

FINAL REPORT

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MAYOR'S AD HOC COMMITTEE  
ON  
IMPROVEMENT IN MUNICIPAL STANDARDS  
AND PRACTICES

Philadelphia, Pennsylvania  
March 15, 1962

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Philadelphia, Pennsylvania  
March 15, 1962

The Honorable James H. J. Tate  
Mayor  
City of Philadelphia  
City Hall  
Philadelphia 7, Pennsylvania

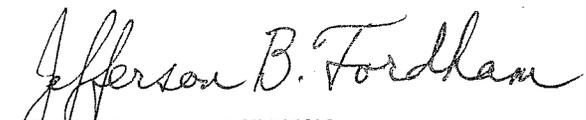
Dear Mr. Mayor:

It gives me great pleasure to transmit to you the report of the Ad Hoc Committee appointed by your predecessor, Richardson Dilworth to consider some of the elements relating to the Travis scandal and make recommendations to the City with respect to possible improvements in municipal standards and practices.

On behalf of myself and my colleagues, Messrs. Carroll and Frazier, I thank you, and through you, former Mayor Dilworth, for the opportunity to be of service to the City in this respect. The members of the Committee also express their gratitude to you for your cooperation, as the then President of the Council, in facilitating its work through your prompt assurance of support and the making available of the necessary funds.

We hope that our recommendations - and the further recommendations which are detailed in the report prepared by the Pennsylvania Economy League, Eastern Division - will be of value to you and to the City in improving municipal operations.

Sincerely,

  
JEFFERSON B. FORDHAM  
CHAIRMAN

PART I

INTRODUCTORY STATEMENT

On April 17, 1961, Philadelphia was shocked to read of the results of an audit by the City Controller indicating serious derelictions of duty among a small number of relatively high-ranking city employees, in connection with the defalcations and other derelictions on the part of construction firms with which Eli G. Travis was associated. For the next month, new revelations continued to appear, although in each important instance connected with this same series of transactions. The situation appeared sufficiently grave to warrant the appointment, early in June, by the then Mayor Dilworth, of a group of independent citizens to look into this matter and to make recommendations to the Mayor as to any indicated improvements in municipal standards and procedures.

The Mayor asked this Committee to make a study leading to recommendations with respect to the following:

1. The methods and practices involving the procurement of goods and services by the City;
2. The character, general qualifications, selection and supervision of Civil Service employees in the supervisory grades;
3. The standards of ethics which should govern every city employee.

It will be noted that this Committee specifically was not charged with actual investigations as to the various acts of wrongdoing or other similar acts, but rather was intended to concentrate on what might be done constructively to prevent their recurrence and, generally in its area of interest, to increase the effectiveness of city operations.

The Committee was promptly given the assurance of councilmanic support, and provided with an appropriation by which to carry on its work. It proceeded to contract with the Pennsylvania Economy League - Eastern Division to make the investigations and primary recommendations as to the first point above-mentioned. Also, it employed as consultants, with respect to the last two points, the Honorable Franklin K. DeWald, Personnel Director, State of Michigan, and Professor Bayless Manning of the Yale Law School who had recently served on a presidential ethics committee. It employed, for staff assistance, Alexander A. DiSanti, Esquire, of Upper Darby, Pennsylvania. The Committee is grateful for the material assistance these gentlemen rendered.

Early in July, 1961, as an interim measure, while the consultants were working on detailed recommendations, the Committee deemed it advisable to recommend to Mayor Dilworth that a statement be prepared for the guidance of all municipal personnel in connection with the proffering of gifts. The Mayor agreed with the Committee's recommendation and, on July 11, issued an Executive order with respect to this matter. The text of that order is reproduced as Appendix A, at page 48 of this report.

On January 18 and 19, 1962, the Committee conducted public hearings with particular reference to ethics in city government. In candor, it must be reported that the public's response to the invitation was disappointing. Nevertheless, the Committee did have the benefit of helpful testimony by the President of the Council and the representatives of several interested organizations.

## PART II

### SUMMARY STATEMENT OF RECOMMENDATIONS

#### 1. Ethics in City Government

The charter provisions against conflicts of interest apply only to contractual relations, but apply inflexibly in the area covered, without regard to the extent of private interest or actual participation on the public side; they should be supplanted by provisions which would extend broadly to official activities, but would take into account the factors of substantiality of private interest and actual participation on the public side.

\* \* It should be provided by ordinance that city officers and employees, as well as members of the Council, shall not, except under certain specified conditions, assist another person by representing him as his agent or attorney in any transaction involving the city.

\* \* It should be provided by ordinance that no city officer or employee, other than a member of the Council, shall assist another person, after termination of city service, in any transaction in which he participated substantially while in city service. There should be a two-year prohibition on such assistance by a compensated public servant as to matters which were simply under his official responsibility while in city service.

\* \* It is desirable that the state election code be so amended as to extend the requirement of reporting of political contributions to contributions not made in relation to elections and to require local newspaper publication of the facts as to substantial contributions in an effort to minimize exaction of political contributions as a condition of taking official action.

\* \* An effort should be made to bring about enactment of state legislation in order to cover by criminal statute, with appropriate sanctions, the subject of bribery and extortion as to city personnel. At present much of the ground is left to the common law as distinguished from statute.

\* \* There should be a prohibition by ordinance both upon the making to and the receipt by a city officer or employee, or a member of the Council, of any gift, loan, gratuity, favor or service of substantial

economic value that might reasonably be expected to influence such a public servant in the discharge of his official duties.

\* \* It is proposed that informal personal (ex parte) approaches and communications to municipal personnel engaged in functions of an adjudicative character be forbidden by ordinance, and that a like prohibition be laid down by the board of judges of the court of common pleas with respect to magistrates.

\* \* The problems presented by outside employment on the part of city personnel should be met administratively, under an executive order issued by the Mayor for the executive and administrative branch which would forbid outside work incompatible with the proper discharge of official duties.

\* \* In order to provide guidance for city personnel in the observance of ethical standards there should be created by ordinance a board of ethics, public in nature, to be charged with the function of rendering advisory opinions on ethical questions under the Charter and ordinances of the city. This is in keeping with a general approach to administration and enforcement which stresses leadership, good example, education and guidance, with only secondary reliance upon punitive sanctions.

#### The Continuing Watchdog Function

\* \* In order to afford an independent watch upon municipal administration, which would be concerned with fairness to the citizen, good administration and ethical conduct, and which would be a ready recourse for the individual citizen, it is proposed that there be established the office of Commissioner of Public Affairs. The commissioner would have broad powers of investigation, to be exercised either on complaint or on his own motion, and would depend upon the prestige of his office, publicity and referral to a cognizant body or office for action on his findings. A Charter Amendment would be required to make this office fully independent, and of broad scope; but in the interim, an expansion and reorientation of the charter-contemplated Mayor's Office for Information and Complaints would go part way, at least, toward meeting the indicated need.

## 2. Civil Service

\* \* While the Civil Service Commission has executed its charter-assigned functions with credit -- especially so in the several important areas of recruitment, examinations, and pay classifications, there are two areas which should have increased attention.

\* \* The first of these is training directed toward development of supervisory personnel from the ranks. It should be accomplished by effort cooperative with the line departments, through centralized planning and guidance.

\* \* The second area lies in increased liaison between the Personnel Director and line department heads to bring about joint understanding of problems of supervision, so that the Director can implement solutions to these important problems.

### 3. Public Works Contracting and Procurement

\* \* A public works control unit should be established in the Managing Director's office where project proposals would be checked prior to the contract-letting process, for conformity with the capital budget and six-year program, and where progress with respect to the budget and program could be under continuous review.

\* \* The Procurement Department should consider its role in the contract-letting process as more than ministerial; assuming responsibility for the review of specifications, conformity with proper public procurement standards, the assessment of bids, the testing of component materials, and supervision over any authorized contract changes.

\* \* Pre-qualification of bidders should be abandoned, for a system of post-qualification of the successful bidder which would permit a careful review of his ability to complete the assignment he seeks.

\* \* A systematic program should be instituted for the recording of the city's experience with contractors, architects and engineers.

\* \* Delays attendant upon the whole public works process are costly to the city; and various steps, as outlined, should be taken to reduce them.

\* \* The Procurement Department should assume its charter-assigned responsibilities for the testing of material and supplies, either in its own laboratories or by contracts it lets and supervises.

\* \* The functioning of the Department could be otherwise improved by the adoption of sundry detailed recommendations included in the Consultant's report.

### PART III

#### ETHICS IN CITY GOVERNMENT

##### Introduction

The maintenance of high ethical standards in the public service has been a matter of uneven public concern, but it has been much in the public eye for the past ten years or more. The public interest has been heightened now and again by disclosures at one or another level of government of individual activities which involve deviations from what would generally be regarded as acceptable standards of conduct. A great deal of the publicity has related to conduct other than the crude and clear venality to be found in such activity as bribery or extortion. This is not to say that some of the more subtle activities are for that reason any the less reprehensible. In the total range of questioned conduct, however, there have been activities with respect to which the drawing of ethical lines is extremely difficult. The general ethical principle as to conflict of interest has and deserves very wide acceptance, but its application to the complexities of contemporary human relations is often extremely difficult. For example, there is a real problem as to how substantial the private interest of an officer or employee of the city should be in order to provide the basis for saying that a conflict of interest is present.

The sort of thing which is within the appropriate sphere of a committee of the instant character does not go to the fundamentals of human morality and of functions and general structure in city government. Those matters are definitely related, of course, to ethical standards in the public service and we are sensitive to this. It is not difficult to perceive that structure or substantive policy may have very real bearing upon the maintenance of high ethical standards. For example, the efforts of private individuals to exert improper influence upon the process of passing upon applications for zoning variances might be greatly curtailed by a change in policy which would render the variance mechanism unavailable with respect to a change in land use classification. Such a change in policy, however, would be a matter for independent consideration from the standpoint of the governmental purposes of zoning.

We are clear that it is not for the members of this Committee to undertake to tell the citizenry in general how to elevate community morality. It is, at the same time, well within our province to relate the problem of achieving a high ethical level in the public service to the moral climate of the community. One may grant that these things interact and that a fine example set in the public service may have a wholesome influence on private ethics. The greater likelihood, however, is that what can be accomplished in lifting the level of ethics in government will be much

are largely affected by community standards and conduct. Individuals in public life come from the community; they are people like the rest of us and what can be expected of them must be regarded in large part in terms of ethical standards which the community itself is able to maintain. This is not to say that a somewhat higher level cannot be achieved in the public service, but it does add up to the proposition that we cannot reasonably expect the gap or difference in levels to be wide.

Let us be a little more explicit. The public servant is not going to accept a bribe or extort money unilaterally; there is always someone on the other side of the transaction. One reads in the press that business people have felt it necessary to make political contributions not simply to support the political party of their choice but in order to get certain governmental action that they desire. What we suggest is that necessity is the wrong term; the economic pressure may be great, but firm resistance on the part of business people concerned is not too much to ask and in the long view may be expected to carry the day.

Political morality has its bearing upon ethics in municipal administration. In some cities elections have been placed on a non-partisan basis, but, of course, is not the case in Philadelphia. The need of a political organization for voting strength is a pressure which results in resort to expedients other than the merits of political ideas and of candidates. Even in the ranks votes are produced by helping people with their problems. This help sometimes takes the form of getting around an inconvenient law or regulation. This is hardly a wholesome influence at the grass roots. Its presence does not make the task of elevating ethics in government any easier.

It has been suggested to the Committee that Philadelphia's problem lies down to the simple issue of elementary morals and that all that is needed is fidelity to the commandment "Thou shalt not steal." This approach rejects outright the formulation of ethical standards by ordinance by executive order or in part by each. It makes the factually unwarranted assumption that ethical questions in city government are all matters black and white, that there are no gray areas. It hardly need be stated that the Committee embraces the ancient commandment. It does not find in that prohibition, however, clear guidance for public personnel in gray areas involving, for example, various aspects of conflict of interest or public employee representation of private interests.

The Committee cannot stress too strongly the proposition that the most vital factor in maintaining high ethical standards in the public service is the quality of public personnel. The problem here is to make the public service attractive to people of high character, as well as ability. The matter of how this is to be done is a broad and pervasive problem.

ch is beyond the range of this report. It is in order to point out here that a number of factors are involved and that they include the example set by the people in top positions, the level of compensation of public personnel, the opportunities for advancement, the security of the individual who sets high standards of performance and appropriate recognition apart from compensation or rank.

Alexander Pope said in his Essay on Man "For forms of government let fools contest; What'er is best administer'd is best." He was putting the matter rather strongly. The exaggeration was calculated, no doubt, to emphasize the point that actual performance by people on the job is more fundamental than structure. The relation of this to what has been said is evident. Quality in people is a fundamental element.

In considering what might be done to contribute to the maintenance of high ethical standards in city government, the Committee has found it helpful to focus upon substantial problem areas. It is enough at this point simply to identify in a preliminary way the major problem areas which have been explored. Stated topically they are as follows:

- (1) Conflict of interest as between the private economic interests of city personnel and their official responsibilities with respect to policy-making or administration;
- (2) Representation by city personnel of the private interests of others in transactions which are either the subject of city action or are transactions to which the city is or will be a party, or are transactions in which the city has a proprietary interest;
- (3) Representation of private interests of others by former city personnel in transactions involving the city;
- (4) Exaction of political contributions as a condition of taking official action;
- (5) Acceptance of bribes by city personnel;
- (6) Extortion or abuse of office by city personnel to exact tribute from private persons;
- (7) Acceptance of gratuities by city personnel;
- (8) Informal personal (ex parte) approaches and communications to judicial or semi-judicial officers about pending matters; and
- (9) Engaging by city personnel in outside employment.

In addition to considering the substance, from the standpoint of policy ideas relating to these problem areas, it has been necessary to take into account the choice of governmental level or branch of government for policy-making, whether it be the state legislature, the voters of the city acting by charter amendment, the Council acting by ordinance, or the Mayor acting by executive order. Beyond this there is the problem of administration and enforcement. What are the appropriate sanctions directed to the achievement of a high degree of conformity to formulated ethical standards, what administrative arrangements and procedures are desirable in the effort to achieve a high level of conformity?

#### Section 1. Conflict of Interest

The ethical conception expressed in the familiar proposition that a man cannot serve two masters is one that has deep roots in both law and morals. It is a fundamental idea to guide the conduct of persons in a fiduciary relationship, whether it be a full-fledged trusteeship under a private trust or any one of many relationships involving representation of the interests of others. Obviously, it carries over into the public service where all personnel are in a broad sense representatives of the interests of the community. It is an ethical principle, which should be given vital application in the municipal service. While the principle is clear enough as a basic, general proposition, its formulation for effective and reasonable application is extremely difficult, especially in this day of extraordinary interdependence and complexity in human relations and of a welter of loyalties in the living pattern of a particular individual. A very sweeping general provision as to disqualification or the equivalent in a case of conflict of interest is very likely to clash here and there with the strong public interest in obtaining public personnel with outstanding qualifications.

