

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: Oversight Hearing of the State Ethics Commission

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Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Monday,
April 29, 1991
1:00 p.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime
and Corrections
Hon. Gerard Kosinski, Subcommittee Chairman on
Courts
Hon. Karen Ritter, Secretary

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin Hon. Frank LaGrotta
Hon. Gregory C. Fajt Hon. Christopher McNally
Hon. Lois S. Hagarty Hon. Robert D. Reber

Also Present:

Representative Cohen, Majority Caucus Chairman
Galina Milahov, Majority Research Analyst
Mary Woolley, Republican Counsel
Mary Beth Marschik, Republican Research Analyst
Katherine Manucci, Majority Committee Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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Vincent Dopko, Chief Counsel, State Ethics Commission	
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1 CHAIRMAN CALTAGIRONE: We'll get started
2 with the oversight hearing on the Pennsylvania State
3 Ethics Commission, and I'd like the panel of members
4 that are present at the present time, and staff, to
5 introduce themselves for the record, and if you would
6 like to start at my left, Frank.

7 REPRESENTATIVE LaGROTTA: Frank LaGrotta,
8 from Lawrence County and Beaver County and Mercer
9 County and points in between.

10 REPRESENTATIVE RITTER: Karen Ritter,
11 from Lehigh County.

12 REPRESENTATIVE FAJT: Greg Fajt,
13 Allegheny County.

14 REPRESENTATIVE BIRMELIN: Jerry Birmelin,
15 Wayne, Pike and Susquehanna Counties.

16 CHAIRMAN CALTAGIRONE: Representative
17 Caltagirone, Berks County.

18 REPRESENTATIVE HAGARTY: Lois Hagarty,
19 Montgomery County.

20 REPRESENTATIVE REBER: Bob Reber,
21 Montgomery County.

22 MS. WOOLLEY: Mary Woolley, Counsel to
23 the committee.

24 MS. MILAHOV: Galina Milahov, Research
25 Analyst.

1 MS. MARSCHIK: Mary Beth Marschik,
2 Research Analyst.

3 CHAIRMAN CALTAGIRONE: Thank you.
4 Now, if you would please introduce
5 yourself for the record, the panel.

6 MS. HUGHES: Yes. Good afternoon. I'm
7 Helena Hughes, Chair of the State Ethics Commission.
8 It is our pleasure to be here this morning and thank
9 you to share this dialogue.

10 The Commissioners present are one Robert
11 Brown. If you don't know Mr. Brown, please raise your
12 hand for those who don't. John Contino, our Executive
13 Director of the Commission; Vince Dopko, our Chief
14 Counsel.

15 Our Vice Chair, Commissioner Brown, will
16 make our opening statement.

17 MR. BROWN: Good afternoon, Mr. Chairman,
18 members of the Judiciary Committee. As Chair Hughes
19 indicated, we are very pleased to have this opportunity
20 to engage in this dialogue through this process of this
21 oversight hearing. I think it formalizes some of the
22 informal discussions that our staffs have been
23 discussing over the course of the years in the
24 administration of first Act 170 and later Act 9 and the
25 dialogue that continues today over the development of

1 the regulations that we are currently pursuing.

2 On behalf of the Ethics Commission, what
3 I would like to do at this time, we provided you with
4 approximately an 18- or 20-page statement, and rather
5 than belabor the reading of that informal statement, I
6 would like to provide you with a summary or the
7 highlights of the statement. If you have any questions
8 on the page or any other issues that aren't covered in
9 the statement, we would like to address those to the
10 best of our abilities.

11 In 1978, the General Assembly of
12 Pennsylvania was one of the first in the nation when
13 they enacted the Public Official and Employee Ethics
14 Law, more commonly referred to as the State Ethics Act.
15 Again in 1989, Pennsylvania was a leader when the act
16 was amended and the Commission was re-created through
17 the passage of Act 9, which culminated the sunset
18 review process.

19 With the promulgation of those two acts,
20 they simultaneously created an independent agency, the
21 State Ethics Commission. This landmark legislation
22 codified what was the longstanding public policy that
23 public office is a public trust and that any attempt to
24 violate that public trust through financial gain was a
25 violation of the trust.

1 In order to effectuate that initial
2 statement of intent, three primary functions:

3 1. To administer and enforce the
4 financial disclosure requirements of the law;

5 2. To issue advisory opinions and advice
6 to public officials and employees regarding their
7 duties and responsibilities under the law; and

8 3. To investigate, upon sworn complaint
9 or upon the Commission's own motion, alleged violations
10 of the provisions to the State Ethics Act.

11 The Commission, in furtherance of its
12 statutorily mandated duties and in pursuit of the
13 expressed intent of the General Assembly, administers
14 its opinions with an emphasis on guidance to public
15 officials and employees who are subject of the
16 provisions of the law. We believe that our primary
17 mission is one of education.

18 One of the more important aspects of the
19 legislation both in terms of State and national
20 implications is that it applies to both public
21 employees and officials both horizontally and
22 vertically within the public sector both among State
23 government and among local governments. Thus, for the
24 first time in the history of the Commonwealth back in
25 1978, a uniform and comprehensive statute was

1 established setting forth standards of conduct for
2 virtually all individuals serving the public sector.

