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**REPORT**  
**OF**  
**THE MARYLAND STATE PROSECUTOR**  
**FISCAL YEARS 1995, 1996**  
**(July 1, 1994 – June 30, 1996)**

*Pursuant to Article 10 § 33B(g)*

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**Summary of Fiscal Years 1995 & 1996**  
**(July 1, 1994 – June 30, 1996)**

During the first few months of Fiscal Year 1995 it became abundantly clear that this Office would be heavily involved with election law complaints. This was the time period when political campaigns were in their final phases prior to the 1994 General Election in November. Between July 1, 1994 and November 8, 1994, the day of the election, the Office received 48 complaints dealing with alleged violations of the Election Code. Following the General Election the Office continued to receive a steady stream of such complaints.

Although we had experienced increasing numbers of complaints related to campaign financing in previous election years, they had never approached the volume received in FY95. Notable among the allegations received were those of gubernatorial candidate Ellen Sauerbrey and her supporters who had compiled a series of incidents and irregularities which they believed pointed to a conspiracy to "steal" the election by supporters of the Democratic candidate.

There are no doubts among the State Prosecutor's staff that the investigation of the conduct of the 1994 General Election virtually consumed the Office resources during the second half of FY95 culminating in the 120 page Report of Allegations and Findings Concerning the 1994 General Election, published in August 1995. Although the results of the investigation still seem to generate controversy, its political implications represented a classic case in which an independent prosecutor was required.

Also, during the first quarters of FY95 two major cases were disposed. *State vs. Jacqueline F. McLean*, involving the former Comptroller of Baltimore City, was finalized with guilty verdicts and a non-jail sentence. This case received more notoriety than the Office has experienced in many years. Although the presiding judge rejected the State Prosecutor's recommendation of incarceration, he later denied McLean's motion for modification of sentence which would have restored her pension rights forfeited upon her conviction and subsequent action by the Baltimore City Retirement Board.

*State vs. J. Basil Wisner*, the former Deputy State Comptroller, involved the filing of false state tax returns. This was a plea bargained guilty plea in which one of the conditions was the defendant's resignation from state service after 35 years in which he had steadily advanced to the position of being second in command of the Comptroller's Office.

Three acquittals were suffered in cases tried by assistants during FY95 and FY96. One involved the attempted bribery trial of the Martinuks in Cecil County. After a jury mistrial, an appeal on double jeopardy grounds and a retrial in February 1996, a Cecil County jury acquitted the Martinuks. The other two cases involved a young woman accused of falsely registering college students and subornation of perjury and a Baltimore

City Election Board employee accused of false voting (voting in a jurisdiction in which he did not reside).

An unusual case was referred to the Office by the Legislative Auditor who found financial mismanagement in the Town of Port Deposit. An investigation and subsequent prosecution removed the Town's Clerk-Treasurer. The Town Mayor resigned during the investigation in which non-payment of Town taxes was discovered. However, we did not find thefts that would have impaired the financial stability of the Town.

A four month investigation in Garrett County resulted in the indictment of the County Clerk Robert J. Fousek, Sr. Fousek had been County Clerk for 14 years in which he functioned as the County's Chief Administrator and also as Roads Administrator during his last three years of service. He was indicted on state income tax charges, theft and misconduct in office. The Grand Jury which handed down the indictments also issued a report on the actions of the County Commissioners and Fousek in awarding a non-competitive bid contract for \$1.3 million dollars of roads equipment which resulted in extensive and costly litigation.

Much of the work of the Office involves writing reports to the complainants and subjects of investigations in which the State Prosecutor either does not find criminal conduct, or for reasons given, does not recommend prosecution. In fiscal years 1995 and 1996, 46 reports were issued, only 5 of which were made public by the subjects of the investigations. These amount to approximately two reports issued every month which involves considerable time and effort. The standard used is that any finding of the State Prosecutor must be able to withstand judicial scrutiny if contested by the subject(s) of the investigation. That means that we must be able to produce evidence in court justifying our finding. As of the date of this report none of the 122 reports issued by the current State Prosecutor have been contested. However, some of the complainants have expressed their disappointment that we did not confirm their allegations.

The Office budget and staff have stabilized at eight permanent positions with contractual funds to hire a part-time legal intern. An additional investigative position was included in our FY97 budget bringing the total staff to eight. Workload reflected a dramatic increase in FY95 due to the election law complaints, but leveled off in FY96 to comparable experience in FY94.

STEPHEN MONTANARELLI  
State Prosecutor



**FISCAL YEAR 1995**  
**(1 July '94 – 30 June '95)**

**JUDICIAL DISPOSITIONS**

**1. State vs. Jacqueline F. McLean (Baltimore City)**

In September 1994, after prolonged litigation in which the State Prosecutor requested and obtained the assignment of a non-City judge, former City Comptroller Jacqueline McLean pleaded guilty to theft. Upon her plea of not guilty to misconduct, Judge Donald Gilmore found her guilty as to that charge based on an agreed statement of facts and arguments of counsel.

