

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

before

**SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS' AFFAIRS COMMITTEE**

and

**ASSEMBLY STATE GOVERNMENT, CIVIL SERVICE,  
ELECTIONS, PENSIONS AND VETERANS' AFFAIRS COMMITTEE**

on

**GOVERNOR'S PLAN TO REORGANIZE THE DEPARTMENT OF THE TREASURY**

Held:  
February 24, 1984  
Room 348  
State House Annex  
Trenton, New Jersey

**MEMBERS OF SENATE COMMITTEE PRESENT:**

Senator Wynona M. Lipman, Chairwoman  
Senator Gerald R. Stockman, Vice Chairman  
Senator Gerald Cardinale  
Senator H. James Saxton

**MEMBERS OF ASSEMBLY COMMITTEE PRESENT:**

Assemblyman Joseph Charles, Jr., Chairman  
Assemblyman Richard A. Zimmer

**ALSO PRESENT:**

**New Jersey State Library**

Joseph P. Capalbo, Research Associate  
Office of Legislative Services  
Aide, Senate State Government, Federal and  
Interstate Relations and Veterans' Affairs Committee

Donald S. Margeson, Research Associate  
Office of Legislative Services  
Aide, Assembly State Government, Civil Service,  
Elections, Pensions and Veterans' Affairs Committee

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**SENATOR WYNONA M. LIPMAN (Chairwoman):** We will now begin the hearing. I have a statement, and then we will entertain a statement by Mr. Biederman. But, first, I have to formally open this hearing, if it is all right with everyone.

Pursuant to SCR-81, approved by both houses of the Legislature on May 6, and in accordance with its findings that the organization and management of the State government are the responsibility and concern of each branch of government, in concern with, and with the cooperation of others, this Joint Committee is convened today to inquire into the reorganization of the Department of the Treasury, submitted pursuant to the Executive Reorganization Act of 1969.

Specifically, it directs the Committee to review the Reorganization Plan for the Department of the Treasury, submitted by the Governor on January 23, 1984, as it relates to the overall restructuring of the Department of the Treasury, and the events surrounding its submission, to determine its completeness, and to advise the members of this Legislature as to their concurrence in the plan.

The overall parameters for the organization of the departments of State government are set by the constitutional requirement that all executive and administrative offices, departments and instrumentalities shall be allocated by law, among and within not more than twenty principal departments. Within that conduit, the Executive Reorganization Act authorizes that the Governor submit to the Legislature, reorganization plans which would increase efficiency, reduce expenditures, promote economy, and consolidate the functions of executive agencies.

Such plans, unless disapproved by the Legislature within sixty days of their submission to the Legislature, shall have the force and effect of law. A reorganization plan may not authorize an agency to exercise a new function not expressly authorized by law at the time the plan is transmitted to the Legislature; and, cannot create a new principal department, or continue an agency in a term of office beyond the period provided by law.

Since the enactment of the Executive Reorganization Act, nine reorganization plans have become law. Before turning to Assemblyman Charles, who will begin the formal questioning, I would like to outline a few of the concerns which led the Legislature to authorize this review. Let me say for the record, that this Committee shares the Governor's interest in increasing efficiency and economy in the management of the State government. It is not the purpose of this inquiry to take issue with, or to criticize broader reorganization of the Department of the Treasury, which the Governor announced last year as a means of implementing these goals. From the viewpoint of the Chief Executive responsible for managing the State government, the creation of an Office of Management and Budget is a sound policy and, in fact, had been proposed by the Governor's predecessor. Personally, it is a proposal which I would support, and I hope my colleagues would support also, if such were submitted to the Legislature for consideration and approval.

The same can be said for giving greater direction to the financial management functions of the Department of the Treasury by the creation of a Financial Management Administration. However, while Mr. Stringer's transmittal letter alludes to other changes within the Department of the Treasury, and notwithstanding that the letter acknowledges that those changes significantly alter the manner in which budgets are formulated and financial dealings are carried out, the current reorganization plan is silent with respect to both of these entities. Consequently, this Committee, in addition to discussing the proposed creation of a General Services Administration, is also interested in exploring whether the changes announced earlier by Governor Kean, and alluded to in Mr. Stringer's letter, should appropriately be the subject of a formal submission to the Legislature of a reorganization plan of proposed statutory changes in the budget law of the Department of the Treasury law.

We are interested in assuring that the reorganization of the Department in its entirety is, in fact, in conformance with our respective responsibilities and prerogatives under the Constitution and the law.

I would like to thank the Department of the Treasury officials who accepted our invitation to appear here today. Now, I would like to introduce Assemblyman Joe Charles, who is my cochairman today, and who is the Chairman of the Assembly State Government Committee.

Mr. Biederman has asked Assemblyman Charles if he may make a short statement; since he is ill, it will be short.

ASSEMBLYMAN CHARLES: I think everyone will agree, that in consideration of Mr. Biederman, he be permitted to give his statement, and we will hear that now, Mr. Biederman.

**K E N N E T H   R .   B I E D E R M A N:** Thank you very much. I apologize for the wheezing and coughing that may take place from time to time, but I can't do much about that.

My name is Ken Biederman; I am the lame duck Treasurer of the State of New Jersey. Next to me is my Executive Director, Bill Stringer, who is also known to you. We have a number of representatives from the Treasury Department here. The administrators of all of the areas that are in our reorganization plan, and in the restructuring aspect of Treasury, as well as other Treasury officials here, are more than willing to answer any questions you may have.

We certainly want to offer support to this Joint Committee in its examination of the reorganization plan. It is not only their duty, but their responsibility to look into the completeness of the plan, and to make their own judgments as to its compliance with the Executive Reorganization Act. Certainly, to that end we give you our full support, and are willing to provide, as I think we have, responses to any requests you may have. I think this is a good thing to do. Actually, I am surprised that this effort has not been done with some of the other reorganization plans, and, certainly, it is my personal opinion that it should be done. As reorganization plans are submitted, perhaps they should be subject to this kind of scrutiny and review.

I would just like to give you a brief background on the Treasury reorganization -- it has not been covered in the press as much as perhaps some of the other aspects of it -- so that you will understand the genesis of what occurred. Basically, last January,

after I had been in office for a period of a year or so, and after having gone through a rather onerous budgeting process, as we did in the first year of the Kean administration, it began to appear to me that there were aspects of the Treasury Department that from a management and efficiency standpoint were not organized the way they should be.

The Treasury Department is the largest Treasury Department of any state in the nation. The New Jersey Treasury Department has had more powers, authorities, and responsibilities conveyed upon it than any other Treasury Department of any other state in the nation. Bob Van Fossan, who is one of the heads of the Governor's Management Improvement Program, once described the Treasury Department in the State of New Jersey as the "State's attic." He wasn't doing that in a condescending role, but rather because of the fact that often when legislation is passed, and questions of who will administer, who will be responsible, who will do this -- often these responsibilities were put in the Treasury Department.

I felt that there needed to be a fairly major reorganization, to better group some of these activities along functional lines. Dick Standiford, who is now the Controller, and I began working at that time on a draft reorganizational plan which would better group the functions of the Treasury Department under like administrations -- administrative responsibilities and, also, to take a look at perhaps certain aspects of the Treasury Department which maybe should not be within the Treasury Department. As is evident, this was certainly not a permanent career move for me, and one of the things that I -- and I think any Treasurer who serves at the pleasure of the Governor -- was interested in was to make the organization better for the successors.

Basically, what we did, was prepare a fairly far-reaching reorganization of the Treasury Department, which would have moved certain major functions in the Treasury out of the Treasury Department, which would have grouped certain major functions, some which were outside the Treasury Department, and brought them into the Treasury Department, and basically concentrated the function of the Treasury Department as the fiscal arm, the financial arm, and the monetary

revenue arm of the government, and looked at other aspects of Treasury that perhaps should have gone elsewhere. Our recommendations, our analysis, led as far as the creating, by legislation of course, of new cabinet level positions and, by necessity, the abolishment of other cabinet level positions. This particular plan would not have endeared me to some of my cabinet officers, because perhaps they wouldn't have been my fellow cabinet officers under this reorganization.

It was a very extensive plan, which we then presented to the people at the Government Management Improvement Program (GMIP) for their thinking because, as you know, some of these executives are very successful, and we certainly wanted to rely on their opinions and thoughts. That particular plan, as I mentioned, was very far-reaching. We discussed it with the Governor, and it was decided, even though the Governor was very impressed by the thought of it, that it was so major and so far-reaching, that we would not undertake it at this point in time. Nonetheless, the basic need of a better functional structuring of the Treasury Department was still there.

From there, we began to move in the direction of what was then announced, I believe, on July 20, whereby we grouped, if you will, functions by the area of revenue raising. Taxation and the Lottery were left basically untouched. The area of budgeting and planning type functions, in terms of oversight within the Treasury Department, are related to designing the concept of the Office of Management and Budget, and the Financial Managing function of Treasury, would bring in the areas of cash management, debt management, debt collection, all of these financial aspects of Treasury -- we put them under a supervisory arm, the oversight arm of Elizabeth Felker. All those aspects of Treasury are related to what I call "general services," the purchasing activities, the property activities, the leases, the waivers, the contracts, the papers, the telephones -- the day-to-day type administrative functions of government which the Treasury was charged with.

In so doing from a management standpoint, the idea here was to get these functions better tied together and reporting into the Treasurer by like management administrative responsibilities. That is

the quick genesis and history when thinking about what it is we did. The next thing was, how do we actually go about putting this together? In that sense, we had to depend, of course, on the Attorney General's office as to how to interpret the Executive Reorganization Act. What is it that needs to be put into the Executive Reorganization Act from the standpoint of the way we are going about structuring this, and what should not be in the Executive Reorganization Act? So, we worked with the Attorney General's office on a very regular basis. As a result of all of that, we have, of course in writing, a very extensive opinion from the Attorney General's office, the bottom line of which says that with regard to any executive reorganization, the key is whether there is any kind of a change in statutory responsibilities, as opposed to administrative delegations of powers and authorities which are already vested in the Office of the State Treasurer.

The Department of the Treasury, the State Treasurer, to quote the Attorney General's opinion, has the general responsibility for all the Department's operations, as well as the authority to supervise the organization of the Department, and changes in the organization thereof. In addition, the State Treasurer has the power to arrange for the interdepartmental transfer of personnel, with a view to the greatest possible efficiency of Departmental operations.

Madam Chairman, you mentioned the overall idea of the Executive Reorganization Act, which is to allow for greater efficiency and changes within a department to take place under the direction of a department, as long as statutory responsibilities were not altered. When that occurs, according to the Attorney General's opinion -- where major changes occur in structure, that is where the Executive Reorganization Act comes in.

That is the background, and given the way we were trying to get better management oversight and delegation of responsibilities from the Treasurer's Office along a functional line, this led to the Executive Reorganization Plan, which we submitted. It is in the general services area where we are actually proposing changes in statutorily constituted responsibilities, from the standpoint of the abolishment of telecommunications and data processing, the conveying of

certain authorities with regard to purchase and property, and so on. These were actual changes in statutory responsibilities, which came under the purview of the Executive Reorganization Act. It was the opinion of the Attorney General's office, again, that the other structural, if you will, management delegation type changes that we are talking about in Treasury, were within the purview of the powers conveyed upon the State Treasurer and, therefore, it was not necessary to include them within the Executive Reorganization Act.

I would like to stress this point: We were not approaching this from the standpoint of, how do we avoid putting something in the Executive Reorganization Act. That was not our intent, and I go back to the original plan we were working on, which would have involved some major legislative changes. Rather, once we came to where we were, in terms of a decision as to how to proceed with the reorganization in the Treasury, the question was, what is it under the Executive Reorganization Act which needs to be included in there? That, under the Attorney General's opinion, is what we submitted to the Legislature.

Again, I just thought it was important for the Committee to understand how we came to where we are today, and what our thinking and attitude was in approaching this. That completes my statement, Madam Chairman.

ASSEMBLYMAN CHARLES: Thank you, Mr. Biederman, for your opening statement. Are you available for some questioning now?

MR. BIEDERMAN: Surely. Once I drop off the chair and fall on the ground, Mr. Stringer will take over. (laughter)

ASSEMBLYMAN CHARLES: That's okay. As Senator Lipman said, we are here simply to elucidate as many of the facts as we can. Like you, the Executive Branch of the government, we in the Legislature, and I guess I can speak for most of them, are concerned, and are supportive of any efforts which are going to make our operations in the Executive Branch more efficient. So, basically it is just a matter of the Executive, through you, telling us what it is that you did do. You know, we read some releases back in July, and we have read some other things since then, which raised some concern as to whether or not we

had a duty as the Legislature, and a co-equal branch of government, to discharge our function with regard to any possible reorganization. If it turns out that there is nothing for us to be concerned about, we will be pleased, and all of this will be an informative exercise.

My first question would have to do, I guess, with the plan which was submitted on January 23, under the transmittal letter of Mr. Stringer. In that plan you described the GSA reorganization. I take it that several existing offices -- divisions I should say -- were combined, or consolidated, and that another was abolished. Is that correct?

MR. BIEDERMAN: Well, there is, under the Executive Reorganization Plan-- Item 4 of the Executive Reorganization Plan calls for the Division of Data Processing and Telecommunications, created by P.L. 1970, to be hereby abolished, with the function, powers, and duties specified under that particular legislation, with regard to matters of procurement and the direct operation, to be transferred to the Administrator of General Services. The remaining functions and powers dealing with matters of planning, oversight, coordination, and so on, as opposed to purchase and procurement, would be transferred to the State Treasurer.

ASSEMBLYMAN CHARLES: So, you combined two departments, and you abolished one, transferring some of its powers to the combined agency, the remainder of it being passed over to the Treasurer. Is that correct?

MR. BIEDERMAN: That is correct.

WILLIAM L. STRINGER: That would be effective on the date the Executive Reorganization Act becomes effective, and that has not occurred as yet.

ASSEMBLYMAN CHARLES: All right. Are any new positions contemplated by this proposed reorganization -- different personnel, additional personnel? What is your opinion as to what new additional personnel will be required to implement this GSA unit?

MR. BIEDERMAN: Bill, do you have any staffing figures?

MR. STRINGER: Well, let me say two things. First of all, there is no contemplation that there would be any additional personnel

necessarily required to implement the GSA reorganization. Presently, we have the GSA, what would be the GSA, going through a very -- I describe it as a very tedious and difficult reorganizational procedure, whereby they evaluate their spans of control, they evaluate their goals in government, and they evaluate the job they are fulfilling. That plan has not been formalized; that plan may, in fact, contemplate fewer employees, or it may contemplate more employees. It just does not exist at this time. There are no reasons, per se, why the GSA reorganization would increase the number of employees. That is not contemplated.

ASSEMBLYMAN CHARLES: If I understand you correctly, you're saying that the reorganization to form a GSA is being proposed, even though you have no particular conclusions at this point as to what new positions will be created, or what old positions will be abolished, within the existing division. Is that correct?

MR. STRINGER: The creation of any new positions, or the

ASSEMBLYMAN CHARLES: Are you saying that within the Division of Purchase and Property, for example, or the Division of Building and Construction, that you do not know at this point what will happen in terms of the actual positions which presently exist there?

MR. BIEDERMAN: What you may see as a result of that, are transfers of people within those organizations. For example, a group of responsibilities could be moved from one section into another section once the reorganization plan is approved. That may well occur. Clearly, you do have an administrator here, which is a new position. Again, what was laid out in the plan is a proposed structure of a reorganization of Treasury, during the period of which the concept was announced in July, and now there has been a considerable amount of work and analysis, with a lot of consulting assistance on how to best, within the framework of this structure, allocate existing bodies and existing responsibilities, with the overall objective being a better functional relationship within Treasury, in terms of management control. That is the overriding objective here.

ASSEMBLYMAN CHARLES: Do you have an opinion, or an estimate at this time as to whether or not that increased efficiency in function

will cost more money in terms of paying for it with personnel, or whether it will result in lower personnel costs?

MR. BIEDERMAN: Well, obviously, our overall objectives are to increase efficiency, and to reduce costs in management within the government. Clearly, we do have the additional position with regard to the administrator. What we are looking for in terms of the structure and, again, it must be operational under this structure, is to increase efficiencies and, in so doing, reduce costs. Those are the objectives. There is also a management objective, which is to have tighter controls and oversight over some of the functions that have gone on. Now, if I may just take an extreme, but I think it is an example: there are management changes, let's say, within the Division of Building and Construction, in terms of property management one would look at, in which you would have all property management type functions consolidated with a greater oversight. You know, we had the situation involving the Justice Complex, which has received a lot of publicity on some of the things which happened. One of the things we have been attempting to do, is to tighten controls, procedures, and management functions in that area.

ASSEMBLYMAN CHARLES: Not to interrupt you, but I understand that, and I can think of at least two distinctions. We can talk about tightening up the functional unit. I understand that; that is an efficiency element.

MR. BIEDERMAN: Right.

ASSEMBLYMAN CHARLES: The cost element of tightening up a function, is that also going to be reduced?

MR. BIEDERMAN: Obviously, that is what we are looking for, to gain those kinds of efficiencies.

ASSEMBLYMAN CHARLES: That goes automatically with this efficiency, okay.

MR. BIEDERMAN: Not only in personnel. The point I was trying to make is, not only in personnel, but in the sort of things that Treasury does. As you know, Treasury awards contracts, Treasury looks at waivers, Treasury is involved with almost everything that has to do with government, with regard to the movement of money.

ASSEMBLYMAN CHARLES: Excuse me, that was my point. There is personnel, and there are also other things that Treasury does. My question as to cost savings can be broken into two divisions, therefore: one, pertaining to personnel, and two, pertaining to other things that government does. Specifically with respect to personnel now, is there going to be a reduction in cost?

MR. BIEDERMAN: Well, that is certainly our objective and, again, as Mr. Stringer was pointing out, the work that is being done for us, looking at the restructuring of personnel within the framework of this reorganization plan--

ASSEMBLYMAN CHARLES: (interrupting) You haven't determined conclusively at this moment whether or not -- in terms of personnel now -- there is going to be a reduction in costs?

MR. BIEDERMAN: I cannot sit here and tell you the total conclusion.

MR. STRINGER: I should also say that as this is proceeding, we have discovered things that, quite honestly--

ASSEMBLYMAN CHARLES: Excuse me, what was the answer to that? No, you haven't concluded?

MR. BIEDERMAN: I was just saying, no, we have not reached that conclusion, but that is one of our objectives.

MR. STRINGER: We have discovered things as we worked, and maybe we will find that we need to augment certain areas of GSA. For example, with regard to the new Trenton buildings, we discovered that the Department of Building and Construction was designing the outside of the building and the Division of Purchase and Property was designing the inside of the building. We are in trouble if they don't use the same design. That is an inefficiency that just can't exist. You have to change that.

ASSEMBLYMAN CHARLES: I assume that, at least as to the other things the Treasury does, there is going to be a reduction. This is going to be involved in the reorganization. I assume that. I don't think we even have to explore that.

My question concerns the personnel aspect of it, and whether that will also become involved in this.

MR. BIEDERMAN: Again, I would like to stress that these are not mutually exclusive activities. For example--

ASSEMBLYMAN CHARLES: To the extent that they are, and they can be divided--

MR. BIEDERMAN: Clearly, in the case of Ms. Felker's area, we find an increasing staff in the area of debt collection who were able to bring in some of that eight hundred million dollars.

ASSEMBLYMAN CHARLES: Let's limit ourselves to GSA now, since we are not talking about Ms. Felker. Let's talk about GSA.

MR. BIEDERMAN: If, in Mr. Stringer's case then, it would pay for us to increase personnel in an area where we are going to reap, many times over, efficiencies because of tighter controls or procedures, it would be logical to do so.

The underlying effort of looking at this whole structure is to group the functions in order to get better overall management. If we can save in staff, obviously we are going to save in staff and do the same function. But, if the conclusion is we need two more people there, the result of which is going to save millions of dollars, it would also make sense to do that.

ASSEMBLYMAN CHARLES: I agree with you.

MR. BIEDERMAN: That's about all I can say at this point.

ASSEMBLYMAN CHARLES: I agree with you. My only question was, and I think I said this in the beginning, whether you had gotten to the point where you are able to tell us today whether, on the personnel side, there is going to be a reduction in force.

MR. BIEDERMAN: No, I can't say that.

ASSEMBLYMAN CHARLES: All right. You have answered my question then.

The GSA Administrator -- that is going to be Mr. Hofgesang. Who will be reporting to him? (no response) Maybe I can make that question clearer for you. As I understand the new GSA, there is going to be the two preexisting Divisions, plus a part of Data Processing and Telecommunications. There is, presently, a Director of Property and -- what is it?

MR. BIEDERMAN: Building and Construction.

ASSEMBLYMAN CHARLES: (continuing) Building and Construction and Purchase. They have Directors, is that correct?

MR. BIEDERMAN: That's correct.

ASSEMBLYMAN CHARLES: Those Directors will be reporting to Mr. Hofgesang?

MR. BIEDERMAN: That's correct.

ASSEMBLYMAN CHARLES: Okay. And, the person who was previously the Director of Data Processing and Telecommunications -- was he a Director also?

MR. STRINGER: No, he was not a Director of the Division; he was a Bureau Chief.

MR. BIEDERMAN: But, there was an individual who headed up that particular area. And, under the restructuring within GSA, there may well be somebody who will be responsible again for that administrative effort.

ASSEMBLYMAN CHARLES: Is that individual at the Bureau level, is he going under GSA or is he now reporting directly to the Treasurer as an element that was left out of the GSA?

MR. STRINGER: At the time that the Reorganization Act becomes effective, he will report to GSA. At this time he reports to the Treasurer.

ASSEMBLYMAN CHARLES: These other men who are in the Division that is being assumed, will they continue under the title of Director?

MR. STRINGER: It has been contemplated, yes.

ASSEMBLYMAN CHARLES: Okay. And, what would be the responsibility of the GSA Administrator? I suppose he would supervise and directly take reports from these two men?

MR. BIEDERMAN: Well, there may be others as the structure is broken down. For example, there are certain data processing and communications responsibilities that are going to be within GSA. His role here is to act as a management individual that oversees the functions that are within GSA -- administrative functions of government.

Within GSA, you have a number of responsibilities of an administrative nature. His role -- and, again, this is our objective

-- is to group these functions and have a tighter reporting and control relationship, from a management standpoint. So, if you will, and with regard to the State Treasury Department, that is the role of the administrator.

ASSEMBLYMAN CHARLES: Of these existing divisions that would be assumed and consolidated into this GSA, do any of those Directorships require the advise and consent of the Senate?

MR. BIEDERMAN: Well, let's see. Purchase and Property does. Building and Construction does not.

ASSEMBLYMAN CHARLES: Purchase and Property does. Was any thought given -- regarding the GSA Administrator -- as to whether or not that position should involve advise and consent from the Senate?

MR. STRINGER: We have not considered that, but I think everyone involved would look at it.

