno, which he did.

Q. You wanted to ask them what the reasoning was for their instruction for you to use that figure; right?

A. I don't know if I was so interested in the reasoning. I was just interested in getting the permission of the county office to put in an inappropriate figure.

Q. The question is, that I asked you previously, was: Do you call them up to say why you should be using an inappropriate figure?

A. No, I didn't.

Q. Listen to me. Your answer to me was: Well, I planned to do this when I went up there and we discussed the figures themselves?

A. That's correct.

Q. So the question is: Did you do that?

A. Did I do --

Q. What you had planned to do: Discuss the reasons why they were telling you to put in an inappropriate figure?

A. I never got to talk to Mr. Marbaise or Mr. DiMinno.

Q. What did you do to try to talk?

A. I asked Mr. Izzo to do the same: Would he please speak to them to give us some direction as to what we're going to do here.

Q. Why didn't you ask to talk to them yourself?

A. They were seated at that time at the table. There were other people at the table. There was a great deal of confusion.

Q. What would be the problem in walking over to that table and saying: Look, I got a problem here?

You didn't want to interrupt them?

A. That's correct.

When I go to the county office, I view that as my superior, my boss. There's a matter of protocol. I just can't move around and --

Q. But this is an unusual situation; they're telling you to put in false information into a document?

A. That's correct.

Q. At least you think they're telling you that?

A. That's correct.

Q. Because you didn't discuss it with them?

A. Correct.

Mr. Izzo's recollection was that he found the error and asked Mr. Abate for an explanation. Mr. Izzo spoke with either Mr. Marbaise or Mr. DiMinno at the request of Mr. Abate, who had asked him to add the handwritten footnote on the budget document.

language Mr. Abate said was agreed to by Mr. Izzo. It is clear that the information provided for that entry came from Mr. Abate.

Mr. DiMinno and Mr. Marbaise disagreed with Mr. Abate's recollection of events. According to Mr. Marbaise, it was Mr. Abate who told the County the incorrect figures could be used in the proposed budget. He testified, "Although these figures were incorrect, I was told by either -- I was told by Abate: It's all right. We were told we could use them by the State Department of Education." Mr. Marbaise confirmed speaking to Mr. Izzo about the use of the incorrect figure. Mr. Marbaise told Mr. Izzo when it was finalized to give it to him and he would handle it from that point. Mr. Marbaise decided to accept Mr. Abate's assurances that the use of the figure had been approved and he intended to check it out later. Thereafter, when Mr. Marbaise checked with the Department of Education, he did not receive verification of Mr. Abate's representations and instructed Lyndhurst to change the figures.

There is no evidence of any communications from the Department of Education to the County which could be construed as a basis for the County instructing Lyndhurst to use the inflated special education figures. Absent such instruction from the State, there is no motive or reason for the County on its own to have directed Mr. Abate to use these figures, especially in light of the fact that the revised figures were available and known to all.

A revised budget, dated April 22, 1991, prepared by Mr. Abate, differed from the March 27, 1991, budget by increasing the tax levy by \$1,714,232, reducing the special education amount to the corrected figure of \$912,473 and increasing the transition aid figure from zero to \$343,513. According to Mr. Abate the revised budget was prepared after discussion at a public hearing.

By memorandum dated April 25, 1991, Commissioner Ellis communicated to all school districts information and standards for the discretionary funds available under OEA II. Mr. Travisano testified when he received the memorandum he believed these discretionary funds were the mechanism by which the Commissioner would provide the Lyndhurst Board of Education the \$1.7 million.

The criteria under which the discretionary aid was available were clearly set forth in Commissioner Ellis' memorandum:

The general purpose of this aid is to continue quality education programs. It is not designed to spend more money or create a means to gain additional appropriations. Rather, its sole purpose is to respond to very critical problems to meet thorough and efficient standards of education where changes in the law have produced unusually severe hardships or unanticipated consequences in the first year of the new funding formula.

The memorandum then set forth three standards to guide the applicants:

1. To prevent discontinuation of demonstrably effective programs, services, or capital improvements whose elimination will have a direct adverse affect on student academic

achievement and preventing a school district from maintaining a thorough and efficient educational program.

2. To implement programs, services, or capital improvements which are part of a plan required by the Commissioner (e.g., Educational Improvement Plan, Corrective Action Plan, or Level II or Level III Plan).
3. To implement a previously planned major educational reform, program, or service which the district is unable to undertake because of the already specified cap restrictions and/or aid limitations.

Based upon Mr. Travisano's conversation with Senator Ambrosio and his understanding of his conversation with Commissioner Ellis, he concluded that he could apply for these discretionary funds. Under the criteria issued by the Commissioner, Lyndhurst did not qualify for discretionary funds. Even after adjustments were made for the computer error, Lyndhurst did not lose money but actually gained approximately \$140,000 pursuant to the enactment of OEA II and did not fall within the standards and guidelines established for the discretionary funds.

Mr. Travisano prepared an application for the grant dated May 15, 1991, and then prepared a revised application dated May 30, 1991. By the time the discretionary funds application was being prepared by Mr. Travisano the school budget had been defeated by the voters and the Board of Education was facing substantial cuts in its spending plan. Mr. Travisano believed that the public uncertainty surrounding whether the Commissioner would provide the anticipated \$1.7 million, as well as the

unusual public scrutiny into the matter led to the defeat of the budget. In his application for discretionary funds, Mr. Travisano set forth that the Lyndhurst School District needed the discretionary funds "...because of the change of state funding." The total amount sought from the Commissioner was \$3 million, broken down as \$1,716,009, "[d]ue to the Department of Education computational error..." and \$1,349,700, "...because of a defeated budget..." The final application further stated that the funds sought, "...will fall into section 1 and 3 of the criteria listed in a memo to my attention dated April 25, 1991." The application was submitted to the County for validation. The County Superintendent refused to certify the \$1.7 million because it "...was not available in the first place since it was initially a revenue then corrected because of an error. However the \$1.3 million is valid." The application was then forwarded to the Department of Education by the County.

On May 20, 1991, and May 21, 1991, the Lyndhurst Township Board of Commissioners held a joint meeting with the Board of Education to resolve issues raised by reason of the defeat of the school budget. The tape recording made of the public portion of this meeting was reviewed and interviews were conducted of the Commissioners concerning the telephone call which was made to Senator Ambrosio during the first night's meeting, on May 20, 1991.

The basic issue to be resolved was whether the school budget should be cut by \$3 million thereby not incurring a tax increase.

At the root of this issue was the question as to whether the school district was actually going to receive the \$1.7 million in state aid which Senator Ambrosio had assured would be forthcoming. The Commissioners were intending not to raise taxes. If the school district was going to receive the additional \$1.7 million, the Commissioners were willing to cut the school district's budget by only \$1.3 million, and, instead of raising school taxes by \$1.7 million to cover the difference, they would approve a budget that would include the anticipated \$1.7 million in aid. At this point in time no specific programs had been targeted for cuts and the anticipated \$1.7 million were to be utilized in the general school budget.

Before approving this plan, the Commissioners needed assurances the state aid would be forthcoming. They telephoned Senator Ambrosio who spoke personally to Mayor Louis Stellato. The Commissioners wanted to know whether the state aid would be coming to the municipality or directly to the Board of Education. Senator Ambrosio told them that he didn't know where specifically the funds would be going but assured them that the funds were coming to Lyndhurst.

After speaking with Senator Ambrosio, it was decided if the funds were received by the municipality, they would be transferred to the Board of Education. When funds were received by the Board of Education, whether directly from the Commissioner or from the municipality, they would be applied to the budget which would have the effect of tax relief.

The criteria established by the Commissioner for discretionary funds dealt with program discontinuations or reductions because of the enactment of OEA II. Mr. Travisano testified that no Lyndhurst programs had to be cut as a result of the enactment of OEA II. He testified that category 3 of the Commissioner's memorandum did not apply to Lyndhurst. Mr. Travisano further testified that he added category 1 as a criterion because the school budget had been cut as a result of the defeated budget. Mr. Travisano testified that the real reason the application was being made was to obtain the \$1.7 million the Commissioner had promised Lyndhurst, and \$1.3 million which was the loss suffered by Lyndhurst by reason of the budget defeat, which he attributed to the computer error created during the enactment of OEA II.

Commissioner Ellis testified he considered the application worthy because the application represented that a substantial number of programs would not be continued if the funding were not forthcoming. The application characterized the situation in Lyndhurst as "catastrophic". According to Commissioner Ellis, "...it was my opinion that the list of reductions that they were contemplating because of their fiscal circumstances were severe and would significantly impact the quality of the education in that city."

The request certified by the County was for \$1.3 million. Commissioner Ellis' initial award was for \$1.5 million. He explained the increase as follows:

Q. Would you explain to us the difference?

A. Yes, they described in the application as well the fund balance and how it was running low. It was my opinion that the department of education had contributed to their fiscal difficulties, in what degree, I was not sure. Certainly, not to the degree that I could simply automatically give them \$1.7 million because that was inappropriate, but that some modest recognition of the fact that the office of education had contributed to their fiscal dilemma was a responsible reaction.

It is my opinion that when government errs and helps create -- not entirely -- helps create a fiscal problem for a district, and we have some legitimate basis on which to assist that district, we ought to do so. And it was my opinion that while I agreed with Ray Kelly, the county superintendent, that \$1.7 million should not be considered, to have some modest amount of money that would help build back their balance was a responsible reaction to the problem that had been created.

Q. The 1.3, the bulk of the award, was based upon the application and not the -- or --

A. Yes, well, it all was based on the application because they applied for \$3 million, and they stated in their application the error. My award, though, was for the programmatic aspects that were represented in the application that they said would be eliminated if they didn't receive those dollars. 1.3 would be, you might say, conform with what Kelly authenticated were legitimate educational expenditures, and 200,000 was to help building back their balance, in part, to deal with the issue of the error. But it was essentially a program-based decision.

On July 22, 1991, Commissioner Ellis awarded the Lyndhurst Board of Education \$1.5 million in discretionary aid. This award was administratively reduced to \$1.448 million on or about July 26, 1991.

The award notification letter required that Lyndhurst develop a spending plan which would be submitted to the County Superintendent. This requirement applied to all school districts which received less than the full amount of the grant applied for. The spending plan was to outline how and for what the money would be expended. This would permit efficient auditing of the grant to insure that the monies would be spent for the grant's purposes.

The requirement for a spending plan created a problem for the Lyndhurst Board of Education because the programs enumerated in the application already had been included in the budget. The Board of Education could not prepare an acceptable spending plan because the Township had kept the programs in the budget based upon representations from Senator Ambrosio that state aid would be forthcoming. The grant money would be needed to reduce the Township's tax levy.

By this time, Mr. Abate had been appointed Superintendent of the Lyndhurst School District and Mr. Travisano had retired. Mr. Abate was having trouble putting together a spending plan. The County, through Mr. Marbaise and Mr. DiMinno, had concerns that the discretionary grant funds were to be used for tax relief and not for programs. Their concerns were based upon the fact that on August 2, 1991, approximately one week after the Commissioner revised the discretionary grant to \$1,448,757, the Lyndhurst Board of Education prepared a form known as an A4F which was inadvertently forwarded to the Bergen County Board of Taxation

notifying it that the levy would be reduced by the amount of the grant.

A handwritten note prepared by Commissioner Ellis and found in his files memorializes a telephone conversation with Mr. DiMinno on August 9, 1991, in which the Lyndhurst issue of "tax relief" was discussed. The concerns raised by the County had caused Mr. Abate to telephone Commissioner Ellis in mid-August 1991, for the purpose of asking him directly the question of whether the grant funds could be used for tax relief. Commissioner Ellis told him that the funds were not meant for tax relief and could not be used for that purpose.

On August 20, 1991, the Township of Lyndhurst Board of Commissioners finalized the A4F submitted on August 2, 1991, and indicated that this action was consistent with their May 21, 1991, agreement with the Board of Education. Shortly thereafter, the County Superintendent requested the Lyndhurst Board of Education to provide a written narrative explaining the August 20, 1991, action of the Township reducing the tax levy by the amount of the grant. The Board of Education refused to comply and, after the Commissioner was notified, he requested his staff to determine the status of the matter. The staff determined that the grant was being utilized for tax relief.

On August 29, 1991, pursuant to a previous telephone conversation, Commissioner Ellis, in writing, sought legal advice from Division of Law Deputy Attorney General Nancy Kaplen-Miller requesting answers concerning, among other things, whether the

discretionary aid grant could be used solely to reduce the 1991-92 school tax levy, and whether the Commissioner could rescind the Lyndhurst Board of Education's discretionary grant award.

Commissioner Ellis testified he also relayed the nature of this new problem in Lyndhurst to Mr. Salema sometime in the middle of August 1991. During his conversation with Mr. Salema he pointed out that discretionary funds could be used only for matters which fell within the established criteria. Mr. Salema asked to be kept informed. Commissioner Ellis' calendar reflects the matter was again discussed with Mr. Salema on August 14, 1991, at a meeting in Mr. Salema's office. Commissioner Ellis recalled that the meeting involved updating Mr. Salema on the situation. By memorandum dated September 3, 1991, Commissioner Ellis sent Mr. Salema a copy of the materials he had forwarded to Deputy Attorney General Kaplen-Miller. By that time, Deputy Attorney General Kaplen-Miller had provided preliminary verbal advice to the Commissioner that the use of the grant monies for tax relief was improper.

Based upon the representations of fact made by the County, as well as the advice provided by Deputy Attorney General Kaplen-Miller, Commissioner Ellis had come to the conclusion that "...the Lyndhurst grant was so seriously flawed that I could not in good conscience permit them to use the money for purposes for which I had not awarded those dollars." Commissioner Ellis telephoned Governor James J. Florio directly to advise him of his

belief that he had no alternative but to rescind the grant. He testified that he did so for three reasons:

1. potential embarrassment which might occur if the grant was rescinded;
2. he believed that Senator Ambrosio was a friend and political ally of the Governor and;
3. he wanted to ascertain directly the Governor's attitude toward the idea of rescission.

According to Commissioner Ellis, in a brief conversation, the Governor expressed disappointment that the problem existed. The Governor thanked Commissioner Ellis for advising him and intimated that he should do what he had to do. He is certain the Governor did not try to dissuade him from rescinding the grant.

Governor Florio recalled that Mr. Salema kept him informed of the fact that Commissioner Ellis had brought the Lyndhurst grant problem to his attention. The Governor stated that in a meeting arranged by Mr. Salema; he spoke with Commissioner Ellis who told him the Lyndhurst grant application was not factual and the grant monies were not being utilized for programs, but rather, municipal tax relief. He explained to the Governor his belief that he legally could not justify allowing Lyndhurst to keep the grant and, accordingly, he intended to rescind it. Governor Florio said that he agreed with Commissioner Ellis' analysis and told him to do what he thought was right according to the law. According to the Governor, this meeting took place some weeks prior to the election but he did not recall the exact date.

Commissioner Ellis then spoke to Mr. Salema and advised him of his discussion with the Governor. Mr. Salema told Commissioner Ellis that he would see the Governor about it. Mr. Salema had very little recollection concerning these events. He recalled that he had learned of Commissioner Ellis' concerns about the Lyndhurst grant, that he did not respond to those concerns, that he did not communicate those concerns to anyone and that he gave Commissioner Ellis no advice concerning the matter. Mr. Salema did not recall discussing Commissioner Ellis' conversation with the Governor.