Prior to her sentencing on December 15, 1994, Mrs. McLean paid the City approximately \$27,000 as restitution plus interest for the amounts she stole by placing a fictitious employee on the Comptroller's payroll. She was sentenced to 3 years incarceration, all of which was suspended, and placed on 5 years probation, 18 months of which was to be supervised, including 750 hours of community service. The State had requested incarceration which the Court denied based on her mental condition, hospitalization, attempted suicide and a belief that she had been punished enough from the time her misconduct and theft scheme were discovered in November 1993.

**2. State vs. J. Basil Wisner (Deputy State Comptroller)**

In October 1994, J. Basil Wisner, a state employee for 35 years, who had served as second in command of the State Comptroller's Office since 1974, was charged with three counts of filing false state individual income tax returns, false state corporate income tax returns and making false statements on state sales and use tax returns. On December 5, 1994, Wisner pleaded guilty to all counts and received a 5 year suspended sentence as to each count, 3 years supervised probation, a fine of \$5,000 and an order to make restitution to the State in the amount of \$64,341.81. Wisner resigned his position as a condition of the plea bargain, which he accepted.

**3. State vs. Dana Lowenstein (Prince George's County)**

On January 2, 1995, Ms. Lowenstein was charged with 15 counts of false registration and 16 counts of subornation of perjury. The charges emanated from a complaint of illegal voter registration of University of Maryland students in College Park. The defendant, who was a candidate for City Council, was alleged to have illegally registered a number of students by having them submit a particular address in College Park rather than their actual addresses on campus.

On April 27, 1995, Judge Joseph Casula of the Prince George's County Circuit Court found the defendant not guilty. Judge Casula stated that he did not find that the defendant had the criminal intent to violate the law; that she was ignorant of the law and

that she had tried to correct the false registrations after she learned that the students could not register to vote where they did not reside.

## **INVESTIGATIONS COMPLETED (REPORTS MADE PUBLIC)**

### **1. October 1994 – Senatorial Candidate’s Residency (District 10)**

On October 14, 1994 a State Prosecutor’s report was released by senatorial candidate Delores Kelly in which the State Prosecutor found that she had established residency in the 10<sup>th</sup> Legislative District. Her residency had been contested by her opponent in the Democratic Primary, which she had won, and her Republican opponent in the general election. Her opponents alleged that she had not established residency in the District for six months prior to the general election as mandated by the State Constitution and; therefore, had committed perjury on her voter registration application in Baltimore County.

An investigation by this Office revealed that Mrs. Kelly and her husband had rented an apartment as of April 1, 1994 in the District while their home on Joleon Road was being built. On her certificate of candidacy she listed her future Joleon Road address after being advised to do so by the Baltimore County Board of Election Supervisors since she expected to be moving shortly into her new home. The State Prosecutor’s report also listed a lease for the apartment, a canceled rent check and a letter from the apartment owners as proof of residence.

On October 25, 1994, Republican candidate Jerome Goodman, who was opposing Mrs. Kelly in the general election, filed a complaint with the State Prosecutor Selection and Disabilities Commission alleging that the State Prosecutor had conducted a “sloppy” investigation. The State Prosecutor answered the complaint in a written report to the Commission members.

### **2. October 1994 – Senatorial Candidate’s Residency (District 12)**

On October 27, 1994 a report was released by senatorial candidate Edward J. Kasemeyer in which the State Prosecutor concluded that Kasemeyer had moved into the District in sufficient time to establish residency for his candidacy. The report listed utility and telephone records as well as interviews with associates, friends and neighbors in the Columbia condominium which supported the conclusion that Kasemeyer had been a resident since March 1994, thereby meeting the six month residency requirement prior to the general election. The investigation had been initiated by Kasemeyer’s opponent who questioned his recent move to the Legislative District.



## **INVESTIGATIONS COMPLETED (REPORTS NOT MADE PUBLIC)**

In the following investigations the subjects chose not to make public State Prosecutor reports. A general statement of the investigation is made in order to give the reader some concept of what the Office does without disclosing confidential information. Only reports deemed significant are mentioned.

### **1. August 1994 – Final Report of Allegation Made By Baltimore City Grand Jury**

An extensive investigation commenced in early 1993 was completed in August 1994 with no charges recommended in a 32 page report. On January 18, 1996, all records pertaining to the investigation were sealed by court order. These included two interim reports made public and the final report, which was not made public. This investigation was discussed in our Fiscal Year 1994 Annual Report.