3 This Commission, through its history, has
4 diligently pursued its statutory mandate in the most
5 efficient and effective manner possible. The first
6 several years were spent in evolutionary procedures
7 from which the Commission could proceed. We believe
8 that this structure has now been developed and the
9 Commission continues to fill the duties and
10 responsibilities vested in it by law through an
11 efficient and effective manner.

12 The State Ethics Act has undergone many
13 legal challenges, and while there have been some
14 important changes as far as the act's application to
15 certain groups of officials, such as judges and lawyers
16 initially, the act has survived a substantial number of
17 legal attacks. Regarding a few problem areas
18 identified during judicial proceedings, most have been
19 remedied by provisions now contained in Act 9 of 1989.

20 I am pleased to note that the vast
21 majority of the court decisions have upheld the
22 provisions of law and have affirmed the commission's
23 application of the law, and decisions establishing the
24 parameters of the law's purview have laid a formal
25 legal foundation for the Commission's operation. The

1 body of law that has been created, and the public
2 policy as enunciated by the General Assembly, is now
3 well rooted.

4 The various accomplishments that we've
5 been asked to provide you with are no more better
6 evidence than through the myriad of functions performed
7 by the agency and the degree to which the Commission is
8 called upon to carry out its functions.

9 During the past 12 years, this Commission
10 has issued approximately 1,700 advices and more than
11 300 opinions. In addition, Commission staff responds
12 to hundreds of inquiries each week by way of telephone.
13 These opinions and advices have been issued at all
14 levels of government and were in response to questions
15 posed by these individuals.

16 Our resultant decisions have addressed
17 issues ranging from the routine to the extremely
18 complex. Many of the decisions involved questions of
19 first impression for which there is no prior guidance.
20 For the most part, the public officials and employees
21 who seek the advice of the Commission have no other
22 avenue available for the resolution of their questions
23 but to request advice or opinions from the State Ethics
24 Commission. The Commission, in this respect, provides
25 an independent forum from which public officials and

1 employees are able to obtain advice and guidance
2 regarding their activities as public servants. Not
3 only does this Commission perform this vital advisory
4 role, the power to issue such opinions also provides a
5 statutory protection to persons who seek advance
6 determination as to the propriety of certain
7 activities.

8 As noted, the Ethics Law, for the first
9 time, required public disclosure of certain financial
10 interests of public officials, employees, as well as
11 candidates for public office. This was promulgated in
12 order to strengthen the faith and confidence of the
13 people of the State in their government. The General
14 Assembly has further set forth the intent of this
15 requirement, and specifically delineated that the
16 disclosure of financial interest holders or candidates
17 of public office would not present a conflict with the
18 public trust. To that end, the Commission has
19 administered and enforced the statutory requirement as
20 promulgated.

21 The Commission annually distributes
22 approximately 150,000 financial information disclosure
23 forms. Although not all forms are filed directly with
24 the Commission, and the Commission is currently
25 developing a computer generated random sampling

1 compliance program to better insure an effective,
2 efficient, and equitable mechanism of conducting such
3 reviews within the Commission's resource allocations.
4 As part of the administration of the disclosure
5 requirement, non-filers and deficient filers are
6 notified of the filing obligations and of the
7 appropriate enforcement or legal procedures that may
8 follow for those who continue to ignore the Ethics Act.

9 The Commission has also played an active
10 role in ensuring convenient public access to such
11 documents. The Commission will continue to further
12 streamline this process during each filing period and
13 advance the now established foundation for
14 administering disclosure requirements.

15 The third major area relates to its
16 authority to investigate alleged violations of the act.
17 In this respect, the Commission has issued over 800
18 orders in the course of its existence. These orders
19 were issued as a result of either sworn complaints that
20 had been received by the Commission or as a result of
21 investigations that were initiated upon the
22 Commission's own motion. While all investigations must
23 generally remain confidential during the course of an
24 investigation, the Commission does have public
25 accountability. As such, upon the final determination

1 of an investigation, the Commission issues an order
2 outlining the allegation, the findings of fact, and the
3 conclusions of law.

4 This process has resulted in securing in
5 excess of \$100,000 in restitution to State and local
6 governments, representing the financial gains received
7 by some public officials and employees in violation of
8 the act, and the termination of such activities that
9 had resulted in specific conflicts of interests or that
10 represented the use of public office for personal gain.

11 One of the most significant
12 accomplishments in this area of the Commission's
13 mandate has been the refinement of the investigative
14 operational function. In 1989, immediately prior to
15 the enactment of the revised Ethics Law, the Commission
16 had approximately 250 open, ongoing investigations. As
17 of this date, the Commission has reduced that number by
18 approximately 100 cases. This reduction has been
19 accomplished with no major increase in the Commission's
20 investigative division but rather through a refinement
21 of the intake and preliminary inquiry procedures.

22 In addition to the foregoing, the
23 Commission has effectuated an organizational structure
24 that segregates the investigative and adjudicatory
25 functions, thereby establishing a firm due process that

1 comports with the most rigid due process requirements.

2 In 1983, it's interesting to note that
3 the Commission adopted a statement of purpose and goals
4 or a mission statement that provides that: "The
5 Pennsylvania State Ethics Commission is responsible for
6 strengthening the faith and confidence of the people of
7 the State in their government by effectively and
8 efficiently administering the Ethics Act."