In early September 1991, Commissioner Ellis took a vacation returning on or about September 22, 1991. On September 26, 1991, Commissioner Ellis forwarded a letter to Mr. Salema formally advising him of his decision to rescind the grant and concluding that "...the Lyndhurst grant application was either a misrepresentation of the district's intentions or, at best, was not followed." Commissioner Ellis' calendar contains an entry referencing a meeting at Mr. Salema's office on September 27, 1991, which Commissioner Ellis believed was held as a direct result of his September 26, 1991, letter. At that meeting, Mr. Salema related Senator Ambrosio was angry he had not been contacted by Commissioner Ellis concerning this issue. According to Commissioner Ellis, Mr. Salema attempted to re-argue the issue concerning the award of discretionary funds. Mr. Salema asked that Lyndhurst be given the opportunity to express its side of the story at some form of hearing prior to a final determination

of the issue. Mr. Salema stated that a hearing was owed to the Senator to insure that everything was done to hear all of the arguments. Mr. Salema said that he wanted Senator Ambrosio present because he did not want an important party left out. Mr. Salema agreed that at some point he directed Ellis to give Lyndhurst a hearing, but had no recollection of the September 27, 1991, meeting.

On October 3, 1991, an unscheduled, informal meeting took place in Mr. Salema's office with Mr. Salema, Commissioner Ellis and Senator Ambrosio at which the Lyndhurst issue was discussed. According to Commissioner Ellis, Senator Ambrosio set forth the problem as he saw it after Mr. Salema suggested that the Commissioner hear the Senator's side of the story. The basis of Senator Ambrosio's argument was that after the defeat of its budget the school district reduced its budget by \$1.3 million instead of by \$3 million based upon Senator Ambrosio's representations and upon the belief that the state would come forward with \$1.7 million representing the mistaken aid figure which was subtracted from the total state aid package. Senator Ambrosio argued that had the budget been reduced by the full \$3 million, the programs could not have been continued and, accordingly, the grant could have been awarded on that basis, thereby resulting in the same net effect. According to Commissioner Ellis, Senator Ambrosio, at that meeting did not allege that he had been promised \$1.7 million in state aid by Commissioner Ellis.

Mr. Salema suggested to Commissioner Ellis that Senator Ambrosio's argument was "reasonable." Senator Ambrosio's recollection of that meeting is less detailed than Commissioner Ellis' testimony. He recalled that it involved discussion of issues to be examined at the hearing of the matter scheduled for the next day. According to Senator Ambrosio, Mr. Salema admonished them both, telling them "...to straighten it all out. This is something that shouldn't linger."

The following day, October 4, 1991, Commissioner Ellis held the meeting which was to serve as the hearing suggested by Mr. Salema. Present were representatives of the Township, the School Board, the Department of Education and the Division of Law. According to all accounts, shortly after the meeting began Senator Ambrosio became upset and argumentative. According to Senator Ambrosio, it was at this meeting he heard for the first time that Commissioner Ellis had denied he had promised \$1.7 million to Lyndhurst as a result of the computer error. The hearing, in fact, constituted a venting and did not maintain the characteristic of an impartial proceeding. The meeting accomplished little and the parties were openly hostile. There was no discussion of the availability of alternative funding sources to resolve Lyndhurst's problems. The only issue discussed was whether the grant should be rescinded in light of the equities of all of the positions.

By October 16, 1991, Commissioner Ellis had made the decision to rescind the grant. On October 16, 1991, Commissioner

Ellis sent a letter to the Attorney General requesting a review of a draft of the letter he intended to send to Lyndhurst rescinding the grant, requesting advice as to whether he had followed appropriate legal procedures and requesting whether he had the legal basis to rescind the grant. After sending the letter, Commissioner Ellis spoke with the Attorney General on October 11, 1991, at a Cabinet retreat held at the Governor's residence, Drumthwacket, and asked if he would look into the matter.

On October 30, 1991, Deputy Attorney General Kaplen-Miller advised Commissioner Ellis that the letter had been approved as drafted. According to Commissioner Ellis he was also advised that if he decided not to rescind the grant that a legal argument could be made to support that position because of the broad authority granted in the statute. Commissioner Ellis concluded to permit Lyndhurst to keep the grant for tax relief would be unfair to the other school districts because they had not received notice that tax relief was an appropriate basis for a grant award. Commissioner Ellis had Mr. Marbaise hand-deliver the letter to Lyndhurst on November 4, 1991, the day before the general election. Prior to sending the letter, he had a conversation with Dr. James Jones, who at that time was President of the State Board of Education. Dr. Jones advised him to send the letter before the general election. According to Commissioner Ellis it was his decision alone to send the letter before the election because he believed that had he waited until

after the election he would have been criticized for withholding the letter for political gain. By 4:30 that afternoon, Mr. Salema telephoned Commissioner Ellis and related the fact that Senator Ambrosio was furious at the circumstances surrounding the rescission. Commissioner Ellis was aware of the possible political implications surrounding the rescission of the grant either prior to or after the election. According to Commissioner Ellis, he kept Mr. Salema apprised of his actions throughout this controversy. However, Commissioner Ellis did not notify Mr. Salema prior to sending the notification of rescission to Lyndhurst.

Based upon the facts ascertained by this inquiry, the Township of Lyndhurst Board of Education was not entitled to an award of discretionary funds. It did not suffer a loss of state funding as a result of the enactment of QEA II. Senator Ambrosio in his testimony agreed that based solely upon Lyndhurst's application for discretionary funds, the grant should have been denied. Even Mr. Travisano testified that Lyndhurst initially did not fall within the criteria issued by the Department of Education. The Lyndhurst application, which was based upon not only the error committed by the Department of Education, but also upon a hardship as a result of a defeated budget, must be read in conjunction with the guidelines themselves and, therefore, clearly represented that programs would be eliminated or reduced as a result of the enactment of QEA II. This representation is not true - the application contained incorrect information. The

programs alleged to have been reduced or eliminated were actually included in the budget with the expectation that the state aid would be used to provide tax relief.

Senator Ambrosio has consistently taken the position that he believed that OEA II would provide the Lyndhurst Board of Education with \$5 million in state aid, and, notwithstanding the fact that the total dollar figure was based upon an error in calculation, that Lyndhurst should have been entitled to the entire \$5 million. Commissioner Ellis communicated to Senator Ambrosio very early on, prior to the preparation of the school budget, this position was untenable. Senator Ambrosio believed Commissioner Ellis promised that the Department of Education would provide additional funding in some other fashion. He communicated this belief to the Township and Board of Education officials on several occasions. This was an issue of great importance to Senator Ambrosio. The reduction of the state aid by \$1.7 million was a source of personal embarrassment creating within the Senator an intense desire to insure that the dollars he had promised Lyndhurst would be received. Whether he misinterpreted Commissioner Ellis in the wake of his attempt to rectify the matter, or whether Commissioner Ellis actually represented that he would commit funds to Lyndhurst, cannot be resolved with certainty.

THE SEARCH FOR ALTERNATIVE FUNDING FOR LYNDHURST

On November 5, 1991, Senator Ambrosio lost his bid for reelection. While other Democratic incumbents were also defeated, Senator Ambrosio was convinced the timing of the rescission of the Lyndhurst OEA II discretionary grant was a significant factor in his loss. Senator Ambrosio believed that the Governor and Commissioner Ellis had cost him his election and he found it hard to believe that the Governor and Mr. Salema were not aware that Commissioner Ellis was going to revoke the Lyndhurst grant and further believed that the timing of the grant revocation was intentional.

According to Senator Ambrosio, two weeks after the election, the Governor personally telephoned him to invite him to a Saturday breakfast meeting at Drumthwacket. Senator Ambrosio believed that Governor Florio was reaching out to him as a friend and supporter who had suffered a loss by a narrow margin.

At the breakfast meeting, Senator Ambrosio expressed his belief that the action of Commissioner Ellis had cost him his reelection and proceeded to describe the history of the matter "chapter and verse." According to Senator Ambrosio, the Governor did not believe that this issue cost him the election. The Governor attempted to convince Senator Ambrosio that he was still a valued member of the team but, when the Lyndhurst issue was raised, the Governor did not want to discuss it and gave Senator Ambrosio no reaction concerning the issue. During the meeting and prior thereto, Senator Ambrosio was not considering any

effort to obtain other funds for Lyndhurst and he did not address the possibility of substitute funds with the Governor.

The Governor recalled this meeting and stated that to describe Senator Ambrosio as angry would be an understatement. He believed Senator Ambrosio, while not directly asking for funds, was seeking some assistance in obtaining additional funding for Lyndhurst. Based upon the circumstances which had previously been described to him by Commissioner Ellis, the Governor did not encourage Senator Ambrosio as he felt Lyndhurst was not entitled to a grant from the Department of Education.

When the dust settled and the realization set in that he had only a short period of time left in the Senate, Senator Ambrosio resolved to do what he could to repair the damage and obtain additional funding for Lyndhurst. Part of Senator Ambrosio's motivation was that he did not wish to be blamed for the loss of the education funds. During the campaign, his opposition had questioned his credibility for saying that Lyndhurst was going to receive additional aid, when, in fact, it was never going to come. Senator Ambrosio did not wish to have his reputation sullied if he could prevent it. By his own description, he "... started combing the halls of the State House to see what could be done to replace the money that the education commissioner revoked."

After his breakfast with the Governor, he believed he was not going to get any help from the Governor's office, "...so

there was no sense in asking." If he was going to get help, it would have to come from the Legislature.

Senator Ambrosio began his quest for funds for Lyndhurst during the lame duck legislative session. He approached Senator John Lynch, then Senate President, and Senator Daniel Dalton, then Senate majority leader, advising them, as he characterized it, that he wanted to see if the hole in the Lyndhurst budget could be plugged. He was trying to prevent the dramatic impact on the next year's taxes that would be caused by the loss of the \$1.448 million. He knew the discretionary grant already had been advanced to the Lyndhurst Board of Education, but that the state would recoup it next year by reducing state aid in a like amount.

In his efforts to obtain the funds, Senator Ambrosio would speak to "...anybody that [he] could pin down for a two-minute conversation," including Mr. Salema, Deputy Chief of Staff Samuel Crane and the majority staff. The keys to success rested, Senator Ambrosio believed, with Senator Dalton, Senator Lynch and Kathleen Crotty, Executive Director of the Senate Majority staff. He was convinced that if anything could be accomplished, it would be accomplished in the Legislature. Initial efforts focused on a proposed supplemental appropriations bill. Senator Ambrosio was under the impression that an effort was going to be made to get an appropriations bill together to benefit a number of municipalities and he wanted Lyndhurst to be included in that bill. Until the middle of December, that was the focus of his efforts. But it was becoming clear to Senator Ambrosio that a

supplemental appropriations bill was not going to include funds for Lyndhurst.

Realizing there would be no legislative remedy, Senator Ambrosio turned to the Senate Democratic staff. He talked to Ms. Crotty, Robert Noonan and Mr. Rousseau, asking them for any ideas on resolving the problem. During his five years in the Senate, Senator Ambrosio had found the staff to be particularly responsive to him. He trusted and relied on them. Toward the end of December, it was suggested to him that the Department of Community Affairs had funds available and had awarded grants to municipalities in financial difficulty and that perhaps such a grant could be obtained for Lyndhurst. Senator Ambrosio attributed this idea to the Senate staff though he is not certain whether Ms. Crotty or Mr. Rousseau thought of it. According to Senator Ambrosio he spoke "...to someone, be it Crotty, Dalton or Lynch, and was told 'that the procedure is in the works. They're going to try and see what they can do to make that happen'." Senator Ambrosio had no idea how it would happen. He claimed he was unaware at that point that the Executive Branch had any control over the money and, accordingly, he did not contact Department of Community Affairs Commissioner Melvin Primas or Mr. Salema. It was also suggested to the Senator, at some point, that he contact Speaker Doria and Assembly Majority Leader Bryant, because certain procedures required the Assembly to concur. Senator Ambrosio did speak to them to let them know that he was exploring ways of getting money for Lyndhurst. He wanted

them to be aware of it as it may be something that required Assembly approval.

Mr. Rousseau remembered having spoken to Senator Ambrosio when the latter was looking for a way to get Lyndhurst the money. Mr. Rousseau informed the Senator that the Governor's Office was preparing a supplemental appropriations bill for introduction during the lame duck session of the Legislature. He further advised Senator Ambrosio that any additional spending would have to be both initiated and agreed to by that Office. As Mr. Rousseau believed Mr. Crane was involved in drafting the legislation, it was suggested that the Senator talk to him. The Senator and Mr. Rousseau spoke several times over a period of weeks during which Senator Ambrosio inquired as to the status of the supplemental appropriations bill. Mr. Rousseau believed the Governor's Office was still "...working on it."

Ms. Crotty testified to a different recollection of events. Sometime subsequent to the election, she became aware that Senator Ambrosio was seeking additional funding for Lyndhurst. Ms. Crotty did not recall how she first learned of the Senator's desire; whether it was through direct contact with the Senator or through contact with the Governor's Office. Between the election and mid-December Ms. Crotty had a number of discussions with Senator Ambrosio about the issue. At the same time, prior to the lame duck session of the Legislature, Ms. Crotty was working with Mr. Crane on the Administration's supplemental appropriations bill. She discussed the possibility of including funds for

Lyndhurst within the legislation with Mr. Crane between November and mid-December, when she recollected the bill was introduced.

Ms. Crotty recalled that Senator Ambrosio felt that it was his obligation to endeavor to get the money that had been promised to Lyndhurst, because at that point the Township had a \$1.5 million hole in its budget. Ms. Crotty suggested to Senator Ambrosio that, in relation to the proposed legislation, "...he should discuss it with the Governor's Office." The Governor's Office, including Mr. Crane, was taking the lead on the bill by determining what items were going to be included, because the appropriations were to be primarily for state operations.

What Ms. Crotty apparently did not share with Senator Ambrosio were her discussions with Mr. Crane concerning the inclusion of a supplemental request for Lyndhurst in the legislation. From these discussions, Ms. Crotty had the impression that Mr. Crane was aware of a push to include Lyndhurst in the bill. Ms. Crotty did not remember ever being informed by anyone from the Governor's office that there should be some attempt to accommodate Senator Ambrosio's request and she was not actively attempting to get Lyndhurst additional funds. She was concerned about having bi-partisan support for the supplemental appropriations bill and believed that inclusion of dollars for Lyndhurst would destroy any chance of obtaining that support for the package.

The supplemental appropriations bill introduced in the Legislature did not include a provision for funds for Lyndhurst.

There was some interest in amending it prior to it being posted for a vote. Mr. Rousseau believed that Senator Ambrosio continued his efforts to amend the bill, however, there was no agreement and the bill was reported out of committee without a Lyndhurst amendment.

The Senate Democratic caucus would meet when there were bills posted for a vote. In the caucus, if a member was dissatisfied with a proposal, the matter could be raised for discussion. Any proposal to amend legislation could also be discussed within the caucus. Senator Ambrosio recalled raising the Lyndhurst issue in the Democratic caucus with the other Democratic Senators. Senator Ambrosio stated: "[a]s we would be raising issues, I would always raise Lyndhurst... I figured if I made a pest of myself, somebody would find a way to get this done." He "...literally went around begging for the money." Senator Ambrosio believed it was not going to help him politically since he had already lost the election. It would enable him to leave office knowing that he did all he could to help a town which he believed was put in jeopardy by the actions of someone he considered to be an "incompetent and duplicitous education commissioner."

On January 9, 1992, the supplemental appropriations bill was posted for a vote and it did not include any monies for Lyndhurst. Senator Ambrosio made one final attempt to have funds for Lyndhurst included in the legislation.

At some point prior to January 8, 1992, according to Mr. Rousseau, Senator Ambrosio requested the drafting of four amendments to the supplemental appropriations bill. Mr. Rousseau communicated this request to the Office of Legislative Services which, in turn, drafted the amendments and electronically mailed them to him, on January 9, 1992. It is unclear whether the proposed amendments were distributed to the Senators. Mr. Rousseau recalled that Senator Ambrosio was going to try to convince the Democratic Senate caucus to amend the bill, designated S-3600. To be successful Senator Ambrosio would need to convince his Democratic colleagues in the Senate to put the bill back for a second reading.