### **2. February 1995 – Sheriff's Misconduct**

An investigation of a Sheriff accused of misconduct was completed with a 12 page report. Although this Office found that the Sheriff committed misconduct by illegally using the Criminal Justice Information System to check the criminal records of potential tenants of his rental properties, the State Prosecutor did not recommend criminal prosecution. Citing the administrative sanctions which are usually imposed for using the state system for personal reasons, the State Prosecutor concluded that the misconduct did not warrant criminal sanctions. Other allegations of misconduct were found to be either lacking proof of criminal conduct or de minimis (trivial in nature for which the criminal courts should not be used).<sup>1</sup>

### **3. December 1994 – Alleged Improper Use of State Resources By Cabinet Officer Constituting Campaign Contributions**

In October 1994, a gubernatorial candidate alleged that the secretary of a state department made an improper campaign contribution to an opponent by causing a survey and report to be made on a campaign issue. The allegations included a possible criminal use of state funds through the use of state personnel and resources in order to compile the report, a copy of which was given to the opponent's campaign committee and not to the complainant's campaign committee.

A preliminary inquiry revealed that the secretary had asked the five largest state departments to compile a survey of the impact that a 6% decrease in general funds would

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<sup>1</sup> This report was obtained and published in extracts by two local newspapers without the consent of the subjects of the investigation who are the only persons authorized by statute to release State Prosecutor reports to the public. A request by one of the subjects to investigate whether or not one of the complainants released the report was declined since there are no provisions in the statute giving the State Prosecutor jurisdiction to conduct such investigations. (See Article 10, Section 33B(f), *Annotated Code of Maryland*) The subjects did not allege that the State Prosecutor, or a member of his Office released the report to the media.



have upon their agencies. The departments complied and reported to us that approximately 40 personnel hours were used to compile the information. The cabinet secretaries involved, certain members of the Governor's staff, and a member of the opponent's campaign committee were interviewed.

Our Office issued a 12 page report which concludes that since the compilation did not "expressly advocate a particular election result," it could not be viewed as campaign material. Therefore, it would fall short of being an in-kind campaign contribution. As to the alleged illegal expenditure of state funds, the report finds that such surveys are within the purview of a departmental secretary.

**4. June 1995 – Allegations of Gift Giving By Developers to County Building Inspectors**

During an inquiry conducted by a county department of public works, allegations of partiality to developers who had supplied gifts to certain building inspectors surfaced. The County Executive referred the complaints to this Office.

The allegations involved free donations of building materials, free lunches, paid seminars at developers' expense and free tickets to skyboxes at Orioles' games.

Our investigation found that the above gratuities did exist on a small scale, but could not establish that the developers in question gained any preferential treatment from the inspectors involved. In addition, the county's ethics code provided exemptions for some of the gifts. As a result, the State Prosecutor did not recommend criminal prosecution and referred the allegations to the county administrator for employee disciplinary procedures.

**5. April 1995 – Allegation That State's Attorney Improperly Requested Grand Jury Subpoena for Detention Center Director**

In October 1994, prior to the general election, the State's Attorney and the Director of the County's Department of Correction were engaged in a dispute concerning the prosecutor's plea bargaining policies. The Director had alleged that lenient pleas had caused dangerous prisoners to be incarcerated in his facility rather than in state penal institutions. The dispute was reported in the local newspapers and became a campaign issue between the incumbent State's Attorney and his opponent.

On October 30, 1994, a disturbance occurred at the detention facility, which escalated into a riot and a nine hour confrontation between the guards and 13 prisoners. The State's Attorney requested the names of the prisoners involved in the disturbance for purposes of prosecution, bail hearings and sentencing recommendations. The Director refused to supply the names until a police investigation was completed, but eventually did comply pursuant to a State's Attorney's subpoena. Subsequently, the State's Attorney caused a grand jury subpoena to be issued for the Director after the Director refused to appear voluntarily before the Grand Jury. On the day the Director was scheduled to

testify an agreement was made between his attorneys and the State's Attorney to postpone his appearance until after the General Election held on November 8, 1994.

This Office found that the State's Attorney had the authority and the duty to assist the Grand Jury in its investigation and/or prosecution of offenses arising out of the disturbance; that a procedure existed for the full flow of information between the Detention Center and the State's Attorney's Office and that the Grand Jury could make whatever inquiry it required for its annual report of conditions at the Center. Any complaint of motivation on the part of the State's Attorney to embarrass the Director was weakened by the above factors.



**FISCAL YEAR 1996**  
**(1 July '95 – 30 June '96)**

**JUDICIAL DISPOSITIONS**

1. ***State vs. Jacqueline F. McLean – Motion for Modification Of Sentence (Baltimore City)***

On April 6, 1995 the Baltimore City pension board decided that the former City Comptroller had forfeited her pension of \$23,850 per year. This decision was based on a section of the City Code which states that no elected official may receive benefits if convicted of a job-related offense punishable by at least six months in jail and a \$500 fine. In addition, Mrs. McLean lost the medical benefits connected with her pension.