9 The primary result of the Commission's
10 activities must be a knowledgeable general public,
11 through the participation and cooperation of all
12 persons and groups affected by the act. That statement
13 emphasized the Commission's informational or
14 educational function. Interestingly, this statement
15 predated Act 9 by six years and was clearly in line
16 with the directions of the General Assembly as outlined
17 in Act 9 of 1989. During the upcoming year, we will,
18 as a Commission, further review this statement to
19 determine whether there is a need to amend it.

20 The Commission, however, has aggressively
21 worked toward fulfilling this educational mandate. To
22 that end, we continue to publish and distribute Guides
23 to the Ethics Act, Rulings Digests, and Comprehensive
24 Annual Reports. We have also begun to hold hearings
25 and meetings outside of Harrisburg to solicit input

1 from persons and organizations who represent our
2 constituents who are subject to the law, as well as
3 other interested parties. Additionally, the Commission
4 has, since the inception of the revised law, ensured
5 compliance with the requirement that full texts of
6 rulings are distributed to various enumerated
7 recipients.

8 Additionally, the Commission has made
9 various presentations to the employees of Commonwealth
10 agencies and at colleges, schools, and universities of
11 the Commonwealth.

12 The Commission will also, during the
13 upcoming year, attempt to develop a flexible training
14 program that could be conducted by agency staff members
15 upon request for any group of government officials and
16 employees. It is anticipated that such a program will
17 be a comprehensive review and analysis of the law that
18 will also include audio and visual aids, as well as
19 group workshop sessions where appropriate.

20 The instant appearance before this
21 committee presents an ideal opportunity to bring to the
22 attention of the legislature the thoughts of the
23 Commission regarding areas of potential legislative or
24 regulatory proposals. The presentation also will
25 permit us the opportunity to solicit from the committee

1 members any concern or commentary regarding the general
2 operations of the agency as well as the
3 administrative law. Such input is welcome and we
4 hope that the dialogue continues after our session ends
5 today.

6 At this time, I would like to conclude
7 our opening statement by opening the floor, with the
8 Chair's permission, to any discussions or questions
9 that you may have for us.

10 CHAIRMAN CALTAGIRONE: Certainly.

11 Members, questions?

12 One of them that I have is of course the
13 budget, which we're going through the process right
14 now, and one of the things that I distributed to the
15 members here present, and I'm sure you know what your
16 budget proposal is for this year, could you please
17 review for the members' benefit your current budget
18 amount, the proposed budget, the staff complement, and
19 just a brief on what that money buys the legislature?

20 MR. BROWN: All right, fine.

21 Our current budget appropriation for
22 fiscal year 1989-90 is \$794,000. Our proposed budget
23 is \$805,000. Or 1990-91, our current budget is
24 \$805,000. The majority of those expenditures, if you
25 were to design a pie chart, would reflect that most of

1 it goes to salary and benefits administration. I would
2 estimate that approximately 84 percent of the current
3 staff your appropriation goes for salary and benefits
4 administration. Benefits are much beyond the
5 Commission's ability to control, as you can imagine.
6 However, salaries are within our control. We maintain
7 rigid adherence to the Commonwealth salary structure in
8 that regard.

9 One of the things that I would like to
10 point out is that in our '90-'91 proposal we're hoping
11 to reduce the percentage of salary and benefits costs
12 from approximately 84 percent -- 84.5 percent down to
13 by 4.2 percent from its '89-'90 percentage. That is
14 through not filling certain positions that we are
15 carrying in vacancies.

16 In terms of staff complement, in addition
17 to the administrative expenses allowed for the
18 Commission members which were increased through the
19 \$125 per diem plus expenses, we carry a Chief Counsel
20 and an Executive Director. We have added one attorney
21 as an assistant to the Chief Counsel in this year,
22 which was an initiative. We have approximately seven
23 investigators, plus one Assistant Executive Director
24 and one administrative officer who handles our
25 administrative matters. The rest of the staff is

1 composed of secretarial support. Total staff
2 complement of approximately 17.

3 MS. HUGHES: I don't know whether you
4 know that we have a western regional office that is
5 located in the Pittsburgh area where part of the staff
6 operates on a daily basis. We have, what is it, three
7 investigators there and a secretary.

8 CHAIRMAN CALTAGIRONE: Is there also an
9 office in the Philadelphia area?

10 MS. HUGHES: No.

11 CHAIRMAN CALTAGIRONE: There's just in
12 Pittsburgh and Harrisburg?

13 MR. BROWN: That's correct. We have an
14 investigator assigned to Philadelphia, but he works
15 primarily out of--

16 CHAIRMAN CALTAGIRONE: Harrisburg.

17 MR. BROWN: Right. He's assigned to the
18 eastern region but does all his administrative work
19 back in Harrisburg.

20 CHAIRMAN CALTAGIRONE: Okay.

21 REPRESENTATIVE COHEN: Mr. Chairman?

22 CHAIRMAN CALTAGIRONE: Representative
23 Cohen.

24 REPRESENTATIVE COHEN: Thank you very
25 much.

1 I appreciate the opportunity to ask
2 questions here, although I am not a member of the House
3 Judiciary Committee.

4 I have found the Ethics Commission
5 responsive to criticisms that I and others have made,
6 and I appreciate that responsiveness. I would like to
7 ask some questions.