Senator Ambrosio spoke very passionately during the caucus on the Lyndhurst issue, according to Mr. Rousseau. The caucus was held in the early afternoon and ended no later than 3:00 p.m. When it was over, Mr. Rousseau believed the "game plan" was to add the amendment - that the caucus had agreed to support Senator Ambrosio.

On January 9, 1992, the Senate took a recess in the late afternoon, early evening. Mr. Rousseau believed there were still some bills on the agenda. During the recess and prior to the vote on the supplemental appropriations bill, Mr. Rousseau was informed, by either Senator Dalton or Mr. Crane, that there would be a proposed transfer of funds from the Department of Treasury to the Department of Community Affairs for the benefit of the Township of Lyndhurst. What Mr. Rousseau did not know was that

subsequent to the caucus, during a Senate recess, a meeting was held among Mr. Crane, Senator Dalton and Ms. Crotty.

Ms. Crotty related that she had been involved in a discussion with Mr. Crane, Senator Dalton and possibly Senator Lynch in an office that adjoined the Senate chamber. The participants decided they "...couldn't amend the supplemental bill and that some alternative would be explored." According to Ms. Crotty, "...there was an agreement that it was not feasible to amend..." the bill. It was January 9th. If the bill was amended it would have to be laid over. This would create problems in getting it enacted in both houses before the lame duck session ended on January 14, 1992. As pointed out by Ms. Crotty, there was a desire on the part of the Administration and the then Democratic majority to obtain bi-partisan support for the supplemental appropriations bill. It is also clear that the inclusion of funds for Lyndhurst at the urging of Senator Ambrosio would politicize the debate. The inclusion of such a proposal could be scrutinized by all 120 members of the Legislature. The transfer process presented a less volatile alternative. The number of legislators involved in the process immediately was reduced to the six members of the Joint Budget Oversight Committee. The leadership would have to convince only four members of the Committee to gain approval of a transfer and, by virtue of their majority status, four members belonged to the same party. Apparently, there was an "agreement" that the Executive Branch "...would try and find some other way to solve

Lyndhurst's problem." The source of the funding would not come from the Legislative Branch, but from the Executive. How this decision was to be implemented was not discussed at that time. Ms. Crotty was uncertain when she learned that the transfer had been completed; it could have been on the 13th or later that week. She was unfamiliar with Joint Budget Oversight Committee procedures and, thus, could not analyze the procedures employed.

The only representative of the Executive Branch of government present at this discussion was Mr. Crane. He did not indicate the decision was or had to be discussed with anyone else in the Executive Branch prior to its implementation. Ms. Crotty was not concerned with whether additional approvals were necessary in the Administration. When she walked out of the meeting she was satisfied there had been an agreement and the only remaining question was the source of the funds. Ms. Crotty stated that she did not take an active role in assisting Senator Ambrosio. Neither did anyone on her staff. After the meeting Ms. Crotty went about performing her duties; waiting to see if there would be a solution. She assumed that someone informed Senator Ambrosio of the decision but had no idea who that person would have been.

Mr. Rousseau learned of the change in plans when Senator Dalton and Mr. Crane approached him during the Senate recess. According to Mr. Rousseau, sometime between 5 and 6 p.m., Mr. Rousseau joined the two men in Senator Dalton's office, with possibly Assemblyman Bryant and Ms. Crotty. At this time either

Senator Dalton or Mr. Crane informed him they had worked-out what to do with Lyndhurst. Mr. Rousseau was told there was to be a transfer of \$1.5 million from a Treasury account to the Department of Community Affairs, after which the Department of Community Affairs would use its authority to give the money to Lyndhurst to replace the grant lost after Commissioner Ellis' rescission. There was no explanation provided to Mr. Rousseau as to why the transfer was going to be substituted for the amendments. Mr. Rousseau did not endeavor to explore that issue, for the decision was a matter of policy and it was not his role to question policy. There followed a discussion to the effect that before there could be an agreement, Senators Laurence Weiss and Walter Rand would need to be informed. Mr. Rousseau went on to the floor of the Senate and brought both Senators back to the office. Senator Weiss was the Chairman of both the Senate Appropriations Committee and the Joint Budget Oversight Committee. Assemblyman Bryant testified that he had nothing to do with or had no knowledge of the Lyndhurst matter.

According to Mr. Rousseau, once in the office either Senator Dalton or Mr. Crane explained that they were proposing that a transfer be made from Treasury to the Department of Community Affairs to provide a grant to Lyndhurst. Mr. Rousseau recalled that a representation was made by someone, whom he cannot remember, that Assemblymen Joseph Roberts and John Watson, the remaining Democratic members of Joint Budget Oversight Committee, agreed to sign off on the transfer, and that whoever was speaking

wanted to know if Senators Weiss and Rand would "...approve and sign off on the transfer." Mr. Rousseau remembered that both Senators Weiss and Rand responded that they would approve it. The Senators were informed of the "vote" of the Assemblymen, so they would know the transfer was being approved. Additionally, they were informed that the proposed transfer would come over the next morning. The questions being put to them were "...would they approve it, if it came over?" and "Will you sign off on this transfer?" As Mr. Rousseau described it, it was important that Senators Weiss and Rand be advised of the Democratic Assembly members' votes because if the Assembly members did not concur, there would be no reason to request the transfer, as sufficient votes would be lacking.

According to Mr. Rousseau, neither Senator Weiss nor Senator Rand made any inquiry into whether the Republican members of the Joint Budget Oversight Committee were informed of the request. As pointed out by Mr. Rousseau, at this juncture the Legislative Budget and Finance Officer had not even received a transfer request. Technically, there was nothing before the Committee. Additionally, there was no discussion as to when Assemblymen Watson and Roberts had been asked whether they would approve such a transfer.

Mr. Rousseau was not definite that Assemblyman Bryant was present during this meeting, though "something" in his mind gave him reason to believe the Assemblyman was present. The meeting with Senators Weiss and Rand lasted probably less than five

minutes. The entire discussion was no more than 15 - 20 minutes long. At some point in the meeting, Mr. Rousseau recalled that Ms. Crotty suggested that a telephone call be placed to the Office of Legislative Services, informing them that the transfer would be coming over.

Mr. Rousseau knew these types of transfers originate with a request by the Executive Branch of government, in accordance with the language of the annual appropriations act. During this brief meeting no one mentioned who was going to initiate the request on behalf of the Executive Branch. Mr. Rousseau believed it was Mr. Crane, since he was handling the supplemental appropriations bill and performing some work in Treasury at the time. Mr. Crane was to become acting Treasurer on January 10, 1992.

The supplemental appropriations bill was posted for a vote in the Senate at 5:56 p.m. on January 9, 1992. It passed with bi-partisan support, the final vote being 28 to six, with six not voting. It passed in the Assembly on January 10, 1992, by a vote of 42 to four, with 34 not voting. The Senate vote occurred after the meeting described above because if the transfer idea had proved unsuccessful, Mr. Rousseau believed Senator Ambrosio would have insisted on the amendments.

Ms. Crotty did not remember participating in the meeting described by Mr. Rousseau. Neither did she remember any conversations with Senators Weiss and Rand. Additionally, she did not recall any conversations with the Senators wherein they assented to the transfer. Her only conversations with Mr.

Rousseau were concerning the fact that the transfer request would have to be processed. These conversations occurred later on Thursday, January 9, 1992, or sometime Friday, January 10, 1992, which was in the same time frame in which she believed she learned that there was to be a transfer request. There was no discussion about effectuating the transfer without notifying the Republican members of the Joint Budget Oversight Committee.

It was common for members of the Senate Democratic partisan staff to contact the staff of the Office of Legislative Services. Ms. Crotty described a fairly standard practice of alerting Office of Legislative Services staff to events, discussions or meetings that were going to occur as a matter of courtesy in order to provide them with advance notice. While she did not recall suggesting to Mr. Rousseau that he should contact the Office of Legislative Services, she found that such contact would have been a very normal event in terms of the interaction of the staffs.

Senator Dalton, the Senate Majority leader in the 204th Legislature, had two primary responsibilities, to chair the Senate Democratic caucus and to serve as the spokesman for the Democratic Party with regard to major bills on the Senate floor. He recalled that Senator Ambrosio was concerned with obtaining funds for Lyndhurst. As described by Senator Dalton:

Senator Ambrosio was very, very interested in getting monies to the Town of Lyndhurst based upon representations that were made to him with regard to the Quality Education Act, and since the Quality Education Act didn't provide the monies that Senator Ambrosio felt

that the Town of Lyndhurst deserved and was promised, that he attempted to get those monies provided via a supplemental appropriation that was moving through the legislature at the time.

On the issue of the incorporation of the aid in the bill, Senator Dalton did not know when he learned that it was not a possibility, although it was Senator Ambrosio who informed him. Given Senator Dalton's leadership position, it is difficult to reconcile his assertions that he did not know of the proposed transfer before it was accomplished; that he did not recall how he learned that there would be an attempt to provide funds to Lyndhurst administratively; that he did not remember any discussion with any member of the Executive Branch, including Mr. Crane, with regard to Lyndhurst; and that he did not recall the meetings described by Ms. Crotty and Mr. Rousseau; particularly in the situation as it existed on January 9, 1992. Senator Dalton was confronted with the prospect that a key piece of legislation needed by the Administration might be amended, thereby creating the possibility that it might not get acted upon before the end of the session.

Senator Ambrosio also recalled that he had some contact with Mr. Crane. Senator Ambrosio was uncertain when this contact occurred, placing the time as somewhere between the last couple of weeks of December 1991, and the first two weeks of January 1992.

Senator Ambrosio believed the contact with Mr. Crane could well have been suggested by Senator Dalton. He recalled such a

suggestion would have been made, not because of Mr. Crane's role in the Governor's office, but, rather, because he had worked in the Senate for four years. Mr. Crane had been serving as the Budget and Finance Officer for the Senate Democratic staff when he was appointed the Governor's Deputy Chief of Staff in October 1990.

Senator Ambrosio recalled that his meeting with Mr. Crane took place in Mr. Crane's temporary office, because Mr. Crane, at that point, was not yet the Treasurer. Senator Ambrosio's recollection of the conversation was that it was very brief and that Mr. Crane knew he was there looking for money for Lyndhurst. Senator Ambrosio told Mr. Crane "... I'm looking for a way to reimburse Lyndhurst for the money that the education commissioner revoked, because Lyndhurst has a hole in its budget. I'm trying to do what I can to patch up that hole." Senator Ambrosio, while not recalling the details of Mr. Crane's response, understood Mr. Crane was giving him advice, which led him to believe a mechanism existed to do it and he should go back to the Senate staff and have them work on it. Senator Ambrosio did not then understand that obtaining the funds would be accomplished in the Executive Branch.

Senator Ambrosio considered Mr. Crane to be a friend. Senator Ambrosio believed if Mr. Crane had a way of helping him, he would try. They left with the understanding that Mr. Crane was going to do what he could and that he was not opposed to helping Senator Ambrosio.

According to Senator Ambrosio, subsequent to this conversation, he went back to the staff, most probably Ms. Crotty, and stated: "I spoke to Sam Crane. He tells me there is money in Community Affairs." Senator Ambrosio believed that the monies were already in the Department of Community Affairs. He further believed "...key members of the legislature had to approve the grant," but that was a routine matter. He never inquired as to procedures - Senator Ambrosio was only interested in the result.

In the waning days of the 204th session of the Legislature, Mr. Crane was handling the lame duck session on behalf of the Governor. Mr. Crane remembered that Senator Ambrosio called him to come over to the Legislature to talk about Lyndhurst. Further, Mr. Crane stated:

I remember somebody saying there is a problem, we got problems in the legislature in the lame duck session with bills. So I go over and try to figure out what it is I got to do. This was but one of all the problems that we had.

It was explained to Crane that "[t]hey wanted a resolution to the Lyndhurst municipal budget problem and could we be of assistance and help."

As a result of media reports, Mr. Crane was aware of a dispute between the Department of Education and both the School Board and Board of Commissioners in Lyndhurst concerning a Department Of Education grant. Supposedly, there was a \$1.5 million hole in the municipal budget. Mr. Crane stated he had never spoken with Mr. Salema about the Lyndhurst situation prior

to talking to Senator Ambrosio about the problem. Mr. Crane recalled that Senator Ambrosio spoke to him in the State House on the second floor, behind the Senate chamber, in late December, early January, during the Legislature's lame duck session. Senator Ambrosio was agitated and asked Mr. Crane what he "...could do about taking care of what was commonly called the 'Lyndhurst problem.'" Mr. Crane also had a recollection that the Legislature requested that he "...take some action to close the Lyndhurst budget."

When Senator Ambrosio inquired if there was something that could be done to resolve the problem, Mr. Crane responded by outlining two options:

1. The Department of Community Affairs, if it had any discretionary dollars, could provide assistance to the municipality so it could close its books.
2. If there was not sufficient funds available, because it was an emergency, money could be moved into an account that would allow the municipality to close its books.

During this meeting, Mr. Crane told Senator Ambrosio "...we would resolve the problem and that I would seek to resolve it. That if we had to move money that it would require the approval of the joint budget oversight committee via the transfer process." By these statements Mr. Crane meant that Lyndhurst would, in some way, receive the funds. From that point on, Mr. Crane claimed that he undertook the responsibility of solving the problem.

Mr. Crane also knew that Senator Ambrosio's request was supported by other members of the Senate. Mr. Crane believed

that Senator Lynch may have come in at some point and said: "Sam, can you help Senator Ambrosio out here?" Mr. Crane responded: "John, let me go see what I can do about the options."

Mr. Crane performed no independent inquiry in order to determine factually the circumstances surrounding the Lyndhurst budget problem represented to him by Senator Ambrosio, nor did he make any analysis as to whether a transfer of funds for the benefit of Lyndhurst constituted a worthy expenditure of State money. He knew that the actual approval for the transfer of money was a legislative function vested in the Joint Budget Oversight Committee which should make an analysis of the transfer before approval. His primary motivation appears to have been the preservation of the bi-partisan support for the supplemental appropriations bill. This was consistent with his position as Deputy Chief of Staff. Mr. Salema, on the other hand, testified he would have anticipated that an inquiry would be made into the circumstances prior to the making of a decision such as the one made by Mr. Crane in the Lyndhurst matter.

Mr. Crane believed he probably advised Mr. Salema that a transfer was being processed to take care of Lyndhurst. Mr. Crane pointed out that it would be common for him to inform Mr. Salema that there had been a problem and how he solved it. Mr. Crane did not talk to the Governor. Governor Florio stated he was not aware that funds were to be or had been transferred to Lyndhurst from the Department of Community Affairs until press

accounts criticizing the grant were brought to his attention. Mr. Crane did not remember talking to Commissioner Primas or anyone else at the Department of Community Affairs about the transfer, though he may have communicated it to Commissioner Primas. Mr. Crane's role was to figure out how to make the financial resources available. In terms of making the money available, Mr. Crane thought if he could resolve this problem through the transfer procedure, he would do it.

On December 3, 1992, Mr. Crane was interviewed by Charlotte K. Gaal, a staff counsel with the SCI, in connection with its investigation. During an approximately fifteen minute long interview, Mr. Crane was asked by Ms. Gaal who had initiated the transfer request. His response, as reported by Ms. Gaal, was "...he did not remember and did not have any information at all that would help us figure that out."

Mr. Crane was interviewed, and a sworn statement obtained, on May 25, 1993, during which the Treasurer provided very specific testimony as to his actions and decisions concerning the transfer of funds to the Department of Community Affairs, much of which has been set forth in this Report.