Obviously, the presence of a private interest does not mean that a particular public servant will necessarily subordinate the public interest; he may act just the other way. The temptation to which conflict of interests puts public personnel, however, warrants a general policy against participation in public action or decisions where the element of conflict is present. The point is that the realities of human relations and of public service recruitment call for the avoidance of a rigid formulation.

Historically, a good deal of the legislation on this subject applicable to municipalities has covered only part of the problem area and been rather timid as far as it goes. This is true of the Philadelphia Home Rule Charter provisions, Section 10-101, applicable to councilmen, and Section 10-102, applicable to other city personnel. It must be obvious that there can be conflict of interest situations with respect to a great variety of matters, whether contracting for construction of public works or purchase of property or services, whether consideration of an application for a license or permit;

or council action on a proposed amendment to the zoning ordinance affecting the use of private land. Yet the two cited charter provisions are confined in their application to contractual matters. The Charter provisions are simply too narrow; there is need of regulation, which would cover broadly transactions with the city of economic significance.

Furthermore, the Charter provisions are unrealistically rigid. They forbid councilmen or other officers or employees of the city to be interested directly or indirectly in any contract for the purchase of property by the city even though the officer or employee has no responsibility with respect to the contract and does not participate in any way in the matter. As a matter of fact, the language of the provisions go so far as to apply even though the individual public servant has no knowledge of the contract or its possible relation to his private interest. It seems to the members of the Committee that it would be much wiser and more conducive to the maintenance of high ethical standards to modify this basic regulation in such a way as to confine the restriction to matters with respect to which a public servant has official responsibility or in which he actually participates.

There is a practical question as to the substantiality of the private interest of the public servant. Literally, the Charter provisions would apply where the public officer or employee held one share of common stock in a billion-dollar corporation with which the city was doing business. It is difficult to lay down a clear line between what is insubstantial and what is substantial, but it is feasible to have deliberate rulings by an appropriate officer on a matter of this sort as questions of conflict arise.

The existing Charter provisions are too narrow in that they apply only to compensated personnel. A substantial part of the total performance in city affairs is contributed by unpaid members of various independent and departmental boards and commissions. In principle the anti-conflict of interest policy applies to them. Surely conflict situations may come about in the course of board or commission activity, as where the wife of a paid member of the Board of License and Inspection Review has a matter before the board. If citizen service without pay is not to be discouraged, the restriction must be limited to disqualification from participation in the matter affected by conflict, and not to exclusion from "office."

The Committee recommends a fresh approach to conflict of interest. It proposes that the present charter sections on the subject be supplanted by provisions which cover broadly transactions of economic significance with the city and focus not upon private interest alone as a controlling factor, but rather, upon the concurrence of private interest and the participation of a public servant in a transaction in which the private interest is involved. The following is suggested language, which deals also with the actor of substantiality:

No member of the Council and no other officer or employee of the city shall participate as such, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a city action, proceeding or other particular matter in which, to his knowledge, he, his spouse, child, partner, business organization in which he is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a substantial financial interest.

The foregoing prohibition does not apply:

- (1) In the case of a member of the Council or other elected officer if he, by a statement entered on the public record of the Council, first discloses the nature and circumstances of the city action, proceeding or other particular matter and his financial interest in it and declares that his interest is not so substantial as to affect the integrity of his actions as a member of the Council or holder of another elective office, or
- (2) In the case of any other city officer or employee, if he first advises the officer or employee who is the head of the department, or of the independent office or agency or commission in which he serves, in writing of the nature and circumstances of the action, proceeding or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such head that the interest is not so substantial as to be likely to affect the integrity of his services as a city officer or employee. This clearance function may be delegated by a head officer or employee to a designated deputy or division head.

It is to be noted that the Charter provisions begin "as provided by statute." They appear to go beyond the statute (P.L. 872 of 1939, Section 100, a penal measure), but follow its approach of forbidding the public servant to have an interest in certain classes of city contracts. The commission proposal follows a different line; it simply calls for disqualification of the public servant in a matter involving conflict of interest. This is less drastic than the statutory scheme but broader in reach and, it is believed, better calculated to advance the purpose. Thus, there is a question whether such a departure from the statute would be valid. The committee proceeded on the theory that it would, since the restriction of the home-enabling act denying authority to the city to exercise powers contrary to statutes applicable to all cities of the commonwealth has been interpreted as statutory provisions relating to matters of state as distinguished from local concern. Addison case, 385 Pa. 48 (1956). The instant matter is believed to be a local concern.

The proposed treatment of the conflicts problem is confined to situations involving private financial interests. It is clear enough that conflicts of interest may exist where the private interest has to do with any one or more of a number of things other than money or property. An individual may be moved, for example, by considerations of social status. The problem is that to go beyond the economic or financial factor would be taken into a realm of extraordinary administrative difficulty.

While the Council has power to supplement the charter provisions as to conflict of interest, what is proposed here is quite plainly more than a mere modification - it is a different policy. Thus, change in the Charter is proposed. The text put forward is designed to replace Sections 10-100 and 10-101 of the Charter.

The alternative of repealing the two Charter sections and substituting a provision which would leave policy-making as to conflict-of-interest solely to the Council, is not suggested as a long-range solution, since it would be out of keeping with other provisions of Chapter 10 of the Charter. The provisions represent policy-making at the charter level.

It is not to be expected that a recommendation for a Charter amendment will be brought to realization in a short time. Meanwhile, the kind of treatment proposed here could be adopted by the Council for non-contractual areas covered by the present Charter provisions. Short of that, the mayor could, by executive order, regulate the subject to the indicated extent for a period in the executive and administrative branch of the city government.

The problem of sanctions supporting charter provisions on conflict of interest will be dealt with in a general treatment of administration and procedure in a later section of this report. It is appropriate to note at this juncture that the Committee, in the effort to achieve conformity to established norms, has greater faith in what can be done administratively through leadership and good example at various levels, through education and through non-penal sanctions, than in recourse to punitive measures. The Home Rule Charter, in contrast, relies heavily upon punitive measures. Section 10-109, which relates to conflicts of interest and other matters, provides:

A violation of any of the foregoing sections of this article shall be a misdemeanor, punishable by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days, or both, and if the violator is an officer or employee of the City, by removal from office or immediate dismissal.

The removal or dismissal clause is a very severe sanction, especially in view of provisions as rigid as those of the Charter sections on

conflict of interest. It invites reexamination; specific comment will be deferred in due course (Section 10, below).

## Section 2. Representation by City Personnel

The concern here is with a special type of conflict of interest situation, namely, that in which a city officer or employee or one closely identified in private activity with such an officer or employee engages in a representative capacity on behalf of private interests in transactions involving the city. It is believed that, in general, representation of this character is objectionable from an ethical standpoint because the public servant is dividing his time and his efforts between the work of the organized community and service of others who have dealings of some sort with the organized community. In some instances, moreover, the very position of the public officer or employee might be thought to be influential without regard to the merits of the matter at hand.

In formulating restrictions upon representation by city personnel, it is important to try to achieve a sensible balance. Restrictions which are rigid and uncompromising may have an adverse effect upon recruitment for the public service. This point is particularly pertinent with respect to part-time and unpaid personnel. It is one thing for an employer to determine the range of permissible outside activities for which his full-time subordinates, who are compensated as such, may engage, and quite another matter for an employer to make a determination for individuals serving gratuitously or on a part-time basis with no compelling economic attraction to their jobs.

In the light of these considerations, the Committee proposes the following standards to be adopted by ordinance:

Except in the course of his official duties or incident thereto no member of the Council and no other city officer or employee shall assist another person by representing him as his agent or attorney, whether or not for compensation, in any transaction involving the city. For purposes of this provision 'transaction involving the city' means any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case or other particular matter which the city officer or employee in question believes, or has reason to believe - (1) is or will be the subject of city action; or (2) is one to which the city is or will be a party; or (3) is one in which the city has a direct and substantial proprietary interest.

A member of a city board or commission whose service as such is a part-time activity, and any city officer or employee who serves on an intermittent basis not involving more than the equivalent of 100 work days per year, who is compensated for his service to the city, is subject to the foregoing paragraph only in relation to a particular

matter (1) in which he has at any time participated as a city officer or employee or as a part-time or intermittent city officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is, or within two years has been, a subject of his official responsibility, or (3) which is pending in the department or agency of the city in which he is serving.

In the case of an uncompensated person in the municipal service otherwise within the class defined by the preceding paragraph, the prohibition of the first paragraph of this ordinance (or section) shall apply only in relation to a particular matter which is pending in the department or agency of the city in which the individual is serving.

This section does not forbid a city officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, or other personnel administration proceedings with respect to those proceedings.

This section does not forbid a member of the Council or any other city officer or employee from acting, with or without compensation, as agent, or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a city officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility.

No member or employee of a partnership of which a member of the Council or other city officer or employee is a partner shall take any action which the city officer or employee is prohibited from doing by this ordinance.

This recommendation, with certain specified exceptions, contains a blanket prohibition upon members of the Council and other city officers and employees acting in a representative capacity on behalf of private interests, with or without compensation, in any transaction involving the city. This standard is generally supportable in the case of full-time compensated city personnel from whom loyalty to the extent here demanded can reasonably be expected. One exception is considered appropriate by the Committee and is embodied in the proposed measure. It is the judgment of the Committee that councilmen and other city officers and employees should not be subject to the restriction here imposed when acting in a representative capacity on behalf of their families, or when acting in the capacity of fiduciary, except with regard to matters which are the subject of their official responsibilities or in which they participated personally and in a substantial sense

r officers or employees. The exception is considered appropriate in  
tion of private relations involving a special loyalty which is gen-  
acknowledged.

Members of city boards and commissions serving on a part-time basis,  
' whom are uncompensated for their services rendered to the city, as  
city officers and employees serving on an intermittent basis, who  
realistically be subjected to the rigid standard applicable to full-  
compensated personnel without qualification, are brought within its  
only to a limited extent.

The recommendation with regard to partnerships of which a city officer  
oyee is a member is considered appropriate, as in the case of post-  
ment representation, in view of the identity of interest and close  
ation of members of such an organization.

### 13. Post-Employment Representation

What restrictions should be placed upon the otherwise permissible  
ies in which former city personnel may engage in a representative  
y, on behalf of private interests, with respect to transactions in-  
g the city? The subject, obviously, has a close relationship to rep-  
ation of private interests while in government service. The problem  
however, appears to be somewhat more narrow.

One who has had a substantial hand, as a participating city officer  
oyee, in a transaction involving the city should be barred outright,  
; time limit, from changing sides after he leaves the municipal serv-  
This is a proposition which, as a practical matter applies more to  
; than to others by reason of the representative character of a  
's work. The proposition here expressed is an ethical standard of the  
profession. Canon 36 of the Canons of Professional Ethics of the  
an Bar Association (which obtain in Pennsylvania by force of a Rule of  
preme Court of Pennsylvania) reads in part:

A lawyer, having once held public office or having been in  
the public employ, should not after his retirement accept employment  
in connection with any matter which he has investigated or passed  
upon while in such office or employ.

Where an individual did not personally participate in a transaction  
ing the city but it was under his official responsibility, he should  
free to change sides as soon as he leaves the municipal service, but  
nable time limit upon such a restriction should be made. The matter  
very well in a recent study relating to the Federal Service:

Three dangers relating to conflict of interest are usually cited in support of post-employment restrictions: disclosure of inside government information; undue and unfair influence of former employees on those who remain; and the immorality of switching sides. Yet it is possible that these have all been exaggerated in significance, while another risk connected with post-employment activities may, in some circumstances, be of greater seriousness than any of them.

Interviews revealed a substantial body of opinion that government employees who anticipate leaving their agency some day are put under an inevitable pressure to impress favorably private concerns with which they officially deal. Conceivably, an offer of a later job might be used as the pay-off for favors done while in office, but this is rank bribery, subject to criminal prosecution, and not the point here. The risk is not bribery through the device of job offers; the risk is that of sapping governmental policy, especially regulatory policy, through the nagging and persistent conflicting interests of the government official who has his eye cocked toward subsequent private employment. To turn the matter around, the greatest public risks arising from post-employment conduct may well occur during the period of government employment, through the dampening of aggressive administration of government policies." Conflict of Interest and the Federal Service, pp. 233-234 (Association of the Bar of the City of New York, 1960).

In the case of post-employment it is believed that a restriction upon former city officer or employee's partners should apply only to matters which he had participated personally as a public servant and should be in duration.

It is not proposed that the restriction apply to post-employment activities of members of the Council since their function as such members is legislative policy-making and not administration.

Greater restrictions than those suggested here might well have an adverse effect upon recruitment of city personnel without corresponding gain in the maintenance of ethical standards. The proposed restrictions might be expressed in ordinance form, as follows:

No person who has served for compensation as a city officer or employee shall assist, at any time subsequent to his city service or employment, another person, with or without compensation, in any transaction involving the city in which he at any time participated substantially during his city service or employment.

No person who has served for compensation as an officer or employee of the city shall assist, at any time within two years after the termination of such service, another person, with or without compensation, in any transaction involving the city which was under his official responsibility as a city officer or employee at any time within a period of two years preceding such termination.

No member or employee of a partnership of which a former compensated city officer or employee is a partner ~~shall~~, for a period of six months following the termination of his city service or employment, assist another person in any transaction involving the city in which such former city employee or officer participated directly during his city service or employment. For this purpose the termination of service or employment with the department, agency or office by which he was employed when he so participated is the termination of his city service or employment.

For purposes of this ordinance (or section) "transaction involving the city" means any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case or other particular matter which the former city officer or employee in question believed, or had reason to believe at the time of his official participation - (1) was or would be the subject of city action; or (2) was one to which the city was or would be a party; or (3) was one in which the city had a direct and substantial proprietary interest.

ion 4. Exaction of Political Contributions as a Condition of Taking Official Action

Section 10-107 of the Home Rule Charter contains a number of substantial restrictions upon political activities by municipal personnel, but does not deal with outside contributions for political purposes. The state election code does regulate political contributions. Among other things, it prohibits such contributions by corporations and unincorporated associations and it requires the filing of expense accounts by candidates and political organizations, showing contributions and expenditures by date and by name of donor or payee, with the Secretary of the Commonwealth, within thirty days after every primary and every other election. Such reports are public records to be preserved and held available for public inspection for two years. The reporting requirement does not appear to apply to contributions unrelated to an election.

A matter of very real concern to the cause of good government is the exaction of political contributions to the taking of desired official action. It will be recalled that disclosure of a political contribution with a view to influencing the vote of a United States Senator on a natural gas bill was a major factor in the action of President Eisenhower in vetoing the bill in February, 1956 for "arrogant lobbying," despite his sympathetic attitude toward the

substance of the measure. A political donation may be designed to create a generally favorable attitude toward the donor, but not be tied to any particular matter. It is not uncommon, for example, for incumbent judges in Pennsylvania to contribute to both major parties even in years during which they are not up for reelection. This is far from inspiring, but it does not present a serious ethical issue as does the case of a donation which is in substance a purchase, by payment to a political organization, of a definite official action desired by the contributor. Where a contribution of this character is exacted as a condition to taking official action, the exaction is akin to extortion.

