

**REPORT OF THE  
HOUSE SUBCOMMITTEE STUDYING THE MOVEMENT OF  
PERSONNEL  
BETWEEN REGULATING BODIES AND REGULATED INDUSTRY  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 29**

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PURCHASES AND SUPPLY  
RICHMOND**

**1978**

## **MEMBERS OF SUBCOMMITTEE**

RICHARD M. BAGLEY, CHAIRMAN  
VINCENT F. CALLAHAN, JR.  
ALSON H. SMITH, JR.

## **STAFF**

JOHN A. BANKS, JR., DIRECTOR  
L. WILLIS ROBERTSON, JR.  
HUGH P. FISHER, III

**Report of the**  
**House Subcommittee Studying the Movement of Personnel**  
**Between Regulating Bodies and Regulated Industry**  
**To**  
**The Governor and the General Assembly of Virginia**  
**Richmond, Virginia**  
**November, 1977**

To: Honorable Mills E. Godwin, Jr., Governor of Virginia  
and  
The General Assembly of Virginia

**Introduction**

The House Subcommittee Studying the Movement of Personnel Between Regulating Bodies and Regulated Industry was established pursuant to House Resolution No. 38 of the 1977 session of the General Assembly. Delegate Gerald L. Baliles of Richmond was chief patron of this resolution.

At the time of the resolution's introduction Delegate Baliles pointed out that the governmental regulatory process works in an ineffective manner when employees of the regulatory agencies leave those agencies in great numbers and join the industries that the agencies regulate. He held that if great numbers of such people join the regulated industries, the by-product of this would be a reduced vigilance among the regulatory agencies. This would be only natural, under these circumstances, he said, because no employee would want to deliberately antagonize a potential future employer.

Delegate Baliles emphasized that this situation is now a major problem at the federal level. He stressed that he did not know whether this is, in fact, a problem in the Commonwealth's State government. A subcommittee should be founded, he said, that would study the potential problem, determine whether a problem exists; and if such a problem does exist, propose legislation to remedy the problem. This, he indicated, was the

reasoning behind the introduction of House Resolution No. 38.

### HOUSE RESOLUTION NO. 38

WHEREAS, increasing public attention has been focused in recent years on the movement of persons between government regulatory bodies and the industries those bodies regulate; and

WHEREAS, the potential readily exists for such movement in Virginia; and

WHEREAS, logic and experience dictate that the public interest may be compromised if there is such unrestricted movement, as evidenced by the fact that eleven other states have already enacted legislation placing restrictions on such movement; and

WHEREAS, Virginia may lack appropriate legislative safeguards to protect the public interest where it may be injured by unrestricted movement between the public and private sectors; now, therefore, be it

RESOLVED by the House of Delegates, That the House Committee on Corporations, Insurance and Banking is requested to study this situation in Virginia with the purpose of determining whether or not legislation is necessary to limit or otherwise restrict the pre-employment and post-employment activities of persons who either become members of regulatory boards and commissions or are employed by those boards and commissions. Such a study would include the State Corporation Commission as well as the various regulatory activities within the Executive Branch. Upon the completion of its study, the Committee shall report its findings to the House of Delegates by December one, nineteen hundred seventy-seven.

Richard M. Bagley of Hampton was elected Chairman of the Subcommittee. Also appointed to serve were Vincent F. Callahan, Jr. of McLean and Alson H. Smith, Jr. of Winchester.

L. Willis Robertson, Jr. and Hugh P. Fisher, III of the Division of Legislative Services served as staff to the Subcommittee.

#### Work of the Subcommittee

Initially, the Subcommittee decided to determine the extent of the problem, if any, within the Commonwealth's government. The following individuals were asked to speak before the Subcommittee on the potential problem: (1) Turner T. Smith, Chairman of the Virginia State Bar Association's Conflict of Interest Committee; (2) John Garber, Director of the State Division of Personnel; (3) John Mizell, Director of Common Cause; and (4) Mrs. Barbara Bitters of the Virginia Citizen's Consumer Council.

Mr. Smith told the Subcommittee that presently there are no Virginia

State Bar restrictions covering the movement of attorneys from State government to private practice. He held that the high ethical standards of the legal profession help to preclude any large-scale conflict of interest problems in this area; and as far as he knew, there was no significant problem in this field. However, he mentioned that the Virginia State Bar in the future would probably adopt opinion no. 342 of the American Bar Association, which would place some restrictions on the activities of former State attorneys who move into private practice.