8 I am aware -- my greatest concern with
9 your operation is that although you are required to
10 keep thing secret that you are investigating, your
11 investigations very, very frequently leak out, and
12 there are huge numbers of elected officials in this
13 Commonwealth of Pennsylvania who now have, as part of
14 their life story, that they have been under
15 investigation by the State Ethics Commission. And we
16 read about these investigations, I read recently about
17 the investigation of Controller Flaherty in Pittsburgh,
18 about Montgomery County Commissioner Bartle, about some
19 high official, I believe it's the controller of Lehigh
20 County or I could have that mixed up, and what happens
21 is what seems to happen is the Ethics Commission goes
22 in somewhere and although the investigation is secret,
23 your people go around flashing identification cards and
24 say, hi, we're from the State Ethics Commission. We're
25 investigating Mr. X. Please answer the following

1 questions. And then you talk to, you want to run a
2 thorough investigation so you talk to a lot of people,
3 and then at least one of those people contacts the news
4 media, and then it's reported that you're investigating
5 Mr. X, and then as part of Mr. X's life story it is
6 probably going to be part of his obituary when he dies
7 that he was investigated by the State Ethics
8 Commission.

9 And the fact that the vast majority of
10 your investigations are to find that people are not
11 guilty of whatever they have been accused of, or if
12 they are guilty it was just a minor violation, I
13 wonder, have you given any thought to steps you can
14 take to keep this confidential so that not only won't
15 you tell everybody but other people won't tell
16 everybody? Have you thought of just asking for records
17 without saying, we're the State Ethics Commission, we'd
18 like to see the following records, without identifying
19 why you're there?

20 MR. BROWN: Well, Mr. Cohen, I think you
21 bring out a very important and sensitive area of the
22 act. It's one that the Commission and its staff
23 continues to effectively administer in the sense that
24 the act does provide for serious penalties if
25 confidentiality of an investigation is breached.

1 Whenever our investigators are conducting an
2 investigation, anyone that they interview, number one,
3 I think it's only common sense that if you were to ask
4 for a particular record they would want to know who you
5 are and why you want it. I'm not certain that there's
6 any way you can avoid identifying yourself as being
7 with a particular investigative body and still expect
8 to get those records provided to you.

9 However, when we do interview individuals
10 that may or may not be the subject of investigations or
11 may be witnesses or have information relative to an
12 investigation, all those individuals are always advised
13 as to the confidentiality requirements of the act. I,
14 myself, conduct hearings as a hearing examiner for the
15 Commission, and as part of one of my regular statements
16 before and after the hearing I reiterate the statement
17 of the act and the penalties that are involved with
18 violation of that confidentiality. If there is any
19 indication that you can provide us or that any member
20 can provide us with indications of where a member of
21 our staff or another individual has violated that
22 confidentiality, we will pursue it and we will ensure
23 that the requirements of the act dealing with breach of
24 confidentiality are taken care of.

25 You referenced a case, alleged case,

1 involving a Controller in the Pittsburgh area, and to
2 my knowledge, this Commission followed the letter of
3 the law in refusing to either confirm or deny the
4 existence of any investigation of that individual.
5 Went so far as to uphold the confidentiality of any
6 alleged investigation, even to the point where a court,
7 a judge ordered our Executive Director to provide the
8 information in a deposition. I mean, those are the
9 lengths -- I think that that example that you provided
10 provides a good example of the lengths that this
11 Commission goes to to ensure confidentiality of any
12 investigations.

13 It's hard to control, you know,
14 individuals who may have other agendas in revealing
15 information to the press. You know. It's a fact of
16 public life that unfortunately we deal with as
17 Commission members, and you Representatives are very
18 sensitive to that, you know, allegations are printed on
19 the first page of a newspaper and retractions are
20 printed, you know, somewhere else.

21 MS. HUGHES: One other point. Once an
22 investigation is completed, all of the hearings are
23 held, and an order is issued, then it becomes public
24 knowledge, and from that point those persons who may
25 have been contacted may make a statement. I mean, it's

1 now public knowledge, and we have no control of that.

2 REPRESENTATIVE COHEN: I'm concerned
3 about the investigations that go on and on and on for
4 years, like the historic investigation of the
5 Controller from Pittsburgh I believe is now over four
6 years old, and there's been no report of any hearing
7 that the Ethics Commission has held. The big news is
8 that the status of the Controller in Pittsburgh is that
9 he is, quote, unquote, "under investigation," and as he
10 runs for re-election this year he runs "under
11 investigation" by the State Ethics Commission. As
12 Commissioner Bartle in Montgomery County runs for
13 re-election he's running "under investigation." There
14 has never been a report of the finding of either
15 investigation. As far as the public knows, there's
16 never been a hearing in either investigation. All the
17 public knows is that there has been an investigation
18 and the investigation has not terminated.

19 MR. BROWN: Well, Mr. Cohen, let me
20 reiterate remarks that we have in our statement and
21 that I made in the executive summary.

22 One of the initiatives that the
23 Commission is pursuing is the elimination of an old
24 case backlog. It was an area of concern that the
25 Commission shares with you. We have eliminated

1 approximately 100 of the 250 outstanding cases under
2 the old act.

3 Relative to again you make reference to
4 an alleged investigation in the city of Pittsburgh, and
5 we will neither confirm nor deny the existence of any
6 such investigation, and the Controller has, in public,
7 taken that same position. So you're the only
8 individual that I'm aware of in the room that's talking
9 about the City Controller being under investigation.
10 We certainly are not taking that position.

11 REPRESENTATIVE COHEN: But although I may
12 be the only one in the room, what I'm saying is it's
13 not a secret to the readers of the Pittsburgh
14 Post-Gazette or the Pittsburgh Press, both of which
15 have written dozens of stories on this alleged
16 investigation.