ASSEMBLYMAN CHARLES: Was that given any thought at all as you put together this plan? Did you think at all about whether or not the constitutional, or other historical principles that are inherent in the notion of advise and consent were being met, and they being complied with under this reorganization when you created a Director?

MR. BIEDERMAN: As a matter of fact, going back to the original plan, the thought was to create all administrative-type general services at a department level within government. This is the broader plan I was talking about.

Obviously, such a person would then have been totally under the advise and consent of the Senate. Since it is not in that position-- Since there are still administrative functions of government that don't come under that at this point in time, I still would not find that a problem -- that the appointment would be with the advise and consent of the Senate.

ASSEMBLYMAN CHARLES: All right. So now, if the law remains as it is, we would have a situation where the GSA Administrator is appointed by whomever, and one of his subordinates would be a person who is nominated by the Governor, and is under the advice and consent of the Senate. That is what you contemplate under this plan, if it is submitted?

MR. BIEDERMAN: That would be the case, I guess. We have not made an allowance for that. You know, there is precedent for that sort of thing, even within the Treasury Department -- the Director of the Budget, for example. But, again, I don't think there would be any reason why the Administrator could not be appointed at the advise and consent of the Senate if that were desired.

ASSEMBLYMAN CHARLES: Who--

MR. BIEDERMAN: (interrupting) Right now, they are being appointed by the Treasurer.

ASSEMBLYMAN CHARLES: All right. That was my next question.

MR. BIEDERMAN: Who, of course, is subject to the advise and consent of the Senate.

SENATOR LIPMAN: Are you finished?

ASSEMBLYMAN CHARLES: Not quite, but I think defer to the others on the Committee.

SENATOR LIPMAN: All right. I will then throw the ball back to the Senate. Senator Stockman.

SENATOR STOCKMAN: Commissioner Biederman, let me take the prerogative of this public meeting to congratulate you on your job as Treasurer.

MR. BIEDERMAN: Thank you.

SENATOR STOCKMAN: I, for one, am sorry to see you go. Now, let's talk about this proposed reorganization.

MR. BIEDERMAN: So much for the nice thought.

SENATOR STOCKMAN: I appreciate your comments about the fact that we need more scrutiny and review, and that the Legislature should be brought in. You were surprised that we don't do more of that. Let me say that I think the reason we are here today is unfortunate. I, for one, would like not to be here today. As a matter of fact, I would like to be downstairs as a participant in the New Jersey Property Tax Assessment Commission study on a vital and troublesome problem of property taxes in New Jersey. However, I haven't learned how to be in two places at once as yet. But, that is another story.

I think the reason we are here is, there is a peculiar sensitivity on the part of the Legislature, and I certainly share that,

when it comes to the question of the budget, and the budgetary process. And, I suspect you would fully understand and appreciate that also. There are a lot of aspects of state government that have a lot of glamour to them. They get a lot of show and a lot of headlines. One that doesn't get that so much is the budget, because it can be so monotonous and so technical. But, I know of no area of state government that is more important to its functioning well, and to the well-being of society, than the Department of the Treasury.

So, when I read, and I think when other people read, the press release, back in July, of Governor Kean, that he was going about a major restructuring of the State's budget development process, it was read with interest, concern, and wonderment as to just how it would fit in with the responsibilities of the Legislature, and in particular the Joint Appropriations Committee.

You used the words, "a fairly major reorganization of your Department." And, at another point, you said it was a "far-reaching reorganization." I am troubled by the fact that, despite those kinds of descriptions, we are not really being asked to participate. In fact, it is being suggested that we in the legislature have no role in what I consider to be the more important aspect of what you are apparently attempting to do -- and that is, the Office of Management and Budget.

As I understand it, you have legal opinions that might suggest that, in fact, we shouldn't have anything to do with it. I want to suggest that I find that a rather narrow and technical approach, and I am very uncomfortable with that suggestion. As a matter of fact, I say that as a lawyer. We have a flurry, apparently, of legal opinions that might attempt to suggest to send us all home today. I couldn't disagree more. As a lawyer, I know you can get legal opinions until the cows come home.

I am concerned about the reality of what you are attempting to do in the Treasury Department, and whether it ought to be something that is participated in by the Legislature.

To begin with, let me ask you this question: You alluded to an opinion, apparently, that I think gives you some -- and when I say

you, I am not speaking of you personally; I am speaking of the Administration through you -- comfort that the Legislature really has no role in this. If I am not mistaken, that is an opinion dated February 24, 1984, is that correct?

MR. BIEDERMAN: February 21.

SENATOR STOCKMAN: February 21? Oh, yes. I'm sorry. It is February 21. Now, my first question to you then is that this whole undertaking -- this whole venture -- started many, many, many months ago, and it was headed towards a major -- and it was announced by the Governor as being major -- restructuring of the State budget. I can't imagine someone, at an earlier time, getting into a debate over whether or not the Legislature would not have to be a participant in this reorganization. I can't imagine that there weren't earlier discussions and opinions.

I would assume that the Treasury Department has counsel assigned to it by the Attorney General's office. Who is that counsel, or who was it back in '83?

MR. BIEDERMAN: We worked on this matter, from day one, with Mike Cole and his people.

SENATOR STOCKMAN: And did Mike Cole give you opinions as you went along?

MR. BIEDERMAN: Verbalized opinions and consultations from Mike and his staff were given all along the way, including as this thing evolved.

SENATOR STOCKMAN: How about written opinions?

MR. BIEDERMAN: The first official written opinion of all of this that was being conveyed verbally was the one you have, dated February 21, which took everything and put it down from "go" to "stop." All along the line, we were receiving counsel from the Attorney General.

Senator, may I just say something? You made statements that I personally would like to clear the air on, because I think they are going to lead us off into the wrong direction if I don't say something in that regard. Our position here is not to keep things away from the Committee. I want you to understand that if it turns out there is some

feeling on behalf of this Committee -- and your charge under the Resolution is to examine the completeness of the Treasury organization -- that this is a matter of question, then we shall resolve it accordingly.

SENATOR STOCKMAN: My problem is -- my suggestion is, and I may be wrong and unique to the Committee; I can only speak for myself -- I am uncomfortable with the fact that the Committee even had to be convened. My suggestion is, when you were talking about so major a redesign of a department, why was it February 21 before the first formal Attorney General's opinion came forth? Why was it January -- I don't know, 8th or 12th, or whatever it was, that the first submission, only with regard to this GSA, was submitted, and there was nothing submitted with regard to the creation of the office of Management and Budget?

Now, Al Fasola is a gentleman I have met. He is a person with whom I have discussed some State issues. He has shown some sympathy on some issues that are very close to my heart. So, this is not a personal matter. But, for instance, a restructuring of this office -- and I think it calls for an appropriation in the neighborhood of some twelve million dollars -- calls for a Director, with assistants, with planning operations, management service, internal support, special projects, and there are a whole host of boxes underneath for the creation of this office; yet, apparently it is your position, and it is the opinion of the Attorney General, three days ago--

MR. BIEDERMAN: The opinion of the Attorney General is not something that came about all of a sudden. It is not as if three days ago we went over to the Attorney General for the first time and said, "Here is what we are doing."

SENATOR STOCKMAN: Well, that's what I am talking about.

MR. BIEDERMAN: No. They have been a part of this all along -- I would like to stress that -- even way before July 21.

SENATOR STOCKMAN: Was there anything else in writing from the Deputy Attorney General, or the Attorney General, discussing the question of participation by the Legislature in this undertaking?

MR. BIEDERMAN: In terms of an official written opinion, this is a summary of all the verbal opinions we have been getting from the Attorney General all along.

SENATOR STOCKMAN: Excuse me, Ken. I am poor with my choice of words sometimes. Let me ask the question again. Were there any other written opinions in the course of the history on this, by any Deputy Attorney General, on the question of the legitimate role or responsibility of the Legislature in this final design plan?

MR. BIEDERMAN: Official opinions of the Attorney General's office, no.

SENATOR STOCKMAN: I didn't use the words "official opinions" of the Attorney General's office.

MR. BIEDERMAN: They were all verbal opinions that were being given by the Attorney General.

SENATOR STOCKMAN: So, there is nothing else in writing?

MR. BIEDERMAN: Outside of this, no.

SENATOR STOCKMAN: You know, knowing lawyers, again, and knowing their penchant for memos, I am just fascinated. Because, in the private sector they can bill for that. I guess the Attorney General can't. You have no memos from Deputy Attorneys General, expressing opinions about whether or not the Legislature ought to be included in this.

MR. BIEDERMAN: Again, we focused on this whole issue from day one. But, I think you have to understand something. This is why I said we had to get a couple of things straight or we were going to go wild. Let me try and do that. Let me go back to my opening statement.

The original approach on this was more far-reaching than when happened. You used the words far-reaching, or extensive, or whatever you quoted from what I said. With regard to the original plan, we were actually going to propose that the Division of Budget and Accounting be an independent division, if you will, removed from the Department of Treasury altogether, and made a Cabinet-level position. All right? That, of course, would have been a major legislative undertaking. I have reasons for that. My own personal belief is, I question whether

the Comptroller of the State should report to the Treasurer of the State. From a watchdog oversight concept, I think this is an issue that needs to be addressed. It still needs to be addressed. In that sense the Comptroller of the State, by statute, is also the Director of Budget and Accounting. In the original plan we worked on, that would have occurred. It would have been a major, major change in the Department of the Treasury.

SENATOR STOCKMAN: I understand that. You scrapped that.

MR. BIEDERMAN: Well, we did not go that route.

SENATOR STOCKMAN: That's not what I am getting at, Ken. But, let me ask you about that, incidentally. You said you discussed that with GMIP. Did you discuss that with any legislator?

MR. BIEDERMAN: Well, we never got to the legislative proposal. This was all being done within the Executive branch.

SENATOR STOCKMAN: Did you discuss it with any legislator?

MR. BIEDERMAN: In terms of the overall plan?

SENATOR STOCKMAN: Yes.

MR. BIEDERMAN: That is a tough question. If I have discussed it, I don't remember if I ever talked to Larry Weiss about it or not, for example; I don't know. Not officially; not as an official plan, because it never was a proposal of the Administration.

MR. STRINGER: There were two legislators on the advisory panel.

SENATOR STOCKMAN: So, they would access to that?

MR. BIEDERMAN: I don't think we ever discussed it with a legislator. I never did.

MR. STRINGER: No, that's true. But, there were two legislators on the panel.

SENATOR STOCKMAN: That's what I am concerned about. Now, as I understand it, this more far-reaching proposal, or this plan, was presented to GMIP. I thought you said that.

MR. BIEDERMAN: No. I discussed it with Bob VanFauson, just so we can use an example. Bob VanFauson was working with me in the Treasury Department as a sounding board on behalf of GMIP. This was not a GMIP initiative. This was a Ken Biederman initiative. After a

year in office, I started to design the concept and put it down on paper, with the help of Dick Standiford. We then bounced this off GMIP and Bob VanFauson.

SENATOR STOCKMAN: Do you know if he shared that with the other GMIP members?

MR. BIEDERMAN: I believe it was discussed with Bob Furgeson and probably Rocco Morano.

SENATOR STOCKMAN: Who were the two legislators on that panel?

MR. BIEDERMAN: There was never a formal presentation that I am aware of. It just did not get to that point. The concept was still there, however. So, I want to stress, first of all, the far-reaching words which I used with regard to the initial proposal, where we came back with regard to the Office of Management and Budget -- and I think this is where people want to focus their attention. I think we need to focus the attention on that. There were two choices: Where did we come back to, and, what, in fact, has been occurring with regard to the budget process, number one. And, number two, was why wasn't something submitted sooner? -- which is one of the points you raised.

SENATOR STOCKMAN: I know you are trying to help me, Ken. But, I am interested in your proposal, incidentally, off the record or on the record. Other members may not want it. I would love to see what recommendations Ken Biederman had. Whether they became palatable to the Administration or to GMIP or not, frankly that concerns the Administration and GMIP. You have been in that office. I think you have done a fine job. You have some ideas and suggestions about major changes of that sort. I, for one -- and I think others -- would be interested in knowing them and talking about them. That is one of the things I am trying to bring out.

I hope, Madam Chairwoman, you don't mind my belaboring and delaying this hearing further, but this is a very important subject.

MR. BIEDERMAN: I would be very happy to do so with the understanding that these are not the proposals of the Administration.

SENATOR STOCKMAN: I would like to see those. But, beyond that, Ken, let me go a step further. We know you were not able to persuade the Administration on some of those ideas. But, you went on from there, and what I am trying to find out is, were there any discussions about submitting this Office of Management and Budget through a reorganization statute to the Legislature?

MR. BIEDERMAN: Oh, yes.

SENATOR STOCKMAN: And, was there a problem? Did some people think you should and did some people think you shouldn't?

MR. BIEDERMAN: Well, we didn't know. Again, I will go back to the thought that this was the legal aspect of this. If you go back to the Executive Reorganization Plan, the question is, "What does it say?"

The opinions we were getting, verbally, from Mike Cole and the Attorney General's office was that if you are changing and restructuring statutory conveyances, then it needs to go into an Executive Reorganization Act.

For example, if it was our proposal to take powers away, conveyed by statute, from the Director of Budget and Accounting and the Comptroller of the State and to vest those powers in an Al Fasola -- or whomever the Director of OMB may be -- that comes under the purview of the Executive Reorganization Act.

SENATOR STOCKMAN: All right. Let me stop you here. If you were going to take away powers, or if you were going to tinker with the powers of the Director--

MR. BIEDERMAN: Statutorily vested powers.

SENATOR STOCKMAN: Well, that is where I guess we-- Who is the Director of the Division of Budget and Accounting?

MR. BIEDERMAN: The Director of Budget and Accounting is Dick Standiford.

SENATOR STOCKMAN: All right. Standiford. Now, the person who is the head of Management and Budget is Mr. Fasola, right?

MR. BIEDERMAN: Yes.

SENATOR STOCKMAN: Now, let's get specific. Maybe that is a better way of going at it. Right now, in the course of the last month, what is the relationship between Standiford and Fasola?

MR. BIEDERMAN: Well, I hope it is a good one. (laughter)

SENATOR STOCKMAN: Okay. I mean, how do they relate to each other? Who has a bigger office? (laughter) Let's get right to the nitty-gritty.

MR. BIEDERMAN: I do know that when I took a chandelier from the kitchen and put it in my office, Fasola wanted one too.

SENATOR STOCKMAN: I may tell him. We may hear from him before the day ends.

MR. BIEDERMAN: I have a bigger office than the Governor.

SENATOR STOCKMAN: I knew I shouldn't have asked that question.

MR. BIEDERMAN: Mine is the only shower in the State House.

SENATOR STOCKMAN: How do they relate to each other?

MR. BIEDERMAN: Well, from a management standpoint -- if that is your question -- Al Fasola acts as an agent of the Treasurer, from a management and administrative standpoint, with regard to the items you have seen in the organizational chart.

SENATOR STOCKMAN: I'm sorry. Could you say that once more for me?

MR. BIEDERMAN: Think of Al Fasola as an Assistant Treasurer -- as a Liz Felker, as an Ed Hofgesang.

SENATOR STOCKMAN: I have a hard time thinking of him as a Liz Felker.

MR. BIEDERMAN: These are not statutory positions. These are positions created within the Department of the Treasury. The only statutory position within the Treasurer's office, I believe, outside of the State Treasurer, is the Deputy. When the State Treasurer is out of the State, the Deputy takes over.

SENATOR STOCKMAN: You used another phrase, okay? I am trying to get back to it. Unfortunately, I am spoiled. When I am in a courtroom, I can ask to have it read back; I can't do that here.

You used another phrase; you said think of him as an agent--

MR. BIEDERMAN: (interrupting) As an Assistant Treasurer.

SENATOR STOCKMAN: No, before that -- as an agent of the Governor.

MR. BIEDERMAN: Again, I don't want to get hung up on words. Think of him as an administrative agent, if you will, designated as an Assistant Treasurer, with regard to the State Treasurer -- not a person who has statutory responsibilities. I think we ought to walk through the budget process, just so you understand what that means. I think this is the whole issue here. I may be wrong, but I think this is very much the issue. Think of certain statutory responsibilities that Dick Standiford has.

SENATOR STOCKMAN: You see, one of the problems I have, Ken, is, we talk about the responsibility of an Al Fasola as Manager of the Office of Management and Budget, not having statutory responsibilities. That is like putting the bunny in the hat because by statute, or by the review process through the Legislature, if we don't deal with him, he can never have any responsibility at all. As a matter of fact, one could argue that he can--

MR. BIEDERMAN: Oh, I would disagree, Senator. I have Assistant Treasurers that often come before committees and testify on my behalf. I have Assistant Treasurers which-- Well, let's take Elizabeth Felker again, if we can, as an example. She has the responsibilities of the State Treasurer, conveyed by statute, that I have delegated to her in terms of management responsibility and oversight. She reports back to me on these matters.

But, with regard to cash management and financial management, these are powers conveyed within the State Treasurer, to be delegated by the State Treasurer.

SENATOR STOCKMAN: All right. Let's go through the State budget. Al Fasola may have minimal, or no real involvement in the budget, and maybe all this is much to do over nothing. So, let's go through it and see if I can follow along, and the rest of the Committee can follow along, as to what his role is going to be, and whether it is an important one -- you know.

MR. BIEDERMAN: Again, we go back to the reason why we restructured it. It is tighter management and oversight efficiencies from a functional line. One of the functions of Treasury is matters of budgeting, planning, and all those things related to the budgetary process.

Let's go through the process this year. I can't give you the exact dates. I can certainly give you the chronology. Early in the budgeting process, after the appointment was made and announced by the Governor, with regard to the Director of Office and Management, which is in your July 21 memo -- and this is not any different from the way it was done in the previous year -- a meeting was held with the Governor regarding the budgeting process on matters of direction. After all, the budget is not only a fiscal document of the State, but it is also a planning and political document of a Governor. A meeting was held, involving people such as the Governor's inner people -- which would be the Gary Steins, Kerry Edwards, Greg Stevens, myself, Standiford, Rich Kievey, and Al Fasola. A meeting with the Governor was held to talk about the general guidelines the Governor wanted to see in his budget.

Among the other things the Governor spoke of at that time was the desire to keep departments capped, in terms of growth. It was also determined at that time that the role of Al Fasola, with regard to budget operation, was to work with -- on behalf of the State Treasurer -- the different Cabinet members and the people of the budget department, in negotiating this whole issue -- the fine details of the budget. You said the boring aspects of the budget, but this is the hardworking aspects of the budget. The State Treasurer does not sit in on every day-to-day budget meeting. That wasn't the case last year, and it isn't the case this year. There are financial policies of the budget that are vested in the State Treasurer's office.

SENATOR STOCKMAN: The Comptroller is the number two man on the budget, after the Treasurer?

MR. BIEDERMAN: Well, in some areas it is the Comptroller by statute. There are certain matters of accounting responsibility, for example, and grouping by fund responsibilities, to see that the budget is a proper accounting document, that are vested, statutorily, in the Director of the Budget. The Director of the Budget reports to the Treasurer, but there are certain policies and functions that the Director of the Budget has where, in a sense, he doesn't report to anybody -- the Governor or anybody else. He reports to the law of the

State of New Jersey. I think that is an important distinction to bear in mind once we get back to this reorganization plan and what is in it and what is not in it.

So, on a day-to-day, sitting in with the Cabinet members, as an agent of the State Treasurer in that regard, and of the Governor in a sense, Al Fasola was working with the budget people on that, from a day-to-day management standpoint, to see that all these policies, procedures, and so on, in conjunction with the Director of the Budget, were getting done as the budget was put together.

SENATOR STOCKMAN: Let me stop you for a moment. Al Fasola, as the new Director of the Office of the Budget, sits down with commissioner "X" of a department, apparently, to discuss that department's budget. What is that commissioner's understanding or appreciation of the role that Al Fasola is going to play in his budget for his department, which I think you and I can agree is an exceptionally vital part of his existence -- whatever commissioner, of the twenty, we are talking about? What was their understanding, or what is their understanding, about the role, the relationship, the importance of this fellow, Al Fasola, who sat down with them -- this agent you talk about?

MR. BIEDERMAN: Again, I can't speak for each commissioner's perception.

SENATOR STOCKMAN: What do you think their perception was?

MR. BIEDERMAN: I don't know. It depends on the commissioners and what they were thinking. Obviously, they knew that Al Fasola was the Director of the Office of Management and Budget.

SENATOR STOCKMAN: Operating without the Director of the Division of the Budget?

MR. BIEDERMAN: Within -- you know -- the name that had been conveyed. They knew that that person reported to the State Treasurer. They also knew that in terms of the budget, we all deal with the Governor.

SENATOR STOCKMAN: Did they know that Standiford reported to Fasola?

MR. BIEDERMAN: Standiford, on matters of the Director of Budget and Accounting, does not report to Fasola. The statutory responsibilities of Standiford are either independent of the Treasurer or the Governor, or, to the extent that statutory powers are related to the Treasurer, there is a statute stated. This is an important point, Senator. I know we are going to keep coming back to it.

SENATOR STOCKMAN: I am trying to get hold of it. I am listening, sir.

MR. BIEDERMAN: The question we dealt with is, is there anything here in this structure that changed any statutory responsibilities? And, according to the Attorney General -- and, again, I get back to this point because we were trying to find out what should or should not be in this within the scope of the law.

SENATOR STOCKMAN: We only got that final, official word on the 21st of February.

MR. BIEDERMAN: Obviously, we were still operating. Our opinion never changed. Our interpretation never changed.

SENATOR STOCKMAN: But, he has been working for months, and we only got that formal Attorney General's opinion a few days ago.

Ken, you keep talking about this statutory responsibility. In a broad sense, the Treasurer and the people under him have a general responsibility to submit a budget that is very massive, complex, and detailed, to the legislature, in order to run the whole operation of government. Can't we agree that in a broad sense all of the work Fasola does is as an agent of the Executive Branch, in order to accomplish that responsibility of producing a budget? The more we talk, the more a common sense lay person -- not necessarily a lawyer -- will begin to say this man plays a major role in what that budget is going to be. And, isn't it strange that there is nothing in the design of state government or in the design of treasury that would give somebody an understanding of what his authority and responsibility is?

I, as a legislator, have no understanding, except as you are articulating it here today, as to what this man, Fasola, who is meeting with each and every department head, and who is perhaps playing a major part in shaping the design of that department's budget, is doing.

MR. BIEDERMAN: Let's look at it. There is no statutory responsibility, that I am aware of, that says the State Treasurer prepares the budget, since the Director of Budget and Accounting prepares the budget.

Now, let's get into the other aspect of preparing the budget. I do not believe that the statute says anywhere that the Governor prepares the budget, but I can assure you that the Governor has a lot to say about what is in that budget. There is no statute, that I am aware of, that says the Governor's Chief of Staff or that the Governor's Chief Counsel prepares the budget, but I can assure you that the Governor's Chief of Staff and the Governor's Chief Counsel sit in on budget meetings, and they have a lot to do with that budget.