The Committee makes no findings as to the existence of this type of practice in Philadelphia. As previously noted, it is the subject of press comment and people come to believe that it goes on in its worst form. This, in itself, is an unhealthy condition. Certainly, the individual who or firm which complains privately that he or it has been a victim would serve the public interest better to refuse to make political contributions on such a basis.

The definition of extortion in a criminal statute could be drawn in sufficient breadth to cover the case where a contribution was exacted as a condition of taking official action. The trouble is that violations would not be brought to light easily. Victims might be even more reluctant to speak up than they would be in the absence of a criminal sanction. The problem of establishing a violation would be considerable, in any event, since the "deal" would hardly be in writing and it is likely that in any particular case other explanations for governmental action could be mustered without difficulty.

Perhaps publicity is the best weapon to use against such an evil. A requirement of quarterly newspaper publication of the names of substantial contributors to political parties and amounts donated might render the exaction device an insupportable risk from the party standpoint.

It is suggested that the establishment of such a requirement is a matter for policy-making at the state level. The state election code could be amended to cover political contributions made at any time, whether or not connected with an election, and to go beyond the present policy of having reports of contributions and expenditures open to public inspection by requiring, as to substantial contributions, publication in a newspaper of general circulation in the county in which the contribution was made.

It is recognized, of course, that this proposal is but one relatively limited suggestion with respect to a large subject. The problems involved in the financing of political campaigns have been aggravated in recent years

the great increase in the magnitude of campaign costs, due in no small part to the use of the television medium. The situation has stimulated the late Senator Richard Neuberger and others to revive a proposal made by President Theodore Roosevelt in 1907 for provision of funds for political campaigns by public appropriation. In this report it is appropriate to take note of such ideas, but the subject in its larger dimensions is beyond the scope of the Committee's study.

#### Sections 5 and 6. Bribery and Extortion

The Committee considers that existing law pertaining to the offenses of bribery and extortion, as applicable to situations involving city personnel, is inadequate and requires modification. Because of the gravity of these offenses and the very limited sanctions available to support city ordinances, the necessary changes should be effected through action of the General Assembly, and no suggestion is made that the problem be attacked by municipal ordinance.

The bribery statute (Act of June 24, 1939, P. L. 872 §303) applies to any member of the General Assembly, or any officer or this Commonwealth, judge, juror, justice, referee or arbitrator." The courts have interpreted this provision, and earlier provisions similar in coverage, to be inapplicable to municipal and county personnel, as not officers "of this Commonwealth" within the intended meaning. In a recent reiteration of the proposition, the Superior Court, in the case of Commonwealth v. Bausewine, 156 Pa. Super. 535, 40 A.2d 919 (1944) decided that the Chief of Police of the Borough of Norristown was amenable to prosecution for common law bribery, which is still operative in cases not within the scope of the statute. Implicit in this was a conclusion that the defendant in that case was not subject to the statute. This was in keeping with the established principle that a crime punishable by statute cannot be prosecuted under the common law. Commonwealth v. Neely, 3 Pitt. Rep. 527 (1871) is authority for the proposition that county personnel are likewise considered beyond the scope of this statute.

As announced in a line of cases of which Commonwealth v. Brown, 23 Pa. Super. 470 (1903) is representative, common law bribery covers all persons whose official conduct is in any way connected with the administration of government, including both the offeror or giver and the recipient.

The only municipal personnel whose misconduct in this area is adequately covered by existing legislation are councilmen. This is by virtue of the Act of May 23, 1874, P. L. 230 §8.

The Act of June 24, 1939, P. L. 873 §304, defining the offense of corrupt solicitation, provides:

Whoever, directly or indirectly, by offer or promise of money, office, appointment, employment, testimonial or other thing of value, or by threats or intimidation, endeavors to influence any member of the General Assembly, State, county, election, municipal or other public officer, in the discharge, performance, or nonperformance of any act, duty or obligation pertaining to such office is guilty of corrupt solicitation, a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000), or to undergo imprisonment not exceeding two years, or both.

While this provision to some extent alleviates the deficiencies of the bribery statute, by including within its purview any person corruptly soliciting any "municipal" or other public officer, and, thus, reaches certain personnel of the City of Philadelphia, it falls short of covering the ground indicated in Commonwealth v. Gallagher, 165 Pa. Super. 553, 69 A.2d 432 (1949), there is a legal distinction between public officers and employees.

Our cases have distinguished such "officer" from "subordinate ministerial agents or employees," such as "policemen, firemen, watchmen and superintendents of public property under the orders of the municipal department." . . . In determining whether a position is an office or an employment, it is generally said that the "question must be determined by a consideration of the nature of the services to be performed by the incumbent, and of the duties imposed upon him, and whenever it appears that those duties are of a grave and important character, involving in the proper performance of them some of the functions of government, the officer charged with them is clearly to be regarded as a public one" [Richie v. Phila., 225 Pa. 511, 74 A. 430]. . . .

Most of Philadelphia city personnel are employees and not officers within this context and are beyond the scope of the statute. They are governed by the common law as to bribery, which is case law without definite formulation to which the individual may look for guidance. The provision, moreover, makes criminal the action of the offeror or giver only, and does not reach the municipal officer who accepts a bribe.

With regard to extortion, the Act of June 24, 1939, P. L. 872 §318 provides:

Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office, except such as is or shall be allowed by some act of Assembly, or receives or takes, by color of his office, any fee or reward whatever, not, or more than is, allowed by law, is guilty of extortion, a misdemeanor, and on conviction, shall be sentenced to pay a

fine not exceeding five hundred dollars (\$500), or to undergo imprisonment not exceeding one (1) year, or both.

This provision, like the statutory provision defining corrupt solicitation, covers only "public officers," in contradistinction to employees. Thus, the latter, as announced in Commonwealth v. Lawton, 170 Pa. Super. 9, 84 A.2d 384 (1951), are subject to prosecution for common law extortion rather than extortion under the statute. The court in that case held, by implication, that a sewer connection inspector in the Department of Public Works in the City of Philadelphia was an employee and as such subject to prosecution only for common law extortion.

A second difficulty is that there is no clear guidance as to the sanctions available in relation to common law offenses. The Penal Code of 1939 provides that common law crimes shall be "punishable as heretofore." Quite apart from policy considerations bearing upon the function of sanctions and the treatment of the individual offender, there is need of something that is clear and identifiable for the courts and the rest of us to go on. This is how the subject stands, as expressed by the Superior Court in a 1944 case (Commonwealth v. Bausewine, 156 Pa. Super. 535, 546, 40 A.2d 919, 924):

The appellant was convicted of misdemeanors at common law. Under Pennsylvania common law, felonies are punishable by solitary confinement and hard labor, but misdemeanors are punishable by fine and imprisonment. Commonwealth v. Gable, 7 S. & R. 423, 435.

Under section 1101 of the Penal Code of June 24, 1939, P. L. 872, 18 P. S. §5101: "Every offense now punishable either by statute or common law of this Commonwealth and not specifically provided for in this act shall continue to be an offense punishable as heretofore." These offenses, therefore, were punishable by "fine and imprisonment." Commonwealth v. DeGrange, 97 Pa. Superior 181, 188. Imprisonment or simple imprisonment means confinement in a county jail or workhouse. Imprisonment at hard labor by separate or solitary confinement means confinement in the penitentiary or a suitable county prison. Commonwealth of Pennsylvania v. Arbach, 113 Pa. Superior 137, 139, 172 A. 311.

... Where there is no punishment fixed by statute, the court may pass judgment of a character similar to that provided for the class of offenses to which the particular crime belongs. Commonwealth v. Kelsea, 103 Pa. Super. 399, 401, 157 A.42.

This judicially calls for a borrowing from the statutory provisions with respect to "the class of offenses to which the particular common law

crime belongs" rather than punishment "as heretofore."

The Committee recommends that the city seek the enactment of state criminal legislation which would clearly and broadly cover bribery and extortion so far as local government personnel are concerned.

If a general revision of the Penal Code of 1939 were undertaken soon it would be highly appropriate to deal with the subjects of bribery and extortion in that framework. There is no compelling reason, however, to await general revision; the immediate objective could be pursued through legislation confined to the subjects of concern, and the incorporation into a revised code be achieved in due course. In any event, the draftsmen would be greatly aided by resort to the relevant material which has been prepared in the Model Penal Code Project of the American Law Institute. See MODEL PENAL CODE, Tentative Draft No. 2 (Am. Law Institute 1954) and Tentative Draft No. 8 (Am. Law Institute 1958; now in course of revision).

#### Section 7. Gifts, Loans and Favors to City Personnel

Conspicuous in the public disclosures which led to the appointment of this study committee was information about gifts to city personnel by persons engaged in business relations with the city. This sort of conduct is very difficult to suppress in all of its objectionable manifestations. The effort should be made; a well-conceived and vigorously enforced provision on the subject is desirable to protect both the public and city personnel. At the same time that the community is safeguarded against officers and employees being influenced by private gifts or favors, the latter are fortified in resisting gifts and favors by a reasonably clear rule for their guidance. Such a rule would be a protection against the "tipping" propensity from which even the best of people may not be entirely free.

The Home Rule Charter, by Section 10-105 forbids any officer or employee of the city to "solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work." This is a type of bribery provision and plainly does not cover the instant trouble zone since it applies only where the gift is for a definite official "act or omission." The gift problem extends to a great variety of gifts and favors not tied to any particular official matter or action but likely, nevertheless, to influence the donee to favor the donor in one way or another at some time or other. Nor is there any Philadelphia prohibition or restriction directed to him who would make gifts to city personnel.

In July, 1961, upon recommendation of this Committee, as noted at an earlier point, the Mayor issued an executive order on the subject of gifts

favors to city officials and employees in the executive and administrative branch of the city government (reproduced as Appendix A hereof). The committee now recommends, after more extended study, that the subject of gifts and favors be dealt with by a city ordinance applicable to all city personnel in both the executive and administrative branch and the legislative branch. The same policy should be applied across the board. We propose separate provisions with respect to city personnel, on the one hand, and persons who would make gifts or loans to city personnel, on the other hand, as follows:

No city official or employee, or member of the Council, shall solicit, accept or receive any gift, loan, gratuity, favor or service of substantial economic value that might reasonably be expected to influence one in his position in the discharge of his official duties, from any person, individual or corporate.

No person shall offer, make or render any gift, loan, gratuity, favor or service of substantial economic value to any city officer or employee or member of the Council which might reasonably be expected to influence such officer or employee in the discharge of his official duties.

These proposals proceed on the policy judgment that there should be single standard with respect to all municipal personnel; and they avoid the rigidity of a flat, uncompromising ban on all gifts and favors.

On the face of things, one might suppose that an outright, unequivocal ban would have the advantage of clear guidance for public personnel and, thus, facilitate administration. It may be doubted, however, that such a ban would be enforceable, for want of sensitivity to such considerations as the relationship of the outsider to the public servant, the relationship of the interests of the outsider to municipal affairs and the particular circumstances and size of the gift, loan or favor. It is true that the formulation used does require interpretation, but that formulation provides a guiding concept, namely, the reasonable expectation that the gift loan or favor would influence the public servant in the discharge of his official duties. The advisory opinion role of the board of ethics recommended in Section 10 of this Part should be significant in this problem area.

Section 8. Informal Personal Approaches and Communications to Judicial or Semi-judicial Officers about Pending Matters

The Committee is informed that the "ex parte" problem of informal personal approaches to public officials about pending matters which are in contention, exists in Philadelphia with respect to administrative tribunals as well as the minor judiciary. It is not in a position to gauge the

nitude of the problem. It is satisfied, at the same time, that the problem is present and should be dealt with in a general effort in behalf of high ethical standards in government in Philadelphia.

There are at least three important ethical objections to ex parte communications. They are a channel of personal or political influence as distinguished from factual and reasoned presentation on the merits. They are behind doors, as it were, and that is a likely setting for efforts to disrupt public processes. They are unfair to others whose interests are at stake in the proceedings.

A great deal of the representation is by lawyers but laymen have had a hand - some as self-styled expeditors. The lawyers are governed by the canons of professional ethics of their profession.

An external rule of general application as to ex parte communication is in order. It is recommended that such a rule be laid down by ordinance of agencies created by or pursuant to the Home Rule Charter and that, to this end, the Mayor request the City Solicitor to draft an appropriate ordinance. In this undertaking consultation with the Philadelphia Bar Association might well be helpful. It is further recommended that in the case of the magistrate courts such a rule be established by the Board of Judges of the Court of Common Pleas.

It must be obvious that the ex parte approach is not foreign to the legislative function. Regulation in that area is not proposed, however, because it would reach beyond formal adjudicative proceedings - usually of an adversary character - into the vague realm of lobbying. The Committee would not favor any effort to interfere with direct citizen access to local legislators and the problem of regulation of access by paid representatives is something for another day.

#### Section 9. Outside Employment

The concentration of effort by city personnel upon city business bears mainly enough upon the volume and quality of performance. Relevant here is the character and extent of outside employment by municipal personnel.

That this topic has ethical implications requires no elaborate demonstration. In some situations there may be incompatibility in the relation of outside work to city service, so far as the nature of the duties or personal interests of the individual are concerned. In others no such clash may exist, but ethical issues may be presented nevertheless. Such a case is that where the outside employment is so demanding as to time or effort

or both that the individual is left unable to provide the city full measure of service. Proper supervision at the departmental level, it is believed, is the city's best recourse as to problems of this character.

An example of functional incompatibility is the case of a housing inspector who works during off-hours as an assistant manager of an apartment house, which is subject to housing inspection by others in his city department. This does not present a direct conflict of interest, but it does involve the pursuit of private activity of a kind which the individual must scrutinize in his public role.

It is obviously impossible to develop a sharply clear standard in this area which will distinguish between proper and improper outside employment and be both rational and administrable. The factors involved in the determination of impropriety are in many respects intangible. The best that the Committee can offer is a broad standard to be brought to earth by resort to administrative experience and judgment in particular cases. It suggests the following language for appropriate adoption and promulgation by executive order:

No city officer or employee shall engage in private employment or render service for private interests that is incompatible with the proper discharge of his official duties. A city officer or employee who engages in private employment or renders service for private interests in reliance upon a written determination by the head of his department, agency, office, board or commission that such employment or service is not incompatible with the proper discharge of his official duties is not acting in violation of this order.

A department head may adopt and enforce within his department more detailed regulations governing outside employment by department personnel. Such regulations must be consistent with the first paragraph of this order.

If a review mechanism is considered desirable from the standpoint of employee protection, the board of ethics proposed below could be helpful in this regard, as it could in assuring an equitable relationship between the various departmental interpretations.