As there was a marked difference in Mr. Crane's recollection between the two interviews, an inquiry was made as to how he could be so specific. Mr. Crane responded that subsequent to the

SCI interview he had gone back and reviewed his recollection of "those days" and had "...thought through more closely."

From an analysis of all the facts and circumstances surrounding the alleged conversations of Senator Dalton, Mr. Crane, Ms. Crotty, Mr. Rousseau and Senator Ambrosio, it is most probable that the sequence of events which has been related by Mr. Crane, Mr. Rousseau and Ms. Crotty occurred during the afternoon of January 9, 1992. As Mr. Rousseau pointed out, at the conclusion of the caucus it appeared that the Senators had acquiesced to Senator Ambrosio's request to amend the bill on the floor to include aid to Lyndhurst. Ms. Crotty explained that such an amendment would have destroyed any hope for bi-partisan approval of the package. Based upon the available evidence, it can be concluded that the meeting of the Senate leadership resulted in Mr. Crane being contacted and ultimately appearing in the Senate in an attempt to resolve the issue. Prior to the meeting of Mr. Crane, Senator Dalton and Mr. Rousseau, Mr. Crane had met with, and discussed the available options with, Senator Ambrosio including an explanation of the option of resolving the Lyndhurst crisis administratively, subsequent to which the three met and at some point were joined by Senators Weiss and Rand. The final results of these meetings lead to two actions: An alert was passed along to the Office of Legislative Services of an impending transfer request; and the transfer process by the Department of Treasury was initiated.

The meeting of January 9, 1992, among Ms. Crotty, Senator Dalton and Mr. Crane resulted in a decision and determined a course of conduct. The decision, according to Mr. Crane, was made by him without consultation or analysis. The implementation of that decision required action by both the Executive and Legislative Branches of State government. The first step required the finding of available funds, a responsibility undertaken by Mr. Crane. He acknowledged taking steps to find the monies through a series of telephone calls. He was uncertain as to whom he called first - Richard Keevey, at the Office of Management and Budget, or Barry Skokowski at the Division of Local Government Services.

Mr. Crane tried to find out if Mr. Skokowski had any discretionary funds remaining. He knew he probably spoke to Mr. Keevey but he was not certain whether that was because he could not reach Mr. Skokowski or because Mr. Skokowski informed him he had no funds available. Mr. Keevey, as the Director of the Office of Management and Budget, would have known where available funds would be, as well as the amount.

Mr. Crane learned in some fashion there were no discretionary dollars available, so he asked Mr. Keevey if there was an account from which they could transfer funds to the Department of Community Affairs to solve the problem. Mr. Keevey, on the other hand, was not certain whether he spoke to Mr. Crane or Deputy Treasurer Nate Scovronick, but the information provided by Mr. Keevey corresponded to that related

by Mr. Crane. Mr. Scovronick had no recollection of participating in this matter at all. Mr. Keevey remembered he received a telephone call, during which he was advised there was a desire to make funds available to Lyndhurst and asked whether funds could be made available for that purpose as well as how that could be accomplished. Mr. Keevey knew there were funds available in several inter-departmental accounts, but the transfer of those funds would require Joint Budget Oversight Committee approval and advised the caller accordingly. As to his conversations with Mr. Keevey, Mr. Crane stated:

I think I said we have a municipal problem, a municipality can't close its budget, there's some controversy around it, we got to let them close, we got to move some money to DCA in order to permit that to happen.

Mr. Crane did not believe he talked to Commissioner Primas to apprise him of the decision he had made or the need for the Department of Community Affairs to implement it. At no time prior to his conversation with Mr. Keevey did Mr. Crane consult with any other member of the Administration.

After speaking to Mr. Keevey, Mr. Crane had no clear recollection of communicating to Senator Ambrosio that "...we did this, we did that." He may have gotten back to either Senator Ambrosio or a staff person. As Mr. Crane said: "I don't remember how I communicated back 'it was okay, we solved it.'" At least one staff member, Mr. Rousseau, was notified of the transfer.

Approximately 30 minutes to an hour after his meeting with Mr. Crane, Senator Dalton, Ms. Crotty, Senator Weiss and Senator Rand, Mr. Rousseau placed a telephone call to the Legislative Budget and Finance Office within the Office of Legislative Services. He spoke to Peter Lawrance, the Assistant Legislative Budget and Finance Officer. Mr. Rousseau informed Mr. Lawrance:

At some point tomorrow you will be receiving a transfer from OMB. Money will be moving from the Department of Treasury to DCA for Lyndhurst. Senator Weiss and Senator Rand signed off on the transfer. It is my understanding that the two Assembly Democratic members signed off on the transfer. You can get confirmation of that from their staff. The transfer should be processed based on their wishes.

He did not recall if Mr. Lawrance responded in any way, and did not remember whether Mr. Lawrance said he would seek confirmation from the Assembly staff. Mr. Rousseau may have informed Mr. Lawrance that, if signed ballots were required for this transfer, Mr. Lawrance should give them to him and he would get the signatures. While Mr. Rousseau knew that the topic of ballots was discussed with Mr. Lawrance at some point over the next several days, he was not certain when it was first raised.

Mr. Lawrance remembered speaking to Mr. Rousseau on January 9th, sometime after 5:00 p.m., possibly between six and seven o'clock. The conversation lasted probably less than a minute, during which he was advised to anticipate receiving a transfer document from the Office of Management and Budget. Mr. Rousseau mentioned it was a transfer for Lyndhurst though he was not more specific. From press reports, Mr. Lawrance knew there was a

problem in Lyndhurst related to education aid. Mr. Rousseau also informed him the transfer needed to be processed prior to the Joint Budget Oversight Committee being reorganized.

The fact Mr. Rousseau called to alert the Legislative Budget and Finance Office was not unusual. As Mr. Lawrance explained, if staff were aware of an impending transfer it would not be unusual for them to mention it as a "heads-up." While the more likely source of such calls would be the departments of State government, it could just as probably come from the Office of Management and Budget, Office of Legislative Services' staff, or partisan staff. Alerts by the partisan staff occurred several times a year, according to Mr. Lawrance.

Mr. Rousseau stated that he communicated to Mr. Lawrance that the transfer had been approved. Mr. Lawrance had no such recollection. At varying times, Mr. Lawrance stated that:

1. "We never discussed votes, period. It was not part of the conversation."
2. "I don't remember him saying" that the committee approved.
3. "When we discussed the transfer on Thursday night, I believe that the committee had not been polled, from what David said."
4. "With the clear recollection I have of that conversation on Thursday night, was to anticipate receiving the transfer. I may have [been] told other things. I've since forgotten."
5. "He may have, and I don't recollect him so instructing me that way."

Mr. Lawrance explained his confusion as follows:

To the extent he also was telling me....:
'This is how the vote is going to go, x, y,
or z is going to happen,' to be quite frank
with you, is not something that I would
remember, because what was relevant to me was
to obtain the document, to review it, to
prepare a memorandum for Mr. Silliphant,...
we would then have a document that would or
would not be approved.

Regardless of what was communicated to him by Mr. Rousseau, Mr. Lawrance was certain that he did not advise Gerald Silliphant, the Legislative Budget and Finance Officer, that there were four affirmative Democratic votes.

It is not the role of partisan staff to vote on behalf of members of the Committee. While any number of times partisan staff might represent how a member was going to vote, the only vote that matters is the one cast by the Committee member.

According to Mr. Lawrance, partisan staff would not alert the Office of Legislative Services of an anticipated transfer unless that staff member believed that it was likely to be approved. In that context, Mr. Lawrance believed Mr. Rousseau knew the votes were there to approve the transfer before he called.

After Mr. Rousseau's call on the evening of January 9th, Mr. Lawrance did not recollect contacting or attempting to speak to any member of the Committee, partisan staff or Mr. Silliphant about the impending transfer request. Knowing that the transfer related to the ongoing press reports concerning Lyndhurst, Mr. Lawrance attempted to contact John White, the education analyst

with the Office of Legislative Services' Central Management Unit. Mr. White proved unavailable and Mr. Lawrance spoke to Dennis Smeltzer, who staffed the Commission on Business Efficiency in the Public Schools. Mr. Lawrance asked Mr. Smeltzer if he had any materials on Lyndhurst and, if so, to send them over. Mr. Lawrance planned to make use of them in the Legislative Budget and Finance Office's analysis of the proposed transfer. By 9:00 p.m., Mr. Smeltzer had hand-delivered to Mr. Lawrance a copy of Commissioner Ellis' November 1991, memorandum to the State Board of Education. The next day, according to Mr. Lawrance, the Office of Legislative Services received the transfer request from the Office of Management and Budget.

After the transfer directive was referred to Mr. Keevey, he took the necessary steps for transmittal of the request to the Office of Legislative Services. He was aware that the matter needed to be expedited. Inter-departmental transfers were conducted by the Assistant Director for Budget, Michael Ferrara. The responsibility of preparing the Transfer of Appropriation form and the two page justification fell to Mr. Ferrara at Mr. Keevey's direction. Mr. Keevey and Mr. Ferrara discussed the information that would be included on the forms. The two men knew that they were transferring money to a state-aid account in order to provide aid to a municipality. As explained by Mr. Keevey, state aid to a municipality can be used to accomplish two things: to reduce taxes or to maintain services. The Information Supplement was completed based upon this conclusion,

with the above information appearing under III. Spending Account Information. The Supplement further specified the funds would be moving to a new account. The Transfer of Appropriation form, Number 932179, was completed and signed by Mr. Ferrara, at Mr. Keevey's direction, on January 10, 1992.

Having reviewed the documents, Mr. Keevey believed the transfer was hand-carried to and from the Office of Legislative Services, which was not unusual. By January 15, 1992, the Transfer of Appropriation Request form, now bearing Mr. Silliphant's signature, was returned and stamped as received by the Office of Management and Budget's Accounting Bureau. The transfer was also entered on the Office of Management and Budget computer system, resulting in the funds being made available for disbursement. Additionally, the Department of Community Affairs was notified that the funds were available.

Mr. Keevey explained a check can be "cut" as soon as the account is operational. Normally, it would take three to five days for a check to be processed through the system. Many times the Office of Management and Budget would "cut" extraordinary checks on a requested basis, particularly in the area of state aid. The Office of Management and Budget received a State of New Jersey Invoice, dated January 15, 1992, signed by John Hartman, the Chief Fiscal Officer of the Department of Community Affairs, requesting the issuance of a check, in the amount of \$1.5 million, payable to the Township of Lyndhurst. A check, number 4A534112, dated January 15, 1992, was issued by the Department of

Treasury, payable to Lyndhurst, and delivered to the Department of Community Affairs. An examination of the invoice submitted by Mr. Hartman contained a handwritten notation requesting that the check be held for Mr. Hartman.

The Transfer of Appropriation form also required an identification not only of the source account but also of the spending account. It is not necessary that the account actually exist before the transfer is proposed. The responsibility for ensuring that an account existed into which the requested funds could be transferred rested with the Office of Management and Budget section that handled Department of Community Affairs fiscal matters, supervised by Robert Goertz. Mr. Goertz believed that Mr. Ferrara contacted Frank Haines of his unit and requested that an account be set up to receive the transfer. One of the mechanisms by which an account can be created is through the submission of an Agency Request form, also known as an AR2. In the instant transfer the destination of the funds was a new account identified as 8030-150-047100. The decision to utilize a new account was not unusual because the Office of Management and Budget knew it was providing aid to a municipality as a direct grant and not under an existing program.

THE ROLE OF THE JOINT BUDGET OVERSIGHT COMMITTEE AND
THE OFFICE OF LEGISLATIVE SERVICES

The ultimate approval of the proposed transfer rested with the Joint Budget Oversight Committee. The Committee was created pursuant to a Joint Rule of the Senate and General Assembly, Joint Rule 30, as an administrative committee of the Legislature. The Committee was the successor to the Joint Appropriations Committee's subcommittee on claims and, as is germane to this Report, its purpose is to carry out the duties and exercise the authority of the Transfers Subcommittee concerning the review of transfers as prescribed in the annual appropriations act. Joint Rule 30 also provides that:

The Committee may adopt rules for its operation and conduct of its business... as it may determine from among its members, except that any matter properly before the committee shall require the affirmative vote of at least four of its members. (emphasis added.)

The Committee is composed of six members, three appointed from each House by the President of the Senate and the Speaker of the Assembly. Bi-partisan representation on the Committee is assured by the Rule's directive that "...no more than two of three members from each House shall be of the same party." The Secretary to the Committee is the Legislative Budget and Finance Officer, an employee of the Office of Legislative Services. Between December 1991, and January 14, 1992, Senators Weiss and Rand, and Assemblymen Joseph Roberts and John Watson were the majority members of the Committee. The minority members were

Senator John Ewing and Assemblyman Rodney Frelinghuysen.

The Legislature has included a delegation of authority to the Joint Budget Oversight Committee in the annual appropriations bills. In the annual appropriations act for fiscal year 1991-92 this delegation is included in the "General Fund Provisions." Subsection (b) directs, in pertinent part:

Transfers submitted for legislative approval pursuant to paragraph (5) of subsection a. of this section shall be made only if approved by the Legislative Budget and Finance Officer at the direction of the committee.

Paragraph 5 of subsection a. describes a class of transfers that the Director of the Division of Budget and Accounting, within the Treasury, must submit to the Legislative Budget and Finance Office for legislative approval or disapproval. Specifically, Paragraph 5 identifies those as:

[r]equests for the transfer of State funds, in amounts greater than \$8,000, between items of appropriation in different departments or between items of appropriation in different appropriation classifications herein entitled as Direct State Services, Grants-in-Aid, State Aid, Capital Construction and Debt Service.

In accordance with this provision, the transfer of funds for Lyndhurst required Joint Budget Oversight Committee approval.

Of all the individuals interviewed during this investigation Senator Ewing most succinctly described the Joint Budget Oversight Committee's function, when he observed that the Committee's role is to "...oversee the question whether transfers were being made... in the best interests of the State and the people." The Legislature having clearly and specifically stated:

the authority and responsibility delegated to the Joint Budget Oversight Committee, the investigation examined the procedures employed by the Committee in the discharge of its duties.

There are no formal rules detailing the operations of the Committee. Rather, the Committee's procedures have developed over time as a matter of practice and custom. The only memorialization of the Committee's rules uncovered during the investigation is contained in a January 18, 1990, memorandum prepared by Mr. Silliphant. The memorandum, addressed to Senator Weiss and Assemblyman Watson, as Chairman of the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee, respectively, states, in pertinent part:

Incident to the beginning of a Legislative session, I would like to discuss with you, at your convenience, the activities and procedures of the Joint Budget Oversight Committee (JBOC).

First, of course, I need to have a listing of the members of the JBOC so that mailings can be forwarded properly. In addition, I would like to have your direction on the procedures of JBOC particularly with reference to the processing of requests for transfers of appropriations. In accordance with current practice, I forward transfers to JBOC as required by Section 10 of the FY 1990 Appropriations Act. These transfers are accompanied with analyses thereof, a recommendation for action and a cutoff date for response back to me by JBOC in the absence of which I will take the action I have recommended.

In addition to those transfers which must be sent to JBOC per the Appropriations Act, I also refer transfers which, in my judgment, should be brought to your attention because

of dollar amount, program implications, deviation from legislative intent, etc.

* * * *

I believe that the processing of transfers of appropriation as outlined above has been successful and productive, has resulted in prompt action and has focused JBOC attention on the major issues raised by certain transfers to the exclusion of those which can be classified as routine.

I am prepared to continue these procedures unless directed by you to the contrary. In the meantime, however, I would welcome the opportunity to discuss this matter with you and other issues relating to JBOC.

The practice of the Committee was designed to ensure that each member had an opportunity to review every transfer that required its approval. The materials provided were designed to allow the membership to answer the following questions:

1. Was the transfer being processed properly by the Administration?
2. Were there monies available in the source account and the effect on that account?
3. Was the purpose for which the funds were to be used appropriate?