SENATOR STOCKMAN: Putting aside this opinion, as a person in the eye of the storm, don't you think that there ought to be some statutory definement of this Office of Management and Budget? Don't you think the Legislature ought to join in some sort of design to make clear what that role and responsibility is in the face of what, in fact, his responsibility is? I am asking you personally.

MR. BIEDERMAN: I think if there are going to be statutory powers conveyed, obviously.

SENATOR STOCKMAN: Well, let's get away from statutory powers. Let's not get hung up on little words like that.

MR. BIEDERMAN: I think I told you what my thinking on the word was. Statutory is not a word you get hung up on. We are a system of laws.

SENATOR STOCKMAN: I walked into Treasury the other day, and there was painting on the window, "Office of Management and Budget." Not many people have stuff on the window like that. Yet, if we go all through these statutes, if we go everywhere, we can't get a handle on what it is all about.

MR. BIEDERMAN: Fasola discovered several gallons of paint in the basement. (laughter)

SENATOR STOCKMAN: Don't you think -- and I am trying to separate you from the Attorney General's opinion, with all due respect-- I am not saying it is not an objective, impartial,

nonpartisan opinion; I am not saying that. But, in your personal opinion, don't you think there ought to be some design, statutorily, as to what this office is?

MR. BIEDERMAN: My opinion is that if the Legislature feels it should be, certainly there is no objection from our office in that being the case. Again, I stress, Senator--

SENATOR STOCKMAN: I appreciate that; I appreciate that.

MR. BIEDERMAN: I will make it even stronger. I stress, Senator, that we did not approach this Executive Reorganization Act with, "What can we keep away from the Legislature?"

SENATOR STOCKMAN: There are those who suspect that, so I am glad you say that was not the case. But, let me ask you once more.

MR. BIEDERMAN: First of all, the Legislature can get into anything it chooses to. You know, it can reject the plan.

SENATOR STOCKMAN: Right, but we wouldn't do that. I think that, by and large, we recognize that particularly the GSA is a sensible move. There is some concern about this senatorial courtesy, and I think that will be worked out.

Ken, I appreciate your volunteering that if we want to, Moose Foran and others, together with myself, we might be able to get into it. But, I'm asking you, just once more, personally, knowing of the importance of what we are talking about, there is a lot of partisanship we cannot escape, neither of us, nor all of us-- But, knowing the role that the Office of Management and Budget plays, a role that a fellow by the name of Tom Kean in a press release talked about as being part of a major restructuring of this Department, when we have legislation that spells out in great detail the operation of the Treasury, and how the budget is put together, and so on, don't you think there ought to be some statutory design of that through the mechanism that the Governor has used with regard to creating this Office of General Services, something more clearly defined for us to deal with?

MR. BIEDERMAN: I would have no problem with that personally whatsoever.

SENATOR STOCKMAN: Wouldn't you think it is the better way to go?

MR. BIEDERMAN: I have no problem with that. Again, under the Executive Reorganization Act--

SENATOR STOCKMAN: Does Bill agree with me on that?

MR. BIEDERMAN: Is Bill still here?

MR. STRINGER: Again, I have no problem.

SENATOR STOCKMAN: I know you have no problem. You are two of the greatest "no problem" guys. All I'm asking is, don't you really agree that that makes sense? I mean, that might save a lot of the heat that has been engendered.

MR. BIEDERMAN: Let me tell you, in fact -- and at the risk of press people being here -- what you read in the press and what really goes on, as you know, is not always what, in fact, is the case.

SENATOR STOCKMAN: Well, look--

MR. BIEDERMAN: If you want to statutorily convey, for example, or if the Governor wants to statutorily convey, powers to the Director of OMB, obviously it requires legislation. Even if the Legislature desires to have it more defined, you will find our office and the Administration willing to cooperate. I said that from minute one. But, I submit to you that when you start cutting away from all the perceptions, the perceived battles between Mr. Fasola and myself, the perceived battles between Democrats and Republicans -- if you really were involved in the budget process this year, you would see that in terms of the preparation, in terms of the Governor's role, the meetings we had, my role, the meetings I had, the role of Mr. Baldwin, whose name is not even mentioned here -- he is the revenue side of the budget--

SENATOR STOCKMAN: I know.

MR. BIEDERMAN: (continuing) you will find there were not many, many changes in terms of how this thing evolved. The kind of changes which did occur, if you will, were a tighter discipline, a tighter management control on the budget, a top-down direction from the Governor, from back in September, on certain things as to where he wanted departments to go, and a negotiation process which involved Mr. Fasola, as an agent of the Treasurer, or Assistant to the Treasurer, or whatever you want to call it, on a day-to-day basis, with regard to these cabinet officers. Now, this can all be changed.

SENATOR STOCKMAN: Well, maybe the heavy in all of this is a guy by the name of Carl Golden, who put the release out about the major restructuring of the State budget development process. Maybe we ought to get him in here and beat him on the head. I think you can appreciate that when the legislators who have to work in this arena of the budgetary process see signs being painted on windows, and correspondence with Mr. Fasola identified as Director of this Office of Management and Budget, and rumors that he is meeting with top government people in shaping the budget--

MR. BIEDERMAN: (interrupting) These meetings did not just happen because Mr. Fasola charged off and decided that he and Mr. Standiford were going to have these meetings. These meetings were decided with the involvement of the Governor, the Treasurer and his Chief of Staff, and his top people, Standiford and Fasola, prior to even setting off the budget process. The direction came from the Governor, and we agreed because that is the way we wanted it structured. But, this was not going to be, you know, a whole bunch of people playing in different directions, but a day-to-day process, in terms of getting the nitty-gritty of the budget together. You know, you're on the Committee, that an awful lot of that budget is in place from day one anyway, because we are forced to spend "X" percent of the budget. So, in terms of just the detail pencils and papers at the cabinet level -- who is going to get what in the bodies -- that day-to-day process involved the Office of Management and Budget with the responsibility of getting the budget together statutorily. Assembling it still lies with the Dick Standifords, the Rich Keeveys, and so on.

That hasn't changed. Once the first draft was prepared, we sat down, again looked at the revenue situation, had secondary meetings with the Governor, received further input from him, went back and hammered that out, went back to the Governor, and the end result was a budget, which except for its cover -- which is in black instead of the red -- looks an awful lot like previous budgets.

SENATOR SAXTON: Madam Chairman?

SENATOR LIPMAN: Senator Saxton.

SENATOR SAXTON: May I follow up on Senator Stockman's last question?

SENATOR LIPMAN: Yes, you may, Senator Saxton.

SENATOR SAXTON: Relative to Senator Stockman's question about statutory authority for an individual such as Al Fasola, whatever his title might be, I was quite friendly with the last State Treasurer, and he was a nice guy too, as Gerry has suggested you are, and I would like to suggest that his personality was quite different than yours. His way of operating was quite different than yours, and I am not suggesting that one is better than the other, but that there is a different modus operandi among individuals in government. Gerry's suggestion that we might consider some type of statutory authority for an office such as the one Al Fasola holds, or such as the job he does, leads me to wonder whether it would be better to do that and put a lock on that type of an office, or whether it is better to leave it to the discretion of the Chief Officer of the Department of the Treasury, together with the Governor, to set up what may work best for them, in terms of their personalities, in terms of their perceptions of government, and in terms of the process they want to use to structure a budget.

MR. BIEDERMAN: I think when I answered his question by saying "I have no trouble," I assumed he was talking about the creation of a terminology recognized statutorily, as opposed to a very definite detailing of who is going to do what. You never want to do that, for obvious reasons. I mean, if you start doing that, then you have to go down and spell out what role the Chief of Staff can have, and what role -- you know, this thing is a give and take document. Every step of the way just can't be laid out. That is why the responsibility is delegated. I think in terms of giving some official recognition to an organization called the Office of Management and Budget, and with the broad guidelines stated, fine. That is done throughout government in many places. But, I agree with you that if you start getting to the point where you say who is going to do what, you are just creating an impossible management situation. Then you don't even need a Treasurer at all.

SENATOR LIPMAN: Excuse me, I didn't quite hear the answer to Senator Saxton's question. He asked you, I think, "Wouldn't it be a good thing to make Mr. Fasola a statutory position?"

MR. BIEDERMAN: Make Mr. Fasola a statutory position?

SENATOR LIPMAN: No, I mean -- not the man, the position.

MR. BIEDERMAN: A lot of people have suggested things for Mr. Fasola, but I never heard that. (laughter)

SENATOR LIPMAN: I mean his job. You know, make it advice and consent, or something, and describing it.

SENATOR SAXTON: What I was trying to get at, Madam Chairman, was whether or not we, the Legislature, as a matter of general policy, should legislate the structure of a department for certain purposes, in this case, whether we should legislate the structure of the Department of the Treasury for the purpose of developing the budget, knowing that different people and different administrations prefer to work differently? That was the thrust of my question.

SENATOR LIPMAN: I understand, Senator.

MR. BIEDERMAN: I think if you create it as a statutory position, you, of course, then get into the issue of creating statutory responsibilities. I mean, if you create a statutory position, and say, "Oh, but you don't have any statutory responsibilities," in effect, we have, if you will, a position administratively named, but the statutory responsibility is going to change. If the question being asked is, should there be a broader look into the creation and changing of statutory responsibilities, of course, that is indeed the initial plan that we were talking about -- along those lines. But, that is not what we have done here. We're getting now into a debate over maybe what my opinion is about what we should do, versus what we have done.

SENATOR LIPMAN: Excuse me, Senator Saxton, have you finished, because I would like to ask a question?

SENATOR SAXTON: Yes, thank you.

SENATOR LIPMAN: Which officers who work for the Treasury have duties defined by statute?

MR. BIEDERMAN: By statute?

SENATOR LIPMAN: Yes.

MR. BIEDERMAN: Well, let's see, the Director of Taxation, the Director of Purchase and Property, the Director of Building and Construction, the Director of Budget and Accounting, the Director of Pensions, and the Director of Data Processing and Telecommunications. The State Treasurer and the Deputy Treasurer are recognized in the statute; Assistant Treasurers are not recognized in the statute. Did I leave anyone out?

UNIDENTIFIED MEMBER OF TREASURER'S STAFF: The Director of the Division of Investments.

MR. BIEDERMAN: Investments, that's right. The Lottery Director is in, but not of statutory-- But, Assistant Treasurers do not have duties defined by statute.

SENATOR LIPMAN: Oh, Assistant Treasurers do not?

MR. BIEDERMAN: No, just the Deputy Treasurer does.

SENATOR STOCKMAN: Ken, the creation of this Office of Management and Budget will significantly alter the manner in which budgets are formulated, won't it?

MR. BIEDERMAN: Will significantly alter the way budgets are formulated?

SENATOR STOCKMAN: Yes. I'll clue you in. I'm reading--

MR. BIEDERMAN: You're reading from a press release, or a letter.

SENATOR STOCKMAN: No, this is a Bill Stringer letter; it goes beyond a press release. It is dated January 23. Would you agree with that?

MR. BIEDERMAN: Significantly alters the way budgets--

SENATOR STOCKMAN: (interrupting) Will the creation of this office significantly alter the manner in which budgets are formulated and the way financial dealings are carried out?

MR. BIEDERMAN: I think that the Office of Management and Budget, from the standpoint that we have a tighter administrative control on the day-to-day preparation -- yes, that is true. Is it going to change in terms of the Governor's involvement, or the Treasurer's involvement, or the Governor's chief policy involvement? I do not think so. I think what it does do is, once the direction is

set, it is a much tighter way of getting the Governor's direction carried out. I think, again, that most of the publicity on it was the so-called "top-down" notion. We have had targets before in budgets, sure. I think this is a way of starting out from day one, getting the Governor's overall direction and guidance, and then just hammering it out -- and involving planning too.

SENATOR STOCKMAN: You're asking the Legislature to appropriate over \$12 million for the Office of Management and Budget, correct?

MR. BIEDERMAN: Those moneys are also disbursed within existing functions that have already occurred in the past too.

SENATOR STOCKMAN: I mean, the boss of the Office of Management and Budget is Al Fasola, right?

MR. BIEDERMAN: Well, the boss, from the standpoint of the budget, is the State Treasurer.

SENATOR STOCKMAN: No. The boss of the Office of Management and Budget is--

MR. BIEDERMAN: He is the boss, and he reports to the State Treasurer, in terms of putting the budgets together.

SENATOR STOCKMAN: But, he is the boss of the Department you are asking the Legislature to appropriate over \$12 million to, correct?

MR. BIEDERMAN: Well, that is not quite correct, because there are certain powers Mr. Standiford has, and he is not the boss of anybody.

SENATOR STOCKMAN: Putting those aside?

MR. BIEDERMAN: Some of those moneys go for that kind of purpose. You know, we have other departments' budgets here that go to people who are going to be reporting to the Treasurer through Elizabeth Felker too. A budget is prepared and is signed off on by the State Treasurer. Administratively, I can delegate and convey responsibilities as the statutes so allow. In some cases, I can't. For example, I cannot direct Standiford to take certain actions that he is independent of the State Treasurer on, such as an issuing official.

SENATOR STOCKMAN: I have only one other question of this witness, and at some point I'm sure we will be hearing from Mr. Fasola

and some others. Is there no difference of opinion, split of authority, within the Treasury Department or the Attorney General's office, on this question of whether or not to deal with this in a more formalized way through legislative action?

MR. BIEDERMAN: Well, in a sense, my own thinking is that we would have gone further.

SENATOR STOCKMAN: I'm sorry, I didn't hear that.

MR. BIEDERMAN: Well, as I pointed out in my statement, my own thinking way back was that we would--

SENATOR STOCKMAN: (interrupting) Of a larger design -- I mean, other than that, on this question--

MR. BIEDERMAN: We relied on the Attorney General's office as to how to interpret the Executive Reorganization Act.

SENATOR STOCKMAN: Then, there was no difference of opinion on that?

MR. BIEDERMAN: Well, not that I am aware of.

SENATOR STOCKMAN: Okay. That is all I wanted to know.

MR. BIEDERMAN: At least at any meetings we attended, Mike Cole made it very clear that this was now -- as we went through the evolutionary process-- By the way, one of your questions that we never got to was, "Why wasn't it submitted sooner?" There was the requirement of both houses being in session, and the fact that I think sometime after September they weren't, until we had less than sixty days left in the session, and then it would have died with the Legislature. All along, the same guidelines the Attorney General's office gave us from day one still apply. Ultimately, they are just restated in that official opinion.

SENATOR STOCKMAN: Thank you.

SENATOR LIPMAN: Okay. Assemblyman Charles?

ASSEMBLYMAN CHARLES: Yes, I have just a couple of questions. Regarding this Office of Management and Budget, what existing bureaus, divisions, offices, or whatever, come under that heading? I mean, in GSA, we know we have Purchase and Property, and we know we have Building and Construction. Under OMB, what do we have?

MR. STRINGER: The Division of Budget and Accounting is the only existing Division that comes under that.

ASSEMBLYMAN CHARLES: The Division of Budget and Accounting?

MR. BIEDERMAN: Do you have organization charts there?

ASSEMBLYMAN CHARLES: Yes, all right. So, it's the Division of Budget and Accounting. Is there anything from the financial--

MR. BIEDERMAN: The Office of Financial Management?

ASSEMBLYMAN CHARLES: Yes.

MR. BIEDERMAN: No. There have been some areas of that which are powers conveyed to the State Treasurer, which I have moved, again under the authority that the Attorney General says I have, into the Office of Financial Management, out of Budget and Accounting. These were non-statutory powers which I moved out of Financial Management because of a functional reason.

ASSEMBLYMAN CHARLES: Out of Budget and Accounting into--

MR. BIEDERMAN: Cash Management.

ASSEMBLYMAN CHARLES: Into where?

MR. BIEDERMAN: Into the Office of Financial Management.

ASSEMBLYMAN CHARLES: All right. What about other units or sections of government which are now under OMB?

MR. STRINGER: I should clarify what I said too. I said that under OMB, there is only the Division of Budget and Accounting, until the plan is finalized.

ASSEMBLYMAN CHARLES: Yes, I understand all that.

MR. STRINGER: There is also Data Processing and Telecommunications.

ASSEMBLYMAN CHARLES: Data Processing and Telecommunications?

MR. STRINGER: Yes.

ASSEMBLYMAN CHARLES: That will also be under OMB?

MR. BIEDERMAN: Not the purchase and property aspect of it; that goes under GSA.

MR. STRINGER: Only when the plan is finalized. Until the plan is finalized, Data Processing and Telecommunications still falls under the OMB umbrella.

ASSEMBLYMAN CHARLES: And, after the plan is finalized, what will then come under OMB?

MR. STRINGER: After the reorganization it will be, in fact, dissolved, and its duties will be placed with Purchase and Property under GSA. The remainder of the duties relating to planning for Data Processing will be given to the Treasurer, and I believe at that time a great proportion of that will fall to OMB as well.

ASSEMBLYMAN CHARLES: Will any other--

MR. STRINGER: Well, the planning will be encompassed within the planning done within OMB.

ASSEMBLYMAN CHARLES: Within OMB, I see.

MR. BIEDERMAN: That is in the Reorganization Plan.

ASSEMBLYMAN CHARLES: So, in effect, what we have is this planning element of Data Processing and Telecommunications -- that planning aspect through the Treasurer, as you say -- which will be under OMB, is that right?

MR. STRINGER: That's right. It makes sense to have--

ASSEMBLYMAN CHARLES: (interrupting) Also, under that will be the Division of Budget and Accounting, as it previously existed, is that right?

MR. BIEDERMAN: With the exception of those activities which have been transferred to Financial Management.

ASSEMBLYMAN CHARLES: Okay. So, some of the activities which now exist in the Division of Budget and Accounting are being removed from that Division, and are being put--

MR. BIEDERMAN: (interrupting) Certain cash management functions.

ASSEMBLYMAN CHARLES: Certain functions -- let's just say functions -- are being removed from that Division of Budget and Accounting over into Financial Management, the other thing you were talking about.

MR. BIEDERMAN: Yes.

ASSEMBLYMAN CHARLES: All right. Now, I understand it is your position that the only thing that requires the submission of a reorganization plan is if there is some transfer of statutory function. Is that how you read the reorganization statute?

MR. BIEDERMAN: That is the way the Attorney General interprets it for us.

ASSEMBLYMAN CHARLES: Well, have you had any--

MR. BIEDERMAN: (interrupting) I do not pretend to be an attorney. In these matters, I rely on his judgment. But, I could give you his opinion, if you want it and don't have it.

ASSEMBLYMAN CHARLES: No, I don't want you to give me anything. Did the Attorney General ever speak to you about the provision of the statute where consolidation, merger or coordination of function is involved, or whether or not that gives rise to a need to--

MR. BIEDERMAN: (interrupting) Yes, that is referred to in his opinion as well.

ASSEMBLYMAN CHARLES: That is referred to in his opinion?

MR. BIEDERMAN: Yes. If you were to take a statutorily created department and merge that department, then you must go into executive reorganization on that as well.

ASSEMBLYMAN CHARLES: What about the merger, or the coordination of functions between departments or units? Was that ever discussed in terms of whether or not that calls for a reorganization plan?

MR. BIEDERMAN: In what context?

ASSEMBLYMAN CHARLES: Well, in the context -- have you read the reorganization statute? You may not have. You are not a lawyer, and I know you function as the Treasurer. You rely, I know, on the advice of counsel. But, I am just wondering whether in the process you ever had occasion to read it, and to read the sections under Section 4?

MR. BIEDERMAN: Well, I don't know about Section 4, but I have read the statute, and I received a fairly extensive opinion with regard to the statute, citing sections of it which are relevant.

ASSEMBLYMAN CHARLES: All right, so you read the section in the statute which said -- this is 14C-4--

MR. BIEDERMAN: I don't have the statute in front of me.

ASSEMBLYMAN CHARLES: You don't have it? Well, let me read it to you. It says, "When the Governor after investigation finds that: (4) The consolidation, merger, or coordination of a part of an agency or the functions thereof with another part of the same agency or functions thereof, it is necessary for him to submit a reorganization plan." Was that language ever discussed?

MR. BIEDERMAN: Yes. We are trying to find references exactly to 14C-4 in here. I have gotten to 14C-3.

ASSEMBLYMAN CHARLES: Let me just ask you this: Is it your position then--

MR. BIEDERMAN: (interrupting) Here it is, a reference to 14C-4.

ASSEMBLYMAN CHARLES: Is it your position then that nothing in the nature of what is proposed with regard to OMB and Financial Management administration involves a coordination of function of preexisting entities?

MR. BIEDERMAN: You would have to run that by me again, because I think you lost me.

ASSEMBLYMAN CHARLES: As I understood your answers initially, you said that the new OMB that is set up is going to have under it -- and this is a change from the way it previously existed -- a Division of Budget and Accounting, from which something has been taken, and given to the Treasurer. It is going to have--

MR. BIEDERMAN: That was vested in the Treasurer to begin with.

ASSEMBLYMAN CHARLES: All right. It was always there. You also said that certain functions of the Financial Management Division are coming under the Office of Management and Budget, right?

MR. BIEDERMAN: Right.

ASSEMBLYMAN CHARLES: Isn't that then a change, or consolidation or coordination of preexisting functions into a different arrangement?

MR. BIEDERMAN: Well, again, I can quote you from the Attorney General's opinion.

ASSEMBLYMAN CHARLES: No, no, I'm not asking you for the Attorney General's opinion.

MR. BIEDERMAN: I am not the attorney here, but I would like to answer that in light of the advice I received from my attorneys.

ASSEMBLYMAN CHARLES: Excuse me, in your opinion as the Treasurer of the State of New Jersey, in terms of the operation of that Department, isn't that, in fact, a change in the functional units of the government?

MR. BIEDERMAN: Well, in that sense, yes, and then the question is, is it within the purview of the Treasurer to take those actions? According to the Attorney General's office, if I may quote--

ASSEMBLYMAN CHARLES: Excuse me. I don't mean to interrupt you, but I don't think that is my question. I understand what you're saying the Attorney General's opinion is, but I'm asking you factually now concerning your opinion as to what it means functionally -- forget about what it means legally. That is something that other people deal with.

MR. BIEDERMAN: We have taken functions from Budget and Accounting, cash management type functions, and moved those, in terms of reporting responsibilities, into the area of Financial Management, absolutely.

ASSEMBLYMAN CHARLES: Under this proposed arrangement for OMB, you would agree then that there is some rearrangement merger, or coordination of functions in a different way?

MR. BIEDERMAN: Yes, we have planning. Again, these are not unlike what we are talking about with Financial Management.

ASSEMBLYMAN CHARLES: No, we are not talking about the difference; we are just talking about the rearrangement. We understand that it is all basically the same, right? We also understand -- we would all agree, I assume, that it is clear that any time you would create some additional powers within any unit, whether it is a division, an office, or whatever, you just can't do that. The statute just doesn't let you make that up.

MR. BIEDERMAN: The way you are putting it, obviously there have been some rearrangements.