17 MR. BROWN: But that was a matter of
18 discovery and an issue in a court case that we had no
19 control over, that the Commission had no control over,
20 whether or not that that existence of that
21 investigation was there or not.

22 Now, you reference Commissioner Bartle.
23 The Bartle matter has been brought to a termination.
24 It is now a final order. I would be happy to provide
25 you with public information relative to that

1 investigation. That's another good example of how the
2 Commission conducts its investigation and makes
3 available that information.

4 Now, two other things I would like to
5 bring to your attention. One, you know, as I said,
6 we're trying to get rid of our old backlog. Two, Act
7 9, two of the very good amendments to Act 9 deal with
8 the frivolous complaint provisions for wrongful use of
9 the act, which doesn't deal directly with an individual
10 case as you're talking about where they reveal the
11 existence of an investigation but certainly deals with
12 the class of cases particularly in a general election
13 where a primary opponent, for no other reason but
14 political purposes, alleges a particular investigation
15 with no particular knowledge. It's only frivolous in
16 his motivation to do that. There are serious penalties
17 provided in the new act for that type of behavior, and
18 the Commission is prepared to enforce those provisions
19 of the act.

20 The second area that I think has been an
21 improvement in Act 9 is the specific timetables that
22 are established in Act 9 for the conduct of an
23 investigation. We have, you know, a preliminary
24 inquiry stage that must be completed within 60 days.
25 We have an investigation stage, provided there's

1 probable cause and it moves to an investigative stage,
2 for 180 days with two 90-day extensions. There will
3 not be any cases, there will not be any cases, Mr.
4 Cohen, under Act 9 that will go beyond the statutorily
5 mandated 360 days.

6 REPRESENTATIVE COHEN: Are you still
7 going to be taking new cases under the old act?

8 MR. BROWN: The new act provides in the
9 law that if any elements of the alleged violation
10 occurred under Act 170, the timeframe when Act 170 was
11 in effect, that Act 170 would apply. So if there are
12 elements of a violation that occurred in '88 and the
13 statute of limitations hasn't run, then yes, we would
14 still be pursuing that case under Act 170 as opposed to
15 Act 9.

16 REPRESENTATIVE COHEN: Are you going to
17 try to act within the limits of the new act under the
18 old act, even though there's no statutory requirement
19 for you to do so?

20 MR. BROWN: I think that the new act
21 provides a clear expression of the General Assembly's
22 intent that these investigations be swiftly conducted
23 and brought to an end. You know, it's an established
24 legal principle that any individual who is the subject
25 of an investigation has the right to have the matter

1 ended, and we are committed to bringing these matters
2 to a close.

3 REPRESENTATIVE COHEN: Okay, because it's
4 been two years almost, it's been at least 22 months
5 since the end of the new act -- I'm sorry, since the
6 new act was passed, January 26, 1989. So that's 22
7 months. So for a violation that occurred on, say, June
8 25, 1989, that was 22 months ago now, and assuming the
9 complaint was filed the day before the new act went in
10 into effect, so that would be 22 months ago, and the
11 deadline under the new act was 13 months for the total
12 process to work. And I would certainly hope, although
13 you are not required to do so, the complaints filed
14 under the old act now or in the future would be filed,
15 we be handled as expeditiously as possible and not drag
16 on for four or five years merely because the
17 legislature does not require you to end them.

18 MR. BROWN: No, sir. You know, I can't
19 speak for five other members of the Commission, but the
20 Chair will join me in this to make you a commitment
21 that investigations will be conducted efficiently,
22 fairly, and effectively, and we will strive to
23 endeavor, if we have cases under the old act, to
24 complete them within the timeframes that are delineated
25 in the new act. I think that that's a marvelous

1 improvement in the new act, and it's one that we're
2 very committed to. I know that the investigations that
3 we are undertaking under the new act we're adhering
4 strictly to those time tables.

5 REPRESENTATIVE COHEN: Okay. And one
6 final concern. Well, two final concerns.

7 First, were there hearings held in 1990?

8 MR. BROWN: Yes. Are you talking about
9 the public hearings to gather input into the act?

10 REPRESENTATIVE COHEN: Public hearings.

11 MR. BROWN: Yes. To date we have held
12 three hearings. One you're aware of that you attended
13 and provided us with input here in Harrisburg. We've
14 had one in Pittsburgh and we've had a subsequent one in
15 Philadelphia. We are planning to go to Scranton, as a
16 matter of fact, next month in an effort to reach that
17 region of the State. Our next scheduled meeting is May
18 23rd and 24th, with the date of the 24th being reserved
19 for public comment on the agenda.

20 REPRESENTATIVE COHEN: So May 24th is
21 your public hearing?

22 MR. BROWN: That will be our fourth one,
23 yes.

24 REPRESENTATIVE COHEN: And in Harrisburg
25 each year you're required to hold at least one public

1 hearing in Harrisburg and at least one public hearing
2 elsewhere in the Commonwealth?

3 MR. BROWN: We have met and exceeded that
4 requirement, yes. And we think that that's another
5 good provision. I mean, we will intend to do more than
6 just the minimum required under the act.

7 REPRESENTATIVE COHEN: Okay.

8 I forgot what I was finally going to say,
9 Mr. Chairman. I yield to someone else.

10 CHAIRMAN CALTAGIRONE: Are there any
11 other questions?

12 (No response.)