This proposal, it will be noted, does not reach the legislative branch of city government, and properly so, inasmuch as the scope of activity in which councilmen officially engage is so broad that in a very real sense almost any outside activity may, considered in the abstract, create an incompatibility between such activity and their official responsibilities, with the result that any standard applied to them must be extremely

difficult of administration or unduly restrictive. It is, therefore, the judgment of this Committee that the resolution of this problem area, as respects councilmen, be left to the council as a body and to individual judgment and discretion of members.

This provision does not extend to part-time or intermittent city personnel, but is not calculated to restrict their private activity greatly, since incompatibility is the test.

Section 10. Administration and Enforcement of Ethical Standards

It must be evident from what has been said as to ethical problems that, in general, the Committee takes a positive approach to administration and enforcement. It is appropriate to note afresh the fundamental positive elements of a healthy moral tone in the community, favorable conditions of public service and quality in personnel. Beyond these elements, the Committee stresses good ethical tone set by the example of high-level officials, and definite administrative responsibility by department and agency heads for maintenance of ethical standards, education and guidance.

Disciplinary action within the administrative framework is appropriate for cases of deliberate departures from established ethical standards. It is suggested that punitive sanctions be discarded. While it is not all clear that their availability with respect to such matters as conflict of interest has been of substantial significance in the achieving of a high degree of conformity to ethical and legal norms, they do, at the minimum, provide a second line of protection, which will have its role in cases where the positive approach does not succeed. It is evident, however, that punitive sanctions are indicated for serious matters, such as bribery and extortion, which are dealt with by the criminal law of the State.

It is a matter of immediate interest that the power of the Council of Philadelphia to define offenses and provide for punitive sanctions is under attack in the courts. A brief expository statement is in order.

The Home Rule Enabling Act deals with sanctions as follows:

. . . . . Ordinances, rules and regulations adopted under the authority of this act or under the provisions of any charter adopted or amended hereunder shall be enforceable by the imposition of fines, forfeitures and penalties, not exceeding three hundred dollars (\$300), and by imprisonment for a period not exceeding ninety days.

Chapter 10 of the Home Rule Charter regulates official conduct as to number of subjects, including conflict of interest and political activities, and public and private individual action as to others. With respect to enforcement, Section 10-109 provides:

Penalties. A violation of any of the foregoing sections of this article shall be a misdemeanor, punishable by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days, or both, and if the violator is an officer or employee of the City, by removal from office or immediate dismissal.

In the case of Commonwealth v. Cabell, in the Court of Quarter Sessions of Philadelphia County, it was determined on November 2, 1961, that Section 10-109 was invalid insofar as it made conduct a crime and provided for punishment by imprisonment. The theory of the court was that the power to define a crime and provide for punishment by imprisonment is a sovereign power which cannot be delegated. The enabling statute was construed narrowly to permit imprisonment only on the traditional basis of a secondary sanction for enforcement of collection of a fine. The case is now on appeal. Should the view of the court below ultimately prevail, the city would be left without a sanction upon which it had been counting, and this would be true not just with respect to Chapter 10 of the Charter but across the board. Until the courts have rendered their final decision, no specific recommendation as to this point would be in order.

A Board of Ethics. As has been observed, there are gray areas in which the public servant may well need guidance. He should be encouraged to get it, if there is a responsible source from which it can be had. In a tremendous governmental establishment of the magnitude of the United States Government it would be very difficult, no doubt, for one central advisory board to function. In Philadelphia, however, major city that it is, the job would be manageable for such a board.

The Committee favors the establishment by ordinance of a board of ethics, the function of which would be to render advisory opinions on ethical questions under the standards established by the charter and by ordinance, upon written request by the officer or employee concerned or by the head of the department, office or agency in which he serves. The board would have no rule-making power, in the legal sense, nor would its opinions have the same authoritative character as court decisions; its function would be interpretive. Doubtless, the action of a public servant in proceeding in reliance upon an advisory opinion of the board would be a strong indication of his good faith.

An important advantage of a central board is uniformity of interpretation. The board could view questions in context, of course, but free of

a departmental orientation. In order to extend the practical reach of the advisory role, board opinions should be published subject to such deletions as would be required to achieve anonymity.

At the public hearings conducted by the Committee the establishment of a board of ethics was supported by witnesses from such diverse groups as the Republican Alliance and the Americans for Democratic Action. There was a difference of view as to whether the board should be a fully public agency composed of public members or should be semi-private with representation from private organizations. The Committee believes that a public character is needed, from the standpoint of responsibility as well as that of the weight which its advisory opinions would carry.

There is a legal question as to whether the advisory function may be assigned to a board of ethics, in view of the charter provision which makes it the duty of the Law Department to furnish legal advice within the city government as to official powers or performance of official duties. It may be doubted that the kind of guidance contemplated here is within the sense of the charter reference to official powers or performance of official duties. In any event, it is believed that the City Solicitor should be a member of the board.

The board might well be established by ordinance. The following formulation is suggested:

There is created and established a Board of Ethics, which shall consist of the City Solicitor, who may serve by deputy, the Director of Personnel and three public members appointed by the Mayor. The appointed members shall serve without compensation. The members shall select the chairman.

It is the primary function of the Board of Ethics to render advisory opinions to officers and employees with respect to the meaning and application of provisions of the charter and ordinances of the City having to do with ethical standards in the municipal service. Advisory opinions shall be rendered pursuant to written request by the officer or employee concerned or by an appropriate superior of the officer or employee concerned. Advisory opinions shall be published by the Board with such deletions as may be necessary to prevent disclosure of the identities of the officers or employees concerned.

The Board of Ethics is authorized to make recommendations to the Mayor and to the Council directed to improvement in ethical standards in the city service or to organization and procedure related to administration and enforcement of such standards.

#### PART IV

### CHARACTER, GENERAL QUALIFICATIONS, SELECTION AND SUPERVISION OF CIVIL SERVICE EMPLOYEES IN THE SUPERVISORY GRADES

One of the areas with which the Mayor requested the Ad Hoc Committee to concern itself is the character, general qualifications, selection, and supervision of Civil Service employees in supervisory grades.

The Civil Service is administered broadly by the Civil Service Commission, which by Charter provision, is appointed by the Mayor from among nominees submitted by the Civil Service Panel. Membership of this panel is defined in the Charter and is seven in number.

The Commission has three members, each of whom is appointed to a six-year term (two-year stagger method) and it, in turn, appoints the Personnel Director. This is intended to assure the complete independence of the Personnel Director and the separation of the administration of the system from partisan political considerations, direct and indirect. The Commission serves as an advisory body to the Director and as an appeal agency.

The Personnel Director carries the day-to-day responsibility of administering the civil service merit system program and on a broad basis of judgment. His duties include:

1. Preparation of Civil Service Regulations (for adoption by Civil Service Commission, and in part by Administrative Board).
2. Administration of the program.
3. Establishment and maintenance of a roster of all employees, showing the class and title of every position, salary or pay rate, and all changes in the roster.
4. Investigation and reporting to the Commission and the Mayor on the operation of existing provisions.
5. Forstering and developing programs for employee effectiveness (training, safety, health and welfare).
6. Assistance, upon request, to the court or any county agency in administration of its personnel system and merit principles.

The purposes of these sections of the Charter are to develop merit principles and scientific principles governing appointment, promotion,

demotion, lay-offs, and discipline. There are also certain exemptions from the Civil Service spelled out in the Charter.

Findings:

1. The Civil Service Commission and the Personnel Department are held in high esteem throughout the nation by students, teachers, personnel technicians, and personnel directors. This repute appears to be earned.
2. Recruitment and examinations, both for entry and promotion, are areas of strength.\* There appears to be little doubt that superior types of candidates would be secured through the established procedures.
3. Insufficient attention seems to be given to the subject of training. The lack here seems to exist principally because of insufficient personnel - not because present personnel lacks the talents. Out of a total budget of \$600,000 for 1962, only \$11,000 or less than 2% is allocated to the Employee Development Division.
4. Classification and pay procedures appear to be standard and number and quality of personnel assigned to this function appear to be adequate.

The absence of higher general pay levels may have serious consequences. This would normally be destructive of morale, for usually the more competent employees are the ones who leave so that the mediocre or less capable employees remain.

5. Working relationships with "line" department heads and with the Commissioners themselves may be less than sufficient. The Chairman of the Commission on occasion sits in on the Mayor's cabinet meetings but the Personnel Director never does. The Director's contacts with members of the Commission are not frequent and his contacts with "line" department heads are also

\* One of the members of the Committee holds the view, derived from both personal experience and consultation, that budgetary limitations on the examining force prevent the City from reaping the full benefit from an otherwise excellent procedure.

infrequent. The lines of action adopted result in only occasional meetings between the Commissioners and the Personnel Director in discharge of the advisory function.

The Committee recognizes that this lack of liaison may well have resulted from the structure devised in the Charter with a view to preserving the Commission and its staff from improper influence. Nevertheless, in the Committee's judgment, these provisions have so operated as to vitiate one of the major benefits in personnel administration, derived from regular and frequent contact between the executives responsible for this service and other top management personnel.

The benefits of closer working relationship seem obvious - particularly when considering personnel in supervisory grades, but since these working relationships have not been utilized it is not possible to appraise the extent of what may have been lost.

6. There was some evidence of concentrations of nationality and racial groups in some departments. The existence of these concentrations may have resulted in part from the abuse of the rule of two (under which the appointing authority may select from only the top two names on the eligible list).

Because this Committee observed no faulty performance directly traceable to the existence of these concentrations, it does not comment further on their existence or on the possible ill effects.

7. The rule of two may, however, be too restrictive and nationally it is not widely applied. Thus, in many instances, the top two eligibles may result from the application of veterans preference provisions. A recent study showed that only seven public agencies of the 225 tabulated used this rule; 156 agencies used a rule of three and 45 agencies used even more liberal rules.
8. Employee references are now checked by the departments, usually orally. It can be argued that written inquiries and written replies would constitute a better record and surely to some extent this is a superior procedure. There are merits in both procedures but the Committee's inquiries developed nothing to show that the written method would have disclosed information preventive of the acts later found to be obnoxious. The then grades of the accused were not further investigated by the Personnel Director because they were attained by promotion and not by outside recruitment.
9. Traditionally, examinations for Civil Service posts include substantive tests, inquiry into prior work experience, and some verification of the applicants' personal background. Philadelphia has followed this general pattern and it does not supplement these

tests with the personality or psychological testing device. There appears to be ample justification for continuing this policy, and it goes beyond the incidence of additional cost that would certainly be incurred. The Philadelphia policy is further supported by experience in New York City and Los Angeles County.

10. We encountered one observation to the effect that the probationary period was utilized to a less than desirable extent in the instance of new appointees. While this criticism may be well founded, it would seem to apply to line department heads principally, and so wide an inquiry was not contemplated by the instructions to the Committee.

#### Conclusions and Recommendations:

Since the best management techniques recognize the desirability of promotions to supervisory levels from within (and this is required at Section 7-401 of the Charter), it is important that the administration of the Civil Service be sound and progressive at all levels. Within the limits commented on herein, this Committee believes that a very good job has been done. Improvements can be made and specific examples and specific recommendations aimed in this direction follow:

1. Training should have increased attention. There is evidence that this subject has had attention but generally at the department levels. Good examples of this are the cooperative courses made available externally and the Philadelphia Government Training Institute. We are informed the training designed to develop executive and supervisory skills has not been carried out vigorously although utilized to some extent in the past. The Committee believes the program should be reactivated and extended.

It is a proper concept that training should be the responsibility of the operating divisions, but coordination of programs, centralized direction, guidance and leadership also have importance and this is especially true for the higher level positions. There are now only two persons - both in Personnel - devoting time to this general subject and they also have other responsibilities.

2. While classification and pay procedures appear to be soundly organized and adequately administered, unless pay levels are maintained at competitive equality, effects on morale may be serious and the more competent and aggressive employee is the one most apt to leave the service, while mediocre ones will stay. Thus, the best source of raw material for eventual supervisory posts may be most affected. It also affects adversely

the recruiting effort. The Personnel Director believes municipal levels are 15% to 20% below equality at least in many categories.

3. The indications of infrequent consultation between the Commissioners and the Personnel Director and as well, between the Personnel Director and line department heads, leads the Committee to point out that the Charter at Section 7-101 and Section 7-200 provides for "development of effective personnel administration within the.....departments....." and ".....shall promote the improvement of City personnel administration....." The apparent insufficient use of the probationary device may illustrate less than optimum performance of these injunctions.

There should be more frequent and more intensive liaison between the Personnel Director and the heads of Line Departments, as well as with the members of the Commission. These are the best ways to assure fuller understanding of problems that may exist and for the Director to implement the policy decisions of the Commission. The Director's duties are such that he should be aware of and complement the solutions to all personnel problems of all City departments, and unless he is thoroughly informed, his contribution will be impaired.

4. In the event that psychological or personality testing be adopted, the Committee believes it should be limited to those positions, perhaps 300 or more in number, carrying annual salary ranges of \$7,500.00 and higher.

The use of a polygraph is also sometimes advocated for promotional procedures. The Committee is not convinced that its use is desirable. In the event that it were to be adopted however, its use, too, should be limited to sensitive areas such as the higher categories of pay classes, or possibly to the applicants for the police department.

5. Many factors may bear upon the integrity and ethical standards of the supervisory personnel of the city. We neither lecture nor argue any of these factors here except to state the great importance of the realities and to state that attitudes of Department Heads may have a very great influence on the ethical standards of performance of persons of lesser importance in the departments.

Certainly to some extent the Mayor and the Administrative Board must accept top responsibility, but this quickly filters down to line department heads (the various Commissioners) and to the Deputies and Division Supervisors. All such persons, by their own example, must set the tone of ethics and principles to be observed. Any program adopted to strengthen this area must have

the full backing of the Mayor and the members of the Administrative Board.

Training in moral leadership is surely desirable and should have attention. The Navy Department has done some work in this area and since there are Naval establishments in proximity to the city, the resource material put out by the headquarters office of the Navy may prove of value to personnel administration of the city.

6. Inquiry by the Committee has developed no information that would lead to the conclusion that ineffective personnel administration was contributory to the collapse of supervisory effectiveness of the three persons who now stand accused of wrongdoing. Inspection of records disclosed nothing that should have forecast eventual failure or turpitude.

PART V

PUBLIC WORKS CONTRACTING  
AND THE  
PROCUREMENT OF MATERIALS AND SUPPLIES

The immediate occasion leading up to the appointment of this Committee was the revelation of fraudulent activities in connection with the letting and follow-up of certain public works contracts. It is natural, therefore, that any review of corrective measures should focus in depth upon this phase of municipal activities. In preparing itself to cope with this responsibility, the Committee recognized that it would be impossible, either through its own membership or with temporarily-employed personnel, to make a comprehensive review of this very complex subject. Accordingly, it turned to an organization skilled in the analysis of municipal operations and with the expertise available to consider and evaluate possible remedial measures. Such an organization, fortunately, was readily at hand in the presence here of the Eastern Division of the Pennsylvania Economy League -- Bureau of Municipal Research. Accordingly, the Committee contracted with this organization to make a review, first, of the public works contracting procedure; second, of other procurement contracting; and, finally, of the procurement function in general. It has received a report on this subject, giving numerous recommendations for specific changes in present practice, or, in some instances, calling for further and more extensive consideration of matters appearing to require remedy. The Committee has carefully reviewed this report, discussed it with its authors, and finds itself in general accord with the findings there set forth. Included as Appendix B of our report are its conclusions and recommendations\*. We recommend their careful study to the Mayor, the Managing Director, the Finance Director and Procurement Commissioner, and the City Solicitor.