ASSEMBLYMAN CHARLES: Exactly. So, what we are talking about in reorganization then is whether, in fact, there has been a reorganization, or any kind of shift or movement in the functional activities of a unit? Is that what we are talking about when we are talking about reorganization?

MR. BIEDERMAN: In terms of reporting responsibilities--

ASSEMBLYMAN CHARLES: When we are talking about reorganization, isn't that what we are talking about?

MR. BIEDERMAN: In terms of reporting responsibilities, I think.

ASSEMBLYMAN CHARLES: And, in this case, where the Office of Management and Budget is concerned, it is true, is it not, that there has been a shifting, or change, or movement of some of the functions from old sections, or units, into this now OMB? Isn't that true?

MR. BIEDERMAN: Movements into? There have been movements out of.

ASSEMBLYMAN CHARLES: All right, out of then.

MR. BIEDERMAN: There have been movements out of the cash management functions, which we have been talking about.

ASSEMBLYMAN CHARLES: There has been movement then, right?

MR. BIEDERMAN: Yes.

ASSEMBLYMAN CHARLES: Now, is it the opinion of the Attorney General's office then, as you interpret it, that only where there is an abolition of a division, or a consolidation of a specific division, that a reorganization plan has to be submitted pursuant to the Act?

MR. BIEDERMAN: Or, if there is a change in statutory responsibility.

ASSEMBLYMAN CHARLES: You keep saying, "Change in statutory responsibility." Tell me what that means.

MR. BIEDERMAN: Well, let's say, for example, that it was desired that responsibility -- I'm trying to get a specific example. Let's say there was to be a change in some kind of an accounting responsibility, perhaps a change with regard to issues of contracts in Building and Construction, or something, in which the statute says it is best to get such and such a title, or individual, to carry out those responsibilities. If there was a proposal for management reasons that the responsibility for that were to be shifted from titled individual "A" to titled individual "B," then that clearly requires the submission of a reorganization plan.

ASSEMBLYMAN CHARLES: All right. So, nothing short of a change in responsibility from one of the statutory offices that you made reference to would require the submission of a reorganization plan? Is that basically your position?

MR. BIEDERMAN: Essentially, my understanding is, if it is a matter of -- and, again, they speak to the powers the Treasurer has within his own office-- My understanding of the interpretation from the Attorney General's office centers around the question of statutory authority.

ASSEMBLYMAN CHARLES: I have one further question. Under the new plan, the OMB plan, does the OMB director, or administrator -- I think you probably covered this -- have contact with these people? Does he coordinate, in any way, the functions of the people in the divisions within that--

MR. BIEDERMAN: (interrupting) They report to me through him.

ASSEMBLYMAN CHARLES: So, he has coordinating responsibilities with respect to those units which come under him, is that correct?

MR. BIEDERMAN: So does Mrs. Felker.

ASSEMBLYMAN CHARLES: Okay. I have no other questions.

SENATOR LIPMAN: All right. I think your fellow Assemblyman has a question.

ASSEMBLYMAN ZIMMER: I just have one request, lest I forget later. Because so many of these documents are subjects of our discussions and questioning, I would just like to suggest that we attach, as exhibits, to the transcript of this meeting, Chapter 203, Laws of 1969, which is the statute we are here to examine the application of, the actual Reorganization Plan as proposed on January 23, the opinion of the Attorney General's office, dated February 21, and the opinion of the Office of Legislative Services, dated February 24.

SENATOR LIPMAN: Very good; all right. I think Senator Cardinale has some questions.

SENATOR CARDINALE: Yes, I have just a few questions, and I will try to be very, very brief. I would like to observe that, while that press release created, for some people, a situation which has been described as "heated," I have kept my jacket on and I don't really feel it. (laughter) Really, there are two categories of activity we are

looking at here. One is the category of changes -- if we want to call them that, in a kind of a generic sense -- which have taken place. You have made some changes, and I'm sure every executive makes changes in the way operations go on, from his predecessor. Those changes which have occurred with respect to this particular area in question -- have you considered if they are efficient, in retrospect? Have you considered them to have created economies in personnel, or economies of effect, in terms of what you have been able to accomplish? Have you considered them effective? Have you considered them bottom line, good changes to have made?

MR. BIEDERMAN: I will have to give you an interim answer, because in one case -- of course, in the case of the GSA, we cannot execute until such time as the Reorganization Plan--

SENATOR CARDINALE: (interrupting) That is the second category.

MR. BIEDERMAN: In terms of the activity, let's say, with regard to Financial Management, there is no question that we have made tremendous strides in that area, just in debt collection alone -- in identification and the accounting for debt collection. We have made tremendous strides in that area. That is not surprising; we had expected that that would occur. There is no question that in the case of the budgetary process this year, we have a tighter control, and we have a greater discipline. We have been able to get efficiencies in getting the budget prepared, and the like. The Governor wanted to see it prepared from the standpoint of planning in the future, because this is the first year of that. I expect to see more of the planning process take part of the budgetary process. So, there is no question about that.

Within GSA, we certainly expect, assuming the completion of this plan, to see the efficiencies there, or we wouldn't have done it. That was the whole idea behind this.

SENATOR CARDINALE: Now, I know you have answered this from many directions, but I just want to put it very directly. In terms of the technicalities of the law that you work under, and I am talking about the Executive Reorganization Act of 1969, are you satisfied that

you sought out the proper kind of advice, and followed that advice to the best of your ability and, in fact, in the changes that were enacted, that you did follow the technicalities that were imposed upon you by that law?

MR. BIEDERMAN: Sure, and if they would have said otherwise, we would have done otherwise.

SENATOR CARDINALE: In a third area, you have been operating for a while under that law, and I would like to compliment you -- as Senator Stockman did -- for the activities that you have undertaken on behalf of the people in the State. I think you have done this to a very good degree. Now that you are leaving, we can perhaps ask you some questions that you can answer very objectively. Have you felt that this law, this Executive Reorganization Act of 1969, caused you to operate under any kinds of restraints that you feel we should look at, in terms of relieving? Or, are there some others that you feel would be better if we put them on? Would your office operate better if we made some changes in that Act?

MR. BIEDERMAN: I do not feel constrained. I probably will get in trouble on this one. (laughter)

SENATOR CARDINALE: Go right ahead.

MR. BIEDERMAN: You know, I am somewhat surprised that all the reorganization plans are not given a little more scrutiny, not that they do not necessarily comply with the statute, but just to look at them and see what is planned. We have sort of been circling the issue here with great intensity -- as to whether or not OMB should or should not have in the Executive Reorganizin Plan, as per legal interpretation in the statute. And, maybe the real issue is just an overall review of the reorganization plan, regardless of whether it should or should not be done. I think that is really as important as debating whether or not the Attorney General's opinion is correct. It doesn't matter whether I agree with the Attorney General's opinion, in terms of his legal opinion. He is my Attorney, and I follow his opinion. That is his role in the State.

I think that any kind of a reorganization that takes place is certainly a matter the Legislature has every right to take a look at,

and they should take a look at it. Whether there is some kind of a legal statement as to how it should be in the Act or not, I will fall back on the Attorney General for that.

But, I have not felt constrained. As I say, if the Attorney General had said put everything in, then we would have put everything in.

SENATOR CARDINALE: In terms of the question which has been been raised here, of someone who is not subject to senatorial confirmation having responsibilities and an interrelationship with someone who has, we would call it the burden -- the additional burden -- of senatorial confirmation. Do you see any changes in the current staffing as it now exists, where there would be benefit to the people of New Jersey if we changed that interrelationship?

MR. BIEDERMAN: In terms of the--?

SENATOR CARDINALE: In terms of the confirmation of any additional people who are employed in your Department. Would that be a benefit?

MR. BIEDERMAN: Well, perhaps, assuming the Executive Reorganization Plan goes through, you may want to require confirmation of the Administrator of General Services, and then give the Administrator the power to appoint the Director, so that you would have a reduction in terms of the hearing process. Vest that responsibility in the Administrator. It is certainly a matter of consideration.

SENATOR CARDINALE: Excuse me, Mr. Biederman. I am really asking your view of it, not what you think we might do.

MR. BIEDERMAN: I think that is my view, that you consider the Administrator, having once been given the statutory recognition that the Reorganization Plan gives him, as somebody subject to advise and consent. That individual would then have the power to make the appointments, not subject to advise and consent, unless it is felt that the Legislature wanted it that way. I think that becomes more of a burden on the Legislature than it does on the individuals themselves -- for the people that report to them. You could get to the point where everybody is subject to advice and consent, and then it gets to be a tremendously onerous exercise.

Again, the objective is to better set up a management chair within Treasury. Treasury has perhaps more people subject to advise and consent than anyone, except the Attorney General. That is not a bad thing to do, because of the tremendous responsibility. I would never suggest that the Director of the Division of Taxation should not be subject to advise and consent. Look at the individual's responsibilities. If you put a lot of statutory powers or responsibilities with Purchase and Property or Building and Construction and then tie them into an Administrator, then maybe that is the individual that is subject to advise and consent.

SENATOR CARDINALE: Thank you very much, Ken.

SENATOR LIPMAN: Senator Stockman.

SENATOR STOCKMAN: I have just one question, Ken. The Attorney General didn't say you couldn't submit a reorganization plan; he said you didn't absolutely have to. I subscribe to the notion that one of the fundamental responsibilities of everyone in government -- in public office -- is to work to see a smooth and harmonious relationship between different branches of government.

For instance, we have a real confrontation of branches of government in the Mt. Laurel area, and the question of fundamental responsibility of the State to live up to that. I urge you here, and your successor, to think about the question of the importance of the relationship between the Executive and Legislative Branches of government, and the importance that we work together to fashion a budget that is in the best public interest.

I urge you to ask your successor, in that spirit, not to feel constrained by some technical, narrow opinion of a particular Deputy Attorney General as to what is absolutely necessary, but to sensibly and simply, in view of the magnitude of this office, bring it in the form of a reorganization plan to the Legislature. Give us the benefit of the doubt, that we will look honestly and fairly at it and deal with it accordingly. Thank you, Madam Chairman.

SENATOR LIPMAN: I think Senator Stockman has made some very good concluding remarks.

SENATOR STOCKMAN: I would still like to ask some questions of Mr. Fasola.

SENATOR LIPMAN: Oh, yes. Just one moment. I would like to say to Mr. Biederman that his short stay has lengthened somewhat. It seemed as though they didn't want to let you go, Mr. Treasurer. So, if you want to stay, that is fine. Otherwise, nobody else has any questions for Mr. Biederman, right?

SENATOR SAXTON: Madam Chairman, I would like to say that we could probably get a consensus on the Committee to end the hearing right now, if the Administration would agree to submit this to a reorganization plan. I, for one, would be happy to forego questioning the other people. Maybe that is the route to go.

SENATOR LIPMAN: I'm sorry. I don't quite understand your question. You say if the Administration will agree to submit a reorganization plan--

SENATOR SAXTON: Of this Office of Management and Budget and Financial Management Administration.

MR. BIEDERMAN: I think that is something you are going to have to address to counsel.

SENATOR SAXTON: It was a try. (laughter)

SENATOR LIPMAN: All right. So, do you want to end it here?

I would like to conclude the hearing if nobody--

SENATOR CARDINALE: I would move that if you would like such a motion, Madam Chairman.

SENATOR LIPMAN: But, Gerry still has questions.

SENATOR STOCKMAN: Well, I don't want to take the burden of that.

SENATOR LIPMAN: I'm sorry. Some of the members of the Committee have questions of other members. If we don't break for lunch for some reason, I think you will be here until we close this. Do you want to go, Mr. Biederman?

MR. BIEDERMAN: If I can, if they are finished with their questioning of me. But, the staff and anyone else will certainly answer your other questions.

SENATOR LIPMAN: All right. Thank you, Mr. Biederman.

All right, who is going to begin, Gerry?

SENATOR STOCKMAN: Let me begin by congratulating you on being the head of this proposed twelve million dollar Office of Management and Budget. Maybe I ought to ask first, what is your job? Tell us what you do.

ALFRED FASOLA: In thirty words or less?

SENATOR STOCKMAN: No, carte blanche. The more you say, the more I may like it.

MR. FASOLA: May I be expansive?

SENATOR STOCKMAN: Sure.

MR. FASOLA: The Treasury reorganization that was characterized by the Treasurer, was to reorganize the activities of this Department along functional lines. There were some logical activities that were grouped around the budget. What we call management services, is to enhance the ability of the departments that are either in a growth mode or those that are in retrenchment, to provide support in the areas of data processing and telecommunication, and to take several existing organizations and to enhance their ability to deliver an efficient and effective service to the State. Now, my job was to provide coordination and oversight to those activities, Senator.

SENATOR STOCKMAN: Coordination and oversight?

MR. FASOLA: Yes, sir.

SENATOR STOCKMAN: I assume that oversight was over the various divisions that fall under the Office of Management and Budget.

MR. FASOLA: Not just divisions. There were a number of activities that did not have division status. For instance, the Office of Management Services was one of the organizational components that came under the umbrella.

SENATOR STOCKMAN: All right. But, the Division of Budget and Accounting does come under that umbrella, correct?

MR. FASOLA: In some functions, yes.

SENATOR STOCKMAN: So, it is your understood responsibility to coordinate the activity of the Division of Budget and Accounting?

MR. FASOLA: Those that do not inure to the State Comptroller.

SENATOR STOCKMAN: Those that do not inure to the--?

MR. FASOLA: The State Comptroller does not come under my coordination or oversight.

SENATOR STOCKMAN: But, the Director of the Division of Budget and Accounting does?

MR. FASOLA: He reports to the Treasurer through me.

SENATOR STOCKMAN: But, it is your understood responsibility to coordinate the activities of the Director of the Division of Budget and Accounting, is that a fair statement?

MR. FASOLA: And other activities and functions that come under that umbrella.

SENATOR STOCKMAN: Well, we will get to the other things. I know you are trying to help me. If you will just answer my question, we will get to the others and then you can be more expansive.

You do have the responsibility, as you understand it, to coordinate the activities of the Director of the Division of Budget and Accounting, is that correct?

MR. FASOLA: Yes.

SENATOR STOCKMAN: You also have the responsibility of overseeing -- you said coordinate and oversight, I know it is a narrow difference -- the Director of the Division of Budget and Accounting, is that a fair statement?

MR. FASOLA: If we want to be accurate here, my job is to coordinate the functions that come under the umbrella of the OMB. That is the most accurate statement that I can make to you.

SENATOR STOCKMAN: All right, I'll accept that statement, but I want to be sure you are responsible for oversight of the Director of the Division of Budget and Accounting.

MR. FASOLA: What do you mean by oversight, Senator?

SENATOR STOCKMAN: Well, you used the word. I would like to say let's have it mean what you meant when you said you had the responsibility for coordination and oversight of all of these activities that you describe. I am sort of trying to adopt your usage of the word.

MR. FASOLA: Okay. What I try to do in my job is to enhance the overall work product that combines the long-range planning

perspective to the annual budgetary process, as well as seeing that the limited resources we have are used as efficiently and as effectively as possible, as it relates to providing services to those twenty operating agencies.

SENATOR STOCKMAN: Does that mean you are Standiford's boss?

MR. FASOLA: I don't consider myself Standiford's boss.

SENATOR STOCKMAN: Whose boss are you?

MR. FASOLA: Pardon me?

SENATOR STOCKMAN: Whose boss are you?

MR. FASOLA: I am a coordinator. It is very simple. I work with four top-flight career people that have line responsibility and whose work impacts on one another. I work as an agent of the Treasurer to coordinate that work activity in presenting as good a budget as we possibly can to the Legislature.

SENATOR STOCKMAN: The word boss is a harsh one. I know I have talked with people in my law office because I say I am not the boss. But, you know, you can say what you say, but there has to be a line of command -- a superior authority on down. I think Tom Kean is the number one boss of the Executive Branch. I think we can all agree with that.

What I am trying to find out is, are you over someone? Do you consider, or do they consider you as someone they have to report to, and is one of those people Mr. Standiford?

MR. FASOLA: They report through me to the Treasurer, Gerry. That is a fact.

MR. STRINGER: You know, that is not an unusual circumstance either. I represent the Treasurer. Al Fasola represents the Treasurer. Peter Pizzuto represents the Treasurer, in many circumstances.

SENATOR STOCKMAN: Let me try it another way.

MR. STRINGER: Doug Forrester did represent the Treasurer.

SENATOR STOCKMAN: Okay. You and Standiford are in a dialogue over an issue apropos to budget. Standiford says "A," you say "B." You are both sincere. Who knows? Only the Lord knows who is right. But it goes back and forth, "A" and "B." Is there an

understanding between you that at some point a decision has to be made, whether it is "A" or "B" -- that you make the decision?

MR. FASOLA: That is not the way I see my job, and with all due respect to the Lord, there is not a whole lot of black and white in the budget situation. My job, primarily, is not to change the work of budget formulation, but it is to ask the right kinds of questions, as they relate to preparing a range of options for the Treasurer's and the Governor's decision, and the decision of other people in the Governor's office that impact on the budget process.

SENATOR STOCKMAN: So, if there is a dispute between the two of you-- And, I use the word "dispute," and nobody should get uptight about that. There is a difference of opinion on an issue apropos to the budget. Are things going to be equal? In other words, Fasola and Standiford--

MR. FASOLA: How about if I give you an example?

SENATOR STOCKMAN: I don't think I am going to like your example. (laughter) Go ahead. Give it to me.

MR. FASOLA: No, I think you are going to, in fact I will bet you a cup of coffee. One of the most, if you will, difficult situations in the budgetary process is matching the overall policies and goals of "the Administration" with the various Cabinet officers. You are always trying to figure out what is consistent and what is not consistent. That negotiation process was the responsibility of Dick Standiford.

In a number of cases, people are not always happy with what the resolution of that does. You might suggest that if I were Dick Standiford's boss, people could come to me, after they were not happy with the negotiation that was provided at that level. There was no case in the fiscal year '85 budget when somebody went around the Director of the Division of Budget and Accounting to me in order to reverse an interpretation or a negotiating position.

Now, if you were really trying to create a distinction in a line function, that would be one very simple, clear measurement.

SENATOR STOCKMAN: Nobody even tried?

MR. FASOLA: Oh, I am not saying there were no efforts made; I am saying there were no successful efforts.

SENATOR STOCKMAN: Was this done on the basis of their interpretation of you as being someone who was a further arbitrator, an arbitrator beyond Mr. Standiford?

MR. FASOLA: Gerry, as you know, in the world of budgetmaking, one tries to go anywhere one can go in order to get the right answer. We try to provide some discipline that we feel has been lacking in the past, as it relates to matching up resources with priorities.

SENATOR STOCKMAN: I think you put your finger right on one of the reasons why I made the plea I did, and why I think what we are doing is important -- although we may get sidetracked, etc. But, in the world of putting together a budget, people will go in all different directions, depending on where they think they can go to get what they think is important to them.

MR. FASOLA: That has been a historical fact.

SENATOR STOCKMAN: And, in the scheme of trying to meet the real, final, bottom-line responsibility of all of us connected with the budget -- that is, the public interest -- it is important that all of the participants have a pretty clear understanding of where the buck stops, and who has the authority to overrule whom.

MR. FASOLA: That's got to start somewhere. That is very simple.

SENATOR STOCKMAN: Right. But, don't you see why I, on this side of the table in this dialogue, am pressing to try and confirm what I think is really clear to an objective listener?

MR. FASOLA: And, I am trying to cooperate and give you an accurate answer. I really am. The buck stops with the Governor.

SENATOR STOCKMAN: I am not saying you are not trying to cooperate at all. But, I am saying that a third party listening here is compelled to a conclusion, despite the choice of words. You may be a very sensitive administrator -- one of those who likes to forget about the notion that you are boss. You would like to reason everything and have everybody live happily ever after. If that were the world of reality, that might be ideal. But, there has to be an understanding by all of us as to where we go in the struggle to do our job.

I, for instance as a legislator on the Joint Appropriations Committee, don't want to go to an Al Fasola with a plea, and waste his time and mine, if I know that Mr. Standiford -- whom I have great respect for and who I think has an outstanding reputation; I think everybody in this room knows and understands that -- makes the decisions and if I know, "Well, look, Fasola has no authority there. It is beyond him." On the other hand, if I know you have that authority and if I think I can persuade you, then I want to go to you. And, the more I listen, the more difficult it is for me to be sure whether after I lose with Mr. Standiford, arguably and conceptually, I ought to even bother picking up the phone and calling you when I know you are very sympathetic and receptive to some of the concerns I have. But, if you don't have that authority, why waste your time, my time, and Mr. Standiford's time?

Isn't it a fact in the scheme of the designer's budget, that you do have authority over him?

MR. FASOLA: I think if you are talking about the reality of the Joint Appropriations' process, that doesn't apply at all to this situation. If you are talking about the timeframe in which we formulate a budget, in which we plan a budget, and in which we negotiate a budget, I would say Dick Standiford is the principal actor in State government in the formulation of that budget.

SENATOR STOCKMAN: What are you doing while he is doing that?

MR. FASOLA: What I am trying to do is ask the kinds of questions that I think should have been asked, perhaps, for the last ten years: What is the impact of that budgetary decision? How does that relate to the objectives of the Department? What is the driving force of those expenditures? Where is the client population for that particular program going in the future? And, does that expenditure make sense?

SENATOR STOCKMAN: Incidentally, we would probably simplify this. Do you -- forgetting about being hung up with the Attorney General -- yourself, as a knowledgeable person in State government, agree that it would probably be better to submit your office, an important one to the Legislature, through a reorganization plan and resolve this?

MR. FASOLA: I am not going to practice law here under any circumstances, Senator.

SENATOR STOCKMAN: It isn't a law. That's what confuses me. Everybody wants to run to lawyers. I am one myself, and you don't need them at times, really.

MR. FASOLA: Some of my best friends are lawyers.

SENATOR STOCKMAN: All right. I agree with that. But, the Attorney General said it is not essential; you don't absolutely have to. He didn't say you can't.

MR. FASOLA: Let's be honest.

SENATOR STOCKMAN: I hope we all are.

MR. FASOLA: During the years I have been here, I have bent over backwards on a host of occasions to work with the Legislature in this whole area of efficiency and effectiveness, because I firmly believe if there are several areas that should be of tremendously common interest to the two co-equal branches, they should be making sure the taxpayers' dollars go to the people that need government services.

SENATOR STOCKMAN: Being very frank and honest with you, Al Fasola, when you say that, I can't publicly resist saying that on the one occasion, when you were sympathetic to a great concern of mine and you promised to try to do something and to respond, you were unable to be effective. I think you remember what that was.

MR. FASOLA: It was not for lack of trying, Gerry.

SENATOR STOCKMAN: All right. And, I appreciate that effort you made by trying. I think it was one of the premiere issues facing Tom Kean today.

MR. FASOLA: I would argue--

SENATOR STOCKMAN: For the benefit of anyone who wants to know what we are talking about, it was Mount Laurel II.