Mr. Garber said that in his nineteen years of service at the State Division of Personnel, he had never seen an ethical problem involving the movement of public employees to regulated industries. He held that based upon his experience, there was no problem in this area.

Mr. Mizell said that he was not aware of any problem at the present time and that he would not recommend any legislation to restrict the movement of State employees to the private sector. Mrs. Bitters noted that while the situation in Virginia certainly has the potential for abuse, she is not aware of a problem in this area. She pointed out that any proposed legislative solution to the potential problem should not interfere with a citizen's freedom to better his job situation.

After hearing these comments, the Subcommittee determined that information should be gathered from the following State agencies: (1) The Attorney General's Office; (2) The State Corporation Commission; (3) The Virginia Employment Commission; and (4) The State Air Pollution Control Board. These agencies were contacted and asked to provide the Subcommittee with information on the issue.

The Attorney General's Office said that between December 1, 1975, and September 1, 1977, twenty-five attorneys left the Office to accept positions elsewhere. Of those twenty-five attorneys, two secured positions with corporations, eight began working for other State or local governmental agencies, fourteen entered the private practice of law, and it is unknown where the other secured employment. The Attorney General's Office said that neither of the two lawyers who took positions with corporations was employed by a company in an industry regulated by a State agency to which legal advice had been rendered by them. Hence, the Office felt that, at least in the case of these twenty-five lawyers, there was no problem with regard to movement from the Office to other employment.

The State Corporation Commission said that of its approximately 500 employees, seventy-two nonclerical employees have resigned during the past eighteen months. Ten of the seventy-two obtained positions in industries regulated by the Commission. A SCC spokesman said that the principal reason that employees leave the Commission is because they can significantly increase their salaries in private industry.

The spokesman pointed out that regulatory agencies often hire personnel who have extensive accounting backgrounds. Yet, many employees with extensive accounting backgrounds leave the regulatory agencies; because a State regulation requires only two years experience in

a private accounting firm to qualify for taking the CPA exam. On the other hand, it takes four years of experience with a State agency to establish eligibility for taking the exam. This type of regulation makes it difficult for regulatory agencies to recruit and retain qualified people. The spokesman said that the SCC does not favor placing restrictions on employee movement from the public to the private sector, as this would further hinder the efforts of State agencies to recruit qualified people.

The Virginia Employment Commission informed the Subcommittee that its records do not reveal where resigning or discharged employees are employed when they leave the VEC. Consequently, the Commission could not furnish the Subcommittee with information concerning how many of its former employees move to industries regulated by the Commission.

The State Air Pollution Control Board furnished the Subcommittee with information concerning all former employees that have left the Board during the last five years. Analysis of the information reveals that very few of these persons began working for the relevant regulated industries after leaving the Board. There seems to be no problem regarding the movement of these people from the Board to industries regulated by the Board.

### Conclusions

Based upon the information that it received and reviewed, the Subcommittee determined that a problem, if one existed at all, was of very small magnitude. The Subcommittee determined that there is movement by a small number of employees from regulatory agencies to the industries those agencies regulate. However, the number of employees that go from State regulatory agencies to regulated industries is a very small percentage of all the employees leaving those agencies.

Moreover, the Subcommittee saw nothing to indicate that those individuals who move from the regulatory agencies to regulated industries were causing a problem in the regulatory process. There was no indication that such movement by a few individuals was causing conflict of interest problems.

The Subcommittee feels that legislation restricting the movement of public employees would have adverse effects on the Commonwealth's ability to recruit qualified people into State government and to retain them in government work. Qualified individuals might be less likely to accept a position with the State, and less likely to stay in State government, if their future job mobility were restricted.

In summary, the Subcommittee found no evidence to indicate that there is a problem of any consequence relating to the vocational movement of individuals from the State's regulatory agencies to regulated industries. In light of this, the Subcommittee believes that any legislative proposals that would restrict an individual's freedom in improving his job situation would not be fair and would not be justified.

Resectfully submitted,

Richard M. Bagley, Chairman

Vincent F. Callahan, Jr.

Alson H. Smith, Jr.