13 CHAIRMAN CALTAGIRONE: You're getting off
14 easy.

15 Second round?

16 REPRESENTATIVE COHEN: Mr. Chairman, I
17 remember now.

18 In this statement, you say the
19 overwhelming majority of your decisions have been
20 sustained by the courts. Do you have any figures as to
21 how many of your decisions have been sustained by the
22 courts?

23 MR. BROWN: I could certainly provide
24 them for you, Representative Cohen. I would be more
25 than happy to provide you with that tabulation. I

1 mean, it's readily available. It's just a matter of
2 accumulating the numbers.

3 REPRESENTATIVE COHEN: Was an
4 accumulation made before you made that statement?

5 MR. BROWN: Oh, of course, but I just
6 don't have the hard number for you.

7 REPRESENTATIVE COHEN: Okay, thank you
8 very much.

9 CHAIRMAN CALTAGIRONE: Last week we
10 accepted the Annual Crime Commission report, which hit
11 just about every newspaper in the State. I'm curious
12 as to the Crime Commission and their work with other
13 agencies. Do they, in fact, work with you? Do they,
14 in fact, initiate any work for you or do you turn
15 anything over to them as a cooperative agency when it
16 concerns especially other public officials, whether
17 they are local, State, or whatever?

18 MR. BROWN: To answer your question in a
19 general way, and then I'll refer to Mr. Contino, who
20 used to work for the Pennsylvania Crime Commission, I
21 believe, at one time, this agency works very
22 cooperatively with investigative bodies throughout the
23 State - local district attorneys, State Attorney
24 General, the Auditor General's Office, as well as the
25 Governor's Office of Inspector General as well.

1 Whenever we can coordinate an investigation or whenever
2 they can coordinate an investigation with us, we have a
3 policy of communicating with them and providing so that
4 there won't be, you know, again, subjecting an
5 individual to, you know, one day, as Mr. Cohen says,
6 the OIG shows up and flashes a badge and another day
7 the Ethics Commission comes in and flashes a badge. I
8 mean, that's just not an efficient use of State
9 resources. So we do coordinate with other agencies
10 when there is an overlap of functions.

11 You will remember that during the sunset
12 review process though, one of the findings of the
13 Legislative Budget and Finance Committee was that there
14 was no other agency such as the Ethics Commission that
15 could undertake the investigations of the act that we
16 have. We have exclusive jurisdiction of that act, so
17 we do handle matters just within our jurisdiction, but
18 we do try to coordinate. I'll leave any other
19 specifics to Mr. Contino.

20 MR. CONTINO: Representative, we have
21 received certain referrals of information from the
22 State Crime Commission. During the course of my
23 service with the Ethics Commission, we have not, to the
24 best of my knowledge, referred anything to them. As
25 you are well aware, their primary mandate is the

1 investigation of organized crime activities. I am not
2 sure if they still have a mandate in the public
3 corruption area. I know that they did when I served
4 with them.

5 CHAIRMAN CALTAGIRONE: Yes, they do.

6 MR. CONTINO: We have not referred
7 anything to them in that area simply because the cases
8 that we typically get would be within the parameters of
9 the Ethics Act, for which we have primary jurisdiction
10 over. Once we have completed those cases, if there is
11 a further referral necessary, having already gone
12 through the administrative process of the primary
13 agency with jurisdiction, those matters would get
14 referred to the district attorney or to the Attorney
15 General for their review, or if there is some
16 regulatory or administrative body that has to take
17 actual action of some type, we would refer to that
18 agency, typically.

19 CHAIRMAN CALTAGIRONE: If a scenario were
20 to be painted like this where you have an investigation
21 of let's say a local Grand Jury as a follow-up to
22 something the Crime Commission has alluded to in its
23 report and some of the public hearings that they plan
24 to hold around the State and it comes out that X, Y, Z
25 public officials are, in fact, involved and you weren't

1 aware of that beforehand, what do you do after that
2 information? Do you have to wait for a complaint to be
3 filed, or can you act in any way independently?

4 MR. BROWN: There are two triggers, so to
5 speak, that would begin an investigation by the
6 Commission. They are both provided for in the act.
7 One is upon a sworn complaint.

8 CHAIRMAN CALTAGIRONE: Um-hum.

9 MR. BROWN: And the other is through own
10 motion on the part of the Commission itself.

11 The threshold requirements in both cases,
12 either in the case of a sworn complaint or on a
13 Commission's own motion, are basically the same. In
14 other words, I can delineate some of them for you. The
15 sworn complaint of the act requires, what we look for,
16 okay, under a sworn complaint or on an own motion
17 investigation is the threshold there has to be reason
18 to believe or probable cause in order to conduct an
19 investigation. We require that the alleged violator
20 and the alleged activity is specifically identified,
21 that the respondent is specifically identified, that
22 the complainant signs under penalties of perjury the
23 sworn complaint in that instance, and that the
24 individual has specific knowledge of the facts. In
25 other words, it isn't just something that they read in

1 the newspaper as well. We also require a
2 jurisdictional review to insure that we have specific
3 jurisdiction over the case.

4 Again, if it's a referral from another
5 agency, we will generally engage in the same type of
6 review as the Commission. If we just get information
7 from a particular audit finding, for example, that, you
8 know, is part of this audit or is part of this
9 investigation, we find this type of activity, unless we
10 meet the specific threshold requirements that we hold
11 for a sworn complaint, we will not initiate a
12 preliminary inquiry.