MR. FASOLA: I would argue further that we went so far when we structured the most efficient and effective way of delivering these services, that we included two legislators on an advisory committee to the OMB, to make sure that the criteria that we put in place were being adhered to -- and that was no change in the statutory authorities that

were currently in existence. We had somebody from the Joint Appropriations process looking over our shoulder, and we had a member of the State Government Committee.

In addition to that, as the organization of the OMB was developing -- and I am not going to mention any names -- we made no fewer than a dozen telephone calls to interested parties, saying, "I would love to sit down and brief you. I would love to go over chapter and verse. And, I would love to get your opinion as to whether you think the way we are going is the appropriate way to go."

SENATOR STOCKMAN: I forgive you for not being able to succeed on that issue, but I appreciate your effort.

SENATOR SAXTON: He certainly doesn't have much authority, does he?

SENATOR STOCKMAN: On Mt. Laurel, apparently he has none with Tom Kean. That is a matter of record.

SENATOR ZIMMER: As to the question of who is whose boss, maybe we can put it in perspective by asking you the question, have there been occasions in the budgetary process where you have differed with the recommendations of Mr. Standiford?

MR. FASOLA: Where I have differed?

SENATOR SAXTON: That's right, where he has submitted a proposal, you have looked at it, and you had a different opinion?

MR. FASOLA: I would say, with all due respect to Dick, there were a number of decisions that were made in the negotiating process where I would have done it differently.

SENATOR SAXTON: Okay. Now, when you have differed with him, has there ever been an occasion when you overruled him, vetoed him, or reversed that decision?

MR. FASOLA: There has never been a case. There are cases, however, in which a certain range of options which may not have been contemplated ahead of time were presented, so that as the decision-making was made at the gubernatorial level there were some options. And, I think that is probably the greatest contribution that I made.

SENATOR SAXTON: So, if Dick Standiford makes a suggestion and you have a difference of opinion, you have not vetoed it; you have not overruled it; but, rather, you have submitted your suggestions along with his suggestions, to a higher authority which made the decision?

MR. FASOLA: As an agent of the Treasurer, that is the way I view my role as a coordinator, and that does not involve just Mr. Standiford. There are other managers within this operation who have made decisions as well, and we encourage that kind of independent thinking.

SENATOR SAXTON: Thank you.

ASSEMBLYMAN CHARLES: In your position, Mr. Fasola, as I understand it, you have no hiring abilities, is that right? Can you hire anybody in the position you hold? Can you recommend hiring anybody?

MR. FASOLA: I have hired my secretary.

ASSEMBLYMAN CHARLES: Okay. What about supervision? Do you have direct supervision over anybody under OMB? Do you have direct supervision there?

MR. FASOLA: Assemblyman Charles, we have a system within OMB in which the top sixteen managers in the organization participate in a planning process of setting forth goals and objectives. I coordinate those activities through the management team. I do not have day-to-day administrative responsibility or authority -- I don't believe -- in the main operating areas. No.

ASSEMBLYMAN CHARLES: All right. There are sixteen managers today in OMB, is that what you are talking about, or are you talking about the whole Department?

MR. FASOLA: No, sir; they are in the Office of Management and Budget.

ASSEMBLYMAN CHARLES: Within OMB, as it now exists, have there been any new hirings under the new formula you now have?

MR. FASOLA: There has been some shifting of personnel. There has been some retraining of personnel. There has been some attrition of personnel. And, there have been some new hirings in areas where we felt they were lacking technical expertise.

ASSEMBLYMAN CHARLES: Overall, under this new plan we have with reference to OMB, is there a greater or a lesser number of personnel carrying out all the functions that OMB does?

MR. FASOLA: Sir, right now, we have less people than we have had before. We have less managers than we have had before. We have approximately thirty percent less of what we call the layered effect. I think prior to the creation of this operation, there was a maximum of nine layers, running from the Treasurer through the budgetary process, and now there are approximately six. So, we feel as if we have streamlined the operation, and that we have enhanced various operations by taking excess employees from some areas in accounting operations, some areas of budgeting, and some areas of planning, and that by using a lot of participation from within the OMB, we have put them together in a way that makes the most sense.

ASSEMBLYMAN CHARLES: These sixteen managers in OMB, you coordinate all sixteen of them?

MR. FASOLA: No, sir.

ASSEMBLYMAN CHARLES: How many of them do you coordinate?

MR. FASOLA: My direct span of control is four.

ASSEMBLYMAN CHARLES: Which four are they?

MR. FASOLA: Dick Standiford. Don Bianco.

ASSEMBLYMAN CHARLES: What is his division?

MR. FASOLA: Don Bianco is wearing two hats right now. He is the acting director of the Division of Data Processing and Telecommunications, and he is also responsible for what we call managing services, which include the consulting operations in State government for computers, telecommunications, and office automation. And, we have a management unit that assists various divisions and Cabinet departments in going through strategic redesign, or organizational redesign, to meet the budget realities.

ASSEMBLYMAN CHARLES: All right, that's two. Who are the other two?

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advantage of technology in the State, as well as providing input to the budget process, strategic planning, and long-range planning.

And, then there is Mr. Guido, who provides internal support. We put a lot of emphasis on the training and development of our personnel, management information systems, and a coordinated office automation program, and that is his responsibility.

ASSEMBLYMAN CHARLES: How long has Gleason been there? Has he been there for a long period of time?

MR. FASOLA: Mr. Gleason has been with the State about twenty-one years. He has only been with the OMB for approximately five months, I think.

ASSEMBLYMAN CHARLES: That came about as a result of all this reorganization, is that correct?

MR. FASOLA: Yes, sir.

ASSEMBLYMAN CHARLES: And, he has taken on some functions that did or did not previously exist within the Department of Treasury?

MR. FASOLA: Assemblyman, he is enhancing the budget planning process, which heretofore had existed, but not in the way we think was giving the proper context to the way we allocate resources. So, we put an emphasis on that.

ASSEMBLYMAN CHARLES: He didn't take anybody's place?

MR. FASOLA: No, sir, that position was a position created out of the process we used of deploying people into the OMB.

ASSEMBLYMAN CHARLES: All right. These four people, are they reported to by the other twelve?

MR. FASOLA: Yes. They each have their own span of control.

ASSEMBLYMAN CHARLES: You mentioned sixteen managers. You identified four. There are twelve left. These twelve funnel into these four?

MR. FASOLA: Let me check my math. Your average span is four each. So we are talking about sixteen and four, so let that be twenty, as opposed to sixteen.

ASSEMBLYMAN CHARLES: These four managers -- was there a common person to whom they reported prior to this reorganization?

MR. FASOLA: No, sir.

ASSEMBLYMAN CHARLES: They reported to different persons, is that correct?

MR. FASOLA: That was one of the problems with the old Treasury Department. It was such a flat organization that the span of control for the Treasurer was immense, and you have the Division of Data Processing and Telecommunications operating here; and you had the Division of Budget and Accounting opposite Management Services. Our argument was you could get a tremendous thrust in the effectiveness of those people and those dollars by impacting on the work in a more coordinated way. That was the initial purpose in having an Assistant Treasurer do that coordination.

ASSEMBLYMAN CHARLES: So, what has happened as a result of this reorganization is that thing which did not exist previously, in terms of organization structure, now exists, is that correct?

MR. FASOLA: You will have to help me with that question, sir.

ASSEMBLYMAN CHARLES: I will change the question. The organizational structure today is the result of these evaluations you have done and the findings you have made. The organizational structure in OMB is very much different than the organizational structure in the Department of Treasury prior to that, is that correct?

MR. FASOLA: I don't think I would be accurate if I am leading you to believe it is very different.

ASSEMBLYMAN CHARLES: It is different, is it not?

MR. FASOLA: It is an enhanced form of what the old organizations were doing, giving them some coordination and some focus.

MR. CHARLES: We will make it as objective as possible then. It is different from what it was previously, is it not?

MR. FASOLA: It is not the same. I should also say, again, that there were some requirements of the old Department of Budget and Accounting which actually were not being carried out, and which are being carried out at the present time.

ASSEMBLYMAN CHARLES: My point is that it is not the same. There has been a reorganization, insofar as there are units and functions within the Department of Treasury, isn't that right?

MR. FASOLA: Assemblyman, I would not use the word reorganization, because I would be giving you an artificial feeling if I did. We did not move boxes of lines and functions and activities. What we did is, we streamlined the way we were currently doing that business. I have to agree with Bill Stringer, without casting any aspersions at all, I would argue that we were not doing the things the statute had asked us to do in a number of instances in the past.

ASSEMBLYMAN CHARLES: So, in attempting to do all that, if I understand you correctly -- and Mr. Biederman and everybody else -- to streamline, to make more efficient, and to make it more effective, you changed things from what they used to be to a different form. That's what you did, right?

MR. FASOLA: We are coordinating the activities in a more efficient way.

ASSEMBLYMAN CHARLES: No. First you changed them so that you could better coordinate them. Isn't that what you did?

MR. FASOLA: You know, if I am giving you the impression that we have made a great deal of change in structure or functions, I am going to be misleading you, and I don't want to do that.

ASSEMBLYMAN CHARLES: As a result of the OMB reorganization, has there been a transfer of any units?

MR. FASOLA: We would not be presumptuous enough to transfer anything until the Legislature has had a chance to act on it through the Reorganization Act.

ASSEMBLYMAN CHARLES: What about functions? Are there any functions from any department or any unit within the Department of the Treasury that have been moved?

MR. FASOLA: We are not transferring now. I must say that we are taking some personnel from areas that we thought were not operating efficiently, and we are cross-training those people to appear elsewhere in the organization, in areas where we think there is a need for a greater number of people. So, we are shifting some resources in that configuration, but we are not transferring functions, no, sir.

ASSEMBLYMAN CHARLES: You are making a distinction between resources and functions.

MR. FASOLA: There is a distinction that I have to make, because as you look across the Office of Management and Budget, let's say we are doing approximately twenty different things. To me, the way we group those people around the functions is what a good manager is supposed to do.

ASSEMBLYMAN CHARLES: Okay. There is a title. It is the Office of-- What is your title? I guess we have that, don't we?

MR. FASOLA: I don't know that. Do we have that? I'm not sure. (laughter)

ASSEMBLYMAN CHARLES: I want to address you in your proper title. What is it?

MR. FASOLA: When I read the press release, I printed my cards as Director.

ASSEMBLYMAN CHARLES: Of what?

MR. FASOLA: The Office of Management and Budget.

ASSEMBLYMAN CHARLES: All right. You printed those cards up in what, July?

MR. FASOLA: As soon as I could. (laughter)

ASSEMBLYMAN CHARLES: That would be July, right?

MR. FASOLA: Yes.

ASSEMBLYMAN CHARLES: Okay. So, since July you have been the Director of the Office of Management and Budget.

ASSEMBLYMAN CHARLES: Was there any equivalent title or position within the Department of Treasury before you?

MR. FASOLA: Well, there were a number of Assistant Treasurers, which I guess is part of my answer to your former question. My official title is one of Assistant Treasurer. I think you will find in government that there is a lot of custom and usage that, taking a title like Director, or using a term like Division, is often a descriptive mechanism to describe what function you are performing and what title you have primarily, and in many cases to do business within State government.

So, yes, there were Assistant Treasurers. There was no Assistant Treasurer that had the specific obligation of coordinating the activities that I coordinate.

ASSEMBLYMAN CHARLES: So, there was no one person who had the same functions you now do, is that correct?

MR. STRINGER: In Treasury, we use a variety of titles.

ASSEMBLYMAN CHARLES: No. My question was, prior to Mr. Fasola, was there any one person who did the things he now does?

MR. FASOLA: The answer is no. There was no one person, unless you want to argue that the Treasurer, ultimately, as a Cabinet officer, had those responsibilities.

ASSEMBLYMAN CHARLES: I have no further questions.

SENATOR LIPMAN: Okay. Do you have any further questions, Senator Stockman?

SENATOR STOCKMAN: I just have one or two. You have spoken about efficiency.

MR. FASOLA: Yes, sir.

SENATOR STOCKMAN: Can you relate that in any kind of specific terms, in terms of personnel or in terms of dollars? What were you able to accomplish in a way that you have referred to as efficiency?

MR. FASOLA: We are operating today with a lesser number of people than the various organizations that make up the OMB operated with before we began to pull the elements together. We operate with fewer managers.

SENATOR STOCKMAN: Can you put some numbers on those?

MR. FASOLA: Well, I believe that when we started, there was a head count of approximately three hundred and sixty-one, or three hundred and sixty-five. We are operating with a head count now of about three hundred and fifty-four, and we have plans in the '85 cycle to reduce that by another eleven or twelve people, because we are applying some automation techniques in areas where we haven't used them before. So, I think ultimately, at the end of the '85 cycle, we will probably be reduced by approximately five percent, and that won't require any layoffs. We have a certain amount of attrition that takes place. What we are trying to do is to redistribute the work behind an attritive position, so that where we don't have to rehire we do not.

SENATOR STOCKMAN: In terms of the job you do, do you see yourself as a policy-maker, or do you see yourself as one who carries out, implements, or reports back to the people who do set the policy?

MR. FASOLA: I think I would classify myself as a conduit for that. I am not a policy-maker.

SENATOR STOCKMAN: I don't have any further questions.

SENATOR LIPMAN: All right. Have we finished with the questions?

Is there another member from the Department of the Treasury whom you wish to question?

SENATOR STOCKMAN: May we just ask Mr. Standiford a few questions?

SENATOR LIPMAN: All right. Thank you, Mr. Fasola.

SENATOR STOCKMAN: I will be brief. Mr. Standiford, you have been a long-term employee in the Department of the Treasury, of course. How does your job differ from that of your predecessor, Mr. Hofgesang?

**RICHARD B. STANDIFORD:** For me personally, it is a lot more exciting, than what I think it must have been under its previous existence.

My office continues to do the basic work of formulating budget options and budget alternatives, just as we had normally. It is an exciting way to use the results of a planning process, to guide us a little more when putting that budget together, and to have the excitement of seeing a management services group that can help in implementing and putting some of the budget suggestions for new, improved, and better ways to carry out State government, into effect.

I have an arm now, through the coordinative efforts of the Director of OMB, and I can see budget policies being translated into changes in agencies. This is an exciting way of seeing the budget develop.

SENATOR STOCKMAN: All right. You understand that the struggle -- or at least the dialogue here today -- isn't over the merits of that change, but is over the question of whether it should be handled as a process in which the Legislature participates and gives it more of a fixed structure?

MR. STANDIFORD: Yes.

SENATOR STOCKMAN: Is Mr. Fasola, as you understand the present arrangements within the Treasury Department, your superior?

MR. STANDIFORD: No. The Governor really makes the budget, and he makes the decisions on it. The statute calls for that.

As I develop the budget, using the planning efforts and the efforts and advice from Management Services, and submit it, there is a forum where that budget is discussed. Mr. Fasola is a participant; the Treasurer is a participant; and, the Governor's staff are participants as we put the options and the pieces of that budget before them.

So, is he my supervisor? No. But, he performs a very good coordinative effort, to see that information is delivered to me in the manner it should be in the planning area. He provides a coordinating effort in assisting the implementation efforts.

SENATOR STOCKMAN: You don't consider him to be your superior in the line of authority and in the operation of the Treasury?

MR. STANDIFORD: As Assistant State Treasurer, I report through him to the Treasurer, and I consider him my superior in that respect, yes, sir.

SENATOR STOCKMAN: Incidentally, what is your salary, and what is Mr. Fasola's salary?

MR. STANDIFORD: My salary is sixty-two thousand, five hundred dollars, and I believe Mr. Fasola's is sixty-five thousand.

SENATOR STOCKMAN: Well, in the old American tradition that sounds--

MR. STANDIFORD: That's a superior. (laughter)

SENATOR STOCKMAN: Yes. I have nothing further, Senator.

SENATOR LIPMAN: All right. Assemblyman Zimmer?

ASSEMBLYMAN ZIMMER: I don't have a question; I just have a comment I would like to make. I just wanted to point out that I read in the paper that the coach of the Rutgers football team gets more than the President of Rutgers does. But, I do believe the President at least has the nominal authority to fire the coach.

SENATOR LIPMAN: Senator Saxton?

SENATOR SAXTON: I don't have a question; I just have a statement. I have been informed that there is an Assemblyman whose aide makes more than he does.

SENATOR STOCKMAN: Unless the record is incorrect, that was in 1975. (laughter)

SENATOR SAXTON: Much has been said today about the Attorney General's opinion as to whether this is appropriate, or as to whether it is totally accurate. I would just like to make it part of the record that the Committee members all have a copy of the letter to Senator DeFrancesco, dated February 24, which I won't quote from, but I will say that it follows pretty much in line with the opinion of the Attorney General. I just think that should be made part of the record.

SENATOR LIPMAN: Yes. Assemblyman Zimmer has already suggested that various documents from this meeting should be part of the testimony.

I want to thank you all again for coming here. I am not sure we quite understand this Reorganization Plan, but it has certainly become a lot clearer to us. I want to thank all of you who came and participated today -- those whom we called up, and those whom we did not call up.

Again, thank you very much. I'm sure you will be hearing from the members of the Committees. This meeting is now concluded.

**(MEETING CONCLUDED)**



STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
KENNETH R. BIEDERMAN  
STATE TREASURER

July 20, 1983

MEMORANDUM TO: ALL DEPARTMENT OF TREASURY EMPLOYEES  
FROM: Kenneth R. Biederman, State Treasurer  
RE: Treasury Department Reorganization

Today, I have announced a major reorganization of the Department of Treasury. This memorandum is being distributed to all employees so that they will be informed of the way their job, their office, and their organization will contribute to making the new Treasury Department work.

The Treasury Department is called upon to perform three major statewide functions, functions which in most other states, would be in separate cabinet level departments. Each of these functions is important enough, in my opinion, to merit the most senior management level possible to oversee and coordinate a statewide activity. The three major thrusts are:

- . Establishing policies for the preparation and control of the state budget;
- . Basic treasury and money management functions including, as an important sub-group, revenue producing activities;
- . Service functions in support of all state departments.

To aid in carrying out these directions in our government, administrators will be assigned to directly coordinate policy and operations in these three areas. The first administrator will be responsible for management and budgeting. This person will coordinate activities of the Division of Budget and Accounting and the Division of Data Processing and Telecommunications. Most bureaus and sub-organizational units within these divisions will continue their present tasks and reporting relationships.

A second administrator will be responsible for general services functions. This activity will essentially include the Divisions of Purchase and Property, Building and Construction, and Pensions.

A third high level administrator will coordinate cash management functions now being performed by the Division of Budget and Accounting, debt management functions now being performed by an Assistant State Treasurer, operations of the Division of Investment, and a new thrust toward instituting improved debt collection activity.

ALL EMPLOYEES

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July 20, 1983

The remaining major activities in the Treasury Department are largely revenue producing operations. The Division of Taxation and the Division of the State Lottery will have no organizational or reporting changes.

The changes which I have described will be formally submitted as a gubernatorial reorganization plan. This plan will require concurrence by the State Legislature. Such action will take a minimum of 60 days. During that time period, preliminary activity will be taken to establish new reporting relationships as shown on the chart which I am attaching herewith. These reporting relationships will not change any existing responsibilities and reporting relationships now being carried out by employees of the Treasury Department until such time as the 60 day legislative concurrence period has elapsed. Thus, until you are otherwise advised by your supervisor, you will continue to report and carry out your responsibilities as you are now doing.

The above changes will enable management personnel within the Treasury Department to concentrate their activities on similar state functions. I call upon each of you to continue the high quality of public service which I found upon assuming my job as State Treasurer, a performance standard which has continued and which hopefully will be enhanced as we move forward together in this new concept.

K. R. B.

Attachment

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: CARL GOLDEN

WEDNESDAY, JULY 20, 1983

Governor Thomas H. Kean today unveiled a major restructuring of the State's budget development process designed to bring expenditures into line with revenues and announced the establishment of an Office of Management and Budget within the Department of the Treasury to implement the new program.

"I have said repeatedly that the principal culprit in the State's year to year budget crises is the inability of revenues to maintain pace with expenditures," Kean said at a news conference in his office. "This State has consistently spent more than its tax programs produce. Unless we can bring the two together through exerting greater control over spending, we will continue to experience fiscal difficulties year after year."

The establishment of the Office of Management and Budget, to be under the direction of Alfred Fasola, currently the director of the Governor's Management Improvement Plan, is a part of an overall reorganization of the Department of the Treasury which also provides for the establishment of a General Services Administration and a Financial Management Administration.

The reorganization was announced by Kean and State Treasurer Kenneth Biederman.

"For years --- regardless of economic conditions --- the State's budget process permitted cabinet departments to request rather substantial increases in their budgets from one year to the next," Kean said. "That process actually encouraged incremental budgeting and inexorable rises in spending. That type of budgeting will be tolerated no longer."

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OFFICE OF MANAGEMENT AND BUDGET

PAGE TWO

WEDNESDAY, JULY 20, 1983

"The Office of Management and Budget will establish realistic budget targets for each department of State government based upon estimates of revenue growth and funding mandatory programs," Kean said. "Each department will be directed to remain within the limits of their target number, a process which will require a more concentrated effort to fund essential programs while reducing or eliminating spending for others."

Kean said that each department will also be required to prepare a three-year forecast for its operating budget and a five-year forecast for its capital budget, a system recommended by the Management Improvement Plan.

"Each department will also be required to identify areas of economy, efficiency, and revenue enhancements and to submit a plan for the use of any funds generated by these efforts," Kean said. "In the past, there was no real incentive to effect savings at the departmental level since the funds reverted back to the Treasury. By permitting the department to utilize savings, it will offer a strong incentive to work toward the goal of economy."

"This Administration is committed to a coherent, long-term budgetary planning process as the most logical direction in which to move to bring spending under control," Kean said.

- more -

OFFICE OF MANAGEMENT AND BUDGET

PAGE THREE

WEDNESDAY, JULY 20, 1983

The Governor pointed out that the reorganization of the Department of the Treasury is aimed at streamlining and centralizing the State's overall fiscal operations.

The Office of Management and Budget will include in its jurisdiction the present Division of Budget and Accounting, the Division of Data Processing and Telecommunications, and the Office of Management Services.

The General Services Administration will be headed by William L. Stringer, deputy treasurer and executive director of the Department of the Treasury, on a temporary basis until a director is appointed.

This Administration will consolidate all purchasing, construction, and Property and Administrative Service Functions of State government. It will include the Division of Purchase and Property, the Division of Buildings and Construction, and the Division of Pensions.

The Financial Management Administration will be under the direction of Elizabeth B. Felker, assistant state treasurer.

This office will include the Division of Investment and will hold responsibility for issuing State debt, collecting funds owed to the State, and overall cash management.

Biederman pointed out that the Financial Management Administration will prove of great benefit in collecting an estimated \$90 million in debts owed to the State.