While the above-mentioned report constitutes the corpus of the Committee's recommendation in this field of its activity, it seems appropriate here to make a more general review of the situation surrounding public works contracting.

At the time the present City Charter was being written, the "engineering" phases of the city's activities were concentrated in one department, the Department of Public Works, and the responsibility was thus clearly and definitely centralized. The Mayor did have certain ministerial responsibilities, principally in connection with the signing of contracts, which, however, he discharged relying almost entirely upon the recommendations of the Director of Public Works.

\* The full document is available, in limited quantities, to interested parties.

Those who drafted the Home Rule Charter decided upon an entirely different scheme of supervision. In the first place, the various elements of the old Department of Public Works were subdivided, separate departments created and placed under the supervision of the Managing Director (with the exception of airport and port operations, which were placed under the Director of Commerce); and second, it was believed desirable that an entirely separate municipal agency supervise the process of contract-letting, and the review of payment on contracts. Thus, the Finance Department either directly or through the Procurement Commissioner, was to provide the service. The Charter specifically assigned a number of functions to the Procurement Commissioner, including the actual awarding of the contract, and his assignment, in effect, set up this official as a key figure in the contract-letting process.

With the passage of time since the implementation of the Home Rule Charter ten years ago, the scheme of oversight recommended by the Charter authors appears to have remained in abeyance. Perhaps because of budget pressures, the degree of public works coordination, formerly a function of the Director of Public Works, has been minimal. Beyond the review given by the City Planning Commission at the initial approval stage for the total budget (which often does not get down to the review of specific projects), there is no centralized unit which oversees the city's public works program. Furthermore, the Procurement Department has apparently adopted the view that its functions were almost entirely ministerial, and relegated more and more of the responsibility for public works contracting to the various individual operating departments. It cannot be said that the concepts of the Charter were tried and failed; rather it would appear that in the absence of major scandals to spur administrative action, the course of least resistance has been followed, and the prime responsibility of the whole process has remained in the sundry operating departments, without effective supervision or the control provided by an active system of checks and balances.

The Committee, in reviewing this situation, does not reach the point of concluding whether the pre-charter or post-charter method of organization is superior. The reaching of such a conclusion would require a complete reassessment\* of the structure of municipal government and was beyond the scope of our assignment. What we do say, is that the present method of organization falls between two stools. It has neither the strength of centralization nor the necessary controls for operating a de-centralized system. The Charter structure is mandated and absent any change, there would only seem room for argument with the premise, which we hold, that the existing charter-envisioned systems of supervision and control should be

The Committee understands that a thorough managerial review of the municipal structure is now contemplated. It endorses this concept, believing that the ten-year period elapsing since the time of the Charter warrants such a careful review.

mented at the earliest possible time. We cannot say with assurance this would have prevented the scandals which arose a year ago, for failures are always possible, but we do believe that the full implementation of the Charter, by means of the various recommendations made in the Bureau's report, will result in a substantially more effective public procurement program.

#### Municipal Works Control Unit

Various aspects of these changes call for specific comments. In the first place, the Committee wishes to underscore the recommendation that there be in the Managing Director's office a unit responsible for the over-review of the municipal public works program. The system by which each department is "on its own" has resulted in individual projects going far beyond planned expenditures, requiring frequent revision of the capital budget, mandatory since, in most instances, a given project is already in progress. Long delays have ensued. Thus, there should be control exercised at the outset of the contract-letting procedure, to see that each project properly fills its assigned role in the city's overall improvement program. As a by-product, through the accumulation of experience in this control unit, supplemented by that of the Procurement Department and systematically there recorded, guidance can be furnished as to the contractors who are suitable for receipt of municipal contracts, and assistance can be rendered in seeing that contracts once let are properly executed.

True, it is perfectly possible to cite individual types of contract-letting which are quite dissimilar from other types, i.e., a comparison between the laying of water mains and the building of a recreation field. The fact of the matter is, however, that there are a sufficient number of points of similarity in this type of contracting that a central review and control unit, properly staffed, would have much to contribute. Furthermore, the Mayor, the Council and the citizens of Philadelphia would have a definite sense of responsibility as to the overall implementation of the city's construction activities.

#### Regulation of the Services of Architects and Engineers

One of the values of having such a unit would be its function as a central source of information as to the performance not only of contractors but also of architects and engineers. As the report points out, the awarding of contracts to these professions must continue to be, to a major extent, on a subjective basis. Nevertheless, there is no substitute for a systematic method by which the city itself evaluates the work performed by it by people and firms in these professions; nor, if this evaluation were made, would there be a better guide in the selection of engineers and architects for future projects.

## Role of the Procurement Department in Public Works Contracting

Turning now to the implementation of the Charter provisions with respect to Procurement Department oversight of the contract-letting function, we believe that the first step should be the creation of a properly defined unit within the Procurement Department, under the supervision of a City Procurement Commissioner, where these responsibilities would lie.

This unit would rely, of course, on the initial review and certification by the Managing Director's office as to conformity of the project with the City's capital budget plans. Beyond that, it would have the responsibility to see that the specifications were so drawn as to permit the most effective bidding for the contract, to limit to the greatest extent possible restrictive specifications which narrow down the choice of the contractor supplying components, and to eliminate provisions which, if included and improperly administered by the operating department, could put a given contractor in a favored position.

This same unit in the Procurement Department should oversee both the letting of the contract and, once the contract is let, any further business dealings with the successful contractor, including particularly the issuance of change orders.

Inspection and Testing - The actual physical inspection of the construction work should remain in the department for which the work is done, but the inspection process should be systematized to a much greater extent than is now the case, by means of the recommendations included in the Bureau's report. It could well be a function of the public works review unit in the Managing Director's office above-referred to, to develop the content of a manual of inspections, leaving the detail of this manual for preparation by interested departments. Even here, however, the Procurement Department has a charter-mandated role, in the testing of component materials. If, as we later recommend, the testing function of the Procurement Department is implemented, and a testing unit set up, one of its principal tasks would be in the testing of materials which are to be used in buildings and other structures (above or below the ground), to assure the city specifications are being lived up to.

Qualification of Bidders - While many excellent firms are engaged by the City for the construction of various public works, the same names tend to appear in contract-lettings, and interest in submitting bids for city contracts is sometimes limited. A number of factors occur to the Committee, some of which are mentioned in the Bureau's report, which may underlie this condition. We would like to mention first the question of qualification. Philadelphia's practice has long been that bidders for public works contracts be qualified in advance of bid openings. This practice has, on the whole, a number of advantages, the principal one being that, in theory at least, the pre-opening review can be made on an objective basis and the

na attached to disqualification of a low bidder can be avoided; thus  
ng more likely, again in theory, the disqualification of unsuitable  
ers. The fact of the matter is, that the theory in this case is all  
often not borne out in practice. The time permitted for review pro-  
ts any but the most cursory review of a bidder's qualifications. There  
arely time to look, in depth, at the performance of the various bidders  
r various contracts and to conduct a full investigation of the techni-  
and financial competence of a contractor to do a given piece of work.  
ews tend to be made on the basis of a few limited criteria, rather than  
verall determination of competence. Furthermore, the difficulties  
ing from disqualification, with threatened suits, and the like tend to re-  
ct disqualification even at this stage of the process.

The Bureau recommends that the Philadelphia practice be changed to  
of post-qualification. This practice has been in successful use in a  
er of other communities, including the City of Chicago where the Pro-  
ment Department is under a competent professional administrator. With  
-qualification, it is possible, economically, to make the review in  
h that is required to determine whether a concern is competent to per-  
a given function, by narrowing the investigation down to the success-  
bidder and allowing sufficient time for gathering the information  
ssary to make an effective review. Parenthetically, we should here  
: that contracts might well not have been let to the Travis concerns,  
example, had this practice been followed. All of the knowledge repos-  
in the various units of city government could, thus, be effectively  
halled to support a finding that a bidder was indeed the lowest quali-  
bidder. Here, the public works review unit in the Managing Director's  
ce, and the public works unit in the Procurement Department, would  
lement the knowledge available within the operating department itself.

Continuation of Delays - Another factor which must, on balance, influence  
decisions of contractors against bidding on city work has to do with  
well-nigh interminable delays often attendant upon municipal contract-

Actually, this can work two ways. On the one hand, bidders familiar  
city operations know that it has been possible in the past to "drag  
work for the city while advancing other of their projects, at little  
of the assessment of any liquidated damages and at a resultant saving  
their own costs; whereas, other concerns might consider it improper to  
ow for such a factor in their estimates. On the other hand, the great  
gth of time involved in all the various steps of dealing with the city,  
cluding the initial bidding process in letting of contracts, up to the  
al payment, often long delayed, may well cause firms to think twice be-  
e going to the expense of submitting a bid for a major city construction  
ject. The Bureau's report calls for remedies of both these conditions.  
ghter scheduling of the city's own work, together with proper expedit-  
of the work of the contractor, and finally an equitable system of  
essing liquidated damages for delays, would go far to correct this  
lition.

. further step toward encouraging qualified bidders to submit estimates for city work would be the establishment of a rating system on construction activities, a function for the public works unit in the Procurement Department, aided by the Managing Director's office review. In this way the firms would feel that their efforts would be recognized, as would the efforts of less scrupulous bidders.

#### Procurement Functions

One element relating to public works activities, but also to other functions of the Procurement Department role, has to do with the testing of materials and supplies. The Charter very definitely assigned this role to the Procurement Department, but the Department has never moved very far in the direction of assuming it. The principal city laboratories for the testing of materials are still outside of the Department, under other aegis. It is recommended that the Procurement Department forthwith address itself to developing a plan by which it should assume its Charter responsibilities in this field, and thus perfect the system of control which that document provided. The Bureau's report contains a number of detailed recommendations in this respect which the Committee hopes will be of assistance to the Department in preparing such a plan.

While a major part of our effort has been directed to a tightening of the public works contracting procedure, our consultants have also concerned themselves with the general operations of the Procurement Department in purchasing materials and supplies for the city. Because of the technical nature of much municipal procurement (i.e., the advertisement-tive bidding, lowest bidder procedure) public purchasing limits the scope of managerial discretion which may be exercised, and to that extent hinders the development of initiative on the part of the purchasing personnel in assuring the city better values. In view of these statutory and recognized limitations on public procurement, not too many suggestions are available which would result in substantially lower cost materials to the city.

The city, does, however, have a measure of control, through the effective use of specifications as to the quality of materials being purchased, and can make perhaps its principal contribution toward economy in purchasing by the use of the most up-to-date system of specifications. It is recommended that emphasis on this activity be heightened, that there be a positive and continuous review of specifications, and that the city's Office of Purchase Standardization and Specification, now limited to municipal employees, be expanded to include others expert in this field. The city can thus gain, by adding the experience of purchasing personnel from other levels of government and from private industry. Recommendations of a practical nature are included with respect to improvements in this area.

Finally, the report notes that the function of encouraging the widest possible bidding on municipal supply contracts, mentioned above with respect to public works, also needs to be performed in connection with the procurement of materials. Greater attention needs to be paid, to see to it that the bidders' lists are fully representative of suitable suppliers and, where not representative, conscious effort should be devoted to encouraging reputable firms to bid on City supplies.

#### Conclusion

The recommendations which have been outlined above, and which are the subject of more detailed comment in the report of the Bureau, will cost money to put into effect. It is impossible to exercise more effective control over the public works process and over procurement without adequate personnel; and some capital outlay will be required, particularly in the testing laboratory area. We have made no exact estimate of the increase in cost which would be involved. However, it would certainly not be excessive when we relate it to the many millions of dollars worth of contracts for construction and for materials here involved.

Although it is impossible to relate a direct saving to the expenditure of such sums, we are convinced that important economies would result if the recommendations were adopted. We recognize that some of the operating departments may chafe at the thought of other personnel reviewing work done largely without review, but believe that, under the Charter scheme, these checks are necessary to assure the public that the tax-payers' dollars will be effectively spent. Some of the increased cost at least can be considered to be a premium on an insurance policy taken out against the repetition of a Travis episode.

## PART VI

### A WORD ON ZONING

Special reference to zoning is in order. The direct relation of zoning to economic and other interests associated with land makes the subject a tempting area both for private pressures at various points in the total zoning process and for official abuse of authority at one stage or another. The Committee's consideration of this problem area has led it to the conclusion that ethical aspects cannot be dealt with adequately apart from a major study of zoning from the standpoints of the substance of zoning regulation as well as administrative organization and procedure. It might be, for example, that more reliance upon definite provisions of the zoning ordinance and less upon administrative discretion as to variances and exceptions would reduce the ethical tensions, but it would not do to follow such a line without reaching a mature judgment as to whether it would further the policy objectives of zoning.

Again, it might render the variance and exception process more deliberate, with more time for consideration of the merits of applications, were the Board of Adjustment to be made a full-time, well-paid administrative tribunal; but the composite wisdom of such a step requires a careful overview, and should not be assessed on the basis of study from the limited perspective of the Committee.

As for procedure, it might be surer ground to offer the suggestion, for example, that the Zoning Board should not act upon ex parte requests for hearing on applications for variances or exceptions, but such a suggestion would be a very limited attack upon a large subject.

In sum, the Committee refrains from offering special suggestions as to zoning but wants to make it clear that the subject merits broad consideration under appropriate auspices. The zoning bill now in Council has already been the subject of extensive review. Perhaps additional time and effort, particularly from the standpoint of the problems under the Committee's study, would result in a significant attack on this problem.

## PART VII

### THE CONTINUING WATCHDOG FUNCTION

We are familiar with financial watchdogs in American governmental practice. They are helpful in protecting the public treasury and in assuring the faithful application of public funds to the intended public purposes. Their reach is limited, however, from the standpoint both of the citizen of little means or influence who seeks relief from arbitrariness or injustice in public administration and of the general community interest in fair and efficient administration.

In the Congress of the United States there is a function called legislative oversight (not an overlooking but a review!) It is relatively new and is an outgrowth of the massive development of administration in the executive departments and in so-called independent agencies under numerous statutes laying down various lines of policy. Congressional committees perform this function principally from the broad governmental point of view, in the interest of good execution of legislative policy and improvement of basic legislation rather than the standpoint of agencies investigating citizen complaints. Doubtless, the same could be said of the oversight function as performed by committees of a city council.

Nor has the historic, constitutionally-protected right of petition to elected representatives for redress of grievances provided the ordinary citizen effective recourse in actual practice. What is needed is an independent, highly respected office, which is detached from the influence of partisan politics and is easily accessible to the ordinary citizen.