These materials included the Transfer of Appropriation form and the two page Information Supplement, both completed by the Office of Management and Budget. These were mailed or faxed to the members, along with a cover memorandum prepared for the Legislative Budget and Finance Officer's signature by his staff. Copies of these materials and the memorandum were also provided to the four partisan staff members who staffed the Joint Budget

Oversight Committee. Generally the staff received the material by interoffice mail, though on occasion they were hand delivered.

The memoranda provided to the members and staff essentially analyzed the proposed transfer, including its impact. This was done to ensure that the members possessed sufficient information to understand the proposal and make a decision. The vast majority of the memoranda submitted to the Committee would include a recommendation by the Legislative Budget and Finance Officer that the Committee approve or disapprove the subject transfer. In those situations, the Legislative Budget and Finance Officer would close with language to the effect: If I do not hear from you by a specific date (ordinarily within 10 days) I will consider your lack of response as signifying a concurrence in the recommended action and will proceed accordingly.

In a small percentage of proposed transfers that required Joint Budget Oversight Committee action, the Legislative Budget and Finance Officer would not make a recommendation, but would seek specific direction from the Committee members. This situation generally arose if the transfer concerned a question of public policy, an unusual purpose, or because of the nature of the funds to be transferred. Attached to the Legislative Budget and Finance Officer's memorandum in those cases, in addition to the Office of Management and Budget documents, would be a ballot for the member's vote which was to be executed and signed by the member prior to its return to the Legislative Budget and Finance

Office. As most of the proposed transfers were routine, ballots were not normally provided to the members.

As the memoranda sent to the members dealt with that class of transfer requests which required Joint Budget Oversight Committee approval, there were occasions when members would seek to delay the process or obtain additional information they believed necessary for a complete evaluation of the request. The members could seek the additional information from their respective partisan staffs or from the Office of Legislative Services. They would also contact the Legislative Budget and Finance Officer and ask him to hold up the particular transfer pending the receipt of more information.

In the event a member believed a proposed transfer should be disapproved, there were options available:

1. The member could contact the Chair and request that the Committee hold a hearing. The decision to convene the Committee was solely within the Chair's discretion.
2. The member could contact the other members of the Committee and attempt to convince them to vote for or against on the issue.
3. The member could communicate his position to the Legislative Budget and Finance Officer.

It was not unusual for partisan staff to contact a member, ascertain his vote and report the results to Mr. Silliphant. Several of the scenarios during which this would occur were explained by Committee members and partisan staff:

1. Where time was of the essence; normally at the close of the fiscal year, or where an emergent situation existed that gave rise to the request.

2. Where the member held up a transfer pending receipt of additional information.
3. Where the Legislative Budget and Finance Officer had forwarded ballots to members and the time period was about to expire.
4. Where a member of the Committee asked for a vote.

The vote would be retained by Mr. Silliphant as Secretary to the Committee. Several staff members noted that these situations could only arise after the members were given written notice of a proposed transfer. There is, as will be discussed infra, a general conflict among the members and their staff, as to who conducted any polling that might have taken place. Finally, on the issue of the existence of ballots, the members and Committee staff are at odds with Mr. Silliphant's representation that ballots were provided with every transfer request. (For example, Mr. Rousseau does not recall a single ballot during 1990 and 1991.)

The two things everybody agreed upon are the concept of notice and a right to participate. The Joint Budget Oversight Committee acts in the place of the full Legislature. During the 204th Legislative, there was no other way that a member would be apprised of an impending transfer but by the memorandum, as noted by Mary Messenger, the Assembly Democratic Director of Budget and Fiscal Analysis. The right to be notified did not depend upon the member's status as majority or minority. Every member had a right to vote on every transfer brought before them.

As is obvious from the procedures described above, the clearing house for the information provided to the members of the Joint Budget Oversight Committee was the Legislative Budget and Finance Officer of the Office of Legislative Services. The Office of Legislative Services was established, pursuant to the Legislative Services Law of 1978, N.J.S.A. 52:11-54 et seq., to assist the Legislature in the execution of its duties. The Office was designed to be a non-partisan agency of the Legislature. Over the years legislators have come to rely heavily on it. The legislation also created the position of Legislative Budget and Finance Officer. (N.J.S.A. 52:11-67.) The Legislative Budget and Finance Officer is to serve as the chief fiscal officer of the Legislature and the duties attendant to that office were enumerated both generally, as a member of the Office of Legislative Services, N.J.S.A. 52:11-58, and specifically, as set forth in N.J.S.A. 52:11-68.

Beyond a general duty to provide non-partisan staff to legislative committees, such as the Joint Budget Oversight Committee, there is a duty to:

...collect, prepare and disseminate to the Legislature, its officers, committees, commissions, members and staff, such information, reports, publications and documents as shall be of concern or interest to or have an impact upon the Legislature or the legislative process. N.J.S.A. 52:11-58b(4).

Additionally, the specific duties of the Legislative Budget and Finance Officer require that he:

- a. At the request of the Legislature or any member thereof, collect and assemble factual information relating to the fiscal affairs of the State;
- b. At the request of the Legislature or any member thereof, examine requests for appropriations and receive and investigate the truth, fairness and correctness of all claims against the State for payment of which appropriations are to be requested;
- c. Report to the Legislature through the Joint Appropriations Committee, or in such other manner as shall be directed by the Legislature, upon the foregoing and as to any other matter which may be of assistance to said committee or the Legislature in forming an independent judgment in the determination of any fiscal matters before it and attend upon the Joint Appropriations Committee during its sittings and hearings and perform such services for it as it shall direct;
- d. Provide the Legislature with expenditure information and, upon request, performance analysis of programs and transactions.
N.J.S.A. 52:11-68.

As previously noted, the Legislature, in the annual appropriations act, has delegated certain authority to the Legislative Budget and Finance Officer in connection with the transfer process. Finally, during the time period between December 1, 1991, and January 20, 1992, secretarial and clerical assistance was provided to Mr. Silliphant and Mr. Lawrance by Gloria Hendrickson and Linda Johnson and there was established within the Office certain procedures with respect to the handling of transfer of appropriation requests.

When first received from the Office of Management and Budget, all transfer requests were to be date and time-stamped. A corresponding entry would be made in the transfer log which was a document established in the Office's computer system. The initial log entry would also include the four digit account identifier number as well as the Transfer of Appropriation document number. While this was a responsibility generally assigned to Ms. Johnson, it was not unusual for someone else to perform these tasks. A cover sheet would then be attached to the transfer document, forwarding the material to an analyst in the Office of Legislative Services' Central Management Unit, who would be responsible for monitoring the source account. This action would also be entered into the log. The analyst was given two weeks to complete his or her review and return the cover sheet and attached documents to the Legislative Budget and Finance Office.

The cover sheet can be described as a mechanism to raise certain questions about the source account, the spending account and the intended use of the funds. It is a standardized document that assists in tracking and recording of the Office of Legislative Services' actions. There are also blocks at the bottom of the form for the analyst to indicate whether the transfer is recommended for approval and/or requires Joint Budget Oversight Committee approval.

Upon receipt of the materials, the analyst was to review the request and determine whether the transfer should be granted. If

the analyst determined the transfer required Joint Budget Oversight Committee approval, it was the analyst's responsibility to draft a memorandum, under Mr. Silliphant's signature, summarizing the transfer, its impact and a recommendation of approval or rejection. This memorandum, the cover sheet and the transfer documents would then be returned to the Legislative Budget and Finance Office, where its receipt would be noted in the log. Ms. Johnson was responsible for all entries in the log. The entire packet of materials would be forwarded to Mr. Silliphant, or, in his absence, to Mr. Lawrance.

Mr. Silliphant or Mr. Lawrance would review the memorandum, and, if there was no need for corrections or additional information, they would direct Ms. Johnson to notify the members of the Committee and the partisan staff. Ms. Johnson, in turn, would prepare copies of the materials for distribution, notifying the six members of the Committee, the partisan staff and Mr. Keevey at the Office of Management and Budget. It is these materials that constitute the official notification to the members of the Committee that there was a matter before the Committee requiring a vote. The originals would be maintained by Ms. Johnson in a file. She would make an entry in the log and on her calendar, both noting the transfer's due date.

The originals would be pulled from the file by Ms. Johnson on the due date and delivered to the Legislative Budget and Finance Officer. She said she would tell the Legislative Budget

and Finance Officer: "These are the ones due today," or "[t]hese are the ones we haven't gotten a response back."

Once the original Transfer of Appropriation form was executed, it was to be returned to Ms. Johnson, who, in turn, logged it out on the computer, made a copy for her file and mailed the original form to the Office of Management and Budget. The documents would not be mailed if she was informed that someone would pick them up. Ms. Johnson stated that she would put a note on the file if she were advised that anyone was interested in a transfer or if it was to be expedited. The Legislative Budget and Finance Office copy of the transfer along with the cover sheet, as well as any ballots and memoranda, would be filed with the other current year transfers. At the end of the calendar year, Ms. Johnson boxed up the transfers and sent them to storage. If she ever needed to retrieve a particular transfer, Ms. Johnson would ask that the box be returned from storage.

Mr. Lawrance stated the files of the Legislative Budget and Finance Office "...are not as vigorously maintained as a highly compulsive person would like," because, once the transfer is approved and returned, the Legislature is finished with the matter. These comments are surprising in light of Ms. Johnson's representation that a copy of all the documents related to a transfer are retained and filed by document number.

Prior to being interviewed, Ms. Johnson had the box which should have contained the Lyndhurst transfer file retrieved from

storage. In searching for the necessary materials she discovered that the box had been "messed up" and the documents related to the Transfer of Appropriation Number 932179 were missing, including the transfer request form which should have contained the date-stamp. Before the box could be returned to storage, Ms. Johnson had to place all the materials back in their proper order.

A request was made of the Office of Legislative Services to search for the copy of the Transfer of Appropriation form, document number 932179, based upon Ms. Johnson's statement. On July 21, 1993, the Office of Legislative Services provided a copy of the July 20, 1993, memorandum of Alan R. Kooney, Legislative Budget and Finance Officer, to Albert Porrioni, Executive Director of the Office of Legislative Services. This memorandum memorialized the effort by the Legislative Budget and Finance Office staff to locate the document without success. It further noted that the search included a review of active and inactive transfer files as well as discussions with Office of Legislative Services staff analysts.

The Office of Management and Budget was contacted to ascertain whether the Legislative Budget and Finance Office's copy of the document had been returned to the Office of Management and Budget. Mr. Keevey stated that the Office of Management and Budget did not have the Legislative Budget and Finance Office's copy of the transfer. He further stated that

the copy of the Transfer of Appropriation form on file within the Office of Management and Budget bears no date-stamp.

The processing time for a transfer that requires Joint Budget Oversight Committee action was approximately 30 days from receipt by the Office of Legislative Services to return to the Office of Management and Budget. The shortest time has been a single day, which only occurs once or twice a year. Mr. Lawrance's clearest recollection was that the Transfer of Appropriation documents were hand-delivered by an Office of Management and Budget employee on the morning of Friday, January 10, 1992. Mr. Lawrance found the documents on his chair and believed he was the first person in the Office of Legislative Services to see the request. He conducted a routine review of the documents: checking to see that the proper signatures were on them; whether the Information Supplement was attached; and to determine if it was a transfer request that required Joint Budget Oversight Committee approval. Mr. Lawrance did not remember whether he took any steps to ensure that the transfer was date-stamped or logged into the computer. A review of the log with Ms. Johnson established that this request was not logged in on January 10, 1992.

Mr. Lawrance did not refer the matter to an analyst in the Central Management Unit as procedures would have indicated. Rather, he proceeded to draft a memorandum to the Joint Budget Oversight Committee incorporating the Office of Management and Budget's justification for the transfer and indicating why it had

to be submitted to the Committee. The drafting required him simply to take an old Joint Budget Oversight Committee memorandum and make some edits to it. Notwithstanding this essentially amounted to a cut and paste, Mr. Lawrance maintained that an analysis of the materials was performed. He recalled that included in the draft memorandum was reference to the reason the transfer was needed. He further testified that "...anything that was particularly relevant..." in the education materials received from Mr. Smeltzer the night before "...could be extracted and included in the transfer document." Prior to the preparation of the memorandum, Mr. Lawrance testified he had no opportunity to discuss the matter with Mr. Silliphant. The original draft of the document was created and dated on January 10, 1992. This was confirmed through an examination of the DOCUMENT SUMMARY, identified as Transfer Document #932179(DCA), which was created by the computer when the document was first typed on the system. The original draft no longer exists as it was edited on January 13, 1992, as will be discussed infra. The last paragraph of the original draft, as described by Mr. Lawrance, consisted of a standard closing paragraph, that read as follows:

Attached please find a copy of the Department of Community Affairs transfer identified with the attached information supplement prepared by the OMB, which provided background information. Also attached is a ballot for your use.

When Ms. Hendrickson finished typing the draft, Mr. Lawrance believed he put it in Mr. Silliphant's IN basket for review, signature or whatever action Mr. Silliphant wanted to take. Mr.

Lawrance stated the document could have been placed on Mr. Silliphant's chair and ballots may or may not have been attached.

Copies of what purported to be the first ballots drafted on or about January 10, 1992, by Ms. Hendrickson at Mr. Lawrance's direction were obtained. There were six ballots, each addressed to a member of the Committee. Each ballot was identified as "TRANSFER OF FUNDS DOCUMENT NO. 932179 - AID TO LYNDHURST - \$1.5 MILLION." The body of the ballot read: "Please record my vote as indicated for this transfer item." Below this language appeared the words: "yes," "no" and "abstain" with a line beside each word for the member to check. The bottom of the ballot contained signature and date lines.

The original draft memorandum and ballots were superceded by a second set of materials that were typed early on Monday, January 13th. Late in the day on Friday, January 10th, after Mr. Lawrance left the draft for Mr. Silliphant's review, Mr. Lawrance reported that he found the materials, with a note from Mr. Silliphant, on his chair in his office. The note indicated that the draft needed more information and a recommendation from the Legislative Budget and Finance Officer. Mr. Lawrance did not discuss this note with Mr. Silliphant on Friday, but did speak to an individual whose identity he did not recall in the Office of Legislative Services' revenue section in an attempt to gather more information.

On Saturday evening, January 11, 1992, Mr. Silliphant held a post holiday gathering at his home. Mr. Lawrance had an

opportunity to speak briefly with Mr. Silliphant with respect to the latter's note. According to Mr. Lawrance, Mr. Silliphant said that he would like the memorandum to elaborate more on the facts and provide a recommendation. Mr. Lawrance did not recall Mr. Silliphant providing any direction as to what the recommendation should be. At the time that Mr. Lawrance and Mr. Silliphant spoke, Mr. Lawrance recalled no indication from Mr. Silliphant that he had been in contact with anyone with respect to this transfer. He also recalled no indication that the Joint Budget Oversight Committee had already acted on the transfer request.

Mr. Lawrance's best recollection was he went into the office on Sunday, wrote out a new draft in longhand and left it for Ms. Hendrickson, who typed the document when she arrived Monday morning. Mr. Lawrance did not believe Ms. Hendrickson had finished typing the new draft by the time he arrived on Monday. He could not recall the precise time it was finished, though he stated that it was probably before 10:00 a.m.

The new draft, dated January 13, 1992, recommended the Lyndhurst transfer be approved by the Committee as a loan. The new draft contained both more information and a Legislative Budget and Finance Officer recommendation. The additional information appeared as a new third and fourth sentence in the first paragraph, which read:

The tax rates in Lyndhurst had anticipated more school aid than was actually provided. This transfer would provide the funding that

Lyndhurst was led to believe it would receive from the FY 1992 Appropriation Act.