- more -

OFFICE OF MANAGEMENT AND BUDGET

PAGE FOUR

WEDNESDAY, JULY 20, 1983

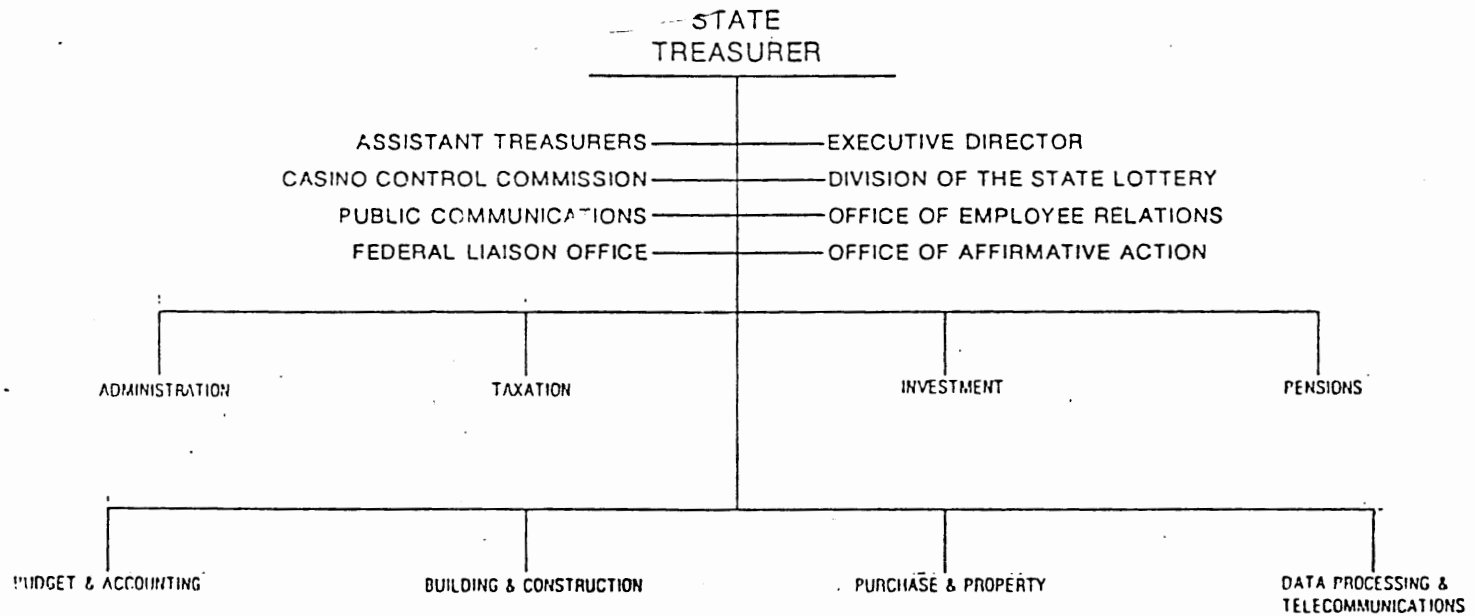
"With the reorganization of the Department, the State Treasurer will be able to fulfill his role as the State's chief fiscal officer in a much more effective fashion," Kean said.

"I feel the State's taxpayers will reap the ultimate benefit of the new budget process as well as the departmental reorganization through more effective and efficient use of each tax dollar," the Governor said.

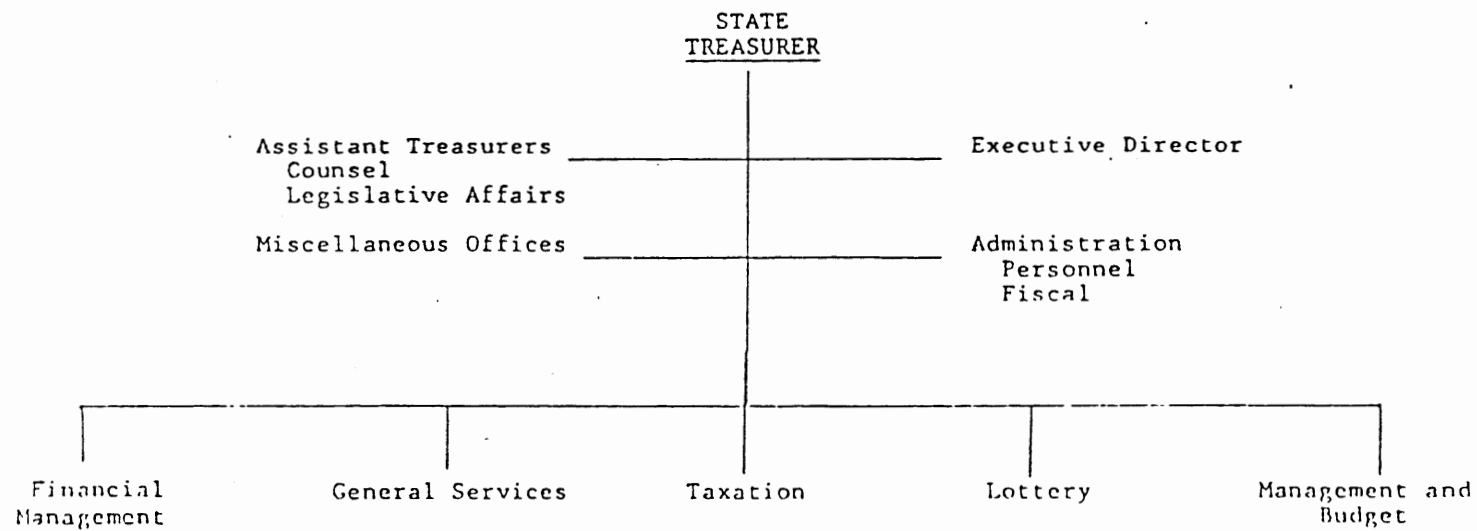
"We look forward to creating a system which will guarantee that we can provide the highest possible degree of State services at the lowest possible cost to the taxpayer," the Governor said.

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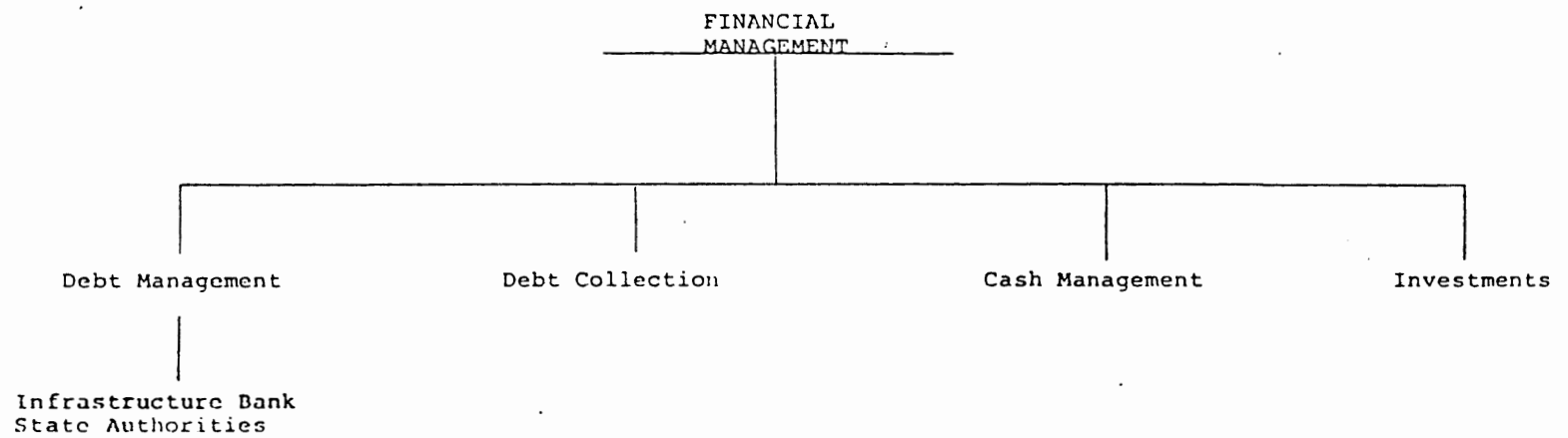
TREASURY DEPARTMENT  
(EXISTING)



TREASURY DEPARTMENT  
(PROPOSED)



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GENERAL SERVICES

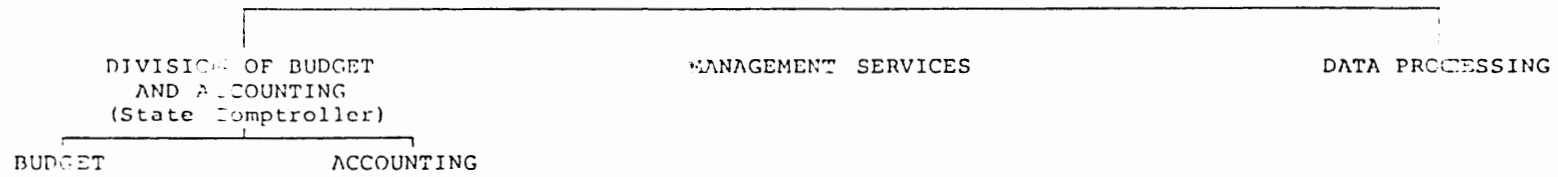
Purchasing

Property  
Management

Employee Benefits

Administrative  
Services

MANAGEMENT AND BUDGET



11x

REPORTING RELATIONSHIPS WHICH WILL EXIST  
UNDER THE TREASURY REORGANIZATION PLAN

AGENCIES REPORTING THRU ADMINISTRATOR OF GENERAL SERVICES

- . Division of Purchase and Property
- . Division of Building and Constr
- . Financial & Management Data Center
- . Division of Pensions

AGENCIES REPORTING THRU ADMINISTRATOR OF MANAGEMENT AND BUDGET

- . Division of Budget and Accounting
- . Division of Data Processing and  
Telecommunications
- . Office of Management Services

AGENCIES REPORTING THRU ADMINISTRATOR OF FINANCIAL MANAGEMENT

- . Division of Investments
- . Cash Management Unit from Budget and Accounting

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New Jersey State Legislature  
OFFICE OF LEGISLATIVE SERVICES

DIVISION OF LEGAL SERVICES  
SECOND FLOOR, STATE HOUSE ANNEX, CN-052  
TRENTON, NEW JERSEY 08625  
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October 25, 1983

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MAURICE E. GOLD

Honorable Laurence S. Weiss,  
Chairman  
Honorable Robert C. Janiszewski,  
Vice-Chairman  
Joint Appropriations Committee  
State House Annex, CN-066  
Trenton, New Jersey 08625

Dear Mr. Chairman and Mr. Vice-Chairman:

You have requested a formal opinion as to what actions are required by law to effect the changes in the organization and functions of the Department of the Treasury proposed in a press release issued by the Office of the Governor on July 20, 1983. You are advised, for the reasons set forth herein, that the Governor cannot accomplish the changes by way of a reorganization plan, but legislation must be enacted to accomplish those proposed changes.

The Governor's plan would place most of the present agencies of the department under three administrative units, according to function, for the purposes of coordinating and overseeing their activities. The General Services Administration would include the Division of Purchase and Property, the Division of Building and Construction, the Division of Pensions and the Financial and Management Data Center. The Financial Management Administration would be comprised of the Division of Investments and the Cash Management unit of the Division of Budget and Accounting. The remainder of that division, the Division of Data Processing and Telecommunications and the Office of Management Services would be coordinated under the Office of Management and Budget. The Divisions of the State Lottery and Taxation and the Casino Control Commission would remain as separate entities not grouped within one of the three units.<sup>1</sup>

In addition, the Governor would eliminate the annual process by which spending agencies request an appropriation for the ensuing year and replace it

<sup>1</sup> Under the plan, the General Services Administration would be headed by William L. Stringer, Deputy State Treasurer and Executive Director of the Treasury. Elizabeth B. Felker, Assistant State Treasurer would direct the affairs of the Financial Management Administration. Alfred Fasola, currently the director of the Governor's Management Improvement Plan, would head the Office of Management and Budget.

with a system whereby the Office of Management and Budget would "establish realistic budget targets based upon estimates of revenue growth and funding mandatory programs." Finally, the Governor expects to encourage economy by permitting unexpended balances realized at the end of the fiscal year by the spending agencies to remain in their budgets from year to year, instead of reverting to the Treasury, as is now the case.

Nothing in the press release indicates that any existing agencies or positions will be eliminated or consolidated. Rather, the Governor's plan would "super-impose" the three new units over existing Treasury agencies as an additional level in the department's hierarchy and grant them the authority to implement the proposed budget reform.

Reorganization of agencies within a principal department is authorized by the "Executive Reorganization Act of 1969," N.J.S.A. 52:14C-1 et seq. Without the need for additional legislative action, the act provides the Executive branch with a means by which it can increase efficiency, reduce expenditures, promote economy and consolidate functions of agencies in that branch. The Legislature declared that these purposes "can be accomplished more speedily thereby than by the enactment of specific legislation." N.J.S.A. 52:14C-2. Based upon this rationale and the limits on the Governor's discretion defined by the act, the Supreme Court has upheld it as a constitutional delegation of legislative power. Brown v. Heyman, 62 N.J. 1 (1972).

According to the procedure established by the act,

. . . the Governor is authorized to prepare a reorganization plan and deliver it to both houses of the Legislature, N.J.S.A. 52:14C-4. A plan will take effect unless both houses shall within 60 days after such delivery pass a concurrent resolution "stating in substance that the Legislature does not favor the reorganization plan," N.J.S.A. 52:14C-7(a). The plan, if not thus disapproved, "shall have the force and effect of law" and will be published with the public laws, N.J.S.A. 52:14C-7(c). The reorganization act further provides that all acts or parts of acts "inconsistent \* \* \* with a reorganization plan adopted hereunder, are, to the extent of such inconsistency, hereby repealed."<sup>2</sup> N.J.S.A. 52:14C-11. [ Brown v. Heyman, supra, 62 N.J. at 5. ]

<sup>2</sup> The use of this word is inartful. Laws inconsistent with reorganization plans are not expressly repealed by this section, but probably would be held to be superseded. See Central Construction Co. v. Horn, 179 N.J. Super. 95 (1981).

The act provides, in pertinent part, that the Governor shall prepare a reorganization plan when

[t]he consolidation, merger or co-ordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof . . . is necessary to accomplish one or more of the purposes of section 2 of this act. [N.J.S.A. 52:14C-4]

The purposes for which a plan is appropriate are efficiency and economy in government, and, when the Governor finds it necessary, "[t]o group, co-ordinate and consolidate agencies and functions of the Executive, as nearly as may be, according to major purposes." N.J.S.A. 52:14C-2.

A review of the press release discloses that the Governor's purposes in restructuring the Department of the Treasury fall within those enumerated in N.J.S.A. 52:14C-2. The reorganization is "aimed at streamlining and centralizing the State's overall fiscal operations;" the "ultimate benefit" will be a "more effective and efficient use of each tax dollar." Therefore, as the Governor has proposed it, the plan is of the nature to be subject to the Executive Reorganization Act of 1969, and should be submitted to the Legislature. Indeed, the submission of a plan was anticipated by the State Treasurer in a memorandum explaining the proposal to all department employees issued on the same date as the Governor's announcement.<sup>3</sup>

However, the Governor's powers to reorganize are limited to the transfer or abolition of the whole or a part of any agency or its functions, or by consolidation, merger or coordination of agencies or their functions. N.J.S.A. 52:14C-4. The act permits changes in the name of an agency and permits the Governor to "provide for the appointment and compensation of the head and one or more officers of an agency (including an agency resulting from a consolidation or other type of reorganization)." N.J.S.A. 52:14C-5. There is no authority for the Governor to create entirely new agencies or offices, other than through the consolidation or merger of existing ones.

We note that the Governor is limited to rearranging what already exists. He is not empowered to decide what new or different authority should be vested in his branch of government. . . . Even within that prescribed area, the statute confines the delegated authority by providing that

<sup>3</sup> Memorandum, dated July 20, 1983, from the State Treasurer to all Department of Treasury employees states that "[t]he changes which I have described will be formally submitted as a gubernatorial reorganization plan. This plan will require concurrence of the State Legislature."

a reorganization plan may not create a new principal department in the executive branch or abolish a principal department or consolidate two or more of them; or extend the life of an agency; or authorize an agency to exercise a function not then expressly authorized by law; or increase the term of an office. N.J.S.A. 52:14C-6(a). [ Brown v. Heyman, *supra*, 62 N.J. at 10. ]

Article V, Section IV, par. 1 of the Constitution provides for the allocation of "[a]ll executive and administrative offices, departments, and instrumentalities of the State government, . . . and their respective functions, powers and duties . . . by law." (emphasis added.) The history of this clause indicates that the power to organize the principal departments was intentionally repositied with the Legislature.

No provision for state administrative organization is contained in either the Constitution of 1776 or the Constitution of 1844, but the framers of the 1947 Constitution considered it. See II, Monograph, 1947 Constitutional Convention 1445, 1461. Several speakers before the Committee on the Executive, Militia and Civil Officers indicated a preference for vesting in the Governor the power to allocate administrative and executive offices by executive order. See, for example, the comments of Mr. Charles R. Erdman, Jr., V, Committee Record, 1947 Constitutional Convention 89, 103 and Mr. John Bebout, *Id* 113. This preference might have been attributable to the fact that, in 1943, over 70 independent state administrative agencies existed through legislative action. II, Monograph, *supra*, 1446. Nevertheless, when the committee finally acted on the issue, it moved that the powers and duties of the 20 principal departments should be determined by law, V, Committee Record, *supra*, 176, not by the unilateral action of the Governor.<sup>4</sup>

The Legislature has not specifically delegated the power to create and allocate within the department. The "Department of the Treasury Act of 1948," N.J.S.A. 52:18A-1 et seq., does not include any broad grant of such powers. In addition to the divisions in existence at the time of the act, it permits the Treasurer to organize and maintain one administrative division. N.J.S.A. 52:18A-3. The Treasurer is charged with the supervision of the organization of the department and changes thereof, and with the designation of a Deputy State

<sup>4</sup> Governor Hughes acknowledged the continued authority of the Legislature in this area when he called for the enactment of legislation granting the Executive branch limited reorganization powers. While noting "the tradition in New Jersey of creating by legislative action even small State administrative units," he assured the Legislature that its "full control over the structure of government" would be preserved. Hughes, Richard J., Seventh Annual Message of the Governor to the Legislature, January 14, 1969.

Treasurer, N.J.S.A. 52:18A-30, but no blanket authority to create new agencies with new responsibilities is prescribed. Indeed, a review of the present agencies of the department reveals a statutory source for each of the 21 listed in the Official Directory.

Thus, the power to create and allocate the administrative and executive agencies is reserved to the Legislature, except as it has delegated that power to the Governor under the Executive Reorganization Act of 1969. The act, as noted by the Supreme Court in Brown v. Heyman, supra, is narrowly drawn and recognizes the continued authority of the Legislature to create and allocate. Agency is defined as "[a]ny division, bureau, board, commission, agency, office, authority or institution of the executive branch created by law." N.J.S.A. 52:14C-3 (emphasis added). The Governor is prohibited from authorizing the exercise of a function "which is not expressly authorized by law." N.J.S.A. 52:14C-6 (emphasis added). The act does not grant the Governor the authority to create entirely new agencies with no origin or precedent in law, nor does it permit him to create the positions to supervise the new agencies and appoint to those positions.

Governor Kean's plan to coordinate the activities of the Department of the Treasury under the new "super agencies," and to appoint the heads of those agencies, therefore, exceeds the notion of reorganization contemplated by the Executive Reorganization Act of 1969 and the legislative authority delegated to him thereunder. It also exceeds the authority of the State Treasurer under the Department of the Treasury Act of 1948. To accomplish his goal<sup>5</sup> of centralizing the department, it will be necessary for him to enlist the Legislature to act, not merely by concurring in a plan, but by enacting legislation to create the desired agencies and offices.

With respect to the reform of the budget process announced by the press release, legislative action will also be required. Statutes establish the current process and provide for the disposition of unexpended balances. Expenditures for the ensuing year are to be requested by a spending agency (N.J.S.A. 52:27B-14); the Treasurer investigates those requests (N.J.S.A. 52:27B-18); transmits those requests and his findings to the Governor (N.J.S.A. 52:27B-19); and the Governor ultimately formulates his budget recommendations which are transmitted to the Legislature (N.J.S.A. 52:27B-20). In the annual appropriations

<sup>5</sup> Although our references to these agencies have been to proposed action, the agencies have apparently been functioning. See Department of Civil Service Salary Administrative Memorandum #7-84, p. 2, October 11, 1983; Goodman, Kean taps Standiford as budget director, Trenton Times, September 23, 1983, at 13, col. 1; Taylor, Hofgesang Moved Up; Standiford Fills Post, The Trentonian, September 23, 1983, at 10, col. 1; Zarate, Positions filled in revamp of treasury, Newark Star Ledger, September 3, 1983, at 26, col. 4. These articles indicate that Hofgesang, former Director of the Division of Budget and Accounting, was promoted to head the General Services Administration, not William L. Stringer.

Hon. Laurence S. Weiss  
Hon. Robert C. Janiszewski

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October 25, 1983

act, the preamble of section 1 routinely provides that unexpended balances lapse into the State Treasury. See, for example, P.L. 1983, c. 240.

The reform, as outlined, apparently does not interfere with the constitutional authority of the Legislature to appropriate. Article VII, Section II, par. 2; East Orange v. Palmer, 52 N.J. 329 (1968). However, amendment of the law is also a legislative function which requires insertion at length of the law to be amended in the new act. Article IV, Section VII, par. 5. The reorganization act authorizes the repeal (supersedure) of acts which are inconsistent with a duly adopted plan, but, as noted earlier, specifically prohibits the authorization of an agency to exercise a function not already expressly authorized by law.

To permit the proposed Office of Management and Budget to "target" the anticipated expenses of the various State departments under any reorganization plan would do just that, in contravention of the act and the Constitution. Similarly, the present appropriations act would require amendment, or separate legislation would have to be enacted, to permit State agencies to retain unexpended balances realized through economy.

In conclusion, you are advised that the Governor cannot accomplish his proposed changes in the organization and functions of the Department of the Treasury through a plan submitted under the Executive Reorganization Act of 1969. Instead, legislation must be enacted to establish the proposed Office of Management and Budget, General Services Administration and Financial Management Administration, as well as the offices to head those agencies, and to reform the budget process.

Respectfully submitted,

DIVISION OF LEGAL SERVICES

Albert Porroni  
Legislative Counsel

Thomas K. Musick  
Deputy Legislative Counsel

TKM/jas



## New Jersey State Legislature

STATE HOUSE  
TRENTON, NEW JERSEY 08625

CARMEN A. ORECHIO  
PRESIDENT  
NEW JERSEY SENATE

ALAN J. KARCHER  
SPEAKER  
NEW JERSEY GENERAL ASSEMBLY

December 6, 1983

Honorable Thomas H. Kean  
Governor  
State House  
Trenton, New Jersey

Dear Governor Kean:

We have received from the Chairman of the Joint Appropriations Committee a formal opinion by Legislative Counsel on the legality of the changes in the organization and function of the Department of the Treasury, including the creation of an Office of Management & Budget.