In an effort to receive her pension by removing her convictions for felony theft and official misconduct, Mrs. McLean filed a motion for modification of sentence. On August 10, 1995 Judge Donald J. Gilmore expressed sympathy for her continuing mental illness and difficult financial condition, but declined to replace her sentence with probation before judgment. He said that the crimes should “stay forever” on her record and that he hoped that she would not run again for elected office. He also stated that, “The crime of theft was a crime of clever deception, a crime of cunning, a crime that took place not just at one time.” As a result of the judge’s ruling, Mrs. McLean was unable to remove the forfeiture of her pension.

2. ***State vs. John P. Martinuk and Joseph P. Martinuk (Cecil County)***

On February 9, 1996 a Cecil County jury acquitted the father and son defendants of attempted bribery. This was the second trial of the defendants who were accused of attempting to bribe the President of the Cecil County Board of County Commissioners in order to obtain his vote for their rezoning request. The rezoning involved an application to use part of their property for a landfill. The first trial had ended in a mistrial in May 1994 with the jury deadlocked at 9 for conviction and 3 for acquittal. In the meantime the Martinuks had appealed the State’s attempt to retry them on the basis of double jeopardy. The Court of Special Appeals upheld Judge Elroy G. Boyer’s ruling that the retrial would not constitute double jeopardy, thereby enabling the retrial to proceed.

3. ***State vs. Samuel McAfee, Christopher Jackson, Joseph Pizza, John Budka, Marie Rogers, Terri Masciazewski and Hakima Shaulis (Baltimore City)***

All of the above defendants were employees of the Baltimore City Board of Supervisors of Elections. They were charged separately on February 1 and 14, 1996 with false voting by casting ballots in Baltimore when their residences were elsewhere. These cases were part of an extensive investigation conducted by the State Prosecutor into allegations of irregularities in the 1994 General Election.



At the time of the investigation all employees of election boards were mandated to be registered voters of the State and residents of the county (in this case Baltimore City) where the board was located and to maintain such residences while employed by the board. False voting is a misdemeanor punishable by imprisonment for no more than five years and a \$2,500 fine.

On March 5, 1996 Shaulis, Masciazewski, Rogers and Pizza pleaded guilty to the single count of false voting, received fines ranging from \$100 to \$150 and unsupervised probation before judgment. The court noted that none of them had criminal records. The agreed statement of facts in each case indicated that the defendants lived outside the City limits, but had registered and continued to vote in Baltimore in order to maintain their jobs. Budka pleaded guilty on April 5, 1996 and received the same disposition.

On April 9, 1996, Christopher Jackson, the son of Barbara Jackson, the board's administrator, was acquitted of the charge on a motion for judgment of acquittal at the conclusion of the state's case. The court found that Jackson had maintained two residences, one in Baltimore County with his mother and one in the City with a friend. Since he voted in the City, the Court determined that he intended to reside in the City and, therefore, would not allow the case to proceed.

Based on the decision in the Jackson case, the State dropped the charge against McAfee on April 24, 1996, since he also maintained two residences, one in Baltimore City and the other in Baltimore County.

During the 1996 legislative session the Legislature amended the Election Code in order to allow board employees to reside other than the jurisdictions in which they were employed. Only the Chief Administrator of the election board is now required to reside in the county where the board is located. It is believed that the above cases and the fact that board employees were the only state employees required to live where they worked were factors in the passage of the amendment which became effective October 1, 1996.

#### **4. State vs. Nancy L. Peters (Cecil County)**

In October 1995 the State Office of Legislative Audits referred the findings of their recent audit of the finances of the Town of Port Deposit to this Office. The audit alleged irregularities in the management of the Town's finances particularly in the collection of property taxes and water and sewer fees.

On December 29, 1995, during the State Prosecutor's investigation, Nancy L. Peters, the Town's Clerk-Treasurer resigned. On February 28, 1996, Mrs. Peters pleaded to Common Law Misconduct in Office before Cecil County Circuit Court Judge Edward D. E. Rollins, Jr. In her guilty plea Peters acknowledged her failure to pay certain amounts of her property taxes and water and sewer fees and her failure to report such delinquencies to the County Treasurer. She also failed to report unpaid bills of two other unnamed town residents.

In return for her plea the State agreed to a suspended three-year sentence, a fine of \$2,500 and supervised probation in order to insure the payment of the delinquent taxes and fees plus accrued penalties and interest.

On March 5, 1996 Town Mayor Erma Keetley resigned her position after serving 21 years as a town official. On March 22, 1996 the State Prosecutor issued a confidential report of his findings to the Office of Legislative Audits, the Attorney General, the State's Attorney of Cecil County and the subjects of the investigation. The report was not made public.

On March 29, 1996, the State Prosecutor issued a public statement that (1) the investigation was concluded; (2) that Mrs. Peters had paid all of her taxes and service fees which were in arrears including penalties and interest; (3) that the other two subjects of the investigation were being assessed by the newly appointed Clerk-Treasurer for monies owed to the Town; (4) that a continuance of the investigation of the two subjects was not justified based on the evidence obtained and; (5) that the investigation had not revealed any widespread theft of Town funds in amounts that would affect the Town's financial stability.