The loan recommendation was described in a new third paragraph, which pointed out the similarity between the instant request and a transfer to Hoboken in the Spring of 1991, by stating:

Last Spring, the Joint Budget Oversight Committee approved a transfer to the City of Hoboken. At that time, the committee directed that the funds be repaid. Therefore, as was done with the Hoboken transfer, I am recommending that this transfer be approved as a loan.

New ballots were also created to accompany this loan recommendation. They were created on Monday, the 13th, again by Ms. Hendrickson, at Mr. Lawrance's direction. The title of the item was reduced to an identification of the document number. The body of the ballot was expanded to include the line: "Yes, as a loan."

There was a difference to Lyndhurst between receiving the Department of Community Affairs' funds as a grant or a loan. A grant of state aid need not be repaid. If the Department of Community Affairs funds were a loan, the infusion of funds would provide the Township with a temporary benefit that would only delay the point at which it would have to either raise taxes or cut services.

Mr. Silliphant recalled that he and Mr. Lawrance did speak on Thursday afternoon about a conversation the latter had with Mr. Rousseau. Mr. Silliphant was informed that Mr. Rousseau had telephoned to say that a transfer of appropriation request involving Lyndhurst would be forwarded to the Legislative Budget

and Finance Office and it should be expedited. Mr. Silliphant was told that the purpose of the transfer was related to a miscalculation of school aid.

Mr. Silliphant stated that he mentioned to Mr. Lawrance his concern that a partisan staff member had contacted his assistant instead of himself. Mr. Silliphant did not like such contact: It had become a "...habitual form communication." Mr. Silliphant agreed with Mr. Lawrance's recollection that there was no discussion that the Democratic members of the Committee either were already aware of the transfer or that those members had indicated they would approve it.

According to Mr. Silliphant, he first saw the transfer request documents signed by Mr. Keevey, on the afternoon of January 10, 1992, when Mr. Lawrance brought them into his office. The following was Mr. Silliphant's recollection of the exchange between Mr. Lawrance and himself:

Mr. Lawrance: Here's the Lyndhurst transfer that I spoke to you about yesterday.

Mr. Silliphant: What is it all about?

Mr. Lawrance: It had to do with a miscalculation of school aid for Lyndhurst.

Mr. Silliphant: You seem to know so much about it, why don't you handle it?

As explained by Mr. Silliphant, his direction to Mr. Lawrance to "handle it" meant to prepare the Joint Budget Oversight Committee transmittal memorandum, as the proposed transfer could only be approved by the Joint Budget Oversight Committee. The only other comment Mr. Silliphant recalled making during this conversation

was that the proposal looked similar to a transfer some months before involving the City of Hoboken which had been approved as a loan. Two reasons seemed to exist for the decision not to refer this request to the Central Management Unit. Mr. Silliphant knew that the matter was to be expedited and Mr. Lawrance seemed to possess background knowledge concerning the transfer.

Mr. Silliphant had no recollection of seeing a draft memorandum on Friday, the 10th. Further, he had no recollection of having left notes for Mr. Lawrance on the 10th, although, when advised of the scenario described by Mr. Lawrance, Mr. Silliphant said it could be possible. He did, however, recall reviewing a draft memorandum on the morning of the 13th - the two page draft of the loan proposal. Mr. Silliphant did not recall reviewing the ballots. Finally, Mr. Silliphant had no recollection of speaking with Mr. Lawrance about the draft after he reviewed it. Mr. Lawrance, however, did not believe that Mr. Silliphant saw the loan proposal on the 13th..

Sometime before 9:30 a.m., on January 13th, Mr. Rousseau telephoned Mr. Lawrance to find out if the transfer had been completed, because of inquiries he had received. While Mr. Rousseau did not recall the specific individuals who had made the inquiries, he believed it may have included someone associated with the Administration. Mr. Rousseau inquired if the transmittal memorandum was ready and, if so, could he have a copy of the Senate ballots so he could obtain the signatures of the Democratic Senators. Either Mr. Lawrance or Mr. Rousseau raised

the possibility of having Senator Weiss speak to Mr. Silliphant about the transfer.

At the conclusion of his conversation with Mr. Lawrance, and some time prior to 10:00 a.m., Mr. Rousseau stated that he either called Senator Weiss, or went to his office to ask him to contact Mr. Silliphant and ascertain why the transfer had not yet been processed. He testified that he reminded Senator Weiss of the particulars of the transfer.

Less than five minutes after his conversation with Mr. Rousseau, while on his way to the restroom, Mr. Lawrance saw Senator Weiss walking through the rotunda on his way to the Legislative Budget and Finance Office. Mr. Lawrance escorted Senator Weiss to Mr. Silliphant's office, during which he said that he hoped the Senator and Mr. Silliphant would discuss the Lyndhurst transfer. Mr. Lawrance did not remember that the Senator responded to this comment about Lyndhurst in any way. From the timing, Mr. Lawrance did not believe that enough time had elapsed between his conversation with Mr. Rousseau and meeting Senator Weiss for it to be probable that Mr. Rousseau had spoken with Senator Weiss. Mr. Lawrance left the Senator at the vestibule, where the latter was met by Ms. Hendrickson. When Mr. Lawrance returned to his office he observed that Senator Weiss was in Mr. Silliphant's office. He also observed that Ms. Hendrickson had finished typing the second draft of the memorandum, which she had placed on the corner of her desk.

Notwithstanding the fact that the transfer needed to be expedited, Mr. Lawrance stated he did nothing with the document, even though Senator Weiss was still in Mr. Silliphant's office. Mr. Lawrance waited to talk to Mr. Silliphant and when that opportunity arrived he learned from Mr. Silliphant that the memorandum was no longer necessary.

The meeting in Mr. Silliphant's office lasted between 45 minutes and one hour. Mr. Silliphant was satisfied that he had received the draft of the loan memorandum before the Senator arrived. According to Mr. Silliphant, up until the point when Senator Weiss walked into his office, it had never been represented to him that a majority of the members of the Joint Budget Oversight Committee had either approved the transfer, signified their inclination to approve it, or even knew that the transfer had been initiated.

Mr. Silliphant said most of the conversation amounted to reminiscing about the past and Senator Weiss' plans for the future. Just prior to leaving, Senator Weiss, according to Mr. Silliphant, informed him that he did not want anything which had been initiated during his term carried over, if possible. In particular the Senator stated there was a transfer to Lyndhurst that he would like approved. Mr. Silliphant was unable to recall the Senator's specific words, but to the best of his recollection the Senator used the following or similar words:

I had been in touch with or touched base with the other majority members of the committee, so I would like that approved.

Mr. Silliphant did not ask the Senator any questions on the issue, because, based upon this statement, he believed that Senator Weiss had spoken to the other three Democratic members of the Committee about the transfer and they wanted it approved. Mr. Silliphant did not broach the subject of treating the proposed transfer as a loan.

While Senator Weiss' exact words are not known, Mr. Silliphant was certain that the words signified the agreement or concurrence of the majority members. Accordingly, he signed the Transfer of Appropriation form as the Legislative Budget and Finance Officer. It was dated the 13th of January, 1992. According to Mr. Silliphant, he had no reason to doubt what Senator Weiss was telling him, as he trusted him. Senator Weiss was a respected member of the Senate and many members, both majority and minority, regarded him as honorable and forthright.

Subsequent to Mr. Silliphant's meeting with Senator Weiss, Mr. Lawrance had an opportunity to speak with Mr. Silliphant in his office as to how to proceed with the Lyndhurst transfer. Mr. Lawrance learned from Mr. Silliphant that he no longer needed to worry about the transfer. When Mr. Silliphant advised him that the transfer had been approved, Mr. Lawrance inquired as to any changes that were necessary in the Joint Budget Oversight Committee transmittal memorandum. There was a discussion initiated by Mr. Lawrance as to providing ballots to the members. Mr. Silliphant responded that these things were not necessary. Mr. Silliphant never told Mr. Lawrance why this was the case.

When he read the transmittal memorandum that resulted from the edits that Mr. Silliphant provided to Ms. Hendrickson, the reason became obvious to him. The language to which Mr. Lawrance was referring is contained in the last paragraph of the memorandum, which read:

At the direction of Chairman Weiss with the concurrence of Senator Rand, Assemblyman Watson and Assemblyman Roberts, the transfer has been approved as of this date. If you have any questions on this, please contact me.

The edited document, essentially Mr. Lawrance's first draft of Friday, the 10th, with the addition of a new final paragraph, was signed by Mr. Silliphant during the afternoon of January 13, 1992. It was then given to his secretary with instructions to mail it out to the members and have it hand-delivered to the partisan staff. When shown a copy of the January 13, 1992, memorandum from Mr. Silliphant to the members of the Committee, Mr. Lawrance identified the first three paragraphs as being his work product.

The various forms of the memoranda prepared by Mr. Lawrance for Mr. Silliphant were designed to communicate to the members of the Committee the nature and purpose of the transfer and to make a recommendation from a non-partisan source to the Committee that the transfer be treated as a loan. Notwithstanding his belief that the Committee should consider treating this transfer as a loan, Mr. Silliphant failed to communicate this belief to Senator Weiss or any other members of the Committee. Mr. Silliphant testified that once the decision of the Committee was

communicated to him there was no further need to discuss alternatives.

Mr. Lawrance had a different recollection of the sequence of events subsequent to the execution of the documents. He recalled that the Transfer of Appropriation form and the transmittal memorandum did not leave the Legislative Budget and Finance Office until sometime on Wednesday, January 15, 1992. Mr. Silliphant, according to Mr. Lawrance, directed the materials be held pending further notice, but, based on his knowledge of the office, Mr. Lawrance could see no reason for the delay. A couple of times during the day, Mr. Lawrance asked Mr. Silliphant: "Is it time to send the memorandum out? What do you want me to do?" He was trying to make sure that Mr. Silliphant had not forgotten about it. Mr. Silliphant's response, according to Mr. Lawrance, was "...don't worry about it. I will tell you."

On Wednesday, January 15, 1992, Mr. Ferrara's secretary was hand-delivering other materials to the Legislative Budget and Finance Office. Seeing her in the office, Mr. Lawrance again asked Mr. Silliphant if it would be all right to return the transfer to the Office of Management and Budget. Mr. Silliphant agreed. Subsequent to the form being returned to the Office of Management and Budget, Mr. Lawrance recalled that the transmittal memorandum was sent by regular mail to the members of the Committee and the partisan staff were copied. When confronted with this scenario, Mr. Silliphant's response was that he did not recall these exchanges. He was puzzled, because the mailing of

the documents was a secretarial function in which Mr. Lawrance had no role.

During the afternoon of January 13, 1992, Mr. Rousseau again telephoned Mr. Lawrance in an effort to ascertain the status of the transfer and whether Senator Weiss and Mr. Silliphant had met. He wanted to know if he was going to be getting a memorandum and ballots. Mr. Rousseau learned that everything was all right. He inquired if the Legislative Budget and Finance Office wanted ballots to memorialize the action. Mr. Lawrance said that would not be necessary. It was clear to Mr. Rousseau that either Mr. Silliphant or Senator Weiss made that decision. Mr. Rousseau stated he kept broaching the subject of the ballots as a way of looking out for Mr. Lawrance and Mr. Silliphant - so that they would have something in writing. The fact that Mr. Rousseau was asking for ballots was seen by Mr. Lawrance, on the other hand, as meaning Mr. Rousseau did not know what was going to happen with the transfer.

According to Mr. Rousseau, the telephone calls to Mr. Lawrance on the 13th were nothing more than him trying to do his job, which was to get those things accomplished that the members of the Democratic caucus determined should be done. As far as he was concerned the decision had been made on Thursday, January 9th. From a practical point of view, he saw no distinction between the Senators saying they would sign off on the transfer when it came over or that they had approved it before it came over. According to Mr. Rousseau, everyone in the meeting on

Thursday night believed the transfer had been approved. Mr. Rousseau believed the vote had been taken when the two Senators said yes and it was represented that two Assemblymen said yes. Even so, he knew that the Republican members had a right to vote. If Mr. Silliphant failed to act quickly, Mr. Rousseau believed that would have hindered the execution of the decision made on Thursday, because, as of January 14, 1992, the Joint Budget Oversight Committee would cease to exist with its present membership. Mr. Rousseau also believed if there were not four votes for the transfer, Senator Ambrosio probably would have proposed his amendments, because he was not going to get the two Republican votes.

Senator Weiss' testimony differed with Mr. Silliphant and Senator Ambrosio's testimony and, at times, it was also self-contradictory. Senator Weiss provided two separate statements under oath during the course of this investigation. In his first statement, he testified he had knowledge of the request to transfer funds on behalf of Lyndhurst. He was unsure how he acquired the information though he spoke to Mr. Silliphant and was reasonably sure that he spoke to Senator Lynch. Both Senators Weiss and Rand were present in the caucus when Senator Ambrosio explained the Lyndhurst situation and defended the position that the Township should get the money, according to Mr. Rousseau. Senator Weiss was told at some point there was a shortage in the Lyndhurst budget as the result of a last minute decision by the Commissioner of Education to rescind a grant to

Lyndhurst. Senator Weiss recalled having been told that if Lyndhurst did not receive \$1.5 million it would not be able to complete the current school year. The information had enough credence that he voted to approve the transfer.

During his first interview, Senator Weiss stated he initiated a vote by contacting Mr. Silliphant and telling him to poll the Committee. He was satisfied that all the members were polled, because, as a general rule, he always asked if all members had voted or were any members absent. The record of the vote would be maintained by Mr. Silliphant as secretary to the Committee. Before directing Mr. Silliphant to take the vote, Senator Weiss never inquired whether all of the members had been notified of the request - he just took it for granted.

According to Senator Weiss, he always insisted that every member get a copy of any matter before the Committee. It was the way he ran the Joint Appropriations Committee, the Senate Finance Committee and Joint Budget Oversight Committee. In his view it was the only way to keep the Committee together. He maintained respect for the members of his committees, regardless of their status as majority or minority members. When he testified about the Lyndhurst transfer he said, as to the minority members, that he recognized they had a duty to deliberate and he wanted them notified even though he felt they would probably vote no.

Senator Weiss insisted during his first interview that he never directed the Legislative Budget and Finance Officer to put the Lyndhurst transfer through without notifying the minority

members. Senator Weiss asserted that he would be both angry and embarrassed if Senator Ewing and Assemblyman Frelinghuysen were not notified of the transfer. Senator Weiss insisted that in the last hours of his term he would not have blemished his reputation by such action. In reviewing Mr. Silliphant's memorandum of January 13, 1992, Senator Weiss was adamant that he never directed Mr. Silliphant to execute the transfer. Further, he stated that he never telephoned and polled the majority for their vote, nor directed anyone on his staff to do so. According to Senator Weiss, the only person who could do the polling was Mr. Silliphant.

This statement by Senator Weiss contradicts what the Senator told the State Commission of Investigation. During the SCI investigation, Ms. Gaal interviewed Senator Weiss by telephone and was told that, with respect to the Lyndhurst transfer, he had polled the members of the Committee by telephone. When questioned about this obvious contradiction, Senator Weiss stated he could not recall being interviewed by the SCI about Lyndhurst.

Subsequent to the taking of Senator Weiss' first sworn statement, Senator Weiss contacted one of the Deputy Attorneys General responsible for this investigation and stated that on reflection he now believed he was never apprised of the transfer at all. A second statement was taken from Senator Weiss, during which he stated that he did not remember having seen the January 13, 1992, transmittal memorandum and accompanying documents until he was shown them during his first interview.

When asked what it was that made him believe that he had not been made aware of this transfer, Senator Weiss responded: "Memory, I don't remember it, is the best I can say." He clearly remembered that he did not direct anyone to execute the transfer. Senator Weiss stated that he had spent an inordinate amount of time with Mr. Silliphant on the morning of January 13, 1992, saying good-bye. Senator Weiss said further:

Did I tell him to release the document or direct him to? The answer to that question is no. Matter of fact, I didn't know the document existed at that point.