A review of the press releases and news accounts indicates that you and State Treasurer Kenneth Biederman have initiated a reorganization of the Department and a change in the budget process. If reorganization, as defined in the Executive Reorganization Act (N.J.S.A. 52:14C-1 et seq.), is your goal, the Legislature has not received the reorganization message required by that act. Furthermore, it is the opinion of the Legislative Counsel that your announced action goes beyond reorganization as defined in that law and requires statutory change. Legislative Counsel is also of the opinion that your proposed "reforms" in the budgetary process likewise are in direct conflict with existing State law.

As leaders of our respective Houses, we wish to cooperate with you to effect appropriate changes in both the budget process and in the Department of the Treasury. We want you to clearly understand that the Legislature, as an institution, has a very important constitutional and legal role to play in the creation and operation of the agencies of State government. It also has a basic concern regarding changes in the budgetary process which the Legislature views as its fundamental, constitutional and governmental role in the operation of State government.

Accordingly, you are therefore apprised that unless you comply with the fully enacted laws of the State of New Jersey and submit to the Legislature the proposed statutory changes necessary

Honorable Thomas H. Kean

December 6, 1983

to legitimize the reorganization in the Department of the Treasury and the budget process, the Legislature will be forced to undertake remedial action in the very near future.

Trusting that we can accommodate each other's concerns and roles in this process, we remain,

Very truly yours,



Carmen A. Orechio  
President  
New Jersey State Senate



Alan J. Karcher  
Speaker  
New Jersey General Assembly



STATE OF NEW JERSEY  
OFFICE OF THE GOVERNOR  
CN - 001  
TRENTON  
08625

THOMAS H. KEAN  
GOVERNOR

January 23, 1984

Honorable Carmen A. Orechio  
Senate President, District 30  
State House  
Trenton, New Jersey 08625

Dear Carmen:

Enclosed is a reorganization plan for the Department of the Treasury, which I hereby file with you in accordance with the provisions of the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C.52:14C-1 et seq.). Also enclosed is a letter from Acting State Treasurer William L. Stringer outlining the nature of this reorganization and certain other changes within the Department of the Treasury.

Sincerely,

A stylized, handwritten signature of Thomas H. Kean, consisting of a large, sweeping 'T' and 'K'.

Thomas H. Kean  
GOVERNOR

cc: Hon. Jane Burgio  
Secretary of State



STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
WILLIAM L. STRINGER  
EXECUTIVE DIRECTOR

CN-002

January 23, 1984

Honorable Carmen A. Orechio  
President, N. J. Senate  
800 Bloomfield Avenue  
Nutley, New Jersey 07110

Honorable Alan J. Karcher  
Speaker, N. J. General Assembly  
61 Main Street  
Sayreville, New Jersey 08872

Dear Mr. President and Mr. Speaker:

On July 20 of last year the Governor and Treasurer Biederman announced a major restructuring of the Department of Treasury. The restructuring was designed to streamline and centralize the State's fiscal operations. Since that date the Department of Treasury has sought to elucidate departmental goals and objectives, define duplicative or unnecessary tasks and develop appropriate lines of communications and organizational structure. Now, consistent with this purpose and subsequent findings, the Treasurer has asked the Governor to submit a formal Reorganization Plan under the Executive Reorganization Act which will formalize those elements of the plan requiring legislative consideration. That submission is attached.

As you know, the Executive Reorganization Act requires the Governor to transmit to the Legislature a plan for the reorganization of a Department of the Executive Branch where such reorganization entails the consolidation of agencies within the Department, the transfer of functions of one agency to another, or a provision for delegation of authority not expressly provided for by statute. Consistent with this mandate, the Reorganization Plan creates a General Services

Messrs. Orechio and Karcher  
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January 23, 1984

Administration (GSA) within the Treasury Department which will include the existing Divisions of Purchase and Property and Building and Construction, and subject them to the supervision and control of an Administrator of General Services. The plan provides for the abolition of the existing Division of Data Processing and Telecommunications. It transfers this division's responsibilities for procurement and operations to the General Services' Administrator and allocates its wider planning responsibilities to the Treasurer. The GSA Administrator shall also supervise the Department's Financial Data Center. Finally, the Plan authorizes the GSA Administrator to exercise delegated powers of the Treasurer, relating to State contracts and property transactions. Edward Hofgesang has been serving as the Treasurer's representative for coordinating the Divisions of Purchase and Property and Building and Construction and will, upon the effective date of the Plan, officially become Administrator of General Services.

The resulting GSA organization facilitates a more encompassing communications and coordination function between closely related service divisions within Treasury. The consolidation will greatly enhance the ability of Treasury to meet its intergovernmental responsibilities, such as providing quality office space, enforcing the State's procurement statutes and acquiring cost effective communications and data processing capabilities. Treasury had noted, and the Governor's Management Improvement Program again noted, that the fragmented nature of service elements within Treasury led to inefficiency and untimely delivery of these intergovernmental services. The establishment of the GSA umbrella will speed review and communications between Treasury divisions.

While the GSA reorganization is the only element of the Reorganization Plan, it would be timely to note other changes within the Department of the Treasury. First, Alfred Fasola has served as representative of the Treasurer in working with the Division of Budget and Accounting in coordinating Management and Budget activities to logically and systematically incorporate long run coordinated objectives and cost saving proposals in the budget process. While additional

Messrs. Orechio and Karcher  
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budget-related activities in the area of Planning and Management Support have been undertaken, no statutory authority is altered and no agencies within the Department are consolidated, created or destroyed.

Second, Treasury has sought to place various financial activities, current and expanded, into a well defined reporting organization. Financial activities carried out in the past by the Treasurer's Office have been expanded. For example, debt collection, authority debt monitoring and work necessary to prepare for New Jersey's general obligation debt issues have grown considerably in complexity in recent years. Elizabeth Felker, serving as representative of the Treasurer, has continued oversight of this Financial Management function and the staff has been expanded in recognition of the need. The Division of Investment will continue to report to the Treasurer through Mrs. Felker. The Division of Taxation, the Division of Pensions and the Lottery Division will continue, without change, to report directly to the Treasurer.

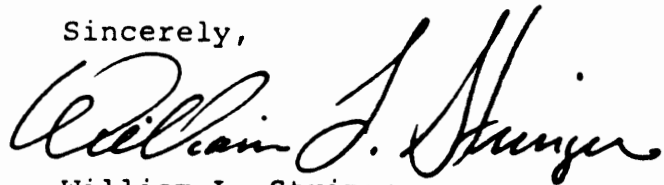
Treasury is a massive department with vast and complex responsibilities. It consists of eleven divisions and 4,600 employees with varied responsibilities ranging from taxation and budget preparation to purchasing and construction. However, in recent history this centralized and coordinated control has been a recognized strength of New Jersey's fiscal and operational structure. This reorganization preserves the strengths yet forms a workable structure from what had evolved into an unwieldy organization.

Admittedly, the vast majority of the changes are internal to the Department. Nevertheless, those changes significantly alter the manner in which budgets are formulated and financial dealings are carried out. The realignment into major reporting groups can only enhance the efficiency of New Jersey's Department of Treasury.

Messrs. Orechio and Karcher  
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The accompanying Executive Reorganization Plan is an integral portion of Treasury's restructuring. Any questions you might have regarding its purpose or operation, of course, are welcome.

Sincerely,

A handwritten signature in cursive script, reading "William L. Stringer". The signature is written in dark ink and is positioned above the printed name and title.

William L. Stringer  
Deputy State Treasurer

Attachment

crk

NOTICE OF REORGANIZATION PLAN FOR THE  
CO-ORDINATION OF PROCUREMENT, CONSTRUCTION,  
PROPERTY MANAGEMENT AND OTHER FUNCTIONS IN A  
GENERAL SERVICES ADMINISTRATION WITHIN THE  
DEPARTMENT OF THE TREASURY

Take notice that on January 23, 1983, Governor Thomas H. Kean issued the following Reorganization Plan which provides for the coordination of the functions of the Division of Purchase and Property and Building and Construction in a General Services Administration within the Department of the Treasury and further provides for the abolition of the Division of Data Processing and Telecommunications and the allocation of its functions.

REORGANIZATION PLAN  
OF THE GENERAL SERVICES ADMINISTRATION  
WITHIN THE DEPARTMENT OF THE TREASURY

In addition to its statutory responsibility in widely diverse areas including budget preparation, fiscal control, revenue collection, investment of State funds, and, pension administration, the Department of the Treasury is also responsible for procurement, construction and property management for other State agencies. In order to provide more effective co-ordination of the Department's service operations for other agencies, this Reorganization Plan provides for the consolidation of those operations in a General Services Administration and authorizes the Treasurer to delegate any of his functions, powers or responsibilities in these areas to an Administrator of General Services. The provisions of the Plan are as follows:

1. The Divisions of Purchase and Property and Building and Construction are hereby consolidated in a General Services Administration within the Department of the Treasury.
2. The General Services Administration shall be under the supervision of an Administrator of General Services who shall be appointed by and serve at the pleasure of the State Treasurer, who shall fix the compensation of the Administrator, consistent with law, within the limits of available appropriations.

3. The Divisions of Purchase and Property and Building and Construction and the Directors thereof shall continue to exercise all functions, powers and responsibilities specified in existing law, subject to the supervision and control of the Administrator of General Services.

4. The Division of Data Processing and Telecommunication, created by P.L. 1970, c.94 (C.52:18A-137 et seq.) is hereby abolished. The functions, powers and duties specified in Sections 3(f), 4(a), 5(g), 6, 7, and 8(a) of P.L. 1970, c.94, insofar as they relate to procurement of equipment and services or the direct operation of telecommunications systems, are hereby transferred to the Administrator of General Services who shall supervise their performance either through the Division of Purchase and Property or through such bureaus as he may establish within the General Services Administration which shall be under his immediate supervision. The remaining functions, powers and duties of the Division not relating to procurement or telecommunications operations are hereby transferred to the State Treasurer.

5. The Administration of General Services shall also directly supervise the operations of the Financial Data Center.

6. The Administrator of General Services shall be authorized to exercise any function, power or responsibility of the State Treasurer relating to the procurement of goods or services, the award of State contracts or the acquisition or disposition of real or personal property as the Treasurer may delegate. Such delegation shall be in writing, stating the scope of the delegation and filed with the Secretary of State, and shall remain effective until revoked in the same fashion.

In accordance with the provisions of the Executive Reorganization Act of 1969, P.L. 1969, c.203 (c.52:14C-1 et seq.), I find that this Reorganization Plan is necessary to accomplish purposes set forth in Section 2 of that Act. Specifically, I find that consolidation of the Divisions of Purchase and Property and Building and Construction and the procurement and operational functions of the Division of Data Processing and Telecommunications in a General Services Administration under the control of an Administrator who may exercise powers of the Treasurer will: (a) group agencies and functions of related kind within the Treasury Department, and subject them to appropriate supervisory control by a single officer responsible directly to the Treasurer, (b) promote effective coordination of the

Treasury Department's service operations for other State agencies, and (c) increase efficiency in the performance of these services and in the general management of the Executive Branch.

  
GOVERNOR

Attest:

  
\_\_\_\_\_

A copy of this Reorganization Plan was filed on January<sup>23</sup>, 1984, with the Secretary of State and the Office of Administrative Law and is published herein pursuant to N.J.S.A. 52:14C-4(c) to become effective on March<sup>23</sup>, 1984, unless disapproved by the Legislature.

Take notice that this Reorganization Plan, if not disapproved, has the force of law and will be printed and published in the annual edition of the public laws by the Secretary of State but the text of this Executive Order will not be codified in the New Jersey Administrative Code.



# State of New Jersey

## DEPARTMENT OF LAW AND PUBLIC SAFETY OFFICE OF THE ATTORNEY GENERAL

CN081

RICHARD J. HUGHES JUSTICE COMPLEX  
TRENTON 08625

MICHAEL R. COLE  
FIRST ASSISTANT ATTORNEY GENERAL  
DIRECTOR, DIVISION OF LAW

RWIN I. KIMMELMAN  
ATTORNEY GENERAL

February 21, 1984

Hon. Kenneth R. Biederman  
State Treasurer  
State House  
Trenton, New Jersey 08625

Re: Reorganization of the Department of the Treasury

Dear Treasurer Biederman:

You have asked for our advice on a multi-faceted plan to reorganize the Department of the Treasury. The intended organizational changes have been outlined in a public announcement of the restructuring of the Department of Treasury on July 20, 1983, and in the body of a Reorganization Plan for the Department submitted by the Governor to the Legislature on January 23, 1984, pursuant to the provisions of the "Executive Reorganization Act of 1969," N.J.S.A. 52:14C-1 et seq., and in the letter of William L. Stringer, Deputy State Treasurer dated January 23, 1984 which accompanied the Reorganization Plan.

As set forth in Mr. Stringer's letter and in the Reorganization Plan, the restructuring contemplates three major changes in the organization of the Department: (1) the creation of a General Services Administration within the Treasury Department which will include the existing Divisions of Purchase and Property and Building and Construction and which will be subject to the supervision and control of an Administrator of General Services. The existing Division of Data Processing and Telecommunications will be abolished and its functions will be transferred in part to the Administrator for General Services and in part to the State Treasurer; (2) vesting responsibility for coordinating budget-related activities in a representative of the State Treasurer who will be responsible for overseeing the present Division of Budget

and Accounting; and (3) vesting in an Assistant State Treasurer responsibility for coordinating the work of the Department relating to debt collection, cash management, escheats and the oversight of other debt-related matters.

The contemplated reorganization is intended to be achieved by both administrative and legislative means. You have asked us to consider whether the mechanisms so contemplated are consistent with applicable constitutional and statutory provisions. For the reasons set forth below, we believe they are.

In evaluating the procedures to be employed in reorganizing the Department of the Treasury, it is necessary to examine briefly the reach of the "Executive Reorganization Act of 1969." Under the Act, N.J.S.A. 52:14C-1 et seq., the Governor is generally authorized, after investigation, to prepare a reorganization plan of existing governmental units in order to promote the more efficient functioning of the Executive Branch and the better execution of the law. The Act represents a delegation of legislative authority to the Governor to reorganize State government subject to the disapproval of the Legislature by the passage of a concurrent resolution within 60 days of transmittal of a plan objecting to same. In the Legislature's judgment, the purposes to be achieved by reorganization plans "may be accomplished in great measure by proceeding under this act, and can be accomplished more speedily thereby than by the enactment of specific legislation." N.J.S.A. 52:14C-2(b). See Brown v. Heymann, 62 N.J. 1 (1972) (upholding the constitutionality of the Act as a proper delegation of legislative power). The declared purposes of the Act, in part, are: to promote the better execution of the law; to increase the effectiveness of the operations of the Executive; and to eliminate overlapping and duplication of effort. N.J.S.A. 52:14C-2(a).

The Reorganization Act, though, need not be adhered to in every instance in which the Executive proposes to restructure the functions of a State department or agency. The constitutional powers of the Governor, and the statutory responsibilities assigned to the State Treasurer, provide an alternative means in certain cases to effect changes in the administrative structure of the State departments.

The Reorganization Act itself reveals that the Legislature intended only to provide an efficient and speedy way of amending existing statutory law for the purposes of promoting more efficient government operations. N.J.S.A. 52:14C-2(b). This is accomplished by the Act's provision permitting the Governor to propose a plan to the Legislature which will take effect within 60 days absent the passage by the Legislature of a disapproving concurrent resolution. In addition, N.J.S.A. 52:14C-3(a)(1) defines an "agency" as "[a]ny division, bureau, board, commission, agency, office, authority or institution of the executive branch created by law..." (emphasis supplied). The Reorganization Act

further provides that the Governor may prepare a reorganization plan providing for, among other things, the transfer in whole or in part of an agency and/or its functions to another agency; the abolition of all or a part of the functions of an agency; the merger of two or more agencies or functions; and the abolition of the whole or a part of an agency or its functions when the implementation of a plan will eliminate that agency and/or its functions. N.J.S.A. 52:14C-4(a). Also, N.J.S.A. 52:14C-6 prohibits the Governor from creating in a reorganization plan a new principal department in the Executive Branch, N.J.S.A. 52:14C-6(a)(1) which may only be created "by law" (emphasis supplied), N.J. Const. (1947), Art. V, §IV, ¶1; "[c]ontinuing an agency beyond the period authorized by law..." (emphasis supplied), N.J.S.A. 52:14C-6(a)(2); "[a]uthorizing an agency to exercise a function which is not expressly authorized by law..." (emphasis supplied), N.J.S.A. 52:14C-6(a)(3); and "[i]ncreasing the term of an office beyond that provided by law..." (emphasis supplied). N.J.S.A. 52:14C-6(a)(4). The Act further provides that when the Governor proposes abolishing the function of an agency he include in his plan "the statutory authority for the exercise of the function." N.J.S.A. 52:14C-4(b). It is apparent on the face of the Reorganization Act itself, that the Legislature intended that its procedures be employed only in those circumstances in which the Governor proposed the rearrangement of agencies and functions specifically created and spelled out by particular statutory enactments. There is nothing in the language of the Act to suggest that the Legislature meant to intrude on the constitutional and other statutory prerogatives of the Governor and of the heads of the principal departments to manage and to coordinate the activities of those departments in a manner that would promote the efficient and effective functioning of State government.

There are many sources of the Governor's and the State Treasurer's authority to administratively organize the functions of the Treasury Department. The State Constitution vests the executive power in the Governor. N.J. Const. (1947), Art. V, §I, ¶1. He has thus been allocated the constitutional responsibility of running the State government on a day-to-day basis and he enjoys complete supervisory power over the principal Executive departments and subordinate administrative agencies that aid him in fulfilling his constitutionally assigned task of enforcing the law. N.J. Const. (1947), Art. V, §IV, ¶¶ 1, 2, 4 and 5; N.J. Const. (1947), Art. V, §I, ¶II. The executive power carries with it a positive grant of authority to issue directives necessary to implement the Governor's supervisory administrative responsibilities. See Kenny v. Byrne, 144 N.J. Super. 243, 250-252 (App. Div. 1976), aff'd 75 N.J. 458 (1978). In the past, governors have routinely utilized this power to issue executive orders to establish administrative units in the Executive Branch necessary to aid them in fulfilling their constitutional duties. See Assoc. of N.J. State Col. Fac v. Bd. of Higher Ed. 112 N.J. Super. 237 (Law Div. 1970) (upholding creation of the Governor's Office of Employee Relations

to act as the Governor's agent in conducting collective bargaining negotiations with State employee organizations); Executive Order No. 30 (1966) (creating a bureau of data processing); Executive Order No. 54 (1969) (creating a bureau of telecommunications management) (It is important to note that the Legislature subsequently passed a law embracing the administrative units created by Executive Orders Nos. 30 and 54. See N.J.S.A. 52:18A-137 et seq.). In addition, it is fundamental that administrative agencies and departments may exercise jurisdiction over those matters that are expressly conferred or by fair implication and intentment are incident to delegated powers. Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579, 598-599 (1970); N.J. State AFL-CIO v. Bryant, 55 N.J. 171, 176 (1969); Allendale Field and Stream Assn. v. Legalized Games, 41 N.J. 209, 217 (1963).

Accordingly, reference must also be made to the broad powers assigned to the State Treasurer by State statutes conferring on him substantial plenary authority for the organization and administration of the Treasury Department. The Legislature has delegated to the State Treasurer "general responsibility for all of the department's operations", N.J.S.A. 52:18A-30(b) as well as the authority to "[s]upervise the organization of the department and changes in the organization thereof." N.J.S.A. 52:18A-30(c). In addition, the State Treasurer has the power to "arrange for the interdepartmental and intradepartmental transfer of personnel with a view to the greatest possible efficiency of departmental operations," N.J.S.A. 52:18A-33. With few exceptions he may exercise any power vested in any director of any division in the department, including the Directors of the Divisions of Budget and Accounting and Data Processing and Telecommunications. N.J.S.A. 52:18A-34. And he has been vested with the power to "co-ordinate the activities of the department." N.J.S.A. 52:18A-35.

In this matter we are advised, as set forth in Mr. Stringer's letter to the legislative leadership dated January 23, 1984, that you have designated Alfred Fasola as your representative to coordinate and to oversee the functions of the Division of Budget and Accounting, created at N.J.S.A. 52:27B-10 et seq., and the Division of Data Processing and Telecommunications, created at N.J.S.A. 52:18A-137 et seq.\* We are further advised that Mr. Fasola will have responsibility for coordinating the budget process and for planning long range budget-related activities, but that no

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\*We understand that the proposed reorganization of the Treasury Department would abolish the existing Division of Data Processing and Telecommunications and transfer some of that Division's responsibilities to the General Services Administration and to the State Treasurer. However, it is our intention to deal with the validity of what we are told is the present administrative structure being utilized by the Department of the Treasury pending legislative review of the departmental Reorganization Plan.

statutory authority is altered and no agencies within the Department are consolidated, created or destroyed. See Letter of William L. Stringer, Deputy State Treasurer, dated January 23, 1984. We are further advised that Mr. Fasola has no day-to-day management responsibilities for the preparation of the budget and that he acts solely as a conduit for information to the State Treasurer and to the Governor. Richard B. Standiford, the Director of the Division of Budget and Accounting, retains complete responsibility for the operation of that Division and fulfills all of the statutory responsibilities for same. Likewise, pending legislative action or inaction with respect to the proposed Reorganization Plan, we are advised that the present administrative structure of the Treasury Department, including the Division of Data Processing and Telecommunications, remains completely intact, and that that Division exists as an independent division within the Department of the Treasury and fulfills its statutory responsibilities. The question posed then is whether the State Treasurer can properly assign to Mr. Fasola general oversight and coordination responsibilities for the budget process. We see no legal impediment to this arrangement since that scheme merely centralizes already existing authority vested in the Governor and the State Treasurer to coordinate the activities and the functions of the Department of the Treasury.

We are also advised that you have vested in Elizabeth Felker, an Assistant State Treasurer, responsibilities for coordinating departmental activities with respect to the broad category of financial management. See Letter of William L. Stringer, Deputy State Treasurer, dated January 23, 1984. Ms. Felker oversees the Department's work in the areas of debt collection, the monitoring of the State's debt, the preparation of general obligation debt issues and responsibility for overseeing escheats. All of these functions have traditionally been handled directly under the supervision of the State Treasurer and are not assigned by statute to any particular agency.