5. **State vs. Robert J. Fousek, Sr. (Garrett County)**

On May 15, 1996 the Garrett County Grand Jury issued four indictments against former County Clerk and current Roads Administrator Robert J. Fousek, Sr. As County Clerk Fousek had served fourteen years as the County's principal administrator reporting directly to the County Commissioners. At the time of the indictment Fousek was on paid administrative leave having been suspended as Roads Administrator in January 1996 when then State's Attorney James L. Sherbin requested the State Prosecutor to investigate a \$76,000 payment made to Fousek in September 1995 as part of a settlement and reemployment agreement which the County Commissioners signed to settle a citizen's law suit. Fousek was suspended for carrying a firearm to work. He was not criminally charged for that incident.

The four indictments included two charges of filing false state income tax forms for tax years 1992 and 1993 by not declaring \$46,000 in consulting fees paid by the County; misconduct in office for felony theft of \$6,000 of county funds in 1993; failing to file a 1994 personal state tax return and; misconduct and felony theft of approximately \$20,000 in connection with the \$76,000 Fousek received for agreeing to retire as County Clerk and become the County's full-time Roads Administrator.

Circuit Court Judge Frederick A. Thayer III scheduled the cases for trial in September 1996 with pre-trial motions to be heard in August. Among the pre-trial motions filed by Fousek was a suggestion for removal based on prejudicial pre-trial publicity.



## **INVESTIGATIONS COMPLETED (REPORTS MADE PUBLIC)**

### **1. Report of Allegations and Findings Concerning the 1994 General Election (August, 1995)**

The gubernatorial election of 1994 was the most closely contested in Maryland's recent history ending with the Democratic Candidate, Parris Glendening, defeating Republican Ellen Sauerbrey by 5,993 votes out of 1.4 million votes cast. Mrs. Sauerbrey challenged the election results alleging a host of irregularities which were adjudicated and dismissed by Judge Raymond G. Thieme, Jr. in the Anne Arundel Court Circuit Case *Sauerbrey, et al. v. State Administrative Board of Election Law, et al.*, Case No. C94-17721 OC (January 1995).

The civil case and a subsequent report by the Attorney General, who found no evidence of fraudulent voting, did not convince those who questioned the votes for governor that the election was fair and free of illegalities. Within two months our office, the United States Attorney and the Federal Bureau of Investigation received complaints of criminal conduct by officials who conducted the election in Baltimore City. In addition, Deputy Attorney General Ralph S. Tyler referred transcripts of the civil case to us regarding the Baltimore City Board Administrator's failure to purge registered voters who had not voted for five years prior to the 1994 General Election.

On March 22, 1995, after receiving complaints from the State Administrative Board of Election Laws (SABEL), the State Prosecutor and members of his staff met with Ellen Sauerbrey and Paul H. Rappaport, the Republican Candidate for Lieutenant Governor, in order to compile a detailed list of allegations and to review evidence accumulated by Mrs. Sauerbrey's supporters.

After compiling all of the complaints, the State Prosecutor's investigative team met with Special Agents Gary L. Stone and Donna L. Kanaskie of the F.B.I. in order to coordinate the efforts of the two agencies. At that time 26 separate allegations were listed as requiring investigations. These ranged from alleged discrepancies in voter counts between unofficial and official results to tampering with voting machines to illegal votes being cast for imprisoned persons, persons registered in vacant houses and dead persons.

The scope of the investigation was extensive and eventually involved all of the office's personnel for a period of 5 months. Four separate audits were conducted to examine alleged discrepancies in voter counts at the various precincts in Baltimore City where all of the allegations focused. Briefly, these involved the following examinations in 88 of the total of 408 precincts in Baltimore:

- (1) The records of 30 precincts were reviewed for alleged discrepancies between unofficial and official voter counts;

- (2) 28,000 voters authorization cards (VAC's) in 60 precincts were counted to reconcile alleged discrepancies between VAC's and votes registered on voting machine counters;
- (3) 60 precincts were audited for alleged irregularities in VAC's such as missing VAC's based on the number which were issued, suspicious signatures, or any observations which would indicate that the VAC was fraudulently created or issued; and,
- (4) 40 precincts were audited by inspecting machine return sheets, affidavits, machine maintenance records and other source documents in order to verify that the numbers taken from the machine counters agreed with the Official Canvass. Complaints had been received concerning these precincts that the Official Canvass did not reflect the actual votes recorded by the machines. In 13 of these precincts letters were sent to 39 election judges concerning irregularities on Precinct Binder Books (documents which reflect who voted at each precinct) and Machine Return Sheet Certificates (documents which reflect the votes counted on each machine). These were followed-up with interviews of the judges.