In an effort to resolve some of the conflicts that exist in the different versions of events offered by Mr. Rousseau, Mr. Lawrance, Senator Weiss and Mr. Silliphant, the remaining then majority members of the Joint Budget Oversight Committee: Senator Walter Rand; Assemblyman Joseph J. Roberts, Jr.; and Assemblyman John S. Watson were interviewed.

Assemblyman Roberts served on the Committee for a short period of time. He did not recall ever being polled by Senator Weiss over the telephone. The Assemblyman testified that he never spoke to Senator Weiss about any transfer request and was satisfied that the information set forth in the Lyndhurst transmittal memorandum was inaccurate. Assemblyman Roberts had no recollection of this matter and did not recall having seen the memorandum. He described transfer requests as being routine and generally handled by staff. Assemblyman Roberts would discuss transfers with the partisan staff, generally Ms. Messenger, and believed his inclination as to a particular transfer could have

been discussed. However, he was never polled by staff. Neither did he speak to Mr. Silliphant nor Mr. Lawrance regarding this transfer.

Assemblyman Joan S. Watson had no recollection of being polled by Senator Weiss, the Assembly leadership or Assembly Democratic staff with respect to a transfer to benefit Lyndhurst. He had no recollection of ever seeing the January 13, 1992, transmittal memorandum or the Office of Management and Budget documents. When asked if he and the other members of the Democratic majority had affirmatively concurred with the proposed transfer, he responded that it did not happen. Assemblyman Watson stated while he could not be absolutely certain, he believed that if he had been verbally polled on the Lyndhurst transfer he would have remembered it.

Senator Rand had no recollection when, or by whom, he was first apprised of the proposed Lyndhurst transfer. The most he could say was that "...somebody... asked me about it. I got the information and I said it was okay with me." On the method of polling, Senator Rand commented that Senator Weiss had polled him in the past, but it was not the usual procedure. Normally, if he was polled it was by Mr. Silliphant. As to the instant transfer, Senator Rand did not recall speaking to either Senator Weiss or Mr. Silliphant, nor did he have any recollection of speaking to Senator Ambrosio, Senator Lynch, or Mr. Rousseau about this transfer. Senator Rand could not recall whether he ever saw the January 13, 1992, transmittal memorandum.

Ms. Messenger was the Assembly Democratic Director of Budget and Fiscal Analysis when the Lyndhurst transfer was approved. She did not remember if she was made aware of the proposed Lyndhurst transfer. Ms. Messenger did not recall polling Assemblymen Roberts or Watson, nor offering any advice to them on the issue.

One of the individuals who did recall seeing the transmittal memorandum was Beth Gates, the Assembly Republican Budget Director. On either the evening of Tuesday, January 14th, or Wednesday, the 15th, Ms. Gates received the transmittal memorandum and accompanying documents in an interoffice envelope. As she reviewed the materials, she became irritated when she discovered that there had been no prior notice given to the Republican members of this transfer and the Republican members of the Committee were not provided the opportunity to vote on the issue. On Thursday evening, the 16th, Ms. Gates brought the matter to the attention of Assemblyman Rodney Frelinghuysen. Mr. Lawrance remembered that Ms. Gates telephoned him on Wednesday, January 14, subsequent to receiving her copy of the transmittal memorandum. Mr. Lawrance recalled her asking: "Peter what is this all about." He replied that the "...Joint Budget Oversight Committee did a transfer." The impression Mr. Lawrance got was that this was the first Ms. Gates had heard of the matter - that she had no prior notice of the proposal.

When Assemblyman Frelinghuysen reviewed the memorandum he formed an impression that this transfer:

...was done in a way that was absolutely wrong, because there was no ballot attached, and the minority members... were given no opportunity to express any opinion...

Assemblyman Frelinghuysen was upset with Senator Weiss, because he had a personal friendship with the Senator. He was more upset with Mr. Silliphant and communicated that to him. The Assemblyman told Mr. Silliphant that he had violated the traditional practice of advising all members what was going on. As Assemblyman Frelinghuysen put it: "...[M]y bone to pick was with the person who was there to protect the interests of both the majority, and the minority, in a non-partisan way."

As to Senator Weiss, Assemblyman Frelinghuysen could only offer that he would not have expected Senator Weiss to fail to notice every member of the Committee. While he would have anticipated such notice, Assemblyman Frelinghuysen made the following observation:

With the exception that the last days of the Democratic majority there were things occurring in the Legislature, I'm sure in conjunction with the Governor's Office... and things were being done in a sense of we're leaving, we're going to accomplish what we have to do.

Assemblyman Frelinghuysen believed that the Democratic majority had no desire to let the Republicans know about the transfer and thereby shut the door on the latter's ability to reverse it. As Assemblyman Frelinghuysen saw it, the last paragraph of the transmittal memorandum was an "outrage." "Never has there [been] a memorandum prepared with that type of language in it, basically saying we have decided the rest of you can go to hell in a hand

basket." Assemblyman Frelinghuysen also communicated his displeasure to Mr. Porrone.

Mr. Porrone confirmed that Assemblyman Frelinghuysen contacted him sometime on Thursday, January 16, 1992. Assemblyman Frelinghuysen was agitated that a transfer had been processed and that he had been essentially disenfranchised with respect to it. Mr. Porrone visited Mr. Silliphant to gather information with respect to the circumstances surrounding the transfer in question. During this meeting, Mr. Silliphant discussed his individual responsibilities under the annual appropriations act and further advised as to the Office of Legislative Services' internal procedures concerning Joint Budget Oversight Committee matters. Mr. Porrone recalled that Mr. Silliphant was adamant that he had operated the Committee both within the "...strictures of the responsibilities of the Office of Legislative Services,... [and] also the standard operating procedure of the committee."

During this meeting, Mr. Silliphant advised Mr. Porrone it was "...very difficult to get Senator Weiss' attention on these matters,... or any specific transfer that, you know, maybe he wanted to handle a little differently." Among the other comments made by Mr. Silliphant, according to Mr. Porrone, was that the transfer was "...something that was sent over by the Executive Branch and they wanted action on it." According to Mr. Porrone, Mr. Silliphant represented to him that when Senator Weiss had visited him to say good-bye, the Senator also mentioned that a

transfer would be coming over that he had already cleared with the Democratic members of the Committee so Mr. Silliphant could approve it when it got to his office.

There is some corroboration of Mr. Silliphant's representations that Senator Weiss may have caused the transfer to be authorized by Mr. Silliphant. While being questioned concerning when he learned that the Department of Community Affairs would have money available for Lyndhurst, Senator Ambrosio testified:

As a matter of fact, I had literally given up on it as something that was going to happen until it was advised -- until I was advised by Larry Weiss that we just accomplished the transfer to the Department of Community Affairs for the Lyndhurst money, and that the grant is going to come.

While reciting some of the events, Senator Ambrosio further testified:

I never discussed the matter with Senator Weiss. Senator Weiss sat next to me in the senate. During a senate session, he simply leaned over to me and said This morning we approved... and I don't even know if he used the transfer of money. He approved the Lyndhurst grant.

I said: Thank you, Senator.

That's all I said. I assumed that was just a matter of routine, either it had to go to his committee or somehow procedurally he had to be involved in that. I thought it was just a matter of routine. He didn't do anything extraordinary or special, but he was chairman of the finance committee.

He was really someone that whenever there was going to be a financial transaction, Larry Weiss had to be involved. I thought there

was some mechanism that required his approval and he was just telling me he approved it.

In addition, as stated previously, Senator Weiss told SCI counsel that he had spoken with the other majority members of the Committee.

The fact is that every majority member of the Committee has testified that either Senator Weiss did not contact them, or, in Senator Rand's testimony, that he did not recall Senator Weiss contacting him. These contradictions with Senator Weiss' testimony raise the issue as to whether a legitimate vote approving the transfer of funds has ever taken place.

There is no competent evidence that it has been voted upon. The majority members of the Committee testified that they did not vote on the matter. Certainly the minority members did not vote. Mr. Silliphant did not proceed with the normal process of contacting the members of the Committee. Senator Weiss testified he did not contact the members of the Committee and in this instance is corroborated by the other members. If the vote was not taken, the transfer is void. As indicated previously, in accordance with Joint Rule 30, this transfer required an affirmative vote by the Committee.

A review of the actions taken by Mr. Silliphant and Senator Weiss must necessarily include not only an examination of the responsibilities of the Chairman of the Joint Budget Oversight Committee but also the duties imposed upon the Legislative Budget and Finance Officer, pursuant to N.J.S.A. 52:11-58 and N.J.S.A. 52:11-68. Mr. Silliphant stated he was following the directions

of the Chairman of the Joint Budget Oversight Committee and that the Senator had the absolute power to change the procedures under which the Committee operated without prior notice. The plain reading of the Joint Rules delegated to the "Committee" the responsibility of creating and establishing the rules under which it would proceed. This delegation was not to the Chairman. There were established rules and procedures under which the Committee operated and there is no evidence to suggest that those procedures in place on January 13, 1992, had been amended.

Mr. Silliphant further stated that in accordance with the procedures as outlined in his memorandum of January 18, 1990, he did provide notice in the instant transfer to the Committee members, notwithstanding that it was after the fact and the notice was of action already taken. This position is not shared by any of the members of the Joint Budget Oversight Committee or by the partisan staffs. Every person interviewed with respect to this aspect has steadfastly represented that all members of the committee should have received notice of the proposed transfer before it was acted upon.

There have been issues raised concerning the nature of the statutory duties imposed upon the position of Legislative Budget and Finance Officer. In addition to the specific duties attendant to the Office as set forth in N.J.S.A. 52:11-68, there are the general duties attendant to all Office of Legislative Services's employees which are set forth in N.J.S.A. 52:11-58b(4). That statute requires, inter alia, that employees:

...collect, prepare and disseminate to the Legislature, its officers, committees, commissions, members and staff, such information, reports, publications and documents as shall be of concern or interest to or have an impact upon the Legislature or the legislative process.

Mr. Porrone, who identified himself as the author of that statutory language, testified that N.J.S.A. 52:11-58b(4) only applies to public information, such as annual reports, and the statute should be further understood to include the phrase "upon request." However N.J.S.A. 52:11-58(b)4 contains no such language and further his suggestion as to its intent and meaning is not shared. Rather, the clear import of that language required Mr. Silliphant, in the instant matter, to provide the transfer information to the members of the Committee because that was necessary for a full understanding and evaluation of the transfer request being proposed by the Executive Branch of State government. Only with this information could there be an informed exercise of their legislative functions.

The Joint Budget Oversight Committee has been delegated the authority to make policy and legislative decisions on behalf of the Legislature. In the context of the transfers that are presented for Joint Budget Oversight Committee approval, the Committee effectively amends the funding allocations made by the Legislature in the annual appropriations bill. The Committee was designed to provide some control over transfers of funds from one account to another.

Finally, even assuming that the Committee Chairman has the authority to change the rules, the evidence fails to establish that such was done in the instant case. Senator Weiss stated he did not change the rules and his fellow members did not contemplate any change in the rules.

Mr. Porrone observed that the Office of Legislative Services is "...a service organization that is only pledged to act in a non-partisan capacity." Senator Ewing went further, and described the reliance placed upon the Office of Legislative Services by the members of the Legislature when he said: "I rely very heavily on what the Office of Legislative Services staff has to say."

**THE DEPARTMENT OF COMMUNITY AFFAIRS AS THE
CONDUIT FOR THE DELIVERY OF FUNDS TO LYNDHURST**

The transfer having been accomplished, and an account having been opened, the \$1.5 million was available to be paid to the Township of Lyndhurst. The check payable to the Township of Lyndhurst was issued on January 15, 1992, the same day the check was requested. Barry Skokowski, the Deputy Commissioner of the Department of Community Affairs and the Director of the Division of Local Government Services, commented that "[t]he quickest check State government ever processed was that check from the get go." This statement raises questions as to the procedure employed to process that check.

The funds granted to Lyndhurst by the Department of Community Affairs were not awarded as a result of an application made by the Township. According to Mr. Skokowski, Commissioner Primas walked into his office and said: "By the way, we're getting a million five for Lyndhurst to settle a problem that Commissioner Ellis created." Mr. Skokowski had no prior notice that funds were going to be transferred to the Department. He was aware from press reports that there had been a problem in Lyndhurst.

Commissioner Primas recalled that, shortly after the general election of 1991, Senator Ambrosio inquired as to whether there might be state aid available for Lyndhurst. The Commissioner recalled that the amount of \$1.7 million was mentioned in connection with Lyndhurst, although he is not certain as to the

source of the information. According to Commissioner Primas, Senator Ambrosio and Mayor Stellato had been lobbying for aid to Lyndhurst for some time. Senator Ambrosio, according to Commissioner Primas, was always looking for more aid for Lyndhurst. The Commissioner directed his staff to perform an analysis to determine whether any funds were available. The answer he received from his staff was that there were no funds available. He spoke to Senator Ambrosio and informed him of the lack of available funds. Commissioner Primas was not able to provide any definitive time frame surrounding these events. This is noted because Senator Ambrosio testified he did not speak to the Commissioner of the Department of Community Affairs.

Commissioner Primas did not recall specifically when or from whom he first learned of the Lyndhurst transfer. He believed he first heard of it from his staff and recalled getting information from Mr. Skokowski and James Alexander, the Director of Administration at the Department of Community Affairs. That would probably have been, according to Commissioner Primas, the same day he believed he heard from Mr. Crane, who advised him during a telephone conversation "...that monies were being transferred to the Department that could be made available for Lyndhurst." According to Commissioner Primas, he believed that when the monies were received by the Department, they were to be distributed to Lyndhurst.

A day or two later Mr. Alexander came to see Mr. Skokowski and informed him that the transfer of funds had been posted on

the computer system. Mr. Alexander learned of the transfer from Frank Haines, an employee of the Office of Management and Budget, during a telephone conversation in which Mr. Haines said something to the effect that there was money being moved to the Department of Community Affairs for Lyndhurst. There was some further indication that Mr. Haines had spoken to Mr. Hartman.

Mr. Alexander went to see Mr. Hartman to find out more about the matter. Mr. Alexander recalled Mr. Hartman told him that Mr. Haines had contacted him because the Office of Management and Budget needed to immediately set up an account and that he was to get the documents necessary to open the account walked down to the Office of Management and Budget. Mr. Haines may have also mentioned to Mr. Alexander that "they" worked to process it up on the system so that a check could be issued that same day.

With this information Mr. Alexander then went to see Mr. Skokowski to inform him of the transfer. Based upon their conversation Mr. Alexander believed Mr. Skokowski was aware of this action. It was important to Mr. Alexander that Mr. Skokowski and Commissioner Primas knew of the transfer because he was concerned that, given how quickly it was happening, it be handled properly. As he explained:

...[I]f we get a call from somebody which says 'we're moving a million and a half dollars into your accounts, we want it disbursed to Lyndhurst,' I'm not going to allow my subordinates to do that unless I validate that as being a proper direction from . . . the commissioner or deputy commissioner.

On February 21, 1991, Commissioner Primas adopted a formal regulation in accordance with the New Jersey Administrative Procedures Act, which amended the grant and loan approval process. The new rules were published in the New Jersey Register on April 1, 1991. 23 N.J.R. 1027. As is pertinent to this report the procedures provide:

The rules contained in this subchapter shall govern the issuance of all commitments and agreements pertaining to the awarding of the grants and loans using funds available from State appropriations, or Federal or private grants received by the Department, for State Aid and Grant-in-Aid programs. (N.J.A.C. 5:2-3.1)

In that context, the rules specify that no grant agreement or other commitment of funds for state aid is final "...until it has been approved in writing" by the Commissioner, the Deputy Commissioner or, in the case of the Lyndhurst grant, the Director of the Division of Local Government Services. N.J.A.C. 5:2-3.2; N.J.A.C. 5:2-3.3(A) 1,2,3.