The problem is recognized by the Philadelphia Home Rule Charter. Section 4-106 provides:

Information and Complaints. The Mayor shall establish an agency in his office for receiving and answering all requests for information about the City or its government. Such agency shall also receive and investigate complaints concerning the operation of the City government.

An Office of Information and Complaints has been established in compliance with this section. That the agency renders helpful service is not questioned here. Its position and role, however, are too limited. The difficulty stems from the charter provision itself. The first point is that the office is inside the administration and is not in a position to act with independence and detachment. Again, the Charter does not create or

provide for a public office, in the sense of a position, and give it a place of dignity and importance. The section, moreover, does not project anything like a full-fledged oversight or watchdog role. It merely provides that the agency shall receive and investigate complaints.

What the Committee considers fitting for Philadelphia is a high-ranking official with broad powers of investigation, either on complaint or on his own motion, and with the carry-through weapons of publicity and referral to an action body or office. It recommends that Philadelphia give serious consideration to provision for the appointment of an official who might be called Commissioner of Public Affairs. What is suggested is an adaptation of the Danish Ombudsman.

The institution of the Ombudsman has existed in Scandinavia since its establishment in Sweden in 1809. It did not come into being in Denmark until 1954 but it has already gained very favorable acceptance there. The Danish office was created to achieve two primary objectives. First, it is the duty of the Ombudsman to act as the alter ego of the Parliament in maintaining control over the various administrative agencies which, in Denmark, as elsewhere, have mushroomed both in terms of numbers and responsibilities since the beginning of the century. This initial function is fulfilled both by constant surveillance of administrative operations and by recommendation of appropriate legislative modifications designed to enhance efficiency and eliminate irregularities. Secondly, the ombudsman is to act, in the words of the Parliamentary spokesman of the Danish Labor Party, as "the protector of the man in the street against injustice, against arbitrariness and against the abuse of power" of the executive. He is authorized to initiate investigations into any matters within his purview on his own motion, and in addition, provision is made by statute for the lodging with him, by any person, of complaints regarding governmental misconduct, laxity or inconsideration. While to a great extent the Ombudsman operates on a somewhat informal basis through personal interviews, provision is made for summoning any uncooperative witness into court in order to obtain testimony under oath regarding matters pertinent to any official inquiry.

The most important and effective sanction available to him in cases where he finds governmental impropriety or inefficiency is the power to make public disclosure of his findings and recommendations. He is empowered also to order the initiation of criminal proceedings, or disciplinary proceedings against any civil servant within the administrative agency involved, where appropriate. The sanction of publicity has great effectiveness by reason of public confidence in his office, the readiness of the press to receive and circulate his opinions, and the publication annually of a report of his work during the previous year. The success of the program in Denmark is in large measure due to the fact that the

e of the Ombudsman has remained almost completely removed from  
san politics, due in no small degree to his freedom to act either on  
aint or on his own motion. It is worthy of note that his salary is  
e same level as that of judges of the Danish Supreme Court.

In order to insure that the office of a Commissioner of Public Affairs  
re an aura of respect in the general community and attract an in-  
ual possessed of the necessary qualifications to assure its proper  
tion, it would be necessary that the salary attached to the office be  
level with that of the Managing and Finance Directors. If the Com-  
oner is to command the confidence of the community, it is equally  
site that so-called practical political considerations be minimized  
e process involved in his selection. Accordingly, the Committee sug-  
appointment by the Council, on nomination of a committee composed of,  
the President of one of the local universities, the Chancellor of the  
delphia Bar Association, and the President of the Chamber of Commerce  
iladelphia. To this committee would fall the task of nominating two  
ree qualified individuals, from among whom the Council would make the  
ntment to the office of the Commissioner of Public Affairs. It is  
er suggested that the term of office of the Commissioner be four years,  
ct to the power of the Council to remove him at any time by affirma-  
vote of two-thirds of the elected membership.

The Commissioner should have powers similar to those possessed by the  
h model, including the power to recommend the initiation of criminal  
edings or disciplinary proceedings against any officer or employee of  
ity in appropriate cases; the power to make public disclosure of any  
nmental irregularity in its broadest sense, including inefficiency;  
he power to make recommendations to the Council and to any office,  
y or department of the City. Beyond this, it would be well to extend  
urisdiction to ethical questions under the standards proposed by this  
t. This would be a rational extension of his field of action and, by  
ding scrutiny after the fact, would complement the advisory work of  
rd of ethics.

It is not unlikely that the very presence of the institution of a  
ssioner of Public Affairs with the indicated jurisdiction would have  
lesome influence in the direction of greater conformity to ethical  
ards.

To establish such an office with the scope of responsibility above

uggested would require a charter amendment,\*which would supplant the present Section 4-106.

Short of the establishment of the Office of Commissioner of Public Works by charter amendment, however, the Committee recommends that, at a minimum, the "complaint" aspect of the Mayor's Office be lifted out of the relatively subordinate position it now occupies and given a much more significant part to play. Within the charter framework, and certainly its intent, a "Public Affairs Commissioner" or similarly titled official responsible directly to the Mayor could be appointed, to serve as the link between the citizen and the municipal structure. He would be of such civic stature as to command respect, adequately salaried, and dissociated from political activities as such. His office would, preferably, be located on neutral ground", away from City Hall, though within convenient reach, to induce to a minimum the natural reluctance of the citizen to come forward with his problem. He would have direct access to the various city departments, in the pursuit of any particular complaint, and his request for information thereon should be fully and promptly honored. He would be empowered, either personally or through a minimum staff, to make such supplemental investigation as appeared required. His findings, as to any particular incident of injustice or malfunctioning, or as to a system for which improvement is recommended, should be advisory in nature, but given the most serious consideration by the Mayor.

Let it be understood that the committee does not come lightly to this or other proposals for changes in the Home Rule Charter. The approach that has been pursued has been to study problems on their merits and to bring forward the best ideas that could be developed in response to the problems. The level of governmental action required to give those ideas effect would depend upon the nature of the proposals. For the most part, action by Council in the form of an ordinance or ordinances would serve. In the case, however, of bribery and extortion, state legislation is needed. And in the case of conflict of interest and the creation of the Office of Commissioner of Public Affairs, charter amendment is called for.

PART VIII

CONCLUSION

Misconduct in public administration is an unmixed evil, but the focusing of public attention upon current instances of corruption should stir the moral sense of the community and strengthen receptivity to constructive measures for the future. The Committee hopes that the recommendations put forward in this report will be helpful to the people of Philadelphia in advancing the cause of sound and ethical conduct of public affairs in the city. The Committee has not been interested in change simply for the sake of change; its recommendations are responsive to the demands of live problems and are calculated, once adopted, to bring about substantial betterment for the future.

Jefferson B. Fordham, Chairman  
Thomas H. Carroll  
Charles H. Frazier

Appendix A

OFFICE OF THE MAYOR

July 11, 1961

EXECUTIVE ORDER

1. No City official or employee may solicit, accept or receive any gift, gratuity, favor or service that might reasonably tend to influence him in the discharge of his official duties, from any person, individual or corporate, other than a public and symbolic gift or award made to him as a City representative. If in a particular instance the City official or employee has a question as to the application of this prohibition, he shall obtain a ruling by his superior officer and be governed accordingly.

2. For purposes of this order a "City official or employee" is anyone serving in the Executive and Administrative Branch of the City of Philadelphia under the Home Rule Charter, in whatever capacity whether the service be regular, part-time or intermittent and whether the service be with or without compensation.

3. All heads of departments and of independent boards and commissions shall be responsible for the enforcement of this order within their respective administrative areas.

4. Violation of this order is ground for appropriate disciplinary action.

RICHARDSON DILWORTH  
Mayor

APPENDIX B

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS<sup>1</sup>

### Selection of Consulting Architects and Engineers

The City has no formal criteria for the selection of consulting architects and engineers. Although the nature of the work performed by these consulting organizations is such that selection must necessarily be made largely upon the basis of subjective judgment, nevertheless the present procedures could be improved.

Each consulting architectural or engineering firm that is to be considered for engagement by the City should be required to file with the Managing Director a full statement of qualifications of the firm and of the principals within the firm. (II-13, 14)<sup>1</sup>

If the City wishes to engage an architect or engineer who has not had previous suitable experience in the design of a structure to meet the *functional* requirements of that for which he is about to be engaged, or if the architect or engineer does not have adequate prior experience with certain *technical* aspects of the proposed design, the City should require that he associate with him one or more persons who do have such functional and technical experience. The City should be required positively to approve the selection of the associated persons, and such approval should not be lightly given. (II-14)

### Rating of Performance of Consulting Architects and Engineers

There is no formal or comprehensive system of reporting the performance of architects or engineers engaged on a consulting basis. The absence of a formal reporting system results in two shortcomings: (a) information concerning the excellence and shortcomings of consulting architects developed in service to one department is not regularly available to other departments who may wish to consider the engagement of the firm; and (b) information and experience gained by one set of City personnel in dealing with a consulting firm of architects or engineers is lost to the City when that personnel leaves City employment.

<sup>1</sup>The notation in parentheses refers to the page in the report where the recommendation appears.

The Managing Director should devise and institute a suitable reporting system on the performance of each consulting architect or engineer engaged by the City. Each agency of the City government should be required to submit to the Managing Director a performance record of each consulting architectural or engineering contract. (II-15)

Prior to the execution of each proposed contract with a consulting architect or engineer, the appointing agency should be required to furnish the Managing Director with a copy of the proposed appointment. The Managing Director should consult the record which has been developed and indicate his approval or disapproval of the proposed appointment. A disapproval by the Managing Director should constitute an absolute veto of such proposed appointment. (II-16)

#### **Terms of Contracts With Consulting Architects and Engineers**

Under present practice, there is no uniform contract form for engaging consulting architectural and engineering services. Present practices fail to contain adequate provisions on a number of points.

The Law Department should prepare a suitable number of master contract drafts to be used on contracting with engineers and architects. Each master contract should contain provision for, and in each contract there should be inserted a dollar limit for, the project (including any equipment within the architect's or engineer's responsibility). The architect or engineer should specifically agree to prepare the plans and specifications in a manner which will enable the City to secure construction bids within the dollar limit so specified. (II-17, 18)

Each master contract should specify the basis of compensation for the architect or engineer. In specifying the compensation, the contract should stipulate that, should the bidding on the project as designed be in excess of the limit, the architect will be obliged to re-design the project to come within such limits, with no additional cost to the City. (II-18)

The contract should specify the time limits within which the architect or engineer is (a) to complete the preliminary

drawings and (b) to complete the contract drawings and specifications. Failure to comply with reasonable time limits, after allowance for delays which are caused by the City, should be a basis for termination of the contract at the option of the City and for the assessment of appropriate damages by the City. (II-18)

### **Standardization of Elements of Construction Contract Specifications**

Except for the regulations contained in the general City codes regulating building construction, there are no general City specifications with respect to elements of construction which are likely to recur from one structure to another. In these circumstances, each department and, in many instances, each consulting architect and engineer proceeds to make his own design of recurring elements of structures. This may result in unnecessary differences.

The Managing Director should investigate the feasibility of developing a list of elements of construction which will ordinarily be standard for the City of Philadelphia. While we know of no counterpart practice in other cities, it would appear that with the City involved with so many different architects, it would be desirable to develop an indicated preferable practice for city structures, e.g., providing that drains from lavatories enter the wall instead of the floor to permit easier cleaning, or that office space would be equipped with suitable acoustical ceilings. (II-19)

If the architect or engineer believes that a method different from that required in the standards should be followed to meet a given situation, he should be allowed to specify an alternative course of action with proper approval of the department responsible for design, subject to challenge at time of review of the specifications by the Procurement Department. (II-19)

### **Review of Construction Plans and Specifications**

Plans and specifications for many projects proceed to the award of construction contracts without any review outside the department responsible for the project. While the Procurement Department presumably has the right of review prior to advertising, this is seldom exercised, and the Procurement Department is not staffed for a technical review. The review by the

Managing Director is necessarily a limited review at this time because that office does not have as a part of its staff any architects or engineers engaged for review purposes.

The over-all effect is that in most of the projects in the capital program, as measured by cost, there is no effective review. Once the department has received its appropriation, it proceeds without regular check upon its performance in executing this aspect of its responsibilities.

The Managing Director should review the construction plans and specifications for all major (in excess of \$100,000) capital facilities before such plans and specifications are forwarded to the Procurement Department. If, as a result of such review, he approves the plans and specifications, he should certify to the following:

- a. That the plans are in harmony with, and will accomplish the objectives stated in, the capital programming and capital budgeting process.
- b. That the work can be accomplished within the funds that have been allocated in the approved capital program.
- c. That the plans have been reviewed in detail and that in their approved form they represent an efficient and economical manner of providing the capital facilities required to accomplish the approved objective. This would entail a review of the structural characteristics as well as the functional characteristics.
- d. That other elements of the capital program have been reviewed in context with this project and that it is a finding of fact that the plans for this project are properly coordinated in physical characteristics, location, and timing with other projects contained in any active capital program. (II-21)

The Procurement Department should provide a technical review of the specifications presented to it for advertisement. The purposes of this review are to enable the Procurement Department to determine:

- a. That the specifications are in proper form.

- b. That the provisions in the specifications are apropos to the type of work to be performed.
- c. That appropriate state, federal, and local laws and City regulations have been properly incorporated, either through excerpt or reference. In this connection, the full text of the document entitled *Standard Contract Requirements for Public Works Contracts* of the City of Philadelphia should be included in full as a part of each set of specifications offered for bidding.
- d. To the extent that the specifications undertake to modify, or elaborate upon, any element of standard requirements referred to above, the Procurement Department shall review such changes with a view to their suitability and enforceability.
- e. That the commercial aspects of the contract have been defined. (Commercial aspects include such matters as determination of how change orders are to be compensated, insurance requirements, labor conditions to be observed, reports to be made, conditions governing time of completion of the work, provisions for payment.)
- f. That the specifications for any materials or equipment are not closed to competition, unless the Procurement Department shall have secured in writing, and shall have approved, an adequate explanation and justification for such closed specifications.  
(II-21, 22)

Inasmuch as neither the office of the Managing Director nor the Procurement Department is presently staffed to perform the type of review hereinabove recommended, it is recommended that each of these units be promptly provided with personnel adequate in number and qualifications and with necessary appropriations to engage specialists which will make it feasible for them to carry out the recommended review functions.

### **Invitation to Bid on Public Works Contracts**

Under the existing procedure, the invitations to bid state that the plans and specifications shall be secured from the department which has

is responsible for the preparation of such plans and specifications. In the interest of keeping the Procurement Department fully advised of the kinds of questions and the kinds of explanations that are provided to prospective bidders, the present procedure should be changed.