13 Now, the act establishes two different
14 layers of investigation. The preliminary inquiry
15 triggers only reasonable leak. After 60 days of
16 investigation, if there is no longer a reason to
17 believe that the act was violated, the Executive
18 Director is instructed by the Commission to bring that
19 matter back to the Commission for dismissal. In other
20 words, the Executive Director can't just dismiss a case
21 himself without the approval of the Commission. Then
22 the Commission will formally dismiss a case. If the
23 Executive Director brings us his investigative results
24 and he finds that there isn't just reason to believe
25 but probable cause, then we will start the 180-day

1 clock ticking on the Executive Director and the
2 investigation for probable cause.

3 CHAIRMAN CALTAGIRONE: A couple examples.
4 One, let's talk about other agencies like
5 the State Police and the Attorney General, and they are
6 doing their own independent investigation. Can they,
7 in fact, refer information to you from their agency for
8 examination by your agency?

9 MR. BROWN: Yes, they can.

10 CHAIRMAN CALTAGIRONE: And does that
11 happen, and how often? You don't have to cite any
12 cases, but--

13 MR. BROWN: In the instance of the State
14 Police, I can't remember any State Police cases.

15 MR. CONTINO: We have had some.

16 CHAIRMAN CALTAGIRONE: You have?

17 MR. CONTINO: Yes.

18 MR. BROWN: I know that I have specific,
19 you know, recollection of referrals from the Auditor
20 General and from the Attorney General and local
21 district attorneys as well.

22 CHAIRMAN CALTAGIRONE: All right. If in
23 the event, let's say, that a complainant files a
24 particular complaint against an individual and your
25 investigator or investigators happen to come across

1 other information that's not relevant to the particular
2 charge that the complaint was originally issued on and
3 there might be something to that complaint or that new
4 evidence that they have uncovered that has nothing to
5 do with the original complaint that was filed, what do
6 you do with that information?

7 MR. BROWN: Is it within our jurisdiction
8 or outside of our jurisdiction?

9 CHAIRMAN CALTAGIRONE: Yes. Let's use
10 the example--

11 MR. BROWN: Let's take your hypothetical,
12 for example.

13 CHAIRMAN CALTAGIRONE: A hypothetical, an
14 official takes a trip to California, takes \$4,000 out
15 of an account and it's never paid back to that local
16 jurisdiction, and that can be prove. Now, what do you
17 do?

18 MR. BROWN: If you deal with an alleged
19 realization of gain through use of office, and that's
20 why we're in there. We're in there to investigate an
21 alleged realization of financial gain through his use
22 of office, okay? And in the course of that
23 investigation we find out that that individual has also
24 not filed a financial disclosure statement that's
25 required, we will also add that to the findings of fact

1 and include that in our consideration of the matter,
2 because that's also within our jurisdiction.

3 CHAIRMAN CALTAGIRONE: If, in fact, the
4 Auditor General's office comes up with the audit
5 exception similar to what I just mentioned to you, and
6 they do this in every single school district, county,
7 and city, borough and township at some point during
8 their cycle of audits that are performed, and in fact
9 when they come up with these audit exceptions and there
10 are examples where public officials or their employees,
11 which are also covered under the act, have done such
12 and such, how do you respond to that if there's not a
13 complaint that has been filed?

14 MR. BROWN: No, that's correct, and that
15 would be the second scenario where the Commission could
16 authorize, through its own motion under the act, an
17 investigation of the matter.

18 CHAIRMAN CALTAGIRONE: How would you be
19 aware of it, though, unless you read every one of those
20 audit reports?

21 MR. BROWN: Go ahead, John. John can
22 explain.

23 MR. CONTINO: Mr. Chairman, we routinely
24 receive not only from the Office of Attorney General
25 but from virtually every investigative agency at the

1 State level, and many county level agencies as well,
2 referrals on a weekly basis. Any time that the Auditor
3 General's Office, for example, believes that they have
4 something that may be impacted upon by the Public
5 Official and Employee Ethics Law, they make a
6 recommendation to refer it, actually in the body of
7 their audit, to the State Ethics Commission for further
8 review and determination within the Commission's
9 discretion and jurisdiction as to whether any further
10 action should ensue. I won't say we get those reports
11 on a weekly basis, but certainly I see a number of
12 those reports every month.

13 Similarly, we get reports, or referrals,
14 as we call them, from the Office of Inspector General,
15 from the Office of Attorney General. We have had some,
16 as I mentioned, from the State Police. We've had some
17 from local district attorneys. So they are brought to
18 our attention. I'm not sure how they identify the
19 Ethics Act potential problem, but they do identify it
20 and they are referred specifically to us in their
21 report.

22 CHAIRMAN CALTAGIRONE: This might be of
23 interest to the committee members. I know it's of
24 interest to me, and maybe if you could supply this
25 information to us I would appreciate it, and we don't

1 need to know cases, I'm just curious about numbers,
2 total numbers, let's say, within the last two or three
3 years, total number of cases that were referred to you
4 by these different agencies, number one, as referrals.
5 Number two, what was done with that information? How
6 you handle it, and if in fact you had findings. And
7 number three, what did you do about it once you found
8 out that let's say there were some truth to the
9 allegations that were made by other agencies? And I'm
10 just curious, we're talking about numbers, because the
11 number of cases that you mention in your statement, how
12 does that relate to the total number with the different
13 agency referrals?