Mr. Alexander said that a countersignature is necessary on any such contract before it is valid. The requirement is clearly detailed in the language of N.J.A.C. 5:2-3.3(b). The countersigning of an agreement attests to the presence of encumbered funds sufficient to fulfill the terms of the contract.

The administrative rules further provide that no grant agreement should be prepared and executed unless there is the prior approval of the Commissioner or Deputy Commissioner. N.J.A.C. 5:2-3.5. The form of such agreements was established by the Commissioner pursuant to the February 21, 1991, regulations.

Mr. Alexander described two different formats that can be utilized in preparing contracts and/or agreements - the formal contract specifying the rights and obligations of the parties, containing pages of prescribed boiler-plate, and the much more simplified letter agreement. Letter agreements, according to Mr. Alexander, would not be subject to a review and approval by a Deputy Attorney General representing the Department of Community Affairs. Additionally, the countersignature contemplated by N.J.S.A. 5:2-3.3(b) sometimes occurred prior to the contract being forwarded to the municipality.

One of the things Mr. Alexander remembered mentioning to Mr. Skokowski was that when the check was issued to Lyndhurst it should be memorialized. He recalled telling Mr. Skokowski that it was necessary to have an agreement with the Township. One of the other things he remembered is that Commissioner Primas wanted to personally present the check to Lyndhurst.

The account opened by the Office of Management and Budget, based upon the documents submitted by Mr. Hartman, was identified as 8030-510-047100-60. The 60 denotes that it is a grant account. The 510 refers to state aid, with the 47100 being the specific indicator. The review of a computer printout dated January 21, 1992, reflecting the activity in the 047100 account revealed that the original \$1.5 million transfer of January 15, 1992, was allocated and disbursed by January 21, 1992. The balance in the account on that date was zero.

Mr. Skokowski testified that Mr. Hartman created the documentation necessary to open the new account after he, Mr. Skokowski, was notified by Commissioner Primas that the funds were being transferred. The Appropriation Account Number Agency Request form that was submitted by Mr. Hartman to the Office of Management and Budget bears a transaction date of January 15, 1992. However, the Transfer of Appropriation form submitted to the Office of Legislative Services contains a transaction date of January 10, 1992, five days earlier. Both forms contain the same account number. Mr. Skokowski explained that the "...deal, however you want to call it, was made and the paper work followed." According to Mr. Skokowski, he never asked Commissioner Primas who told him of the transfer. He presumed it was a done deal and that Commissioner Primas wanted to "...get out there with the publicity and the check."

The check was issued on the 15th of January as a result of Mr. Hartman's submission of a State invoice dated the same day. A copy of the invoice contains a handwritten notation that the Commissioner delivered the check on January 22, 1992.

Prior to the delivery of the check to Lyndhurst there had been no documentation prepared to memorialize the Lyndhurst grant beyond that necessary to open the account and issue the check. There was no grant agreement or contract. A document was drafted on or about February 10, 1992, and mailed to Mayor Stellato in Lyndhurst. The document was not provided for review to the Division of Law's Deputy Attorney General responsible for

advising the Division of Local Government Services prior to its mailing. Mr. Alexander stated he did not provide the document to a Deputy Attorney General for review, as he did not receive the document until much later. Mr. Alexander further dates that he would not see the document before it was executed, since he was not involved on the part of the process. Finally, Mr. Alexander noted at that point in time, Deputy Attorneys General were not signing letter agreements. When the document left the Department of Community Affairs it contained the signatures of both Commissioner Primas and Mr. Skokowski. Mr. Skokowski has acknowledged that he signed the document. As to Commissioner Primas' signature, it has not been established whether the Commissioner signed the document or whether an auto-pen was used. Commissioner Primas did not recall.

The two page letter was returned to the Department of Community Affairs on March 9, 1992, according to the Division of Local Government Service's date-stamp that appears on the copy. When the copy was returned it bore a third signature - Mayor Stellato's.

The letter document, upon its return, was supposed to be forwarded to the Department of Community Affairs's fiscal officer for counter-signature by Mr. Hartman, or someone on his staff, to certify that funds were available. A copy of the document would be retained by the appropriate division, here the Division of Local Government Services, and a copy forwarded to the Grant Services Unit for filing. In the Grant Services Unit, which is

part of Mr. Alexander's responsibilities, the contracts are filed by grantee. Contracts are filed in that unit to insure if someone needs to obtain a particular agreement at a later time they will find it in this repository. Normally, the presence of a signed agreement must be included in the material submitted to the fiscal officer. That officer then reviews the documents and, if found in order, authorizes an encumbrance against which a check can be drawn. Contracts of the type utilized by the Department of Community Affairs are official records and documents of the State of New Jersey. The letter agreement memorializing the Lyndhurst grant was never filed with the Grant Services Unit.

Mr. Alexander stated that he was surprised to find the letter agreement had not been filed in his office, as required. He first saw the letter agreement on or about April 20, 1993, when Howard Izes, Deputy Director of the Division of Local Government Services, asked Mr. Alexander if he was coordinating the collection of data for submission to the Division of Criminal Justice in connection with the current investigation and handed him the letter. Mr. Alexander did not believe the letter was available when the SCI requested information in September 1992. The Deputy Attorney General responsible for providing advice to the Division of Local Government Services also requested a copy of all the materials related to the Lyndhurst transfer in the Department of Community Affairs' possession in September 1992. The initial request was

made to Mr. Skokowski, who referred the Deputy Attorney General to the Department's public information office. The Deputy contacted James J. Johnson, the public information officer, and was provided with the Transfer of Appropriation form, the two page Information Supplement and the State invoice. He did not receive the two page February 10, 1992 letter. Mr. Johnson remembered that a Deputy Attorney General made an informal request for all documents in the Department's possession related to the Lyndhurst transfer. Mr. Johnson contacted the Administration Unit of the Department of Community Affairs, Mr. Alexander's unit, for the information. It was Mr. Johnson's recollection that the material amounted literally to two pieces of paper. Mr. Johnson never made a request for information from the Division of Local and Government Services.

It is essential to any discussion of this matter to consider to what extent the Department of Community Affairs deviated from its internal rules and regulations to accomplish this transfer. There were three violations of Department of Community Affairs procedures in connection with the Lyndhurst grant:

1. The check was issued without the formal written process of grant approval and an authorization to account for the funds.
2. The check was issued before a signed agreement had been secured from Lyndhurst accepting the funds.
3. The letter agreement was inaccurate.

In the normal process, a municipality which has successfully applied for grant funds would receive an award notification

letter from the Department of Community Affairs. Prior to the notification, the Department would have reviewed the municipality's application and prepared the necessary documents to memorialize the encumbrancing of funds in connection with the grant. These preliminary steps would be recorded and the resulting documents become would part of the Department of Community Affairs' file. In the instant grant of state aid to Lyndhurst the preliminary steps of evaluating an application and making a decision did not occur. As such there was no application and no memorialization of the encumbrance. Mr. Alexander stated this is why it was so important to Mr. Alexander to assure himself that Mr. Skokowski and/or the Commissioner knew of the decision.

The regulations required to be followed prior to the January 15, 1992, issuance of the \$1.5 million check to Lyndhurst were ignored. The letter was not mailed to Mayor Stellato until February 10, 1992. Mr. Alexander did not recall at what point he broached the agreement issue with Mr. Skokowski, but the document purporting to be an agreement that resulted was vague, inconsistent and inaccurate. On closer inspection, the letter agreement of February 10, 1992, was an attempt to create documentation to make it appear that the regulations had been followed after Mr. Alexander correctly pointed out to Mr. Skokowski the need for some documentation in connection with a grant of this magnitude. This document amounted to an unartful attempt at merging a grant award notification letter into the

letter agreement format. The following is a listing of its inaccuracies.

1. The letter begins by acknowledging Lyndhurst's request for funds. The Township never made th's request to the Department of Community Affairs. The funds bestowed upon Lyndhurst were the direct result of Senator Ambrosio's intense lobbying efforts.
2. The letter creates the impression that the Department of Community Affairs had conducted an evaluation of the non-existent request and determined that the Township should receive a discretionary grant of \$1.5 million. There was no review by the Department of Community Affairs.
3. The letter falsely states the funds were drawn from some form of discretionary account.
4. The letter misidentifies those who deserve the credit for obtaining this award for Lyndhurst. It is standard practice within the Department of Community Affairs to give legislators credit for arranging funds for municipalities in their district, even if they have played no role in the matter. The February 10, 1992, letter agreement stats that the funds had been made possible through the efforts of Senator John Scott and Assemblymen Paul DiGaetano and John V. Kelly. In drafting letters of this type, Department of Community Affairs personnel simply access a computerized list of legislators to provide the correct identification to the particular community.
5. The purpose for the grant is not set forth in the agreement and, accordingly, the audit provisions of the letter were meaningless. The last paragraph of the letter reads, in pertinent part:

The municipality's registered municipal accountant must include an examination of this grant as part of the annual municipal audit . . . to ensure that funds were properly expended in the amount and

for the purpose expressed in this agreement.

The most an audit by such an accountant would produce is that the monies were deposited into the Township accounts.

Mr. Skokowski agreed that there is some truth to the proposition that the letter of February 10, 1992, was created after the fact so that the Division of Local Government Services could cover itself if this transfer was questioned. Commissioner Primas was asked about these deviations. His response was that he "...wouldn't have known of all the individual procedures and the checkoffs" and that he was not aware until questioned that they had not been followed. Having reviewed the material and testimony, it is clear that, but for the specific concerns of Mr. Alexander that this matter be handled appropriately, there would never have been any documentation prepared reflecting the awarding of the grant.

Mr. Skokowski in an effort to explain his actions said he believed this transfer of funds was done for purely political considerations and that the goal was to help Senator Ambrosio. He characterized the transfer as a political gift. Mr. Skokowski never asked Commissioner Primas who told him about the transfer of funds. Mr. Skokowski felt that this was a "done deal" and he "...just moved the paperwork." He acknowledged these were only his impressions and not the result of specific information he had as to the reason behind the transfer and grant. Mr. Skokowski

expressed that his belief was that he had no choice in the matter. He thought the Department was merely serving as a "conduit."

THE DEPARTMENT OF LAW AND PUBLIC SAFETY'S KNOWLEDGE
OF THE DEPARTMENT OF COMMUNITY AFFAIRS GRANT TO LYNDHURST

Press reports have alleged that Department of Law and Public Safety personnel were aware of an intent to provide financial assistance to Lyndhurst from the Department of Community Affairs as early as October 1991. As demonstrated in the sequence of events leading to the transfer, the idea of using a Department of Community Affairs grant did not originate until January 9, 1992. The conclusions reached in these press reports are drawn from: (1) a date-stamp appearing on a copy of a proposed Stipulation of Settlement reputed by the media to read "1991": and (2) a footnote appearing in an August 3, 1992, letter in lieu of brief submitted to the State Board of Education.

A copy of the proposed Stipulation of Settlement was obtained from the SCI. It was so many generations removed from the original that no date-stamp was discernible. The original document was obtained from the SCI and it shows that the date-stamp referred to in press reports was, in fact, placed upon the proposed stipulation on October 1, 1992, at 12:10 p.m., by the SCI. James J. Morley, Executive Director of the SCI, stated that every document received by the SCI is date-stamped upon receipt. The document in question was faxed to the SCI from the Division of Law at 11:02 a.m., on October 1, 1992.

The letter brief on behalf of the Commissioner was submitted on August 3, 1992, over the signature of Deputy Attorney General Lewis A. Scheindlin, but was actually prepared by Deputy Attorney

General David E. Powers. Deputy Attorneys General assigned to the Division of Law serve as legal counsel to various State departments, agencies and boards.

On page six of the letter brief the following statement appears:

Following the Governor's submission of the budget to the Legislature, Lyndhurst advised the Department that it anticipated receiving \$1,500,000.00 from the township.*

The asterisk refers to the footnote that appears on the bottom of the page which reads:

* Lyndhurst had first indicated to the Commissioner at the meeting of October 4, 1991, that the township had been advised that it might receive additional monies by way of a grant from the Department of Community Affairs.

It has been suggested that the footnote was a clear indication that a transfer of funds to Lyndhurst through the award of a Department of Community Affairs grant was contemplated as early as October 4, 1991, and that a Deputy Attorney General assigned to the Division of Law was aware of that intention. Accordingly, there was an examination of the circumstances surrounding the October 4, 1991, meeting among the Commissioner of Education, his staff and Lyndhurst representatives and the information possessed by Deputy Attorney General Powers that supported the inclusion of the footnote in the letter brief.

The meeting of October 4, 1991, in the Commissioner's conference room has previously been discussed. No participant in that meeting testified that there were any discussions about a

grant by the Department of Community Affairs to Lyndhurst. Deputy Attorney General Kaplen-Miller, who was present at the meeting, recalled it was pointed out at the meeting that the Board of Education and Board of Commissioners did not know whether the funds to make up the budget short-fall were going to come to the municipality or school district, when attempting to structure the school budget on May 21, 1991. Deputy Attorney General Kaplen-Miller was asked if she made any representations to Deputy Attorney General Powers that there had been a guarantee given to the Township that the Department of Community Affairs would be providing grant funds to it. Deputy Attorney General Kaplen-Miller responded in the negative.

It was during the interview of Deputy Attorney General Powers that this issue was resolved. Deputy Attorney General Powers was asked to identify the source of the information that led him to include the footnote in the letter brief. Deputy Attorney General Powers stated he believed the footnote to be inaccurate. As a further expansion Deputy Attorney General Powers testified:

I knew, in general, as a result of the chronology which had been developed, and in the Commissioners letter, the position that Lyndhurst had taken, that they had been assured that they would receive monies from someone and their belief that they were still owed money from someone.

As well as, I believe, their hope that they would still get the money from someone.

I blended that together with my -- with two things, my subsequent knowledge they got it from Community Affairs, and my knowledge that

Community Affairs has acted in a similar fashion, that is to address the situation where a school district budget and the municipal tax rate are adversely impacted in the past.

Finally, he said:

I believe the error in that footnote is the specific reference to the Department of Community Affairs.

I believe insofar as the footnote indicates that Lyndhurst still hoped to receive funds from other sources, that it is accurate.

Deputy Attorney General Powers' error led directly to members of the media drawing a conclusion that a Deputy Attorney General, employed by the Division of Law, had prior knowledge of the transfer of \$1.5 million from the Inter-departmental State Employee Health Benefits Account to the Department of Community Affairs and ultimately to Lyndhurst. As stated by Deputy Attorney General Powers, he merged events which occurred at a later date with issues raised at the October 4, 1991 meeting which he did not attend. He then inferred a Department of Community Affairs resolution had been discussed at that meeting.

Additionally, as previously noted, the Division of Law Deputy Attorney General responsible for providing advice to the Division of Local Government Services was not provided a copy of the February 10th letter when he requested materials from the Department of Community Affairs in September 1992. The Deputy Attorney General stated that he had not seen a copy of the document prior to August 3, 1993, when he was shown a copy by investigators. As was previously discussed, at the time this

document was prepared, according to Mr. Alexander, letter agreements were not being signed by Deputy Attorneys General.

Attorney General Robert Del Tufo and former Director of the Division of Law Edward Dauber testified that they had no prior knowledge of any of the circumstances surrounding the transfer of funds to the Department of Community Affairs on behalf of Lyndhurst. Predicated upon the explanations provided by Deputy Attorney General Powers and the date-stamp evidence there is no evidence that any prior knowledge of this transfer existed in the Department of Law and Public Safety.