The invitation to bids should state that prospective bidders will obtain copies of the plans and specifications from the Procurement Department, and that all questions relating to the plans and specifications should be directed to the Procurement Department. If clarifications are necessary, it will be the responsibility of the Procurement Department to see that they are provided. The method will vary depending upon complexity, and in difficult circumstances action would be taken only in conjunction with the department which has prepared the plans and specifications. (III-15)

If supplemental plans or specifications are necessary, these should be provided to the Procurement Department by the department responsible for preparation of the original plans and specifications, for distribution to all prospective bidders. (III-15)

#### Disqualification of Bidders on Public Works Contracts

For many years, the City of Philadelphia has followed a policy of disqualifying prospective bidders prior to the time that bids are accepted. A general argument in favor of such "pre-qualification" of bidders is that the judgment is rendered at a time when those determining the qualification of bidders are not under the pressure of having to disqualify the best bidder. The disqualification of a bidder after it is known that he submitted the lowest bid obviously may result in claims that the City is acting in an arbitrary manner and that such disqualification will result in a higher cost to the City to the performance of the work under consideration.

On the other hand, when "pre-qualification" is used, the burden upon administrative officials is often so great that it virtually precludes a full investigation into the qualification of each of the prospective bidders who have filed qualification questionnaires. This administrative burden arises in part from the fact that each of several prospective bidders must be examined and from the narrow time limits within which this process must be completed.

The City of Philadelphia should abandon the present practice of pre-qualification and substitute therefor the practice of

of the lowest bidder, or, if he is disqualified, the qualification process then be applied to the next lowest bidder. (III-16)

If early investigation of the lowest bidder's qualifications suggest that he may in due course be disqualified, immediate investigation of the qualification of the second lowest bidder should be commenced. (III-16)

If the pre-qualification procedure is maintained, despite our recommendations to the contrary, we make the following recommendations for improvement.

The time limits during which administrative officials have an opportunity to study the qualification questionnaire should be extended substantially beyond those now provided in the Philadelphia Code. (III-17)

The qualification questionnaires should henceforth be provided in duplicate to the Procurement Department, one for its use and one for the use of the department for which the bid is being received. (III-17)

Whether pre-qualification or post-qualification are used in the future, there is a need for a central comprehensive reference file of realistic performance information regarding each contractor which can form one of the significant elements of the basis for the qualification process.

The Procurement Department should insist that each supervising department prepare the report on the performance of contractors as called for in the *Procurement Manual for Use by All City Agencies*. The Procurement Department should devise and currently maintain a suitable quick reference file which may be used by it in determining the contractor's past performance at the time qualification of such contractor for further work for the city is under consideration. (III-17A)

Especial care should be taken by the Procurement Department in the re-design of the present form and in the administration of the system to avoid the implication that an adverse report by the supervising department upon a contractor's performance constitutes an indictment of the capacity of the supervising department adequately to discharge its supervisory responsibility. (III-17A)

If the recommendations contained elsewhere in this report concerning a transfer to the Procurement Department of much of the inspectional and testing functions are adopted, the Procurement Department will itself be obliged to make a suitable report upon performance as observed by its personnel and to incorporate this in the record to be reviewed at the time of qualification.

#### **Protection of Public Works Bids**

We recommend that present procedures continue in force. (III-18)

#### **Protection of Public Works Bids Against Alteration After Opening**

Bids are submitted in single copy. Under present procedure, there is no protection afforded against unauthorized modification of the details of a bid in the course of its tabulation and processing. No evidence has come to our attention to suggest that there have been any such modifications in bids received by the City; however, certain irregularities which led to the present changes of the contracting procedures suggest that personnel guilty of one type of wrongdoing might well be guilty of modification of elements of the bid efficiently prompted by those who have an interest in the outcome.

The City of Philadelphia should acquire and utilize equipment similar to that which has been in successful use in Chicago for the microfilming of bids upon their public opening, in order to discourage modification of the bids in the course of their processing by City personnel.  
(III-18)

#### **Tabulation of Public Works Bids by Procurement Department**

The Home Rule Charter, in Section 8-200, requires that the Procurement Department receive the bids and that the bids shall be *opened* and *tabulated* in the presence of a representative of the City Controller. Under present procedures, the tabulation of bids for contracts in the Water and Streets Departments are made by those departments; for other departments, the tabulation is by the Procurement Department. While it is feasible to have, and the City Controller does in fact have, a representative present at the opening of the bids, it is not feasible for him to have a representative present at *tabulations* taking place at several places within the government.

Both in order to comply with the Charter provision and in order to concentrate the responsibility for the tabulation

of bids, the Procurement Department should by its own employees, and without delegation of the responsibility to others, open and tabulate all bids. (III-19)

Bids should be invited on a basis sufficiently clear to enable the Procurement Department to make the tabulations without technical assistance from the department which originated the specifications. (This observation becomes applicable only when the Procurement Department has personnel experienced in the fields with respect to which tabulations are required.) If not, serious question may be raised as to the ability of the bidders properly to interpret the items upon which they have submitted the bids. (III-19)

If it is necessary or desirable to provide any other department or agency of the government with a copy of the bid, that this be provided on a photocopy basis, with the original being always retained in the Procurement Department for safekeeping. (III-19)

It is noted that the representative of the City Controller is required section 8-200 of the Home Rule Charter to be both at the opening and at tabulation of the bids. While the City Controller reports that his representative is present at the opening of the bids, we are informed that he is not present at the tabulation of all bids; however, he does review the tabulation of all bids.

Given this requirement, we think that the City Controller is not in full compliance with the existing Charter provisions. On the other hand, it is both awkward and expensive to have his representative present throughout the tabulation of all bids. It would appear to us that the adoption of additional safeguards recommended above for protecting the sanctity of bids, coupled with the type of review of the tabulation now made by the Controller's representatives, afford a reasonable basis for discharging the spirit, if not the letter, of the Charter requirement on this point.

#### Tabulation of Public Works Bids

Upon the basis of information provided to us, we believe that the present procedures are satisfactory. Therefore, we have no recommendations for change in the present procedure. (III-20)

## Public Works Contracts

On the basis of information provided to us, we believe that the proposals for award of the contract are satisfactory. Therefore, we make no modifications with respect to this procedure. (III-20)

### Contract Document; Incorporation of Text of Standard Requirements

Under present procedure, a part of the *Standard Contract Requirements for Public Works Contracts* is incorporated in full in the text of the specifications which become a part of the contract; some sections are incorporated specifically by reference; and the entire document is also incorporated by reference. It appears to us that this is an unnecessary complication.

The full text of the *Standard Requirements for Public Works Contracts* should be incorporated in the specifications and should become a part of the contract document. Any references to these requirements in the specifications should be solely for either (a) emphasis or (b) for purpose of deliberate variation therefrom. (III-20)

### Incorporation of Text of Proposed Contract in the Specifications and Attachment to Bid

Present practice calls for the preparation of a brief covering contract by its terms incorporates the plans and specifications as a part of the contract. The text of this covering document is generally standard but is usually separately prepared for each contract.

In order to avoid any misunderstanding between the contractor and the City, and in order to avoid the possibility of clerical or other error in the preparation of the covering contract, the full text of the proposed contract should be incorporated in the specifications and be offered to each prospective bidder at the time the bids are invited. (III-21)

### Assessment of Fees for Contracts and Performance Bonds

Presently the City requires that the Law Department collect fees from contractors for the preparation of contracts and for the preparation and

ew of performance bonds. In general, we believe that contractors tend to add such costs to their bids as a part of overhead and that the City probably gains very little net return from the charges made, after allowance is made for the additional processing time needed for handling of amounts so charged. Moreover, these fees tend to become nuisances.

The City should abolish both the contract preparation fee and the fee for preparation and review of the performance bonds. (III-21)

### **Decision to Proceed on Public Works Projects**

We believe that the present procedure is satisfactory. Therefore, we have no other comments or recommendations on this matter other than a comment below relating to timely performance of contract obligations. (IV-42)

### **Preliminary Work Conference**

Within the present allocation of responsibilities, we deem the present procedure satisfactory. However, inasmuch as this report proposes that the Procurement Department henceforth be responsible for the enforcement of the commercial aspects of the contracts, and that it be henceforth responsible for the inspection and testing of materials, we recommend:

The Procurement Department should henceforth be represented at the preliminary work conference. (IV-42)

### **Centralization of Testing Responsibility in Procurement Department**

At present, the only centralization of responsibility for testing is that provided in the Testing Laboratory of the Water Department. The conduct of other tests of materials and equipment is widely dispersed through several departments of the government. We believe that responsibility for testing materials, prior to their change of form, should be centralized. It appears clear that the Charter in Section 8-200 intended that this function be centralized in the Procurement Department.

The Procurement Department should assume exclusive responsibility for the inspection and testing of all materials

acquired by or on behalf of the City, whether for regular supply purposes or in conjunction with public work projects. (IV-43)

The Testing Laboratory now under the jurisdiction of the Water Department should be transferred to the Procurement Department. At an early date, an amendment should be sought to the capital program and capital budget which will permit the erection at a suitable location of a new testing laboratory facility. Amendment of the operating budget will be required to provide adequate equipment. (IV-43, 44)

The inspectional functions and the testing functions are so intimately related that these two functions should be integrated into a single unit within the Procurement Department. (IV-43)

As the quantity and quality of inspectional and testing personnel reaches a satisfactory level, the City should progressively withdraw from the use of outside testing laboratories or organizations, except for highly specialized circumstances or to check upon the performance of its own personnel. (IV-43)

In respect to inspection at mixing plants for asphalt and concrete, the city should coordinate its inspectional activities at such plants with other governments served by such plants in order to reduce or eliminate multiple inspections; and the City should determine whether there are any circumstances in which it is sage to accept (1) certifications of quality by independent testing organizations engaged to supervise the mixing of "certified" concrete or asphalt, or (2) mechanical quality control and recording devices now utilized in certain plants. (IV-44)

The accomplishment of the foregoing will require a considerable amount of effort and should be undertaken in measured cadence in order that the transfer of responsibilities can be made in an orderly manner. The target date for completion of this process should be December 31, 1962.

#### **Consolidation of Materials and Equipment Into Completed Structures**

In addition to centralizing in the Procurement Department responsibility for the function of inspecting and testing of materials (discussed

e), a number of other present practices relating to supervision of construction projects need to be improved.

*ROTATION OF INSPECTORS.* There should be a deliberate program of rotation of inspectors. (IV-45)

*CLARIFICATION OF TERMS OF ENGAGEMENT OF OUTSIDE INSPECTORS.* The contract for any inspection to be performed for the City should require that, in case of any cessation or abandonment of the inspection work prior to completion of the construction project in connection with which the inspection services have been engaged, the contract inspector must immediately notify not only the department for which the inspection is being performed but also notify in writing both the Procurement Department and the Managing Director. (IV-45)

*RESPONSIBILITY OF WORKS ROUTINE.* In order to provide (a) a consistent pattern of responsibility for those performing clerk-of-the-works functions, or their substantial equivalent, and (b) to provide for some independent check upon the performance of consulting architects and engineers, it is recommended that:

- (1) The functions of the clerk of the works should, to the extent feasible, be performed by regular personnel of the City.
- (2) In large or unusual projects where this is not feasible, the department responsible for the construction project should directly engage by contract, or otherwise, the services of a competent person or persons to provide the clerk-of-the-works function.
- (3) Such personnel should be wholly independent of the consulting architect or engineer who has been responsible for the design of the project and who may be responsible for general supervision of construction. (IV-46)

*CLARIFICATION OF RELATIONSHIPS BETWEEN THOSE RESPONSIBLE FOR INSPECTION FUNCTIONS.* Under the foregoing recommendations, we have urged that, to the extent that the City finds it necessary to engage outside personnel under contract to

provide clerk-of-the-works functions, it do so entirely independently of the consulting architect or engineer on the job. If this recommendation is followed, it will be necessary for the City to keep the consulting architect informed concerning the results of inspection by the clerk of the works. We recommend:

- (1) The City should develop a manual for use of any personnel, whether by regular City forces or by contract, engaged in the performance of clerk-of-the-works functions. This manual should seek carefully to delineate the responsibilities of such clerk-of-the-works personnel, the consulting architect or engineer, and the supervisory personnel of the department.
- (2) The reports of the clerk of the works be furnished to the supervising Department, and copies of all reports, except special reports which are forthrightly critical of the performance of the consulting architect or engineer, should be promptly furnished to such consulting architect or engineer.
- (3) Where clerk-of-the-works personnel is assigned, the City should not in any circumstances place other inspectional personnel on the project which can operate in a manner to diminish or confuse the responsibilities of the consulting architect and the clerk of the works. (IV-47)

### **Inspectional Personnel**

In the course of this study, we have encountered statements by several department heads or other principal supervisory personnel that the quality of inspectors is not adequate. We have also had similar statements made by some outside architects and engineers that have at one time or another done work for the City. This type of general criticism is one frequently encountered in surveys of management and procedures. Such criticism is difficult to evaluate in the absence of the application of extensive procedures; such procedures were beyond the purview of this study.

It is beyond the scope of this report to make recommendations as to the manner in which this problem should be

solved, particularly in the light of the fact that the Committee for which this report is prepared has under engagement other persons to advise it concerning personnel matters. Even so, we believe that the answer lies at least in part in a more intensive analysis of the functions to be performed by the inspectors; the possible reorganization of some of the more responsible inspectional work so that it may be performed by higher grade personnel; and the assignment of each of the inspectional personnel to pay grades commensurate with the responsibilities and the qualifications of the inspectional personnel. (IV-49)

At the time of their recruitment, the inspectional personnel, especially at the non-professional levels, cannot be expected to be reasonably acquainted with the City's requirements for the performance of inspectional duties. Despite this obvious lack of information, none of the departments of the city reported that they presently had any *formal* training program through which new inspectional personnel is obliged to go at the time of initial appointment.

The Office of the Personnel Director should be assigned the responsibility for the organization and general supervision of training at the time of initial appointment of inspectors and at suitable recurring intervals. Such programs should extend to all classes of inspectional personnel--professional, sub-professional, and non-professional. (IV-50)

Only the Water Department has developed and regularly makes available a manual for the guidance of inspectional personnel.

The City should, with the assistance of an advisory committee of engineers and architects, develop a comprehensive inspection manual for the guidance of its public works inspectional personnel. Each department should develop such special manual materials as it finds are required to explain to its inspectors any special duties or procedures peculiar to the work of the department. Both types of manuals should be reviewed at least biennially and revised if conditions warrant.

Copies of the manuals thus developed should be provided to each person engaged under contract to provide any inspectional services for the City, and should be available, upon request, to construction contractors in order that they may understand the responsibilities of the inspectors.

In addition to portions of the manual for general use, each department should review the necessity or desirability for developing sections of the inspection manual for application by the sub-professional and professional personnel in performance of their inspectional duties. (IV-51)

### Change Orders During Course of Construction

The contingency funds provided within the limits of many contracts are being rather widely used to accomplish work which, if to be done, should have been included in the original plans and specifications. Steps need to be taken to help avoid unwarranted embellishments and to require that each change order be reviewed by an independent agency--the Procurement Department--for concurrence in the reasonableness of the cost or saving ascribed to such change.