Other efforts in the investigation were devoted to (a) examining the voting machines with expert advisors as to how they could be manipulated and whether or not there was evidence of tampering; (b) allegations concerning votes being cast by non-existing voters; and (3) allegations against the City Board and its employees.

In all of the above effort more than 200 persons were interviewed in addition to those interviewed by the F.B.I. agents. It is estimated that more than 30,000 documents were examined. In addition, more than 68,000 records were subpoenaed from the Division of Correction, Parole and Probation and the Baltimore City Detention Center and analyzed by a programmer/analyst on contract to the office.

None of the above investigative methods produced a scintilla of evidence that a conspiracy existed during the 1994 General Election to elect a gubernatorial candidate by fraudulent schemes. In a 120 page report with 47 pages of appendices attached the State Prosecutor addressed each of the allegations, summarized the findings and concluded:

...that in all of our interviews and review of documents, as well as those of the federal agents, there is not a single person whom we can identify as a witness who can give evidence of personal knowledge or observation that a conspiracy existed.

In addition, neither the State Prosecutor's investigators nor the F.B.I. agents found any trace of documentary evidence to warrant further investigation by a grand jury, compulsory process, polygraphing or other investigative technique. The United States

Attorney for the District of Maryland, Lynne A. Battaglia, and Timothy McNally, Special Agent in Charge of the F.B.I.'s Baltimore office jointly announced on August 18, 1995:

That their respective offices have completed an inquiry into the circumstances surrounding the 1994 gubernatorial election in Maryland and have uncovered insufficient evidence to justify further criminal investigation by federal authorities.

The United States Attorney noted that the federal investigation had conducted over 100 interviews and had reviewed thousands of documents without finding any evidence of fraud. Despite claims that 89 votes were cast in the names of dead people, F.B.I. investigators could not find any such cases.

The State Prosecutor's investigation found numerous errors, poor judgment, negligence and incompetence on the part of officials conducting the election. In the case of 110 election judges who failed to report for duty out of 2,300 selected, the State Prosecutor declined to prosecute, noting the built-in defenses of ill health, infirmity or old age and the time and costs involved. However, prosecutions were initiated against City Board employees who voted in Baltimore, but maintained residences outside the City.

In the most notorious allegations against the City Board's Administrator the investigation revealed the following:

- (1) Although she failed to supervise and conduct a purge of voters who had not voted in 5 years prior to 1994, the Election Code does not impose the duty upon her to do so. Therefore, she cannot be charged with willful neglect of duty. Nor, can she be charged with misconduct in office since she is not a "public officer" or "public official" under Maryland law;
- (2) Although she failed to change her residence when she moved to Baltimore County in 1988, and voted in the City that year, the statute of limitations barred prosecution.

## 2. Report of the Grand Jurors of Garrett County (May 1996)

On May 28, 1996 the grand jurors of Garrett County (March Term 1996) issued a 21 page report on an investigation conducted with the State Prosecutor as their legal advisor. The investigation was requested in January 1996 by then State's Attorney, now Circuit Court Judge James L. Sherbin, based on a newspaper report that the County Commissioners had paid their former County Clerk \$76,000 as part of a separation and employment agreement in order to settle a civil case against the Commissioners. The Grand Jury was also asked to investigate the contract, which resulted in the civil case.

The dispute began in December 1993 when a local citizen requested documents under the Public Information Act pertaining to a \$1.3 million contract for road



equipment. The citizen contended that the contract was awarded without following competitive bid procedures prescribed by state and county laws. Robert Fousek, who was the County Clerk and Roads Administrator when the contract was awarded to a local John Deere dealer, was also sued individually along with the County Commissioners by the local citizen who sought to have the contract nullified, to enjoin any payments under the contract and to hold the commissioners, and Fousek liable for any payments.

Litigation escalated in 1994 when a Texas company, which financed the equipment purchase under a lease – purchase agreement sued in replevin to recover the equipment. At that time the County had stopped payments on advice of counsel.

The suit was settled in August 1995. One of the terms of the settlement was that Fousek would retire as County Clerk, be rehired under a merit position and be paid for all accumulated leave. At the time of settlement only one of the three Commissioners who had awarded the contract was still in office.

In January 1996 it was discovered that Fousek had been paid \$76,000 in accumulated leave without documentation at the time of his retirement in October 1995, and had been rehired as Roads Administrator at a salary of \$55,000/year.

After hearing testimony and the results of interviews of 25 witnesses, the Grand Jury accepted the advice of the State Prosecutor and concluded that the Commissioners who awarded the \$1.3 million contract were not acting corruptly. The Grand Jurors found that the Commissioners relied on the advice of the County Attorney who testified that he was mistaken when he did not question the bidding process. There was no evidence that any county official obtained personal gain from the contract award.