14 MR. CONTINO: I do not have the hard
15 numbers here, but I do believe they are available in
16 the mechanism that we use for logging in all
17 complaints, whether they are not within our
18 jurisdiction or whether they are dismissed for no
19 reason to believe that there's a violation. Every
20 complaint that we receive in our office is logged in
21 and so we know who it comes from and we could go
22 through our system for a given period of time, identify
23 those that came from another governmental agency, and
24 then we can track it from there. That is possible for
25 us to do that. I do not have the statistics here,

1 though.

2 CHAIRMAN CALTAGIRONE: One of the things
3 that concerned me about the Crime Commission report is
4 if, as was painted by their report last week is
5 anywhere near accurate, we have some very big problems
6 in this State that we are not addressing, if what they
7 say is accurate. If that's true, the relationship of
8 what they are trying to tell us is occurring in the
9 State would have to involve officials at some level of
10 government. Now, if they have information that they
11 can document and if they have information that should
12 and could go, let's say, to the Attorney General or the
13 district attorneys for potential prosecutions, then I
14 think they should come forward with it, because when
15 they start painting a lot of, and similar to what Mark
16 was getting at, just publishing names in the booklet or
17 book form that they put out and not substantiating it,
18 number one, and painting an innuendo in certain areas
19 of the State in regards to what area it happens to be,
20 if it's true, then I think it's incumbent upon all of
21 us to try to ferret out those that could be involved
22 and take whatever action needs to be taken. Of course,
23 that's also going to involve your Commission at some
24 point in the way, if what they were saying last week
25 was accurate, and at this point in time I don't know

1 exactly how much of that information really is
2 accurate. Do you understand the point that I'm getting
3 at?

4 MR. BROWN: I do, and I think you've
5 brought your concern to our attention and we'll be
6 happy to provide you with those numbers from the other
7 agencies. It's an area that we share concern in
8 because I know one of the efforts that we've undertaken
9 in the last year to 18 months is to formalize and adopt
10 a specific policy that the Commission will use in
11 acting on referrals from other agencies, so that there
12 is a standard of review that's utilized by the
13 Commission so that it's not made up based upon the
14 facts that may be before another group of seven. You
15 know, you have to remember that before a Commission
16 will undertake an investigation on its own motion, we
17 require a majority, four of seven votes, to affirm the
18 initiation of an investigation, and as you can
19 appreciate, trying to reach that majority can sometimes
20 be very difficult.

21 CHAIRMAN CALTAGIRONE: And you have to
22 have some evidence, I'm sure.

23 MR. BROWN: Absolutely.

24 CHAIRMAN CALTAGIRONE: Or some type of
25 proof before you do any type of witch hunt. I don't

1 think any one of us would want to see that happen. I
2 think basically what we're trying to understand is
3 what's happening inside this State, who's involved, and
4 what is it going to take to clean it up? Is there
5 coordination going on between the agencies to uncover
6 information so that there's hopefully cooperation to
7 eliminate some of these problems? It's like somebody
8 said to me just recently, after you expend all this
9 money on the drug war, let's say as an example, and you
10 still have the problem, something isn't working. It's
11 when you eliminate the problem, when you've met the
12 demon and you've beat the demon, and evidently we're
13 losing the battle because in the reports that are
14 coming out, you know, no sooner do these people get
15 arrested on the street corners then there's
16 replacements there before you can bat an eye. So
17 something's wrong. Something isn't working within the
18 system. Now, who is involved, what's involved, you
19 know, I think it's coordinated efforts on the part of
20 every agency of government to find out just what has to
21 be done.

22 Okay.

23 REPRESENTATIVE COHEN: Mr. Chairman?

24 CHAIRMAN CALTAGIRONE: Mark.

25 REPRESENTATIVE COHEN: The last time I

1 spoke to Mr. Contino he told me that the Commission was
2 in the process of revising the financial disclosure
3 limits as to how much, what the cap was before we had
4 to disclose. I was just thinking of that because we
5 are working on formulas in a couple of days. Have you
6 reached any decision on revising the limits?

7 MR. BROWN: Oh, I know what you're
8 talking about. There's a statutory limit that's
9 required to be reported in the act, but also under the
10 act there is a provision that on a biennial basis,
11 every two years, the Commission will review that number
12 and see whether it should be escalated upwards or
13 downwards. I can say that I believe that's an agenda
14 item for our May meeting.

15 MR. CONTINO: We did it.

16 MR. BROWN: Oh, you did it? They did it
17 at the meeting when I wasn't there, Mr. Cohen.

18 MR. CONTINO: Mr. Cohen, the Commission
19 did consider that issue and at this time the
20 Commission, based upon statistics from the Consumer
21 Price Index, decided to keep the dollar figures at the
22 same level for the next two years.

23 MR. BROWN: I can't be held responsible
24 for that.

25 REPRESENTATIVE COHEN: Okay.

1 CHAIRMAN CALTAGIRONE: Okay. No further
2 questions?

3 (No response.)

4 CHAIRMAN CALTAGIRONE: We will adjourn
5 the hearing. Thank you very much.

6 MR. BROWN: Thank you very much.

7 MS. HUGHES: Thank you.

8 (Whereupon, the proceedings were
9 concluded at 2:00 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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