Given the express constitutional and statutory powers assigned to the Governor and the State Treasurer to administer the Department of the Treasury, and the powers reasonably incident thereto, it is apparent there is no legal barrier to assigning to Mr. Fasola and Ms. Felker the coordination and oversight responsibilities discussed above. This arrangement does not constitute any impairment of the provisions of the Reorganization Act or of previously delegated functions to particular divisions within the Department of the Treasury because we are advised that the entities in question -- the Division of Purchase and Property, the Division of Budget and Accounting and the Division of Data Processing and Telecommunications -- remain intact and that the directors of those divisions continue to operate independently and to fulfill their complete statutorily assigned functions. Thus, the general oversight responsibilities being exercised by Mr. Fasola and Ms. Felker were properly assigned administratively without the need to resort to the provisions set forth in the Reorganization Act. No statu-

tory amendment need be made to have those coordination functions supervised by aides of the State Treasurer who always retains the option of appointing such assistants as he deems necessary to carry out his own responsibilities.

You have also asked us to determine whether the Reorganization Plan submitted to the Legislature by the Governor on January 23, 1984, pursuant to the provisions of the Reorganization Act, effectively accomplishes its stated purpose, i.e., to create a General Services Administration within the Treasury Department which will include the existing Divisions of Purchase and Property and Building and Construction and some functions of the existing Division of Data Processing and Telecommunications. Because we have concluded that the State Treasurer has the authority to vest oversight responsibilities for the budget process and financial management in two aides, the proposed Reorganization Plan submitted to the Legislature of necessity deals only with the creation of the General Services Administration.

As noted above, the Reorganization Plan submitted by the Governor, if not disapproved by concurrent resolution, "shall have the force and effect of law" and will be published with the public laws, N.J.S.A. 52:14C-7(c), and all acts or parts of acts "inconsistent ... with a reorganization plan adopted..., are, to the extent of such inconsistency, ... repealed." N.J.S.A. 52:14C-11. The Act is intended to promote the better execution of the law and to increase the efficiency of government and eliminate overlapping duplication of effort. N.J.S.A. 52:14C-2(a). To this end, the Governor, after investigation, may prepare and transmit to the Legislature a reorganization plan providing for the consolidation and abolition in whole or in part of agencies and functions thereof. N.J.S.A. 52:14C-4(a). In his transmittal message and in the plan itself, the Governor must set forth the reasons why the plan promotes the more efficient operation of State government.

Our review of the Governor's Reorganization Plan for the Department of the Treasury satisfies us that the terms of the plan itself properly achieve its desired purpose to "streamline and centralize the State's fiscal operations." Letter of William L. Stringer, Deputy State Treasurer, dated January 23, 1984, p. 1. As set forth in Mr. Stringer's letter to the Legislature:

The resulting GSA organization facilitates a more encompassing communications and coordination function between closely related service divisions within Treasury. The consolidation will greatly enhance the ability of Treasury to meet its intergovernmental responsibilities, such as providing quality office space, enforcing the State's procurement statutes and acquiring cost effective communications and data processing capabilities.

ties. Treasury had noted, and the Governor's Management Improvement Program again noted, that the fragmented nature of service elements within Treasury led to inefficiency and untimely delivery of these intergovernmental services. The establishment of the GSA umbrella will speed review and communications between Treasury divisions. [Letter of William L. Stringer, Deputy State Treasurer, dated January 23, 1984, p. 2]

Moreover, as the proposed Reorganization Plan itself notes, the:

consolidation of the Divisions of Purchase and Property and Building and Construction and the procurement and operational functions of the Division of Data Processing and Telecommunications in a General Services Administration under the control of an Administrator who may exercise powers of the Treasurer will: (a) group agencies and functions of related kind within the Treasury Department, and subject them to appropriate supervisory control by a single officer responsible directly to the Treasurer, (b) promote effective coordination of the Treasury Department's service operations for other State agencies, and (c) increase efficiency in the performance of these services and in the general management of the Executive Branch. [Reorganization Plan, pp. 2-3].

In our judgment, these reasons are consistent with the purposes of the Reorganization Act and fulfill the requirements of the statute for accomplishing an effective realignment of functions as detailed in the Reorganization Plan.

In summary you are advised that there is no legal impediment to assigning Alfred Fasola responsibility for coordinating and overseeing the activities of the existing Divisions of Budget and Accounting and Data Processing and Telecommunications. It is, of course, our understanding that those Divisions will remain intact within the organizational structure of the Department of the Treasury and that the directors of those Divisions will continue to fulfill their statutory functions. We further understand that Mr. Fasola has no day-to-day administrative responsibilities for those Divisions. Similarly, there is no barrier in conferring on Elizabeth Felker, Assistant State Treasurer, coordination and oversight responsibilities for the area of financial management, which embraces a number of activities which have traditionally been exercised by the Treasury Department as incident to the Treasurer's general powers. You are also advised that we have reviewed the

provisions of the Governor's proposed Reorganization Plan for the Department of the Treasury. We find that its provisions are consistent with the purposes of the Reorganization Act as it is intended to promote the more efficient and effective operations of State government.

Very truly yours,

IRWIN I. KIMMELMAN  
Attorney General

Michael R. Cole  
First Assistant Attorney General

MRC:djw

cc: W. Cary Edwards, Counsel

LEGISLATIVE SERVICES COMMISSION

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New Jersey State Legislature  
OFFICE OF LEGISLATIVE SERVICES

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*Assistant Reviser of Statutes*

(609) 292-5430  
MAURICE E. GOLD

February 24, 1984

Honorable Donald T. DiFrancesco  
1906 Westfield Avenue  
Scotch Plains, New Jersey 07076

Dear Senator:

You have asked for our opinion on a reorganization plan for the Department of the Treasury submitted by the Governor to the Legislature on January 23, 1984 pursuant to the "Executive Reorganization Act of 1969," N.J.S.A. 52:14C-1 et seq., and additional organizational changes within the department outlined in the letter of transmittal which accompanied the plan. You are advised, for the reasons set forth below, that the plan, while perhaps technically insufficient, contemplates a valid reorganization. With respect to the additional organizational changes, you are further advised that the reorganization plan is not rendered invalid by the omission of these changes and they are authorized by the Governor's constitutionally vested executive powers and the express and implied authority of the State Treasurer under the law.

The plan submitted proposes to establish a General Services Administration (G.S.A.) within the department to supervise the functions, powers and responsibilities of the existing Divisions of Purchase and Property and Building and Construction. The Division of Data Processing and Telecommunications is abolished by the plan and its functions divided between the Administrator for General Services, a position created by the plan, and the State Treasurer. The administrator is additionally authorized "to exercise any function, power or responsibility of the State Treasurer relating to the procurement of goods or services, the award of State contracts or the acquisition or disposition of real or personal property as the Treasurer may delegate... in writing."

Reorganization of agencies within a principal department is authorized by the "Executive Reorganization Act of 1969," N.J.S.A. 52:14C-1 et seq. Without the need for additional legislative action, the act provides the Executive branch with a means by which it can increase efficiency, reduce expenditures, promote

economy and consolidate functions of agencies in that branch. The Legislature declared that these purposes "can be accomplished more speedily thereby than by the enactment of specific legislation." N.J.S.A. 52:14C-2. Based upon this rationale and the limits on the Governor's discretion defined by the act, the Supreme Court has upheld it as a constitutional delegation of legislative power. Brown v. Heyman, 62 N.J.1 (1972).

According to the procedure established by the act,

... the Governor is authorized to prepare a reorganization plan and deliver it to both houses of the Legislature, N.J.S.A. 52:14C-4. A plan will take effect unless both houses shall within 60 days after such delivery pass a concurrent resolution "stating in substance that the Legislature does not favor the reorganization plan," N.J.S.A. 52:14C-7(a). The plan, if not thus disapproved, "shall have the force and effect of law" and will be published with the public laws, N.J.S.A. 52:14C-7(c). The reorganization act further provides that all acts or parts of acts "inconsistent \*\*\* with a reorganization plan adopted hereunder, are, to the extent of such inconsistency, hereby repealed."<sup>1</sup> N.J.S.A. 52:14C-11. [Brown v. Heyman, supra, 62 N.J. at 5.]

The act provides, in pertinent part, that the Governor shall prepare a reorganization plan when

[t]he consolidation, merger or co-ordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof...is necessary to accomplish one or more of the purposes of section 2 of this act. [N.J.S.A. 52:14C-4]

The purposes for which a plan is appropriate are efficiency and economy in government, and, when the Governor finds it necessary, "[t]o group, co-ordinate and consolidate agencies and functions of the Executive, as nearly as may be, according to major purposes." N.J.S.A. 52:14C-2.

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<sup>1</sup> The use of this word is inartful. Laws inconsistent with reorganization plans are not expressly repealed by this section, but probably would be held to be superseded. See Central Construction Co. v. Horn, 179 N.J. Super. 95 (1981).

A review of the plan discloses that the Governor's purposes in establishing a General Services Administration fall within those enumerated in N.J.S.A. 52:14C-2:

In accordance with the provisions of the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (c.52:14C-1 et seq. ), I find that this Reorganization Plan is necessary to accomplish purposes set forth in Section 2 of that Act. Specifically, I find that consolidation of the Divisions of Purchase and Property and Building and Construction and the procurement and operational functions of the Division of Data Processing and Telecommunications in a General Services Administration under the control of an Administrator who may exercise powers of the Treasurer will: (a) group agencies and functions of related kind within the Treasury Department, and subject them to appropriate supervisory control by a single officer responsible directly to the Treasurer, (b) promote effective coordination of the Treasury Department's service operations for other State agencies, and (c) increase efficiency in the performance of these services and in the general management of the Executive Branch. [Reorganization Plan, pp. 2-3]

If the plan otherwise complies with the act, its purposes ensure that it contemplates a valid reorganization.

The Governor's powers to reorganize are limited to the transfer or abolition of the whole or a part of any agency or its functions, or by consolidation, merger or coordination of agencies or their functions. N.J.S.A. 52:14C-4. The act permits changes in the name of an agency and permits the Governor to "provide for the appointment and compensation of the head and one or more officers of an agency (including an agency resulting from a consolidation or other type of reorganization)." N.J.S.A. 52:14C-5. There is no authority for the Governor to create entirely new agencies or offices, other than through the consolidation or merger of existing ones.

We note that the Governor is limited to rearranging what already exists. He is not empowered to decide what new or different authority should be vested in his branch of government....Even within that prescribed area, the statute confines the delegated authority by providing that a reorganization plan may not create a new principal department in the executive branch or abolish a principal department or consolidate two or more of them; or extend the life of an agency; or authorize an agency to exercise a function not then expressly authorized by law; or increase the term of an office. N.J.S.A. 52:14C-6(a). [Brown v. Heyman, supra, 62 N.J. at 10.]

Agency is defined as "[a]ny division, bureau, board, commission, agency, office, authority or institution of the executive branch created by law." N.J.S.A. 52:14C-3 (emphasis added). The Governor is prohibited from authorizing the exercise of a function "which is not expressly authorized by law." N.J.S.A. 52:14C-6 (emphasis added). The act does not grant the Governor the authority to create entirely new agencies with no origin or precedent in law, nor does it permit him to create the positions to supervise the new agencies and appoint to those positions.

The creation of the General Services Administration under the plan at issue is the result of the consolidation of the Divisions of Purchase and Property and Building and Construction and the abolition of the Division of Data Processing and Telecommunications. Each of these agencies are statutorily created and their functions are also authorized by law. (With respect to the Division of Purchase and Property, see N.J.S.A. 52:18A-3; 52:18A-17, 18; with respect to the Division of Building and Construction see N.J.S.A. 52:18A-151 et seq.; see N.J.S.A. 52:18A-137 et seq. regarding the Division of Data Processing and Telecommunications.) The plan does not permit the exercise of any function not already authorized by law. / The delegation of the Treasurer's authority relating to procurements and contracts is the delegation of authority already conferred upon that office by law. See, generally, N.J.S.A. 52:18A-30.

There is no indication that the plan submitted by the Governor attempts to confer any new or different authority on G.S.A. within the Department of the Treasury. It is our opinion, therefore, that the plan contemplates a valid reorganization pursuant to the "Executive Reorganization Act of 1969." We note, however, that the plan as submitted fails to provide certain information required by the act. No arrangements are made for the transfer of monies, records, property and personnel, or the termination of the affairs of the Division of Data Processing and Telecommunications as required by subsections (c), (d) and (e) of section 5 of the act (N.J.S.A. 52:14C-5).

Additional organizational changes within the department are outlined in the letter of transmittal from Deputy State Treasurer William L. Stringer which accompanied the plan. Alfred Fasola, serving as a representative of the Treasurer, will work with the Division of Budget and Accounting in coordinating its activities "to logically and systematically incorporate long run coordinated objectives and cost saving proposals in the budget process." Elizabeth Felker, currently serving as an Assistant State Treasurer, also acting in a representative capacity, will head up a "well defined reporting organization" to report to the

Treasurer regarding matters of debt collection, debt service and investment.<sup>2</sup>

Mr. Stringer's letter assures us that with respect to these functions "no statutory authority is altered and no agencies within the Department are consolidated, created or destroyed." It appears that, by this guarantee, Mr. Stringer is explaining the omission from the plan of any provision for these representatives of the Treasurer. The question then is whether the reorganization plan submitted by the Governor should have included the creation of the posts to be filled by Mr. Fasola and Ms. Felker. Assuming the assurances Mr. Stringer sets forth are valid, it is our opinion that the reorganization plan is not rendered invalid by the omission from the plan of these two posts.<sup>3</sup>

The executive power of the State is vested in the Governor, N.J. Const., Article V, Section I, par.1, and he "shall take care that the laws be faithfully executed." N.J. Const., Article V, Section I, par 11. In order that he may fulfill this obligation, each principal department is under his supervision. N.J. Const., Article V, Section IV, par 1. This duty includes the inherent power to issue directives which insure the efficient performance of the administrative functions delegated to the Executive Branch. Kenny v. Byrne, 144 N.J. Super. 243, 251 (App. Div. 1976), aff'd 75 N.J. 458 (1978). The executive power must carry with it the authority to implement the Governor's responsibilities. Id.

In the context of budget and State debt matters, the Governor's supervision of the Department of the Treasury necessarily involves the powers conferred on the Treasurer by statute. The general powers of the Treasurer are set forth at N.J.S.A. 52:18A-30 and include "general responsibility for all of the departments' operations," N.J.S.A. 52:18A-30(b) and supervision of the organization of the department and changes therein. N.J.S.A. 52:18A-30(c). The

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<sup>2</sup> It should be noted that these individuals were mentioned in a press release issued by the Governor on July 20, 1983 anticipating a reorganization plan which included the establishment of an Office of Management and Budget (O.M.B.) and a Financial Management Administration (F.M.A.), as the heads of those agencies, respectively. O.M.B. and F.M.A. are not once referred to as such in the letter or the plan.

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<sup>3</sup> The July 20 press release indicated that the contemplated O.M.B. would assume new functions and duties with respect to the budget process which, if implemented, might affect this conclusion.

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Treasurer is authorized to arrange for interdepartmental and intradepartmental transfers of personnel "with a view to the greatest possible efficiency of departmental operations," N.J.S.A. 52:18A-33, and shall coordinate the activities of the department. N.J.S.A. 52:18A-35. Except with respect to certain powers exercised by the Division of Budget and Accounting,<sup>4</sup> the Treasurer is authorized to exercise any power vested in a director of any division in the department and, to the extent that the Treasurer so exercises the power, the director's power is superseded. N.J.S.A. 52:18A-34. In addition to these express powers, those incidental powers reasonably adopted to permit an agency to achieve the task assigned to it should be implied, where necessary to that end. Allendale Field and Stream Assn. v. Legalized Games, 41 N.J. 209, 217 (1963).

Within this framework of the constitutional powers of the Governor to supervise the Executive branch, and the express and implied powers of the Treasurer to administer the functions of the Department of the Treasury, it does not appear that there is any legal impediment to the assignment to Mr. Fasola and Ms. Felker of the representative responsibilities as outlined in Mr. Stringer's letter. The supervisory and coordinating roles they are to assume in their respective areas are well within the general administrative responsibilities of the Treasurer and, ultimately, the Governor. Based upon the assurance of Mr. Stringer that the agencies involved and their various statutory duties will remain intact, resort to their inclusion in the reorganization plan is unnecessary.

In conclusion, you are advised that the reorganization plan submitted by the Governor to the Legislature on January 23, 1984 establishing within the Department of the Treasury a General Services Administration, is, absent any technical insufficiencies, a valid plan under the "Executive Reorganization Act of 1969." You are further advised that, with respect to additional organizational changes set forth in the letter of transmittal from Deputy State Treasurer William L. Stringer which accompanied the plan, the plan is not rendered invalid by their omission from the plan and they are authorized by the Governor's constitutional executive powers and the authority of the State Treasurer expressed in the statutes and implied by law.

Respectfully submitted,

DIVISION OF LEGAL SERVICES

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<sup>4</sup>These powers are set forth at N.J.S.A. 52:18A-8 et seq. and generally concern deposit of State revenues, prescription of forms used in encumbering appropriated funds, encumbrance requests and approvals, and the drawing of warrants. Again, we caution that interference in these activities might affect the outcome of this opinion.

## CHAPTER 203, LAWS OF 1969

### CHAPTER 203

AN ACT providing for the organization and reorganization of the Executive branch of government by submission of reorganization plans by the Governor subject to disapproval by the Legislature within 60 days, and providing for the publication thereof, supplementing chapter 14 of Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

**C. 52:14C-1 Short title.**

1. This act shall be known as the "Executive Reorganization Act of 1969".

**C. 52:14C-2 Policy declaration.**

2. (a) The Governor shall from time to time examine the organization of all agencies and shall determine what changes therein are necessary to accomplish the following purposes:

(1) To promote the better execution of the laws, the more effective management of the Executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive;

(3) To increase the efficiency of the operations of the Executive to the fullest extent practicable;

(4) To group, co-ordinate, and consolidate agencies and functions of the Executive, as nearly as may be, according to major purposes;

(5) To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Executive; and

(6) To eliminate overlapping and duplication of effort.

(b) The Legislature declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this act, and can be accomplished more speedily thereby than by the enactment of specific legislation.

**C. 52:14C-3 Definitions.**

3. For the purpose of this act:

(a) "Agency" means—

(1) Any division, bureau, board, commission, agency, office, authority or institution of the executive branch created by law, whether or not it receives legislative appropriations, or parts thereof;

(2) Any office or officer in any agency, but does not include the State Auditor;

(b) "Reorganization" means a transfer, consolidation, merger, co-ordination, authorization, or abolition, referred to in section 4 of this chapter; and

(c) "Officer" is not limited to persons receiving compensation for their services.

**C. 52:14C-4 Preparation and disposition of reorganization plan.**

4. (a) When the Governor, after investigation, finds that—

(1) The transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency; or

(2) The abolition of all or a part of the functions of an agency; or

(3) The consolidation, merger, or co-ordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof; or

(4) The consolidation, merger, or co-ordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof; or

(5) The authorization of an officer to delegate any of his functions; or

(6) The abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions;

is necessary to accomplish one or more of the purposes of section 2 of this act, he shall prepare a reorganization plan for the execution of the reorganization as to which he has made findings and which he includes in the plan, and transmit the plan (bearing an identification number) to the Legislature, together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to accomplish one or more of the purposes of section 2 of this act.

(b) The Governor shall deliver to the Senate and General Assembly on the same session day a reorganization plan. In his message transmitting a reorganization plan, the Governor shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function and the reduction of expenditures (itemized so far as practicable) or increase in effectiveness and efficiency that it is probable will be brought about by the taking effect of the reorganization included in the plan.

(c) A copy of the reorganization plan shall be transmitted to and filed with the Secretary of State for publication in issue of the New Jersey Register next following said filing.

**C. 52:14C-5 Permissible provisions of reorganization plan.**

5. A reorganization plan transmitted by the Governor under section 4 of this act—

(a) May change, in such cases as the Governor considers necessary, the name of an agency affected by a reorganization and the title of its heads and shall designate the name of an agency resulting from a reorganization and the title of its head;

(b) May provide for the appointment and compensation of the head and one or more officers of an agency (including an agency resulting from a consolidation or other type of reorganization) if the Governor finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary. The head so provided may be an individual or may be a commission or board with more than one member. In case of such an appointment, the term of office may not be fixed for a period in excess of the term remaining to be served by the then Governor, the pay may not be at a rate in excess of that found by the Governor to be applicable to comparable officers in the Executive branch, and, if the appointment is not to a position in the competitive service, it shall be made by the commissioner or other chief executive officer, board or commission of the executive department affected.

(c) Shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(d) Shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the Governor considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective. However, the unexpended balances so transferred may be used only for the purposes for which the appropriation was originally made; and

(e) Shall provide for terminating the affairs of an agency abolished.

**C. 52:14C-6 Prohibited provisions of reorganization plan.**

6. (a) A reorganization plan may not provide for, and a reorganization under this act may not have the effect of—

(1) Creating a new principal department in the Executive branch, abolishing or transferring a principal department or all the functions thereof, or consolidating 2 or more principal departments or all the functions thereof;

(2) Continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) Authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to the Legislature;

(4) Increasing the term of an office beyond that provided by law for the office.

(b) A reorganization plan may take effect as provided in section 7.

**C. 52:14C-7 Effective date of reorganization plan.**

7. (a) Except as otherwise provided by subsections (b) and (c) of this section, a reorganization plan shall take effect at the end of a period of 60 calendar days after the date on which the plan is transmitted to the Senate and General Assembly on a day on which both thereof shall be meeting in the course of a regular or

special session unless, between the date of transmittal and the end of the 60-day period, the Legislature passes a concurrent resolution stating in substance that the Legislature does not favor the reorganization plan.

(b) Under provisions contained in a reorganization plan, a provision of the plan may be effective at a time later than the date on which the plan otherwise is effective.

(c) A reorganization plan which is not disapproved in the manner provided by subparagraph (a) of this section shall have the force and effect of law and the Secretary of State shall cause the same to be printed and published in the annual edition of the public laws under a heading of "Reorganization Plans."

**C. 52:14C-8 Construction of act.**

8. Nothing in this act shall be construed to deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or any pension law or retirement system.

**C. 52:14C-9 Affect of act on certain prior reorganization plans.**

9. This act shall not affect any order, rule or regulation made or promulgated prior to the effective date of a reorganization plan by any department, commission, council, board, authority, officer or other agency, the functions, powers and duties of which have been assigned or transferred to any other officer, authority or agency pursuant to a reorganization plan; but such orders, rules and regulations shall continue with full force and effect until amended or repealed pursuant to law.

**C. 52:14C-10 Affect of act on certain actions or proceedings.**

10. This act shall not affect actions or proceedings, civil or criminal, brought by or against any department, commission, council, board, authority, officer or other agency, the functions, powers and duties of which have been transferred or abolished pursuant to this act; nor shall any reorganization affect any order or recommendation made by, or other matters or proceedings before, any department, commission, council, board, officer, authority or agency, the functions, powers and duties of which have been transferred or abolished pursuant to a reorganization plan under this act.

**C. 52:14C-11 Repealer.**

11. All acts and parts of acts inconsistent with any of the provisions of this act and with a reorganization plan adopted hereunder, are, to the extent of such inconsistency, hereby repealed.

12. This act shall take effect on January 13, 1970.

Approved December 2, 1969.