Prior to issuing its report the Grand Jury had handed down four indictments against Fousek for state income tax fraud, theft and misconduct. Therefore the report does not discuss his Separation and Employment Agreement except to state that the Commissioners had little choice since they believed that the plaintiffs would not settle the case without the Agreement. The Agreement was signed by two of the Commissioners who did not know at the time how much accumulated leave Fousek would be submitting.

**3. Report of Councilman's Failure to Disclose Financial Relationship with Developers (Howard County)**

In February 1996, the State Prosecutor received a complaint that Howard County Councilman Charles Feaga had failed to disclose his financial relationship with developers prior to voting on a zoning bill. The zoning bill amended County zoning regulations so as to permit housing for elderly and/or handicapped persons in Planned Employment Center Districts. The developers, who four months prior to the bill being introduced had signed a contract to purchase the Feaga farm, owned land within a Planned Employment Center District which they had tried to develop unsuccessfully for ten years.

A review of the County Ethics Law revealed that Feaga had a duty to recuse himself from voting only if the matter before him would have a direct financial impact on him, his family or any business interest in which they were affiliated. Therefore, his vote, although directly benefiting the developers, did not directly benefit him or his family. Since there was no duty to recuse himself, Feaga could not be charged with violating the ethics law or misconduct in office.

### **INVESTIGATIONS COMPLETED (REPORTS NOT MADE PUBLIC)**

There were 19 reports issued by the State Prosecutor in Fiscal Year 1996, only three of which were made public as discussed above. Five of the 17 reports not made public involved considerable investigative hours. They may be summarized as follows without identifying the subjects:

1. An election law administrator was accused of hiring family members and other misconduct.
2. A Circuit Court Clerk was alleged to have awarded a contract in which a family member had a financial interest.
3. A former cabinet officer was alleged to have had a financial interest in a contact awarded by his/her department while he/she was in office.
4. A number of county building inspectors were alleged to be taking bribes from contractors.
5. Two county commissioners were alleged to have participated in county land acquisitions, which financially benefited them.

In each of the above cases the State Prosecutor did not recommend prosecution for one or more of the following reasons:

- (a) No evidence of criminal conduct;
- (b) Lack of jurisdiction;
- (c) Insufficient evidence; and/or,
- (d) Mitigating circumstances, which would not justify prosecution.



## ENFORCEMENT OF ELECTION LAWS

Election law complaints continued to consume a significant amount of investigation hours in FY95 and FY96. This was particularly true of FY95 in which the 1994 General Election took place. During the period immediately preceding the election in November 1994 through the summer of 1995 this Office received an influx of election law complaints requiring more than routine investigations.

Prior to the 1994 General Election the usual complaints referred to the Office by the State Administrative Board of Election Laws (SABEL) involved late filings by campaign committees. Very few of these complaints required significant investigative efforts unless the subjects were difficult to locate or refused or were unable to pay the late filing fees. However, the makeup of the complaints in the period cited included such allegations as false registrations, false voting, voting twice, over-contributions and various other campaign finance violations. These were in addition to the numerous allegations received from gubernatorial candidate Ellen Sauerbrey discussed elsewhere in this report. It appears that either citizens involved in the political process are more aware of election law provisions and violations, or, this Office has become a focal point for such complaints.

### Election Law Workload<sup>2</sup>

<u>Complaints Carried Over</u>	<u>FY95</u>	<u>FY96</u>
Late Fees (Individuals)	65	88
Over Contributions	2	12
Failure to File Accurate Reports	2	0
Voter Fraud	1	0
Authority Line	1	1
Fraudulent Petitions	0	1
Official Misconduct	0	1
False Registrations	<u>0</u>	<u>10</u>
TOTAL	71	113

<sup>2</sup> Workload is expressed in terms of individuals, not case files.

<u>New Complaints</u>	<u>FY95</u>	<u>FY96</u>
Late Fees (Individuals)	80	10
Over Contributions	14	8
Failure to File Accurate Reports	7	5
Voter Fraud	4	0
Authority Line	27	2
Fraudulent Petitions	1	0
Official Misconduct	1	2
False Registration	13	3
In-Kind Contribution	9	1
Residency Requirements (for candidates)	5	2
Failure to Register Committees	2	1
Political Activity – Public Employees	3	2
Walk-Around Money	2	0
Voting Twice	8	3
Political Signs Violation	1	0
Contributions in False Names	0	1
TOTAL	177	40

<u>Charges</u>	<u>FY95</u>	<u>FY96</u>
False Registration	2	0
Late Fees <sup>3</sup>	5	1
Voting Twice	1	2
Failure to File Accurate Report	0	2
False Voting	0	7
TOTAL	8	12

<u>Dispositions</u>	<u>FY95</u>	<u>FY96</u>
Failure to File Accurate Reports	3 G	1 G
	1 NG	1 NG
	4 NP <sup>4</sup>	0
False Registration	1 G	0
False Voting	1 NG	5 G
		1 NG
		1 NP
Voting Twice	1 G	2 G
TOTAL	11	11

<sup>3</sup> All late fees were collected with minor exceptions. Only 6 persons were charged for failure to pay their fees to SABEL.