All change orders should be limited in their scope to the accomplishments of the objectives clearly encompassed in the original plans and specifications. Any other modifications should be by new contract, separately let by the Procurement Department.

Each change order should be submitted to the Procurement Department for review, and such change order shall not become effective until approved by the Procurement Department, provided that the bases for disapproval by the Procurement Department shall be limited to the following:

- (a) Materials to be used.
- (b) Pricing of the materials, equipment, and work involved.
- (c) Failure of the proposed change to fall within the scope of the project as defined at the time of approval of the plans and specifications upon which the contract was awarded.

The Procurement Department should specify the circumstances under which its approval of change orders may be on an "after-the-fact" basis arising from genuine emergencies. (IV-52)

It is recognized that the careful application of the foregoing procedures will result in the rejection, at least in the early years, by the Procurement Department of many items which heretofore have been covered by change orders. This, in turn, will doubtless have two results: (a) a number of new contracts will have to be let by the Procurement Department in order to achieve the needs unmet by the rejection of broad use of the change-order power; and (b) after a period of irritation, those responsible for design of the structures will become precise and comprehensive in what is provided in the construction plans and specifications.

In the process of awarding new contracts stemming from rejection of change orders, the Procurement Department should permit supplementary contracts, without separate bidding but after careful scrutiny of prices, for those items which are so integral a part of the original job that separation of the work for separate bidding would not be feasible. However, the Procurement Department, in all cases in which it is feasible, should proceed to separate bidding even though the price thus obtained may not be any better than that which might have been negotiated under a contract supplement. (IV-52A)

### Timely Performance of Contract Obligations

We have observed a number of shortcomings in the procedures of the City relating to timely performance of contract obligations. These deficiencies fall within two broad groups: (a) those in which the City fails to make it possible for the contractor to proceed promptly, and (b) those in which the contractor fails to proceed promptly. Both types of delay are either immediately or ultimately expensive to the City. Obviously, in some circumstances (e.g., the ordering of special equipment or awaiting the completion of work by other contractors), delays are fully warranted.

On the one hand, the City has some procedures which should be carefully reviewed and, where appropriate, revised.

Each specification to be used in an invitation to bid should stipulate the time within which work is to commence on the project following the issuance of the order to proceed. In setting such time, the supervising department should take into account any unusual conditions which affect the time when work can actually be commenced.

The City should uniformly see that the plans and specifications are in such form that the contractor will not be delayed while the City attempts to resolve items which could have been resolved by more careful attention to detail at an earlier date.

The time limits for completion of the work following the date on which the order to proceed has been issued, should be established on a realistic basis and with full intent on the part of the City to see to it that, except for genuine excusable delays, the work will be completed within the stipulated time interval. (IV-53A)

Measures need to be adopted so as to define more precisely the responsibilities of the *contractor*, and to provide for more effective enforcement of those responsibilities by the City.

A provision requiring completion within a stipulated time should be a feature of all specifications offered for bid and of all public works contracts. The basic terminology in contract administration should be modified in order to distinguish properly between the date on which the order to proceed is given and the date on which work is intended to be commenced.

The Procurement Department should work through the supervising department responsible for the project to overcome delays. Should such measures fail, the appropriate cabinet officer should be advised. The contractor should be required promptly to report to the Procurement Department any condition beyond his control which is preventing him from timely performance of the work which he has contracted to do. Upon receipt of any such notification, it will be the responsibility of the Procurement Department, in cooperation with the department responsible for the supervision of the work, to make a determination of the facts as a basis for eventual settlement of claims.

Contractors should be assessed liquidated damages for failure to complete the work within the prescribed time, with allowance for excusable delays properly documented. The City should establish suitable methods for determining the damages actually incurred. The ease of administration of a per diem charge for delinquency would appear to make this the most feasible basis for charges. Upon presentation of the accounts

for final settlement, the Procurement Department should, after consultation with the supervising department, make the determination of the amount of damages which are to be assessed, if any.

Unusually long or costly delays in the *completion* of any contract should become a basis for automatic disqualification for participation in any City public works contract for a suitable period of time. It is suggested that this period range from two to four years, depending upon the severity of the time default. (IV-54, 55)

### Requirement for Separate Contracts

Pennsylvania statutes require that separate contracts be awarded in public works for each of several major mechanical trades, e.g., electrical, plumbing, and heating. The effect of this provision--which is not applicable to private construction contracts--ordinarily is to make the supervising department in City government responsible for the coordination of the work of the various contractors.

In general, we would favor a system under which the City had the *option* of following the present procedure of separate contracts or of causing the entire job to be under a single contract.

The City should explore this matter fully in order that it may, in appropriate circumstances, avail itself of the advantages of a single contract if legally permissible.  
(IV-56)

### Payment Schedule on Public Works Contracts

An analysis, on a sample basis, of the lapse of time between the date of completion of work and the time at which the contractor receives final settlement, indicates that *interim* payments tend to move through with some promptness, although some of these tend to lag beyond any reasonable time limits. In the case of *final* payment, the time-lags all along the way result in delays of weeks, months, and, in some instances, as much as a decade. In our opinion, such delays are not warranted to the degree that our samples indicated they are present.

We have found no evidence which would support a charge that arbitrary action has been responsible for such delays. Nevertheless, the current procedures invite such potentialities.

As a part of its supervision of the commercial aspects of the contract, the Procurement Department should establish reasonable limits within which payment should ordinarily be made, and it should be assigned responsibility for expediting payments to contractors within such period.

To facilitate the performance of the foregoing responsibilities, the Procurement Department should each month ascertain the time required for processing of approvals and payments of all public works contract items paid within such month. In the case of such items in which it shall find that the total processing period from the date of partial or final completion of the work is in excess of the reasonable limits previously established, it should ascertain the point or points at which responsibility for such delays have occurred, ascertain the facts relating thereto, and report thereon both to the unit responsible for the delay and to the cabinet officer to which such unit reports directly or indirectly.

The supervising department should be required to complete all negotiations with respect to final payment within one year of the date of beneficial use of the facility by the City, unless the department has recommended that the contractor be placed in default of contract performance.

Not later than the first anniversary of the date of beneficial use, the supervising department should present a report in writing to the Procurement Department, setting forth the status of all unpaid claims made by the contractor; the identification of those claims, or parts of claims, which the supervising department is willing to approve for payment, together with dollar amounts approved for payment; and the claims, or portions of claims, which in the opinion of the supervising department should not be paid.

The Procurement Department, upon receipt of such report, should advise the contractor that the City is prepared to settle the full outstanding claims for the dollar amount approved by the supervising department, but without specification of which of the individual claims or parts of claims constitute the basis for determination of such amounts; that, in any event, the City proposes to liquidate the encumbrance amount remaining within the contract limit at the end of 60 days, but that during such period it will, upon receipt of full release of the City, make payment in

the stipulated amount, or, in the alternative, the contractor will thereafter have recourse for settlement only through litigation, as the City does not propose to continue negotiations beyond the 60-day period. (IV-56, 56A, 57, 58)

### Post-Acceptance Inspection and Release of Bond

Some departments have regular procedures for post-acceptance inspection of work within a relatively brief time prior to the expiration of the warranty period covered by the performance bond. On the other hand, this is not universally the case.

The Procurement Department should design and supervise the installation of a suitable uniform system under which each completed project will be carefully inspected within the 60 days next preceding the date on which the performance bond is to expire. Such system should require that a report on such inspection be filed with the Procurement Department not less than 20 days prior to the expiration date.

The Procurement Department should promptly review each such report and continue present practice of notifying the surety that there will be claims filed unless the contractor makes necessary repairs or replacements. The contractor should be provided a copy of the notice. If further work by him is to be required, specific notice in writing should go to him at that time as to what is required. (IV-58, 59)

### General Organization of the Procurement Department

The present organization appears to be somewhat unbalanced in terms of responsibilities assigned to two "exempt deputies." Moreover, the present organization results in lines of responsibility flowing directly from the Commissioner to the head of the Division of Standards, who is distinctly at a lower echelon than the three deputies. It is recognized that the present organization has been devised as a tentative plan, arising out of the present unsettled role of the Department and the termination of employment of several key office-holders.

Ordinarily, in a report of this character we would, at this juncture, make specific recommendations as to organizational structure. However, the

ture organization of Procurement Department cannot be worked out until decision has been made as to the degree of acceptance of the recommendations contained in this report and until further details are made concerning the extent to which the Procurement Department will undertake to reform warehouse and storehouse functions for the remainder of the City government, now serviced by independent warehouses and storehouses. Accordingly, we make no specific recommendations concerning organization to offer our services without charge as consultants to the Procurement Department for use at the appropriate time in this respect. (V-7)

### **Distinction Between Public Works and Other Types of Expenditures**

It appears to us that the Procurement Department has not developed sufficiently careful distinction between what is to be considered a public works contract and what is to be considered "supply of services, commodities, or equipment" contract.

Such definition is desirable and should be based upon the character and the type of work required rather than the amounts which might be involved. (VI-9)

### **Review and Revision of Specifications for Materials, Supplies, and Equipment**

While the Procurement Department has from time to time reviewed and revised its specifications for materials, supplies, and equipment, this has not been on a scheduled basis.

The Procurement Department should establish a schedule for a periodic review and, where desirable, revision of specifications which the Department itself prepares. We suggest a schedule to provide such a review at least once every five years. The specifications themselves should indicate on their face the date of the last review or revision. (VII-5)

### **Criteria for Scheduled Purchasing and Development of Standard Specifications**

The Procurement Department needs basic information which would enable it to determine more accurately (1) the extent to which it should use

cheduled purchasing and (2) those types of acquisitions for which it could adopt or develop standard specifications.

The Procurement Department should develop more complete data concerning volume of purchases by commodity items. (VII-5, 6)

#### Board of Purchase Standardization and Specifications

As presently constituted, the Board of Purchase Standardization and Specifications is composed exclusively of City officers and employees. We believe that the composition of this board should be altered.

The Board of Purchase Standardization and Specifications should be reconstituted in order to include some industry representatives. The persons appointed from industry should be those who specialize in purchasing rather than in vending. (VII-6)

#### Delegation of Responsibility for Automotive Equipment Specifications

The responsibility for the preparation of specifications for automotive equipment was several years ago delegated to the Public Property Department. We believe that such delegation is inappropriate, if indeed not contrary, to Section 6-500(a)(7) of the Philadelphia Home Rule Charter which permits the delegation of the purchasing function but specifically requires the Procurement Department's approval, in writing, of specifications for such purchases. But wholly aside from the legality question, we believe that:

The Procurement Department should be fully responsible for the development of specifications for automotive equipment, after full consultation with both the Department of Public Property and the using agency. (VII-6)

#### Revision of Food Specifications

According to our consultants from the University of Delaware (see Appendix B of our full report), a number of items of food are now being purchased on specifications which are reported to be obsolete or inadequate. In the opinion of these investigators, the City is suffering some losses as a result.

Specifications for all food commodities should be reviewed and, where necessary, revised to conform to current practices in the food trades.

All institutions should be provided with order units which will insure compliance with standard wholesale practices, thereby avoiding loss arising from ordering on the basis of non-standard units.

Vendors of meat should be prohibited from delivering meat of a higher grade than specified, except with the specific prior permission of the proper authority in the institution to which it is being delivered. (VII-7)

#### **Increasing Participation By Larger Numbers of Bidders**

The Procurement Department does not have sufficient personnel with proper orientation and assignment to carry on a systematic analysis of the reasons some vendors bid consistently on City business while others in the same trade groups consistently avoid participation in City bidding.

The Procurement Commissioner should assign to a suitable person in the Department the responsibility for maintenance of the best commercial relations consistent with the objectives of the City and the procedures under which the City must operate.

In pursuit of improved commercial relations, the designated person in the Procurement Department should make suitable studies of the reasons persons like to do business with the City and reasons other persons do not like to do so. One of the functions of this officer would be to look into allegations sometimes made to the effect that specifications were not being enforced through tests and inspections. He would also be responsible for determining the extent to which delays in payment adversely affect the willingness of vendors regularly to participate in bidding for city supply contracts.

Such officer should also be responsible for liaison with all appropriate elements of the government which, through their actions and procedures, may have a legitimately favorable impact upon such commercial relations. (VIII-4, 5)

## Performance Bonds

The City is apparently required by the Charter to secure performance bonds from all vendors in contracts amounting to more than \$2,000. In public works contracts, in the supply of articles the lack of which might interrupt operations, and in certain kinds of specialized equipment contracts, performance bonds are necessary. However, in our opinion, the requirement for performance bonds for all contracts of more than \$2,000 is unnecessary, expensive, and a nuisance.

The Procurement Department should explore with the Law Department the possibility of reducing the number of items for which performance bonds shall be required and removing this requirement except in the cases mentioned above in which they should be routinely required. (VIII-5)

## Inspection of Materials, Supplies, and Equipment

For a number of reasons, it is not feasible to present full recommendations concerning the organization of the function of inspecting the commodities and equipment purchased by the City; however, some general recommendations are in order which will be applicable.

The Procurement Department should continue to be primarily concerned with the *quality* of materials and equipment. Accordingly, its inspection and testing work should be pointed primarily to this objective.

If the Procurement Department expands its warehousing function to include most materials and equipment, this will increase the responsibilities of the Department with respect to ascertainment of the *quantities* acquired. This function should, however, be carried on independently of the inspection and testing for quality.

The improved inventory controls contemplated by the Department should be pushed to a very early successful conclusion. A part of this system should include an automatic check between the amounts of items for which the City acknowledges receipt through requisitions for payment and those shown as intake in the inventory records.

While it will probably be necessary, in light of the proposed increase in the volume of Procurement Department

inspections, to provide for some inspections by generalists, it is believed that the Procurement Department is correct in its tentative plans under which the bulk of its inspectional force would be organized on a specialty basis.

Provision should be made for occasional review of the work of the inspectors and the testing laboratory by either (a) arrangements with outside testing and inspection organizations (this course is now followed to some extent through the engagement of the U.S. Department of Agriculture to test-check food), or (b) "double-check" inspections by special personnel of the Procurement Department.

The Procurement Department should include within its field of responsibility the testing and inspection of components of new automotive equipment, which function is presently performed largely by the Department of Public Property.

The Procurement Department, as a part of its responsibilities of inspection, should take three steps to help insure more adequate determination of the *quantities* of materials provided to the City:

- (a) It should occasionally test-check quantities through its regular inspectional force. This will involve some duplication of the work done by the Auditing Department; however, the Procurement Department inspectional force will be more numerous and will regularly be in the field so that cost of additional time will be minimal.
- (b) It should prepare and issue a manual for use by receiving personnel at all receiving points in the city, as to the approved method of determining quantities of materials received. This should include instructions as to when the weight of containers is to be allowed, and when excluded.
- (c) It should arrange with the City's Bureau of Weights and Measures to make regular tests of weighing and measuring devices used by the City. (IX-4, 5)