<sup>4</sup> Four persons were nolle prosequi (charges dropped) after paying their fees in court.



## **Prohibitions On Anonymous Campaign Material Declared Unconstitutional**

It is noted that in FY95 the Office received 27 authority line complaints. These complaints alleged that certain campaign materials had been distributed without an authority line containing the name of the person, candidate, treasurer, chairman or campaign manager responsible for the campaign material. These authority line provisions are contained in Article 33, Section 26-9.2(b) and 26-17(a) of the *Annotated Code of Maryland*.

On April 19, 1995, the United States Supreme Court found similar provisions in Ohio's election law unconstitutional in *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995) ruling that the right to distribute anonymous campaign literature is protected by the constitutional guarantee of free speech.

Following the *McIntyre* decision we asked the Attorney General whether or not prosecution under the Maryland statute could be initiated for lack of authority lines on campaign literature. On May 16, 1995 the Attorney General issued Opinion No. 95-015, 80 Opinions Attorney General \_\_\_\_\_ (1995), stating that:

The two provisions – Article 33, Section 26-9.2(b) and 26-17(a) – are unconstitutional and may not be enforced against individuals who independently produce campaign material. These provisions may continue to be enforced against candidates, treasurers, political committees and other entities, and individuals that produce material in coordination with them.

The Attorney General went on to explain that the Court did not invalidate the Ohio statute on its face, but only as it applied to individuals such as Mrs. McIntyre who was distributing anonymous leaflets against a proposed school tax levy.

In accordance with the Attorney General's advice we will not prosecute complaints involving individuals who distribute anonymous campaign materials.

## **ADMINISTRATION**

As of the date of this report the Office has a staff of eight permanent positions, including four prosecutors, two investigators, two administrative support employees, and one legal intern as a contractual position.

During the 1996 Legislative Session the Governor recommended and the Legislature approved an additional full-time permanent investigative position to replace the part-time contractual position. This was filled in August 1996 by John C. Poliks, a 20-year veteran of the Baltimore City Police Department who was assigned to the

Baltimore City State's Attorney's Office Economic Crimes Unit for the last 12 years of his career with the Department.

In November 1994 Cynthia (Cindi) A. Lewis was appointed as chief administrative officer for the Office assuming responsibility for all personnel, budget and management services. Cindi formerly worked for a private law firm in Baltimore City and has a degree in business administration from the University of Baltimore.

The full staff at this time is comprised of the following individuals showing their job classifications and the month and year in which they began their duties with the Office.

<u>NAME</u>	<u>CLASSIFICATION</u>	<u>MO/YR OF EMPLOYMENT</u>
Stephen Montanarelli	State Prosecutor	May/84
Thomas M. (Mike) McDonough	Senior Assistant State Prosecutor	September/84
Albert T. (Tom) Krehely, Jr.	Senior Assistant State Prosecutor	July/90
Isabel M. Cumming	Assistant State Prosecutor	April/95
James I. Cabezas	Special Agent II	July/86
John C. Poliks	Special Agent II	August/96
Cynthia A. (Cindi) Lewis	Administrative Officer III	November/94
Deborah A. (Debbie) Amig	Administrative Aide	January/87
Tracey Johns	Legal Intern	May/97
Jennifer Martyn	University of Baltimore Law School Explorer Program	May/97

### Budget and Workload

The annual budget for the Office has leveled in the past three fiscal years with increases primarily in changes from a contractual position to that of a permanent investigative position and additional funds for computer system enhancements.

	<u>Actual FY 95</u>	<u>Appropriation FY 96</u>	<u>Allowed FY 97</u>
General Fund Expenditures	\$554,914	\$556,330	\$568,000



<u>Units of Measurement</u>	<u>FY94</u>	<u>FY95</u>	<u>FY96</u>
Complaints Requiring Investigation:			
Pending	15	29	14
New Files Opened	85	153	90
Closed	71	168	91
Carried Over	29	14	13
Complaints (Defendants) Requiring Litigation:			
Pending	4	11	4
Filed	11	9	14
Closed	4	16	14
Carried Over	11	4	4
Reports Filed:	7	27	19
Reports Made Public:	3	2	3
<u>Sources of Complaints:</u>			
Private Citizens	44	86	60
Elected & Appointed Officials	9	18	7
Law Enforcement Agencies	10	3	4
State & Local Election Boards	7	18	7
State's Attorneys & Attorney General	7	14	7
Anonymous	4	12	2
Self-Initiated	<u>4</u>	<u>2</u>	<u>3</u>
TOTALS	85	153	90

The sharp increase in workload from FY94 to FY95 represents the high level of election law complaints emanating from the 1994 General Election. Although the number of full criminal investigations did not increase accordingly, the number of reports filed reflects the increased investigative activity caused by the influx.

