IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF DADE

SPRING TERM A. D. 1955

FINAL REPORT OF THE GRAND JURY

Filed

November 8, 1955

Circuit Judge Presiding

J. FRITZ GORDON

Officers and Members of the Grand Jury

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RUTH SEERTH, Vice Foreman

REGINALD L. BURKHOLDER, Treasurer

GRACE B. SHULL, Clerk

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FRED H. REIS

NANCY SESSLER

WALTER JAMES SNIFFEN

HELEN RHODE STODDARD

WALTER R. WOLFE

SAM F. LEVITEN (Excused)

****

State Attorney

GEORGE A. BRAUTIGAM

Assistant State Attorneys

HUGHLAN LONG
JOHN S. LLOYD
WILLIAM MEADOWS
ADELE FASKE

PAUL A. LOUIS
DONALD G. MacKENZIE
THOMAS M. BALIKES
HENRY H. ARRINGTON

****

Special Counsel

HILTON R. CARR, JR.

****

Administrative Assistant

ELEANOR ROBINSON

****

Official Court Reporter

JACK MALLICOAT

****

Bailiff

MAURICE MOUNSEY

TO THE HONORABLE J. FRITZ GORDON, CIRCUIT JUDGE OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA:

We, the Grand Jury in and for Dade County, Florida, for the 1955 Spring Term of the Circuit Court of the Eleventh Judicial Circuit of Florida, present this our Final Report.

On May 10, 1955, we were impanelled by the Honorable J. Fritz Gordon, Circuit Judge. This Grand Jury has held sixty eight official meetings of the full body, and various committees met upon numerous occasions to facilitate the work.

A list of capital cases considered by the Spring Term 1955 Grand Jury is presented herewith, indicating the action taken thereon:

Defendant	Charge	Action Taken
RUFUS CLIFTON BURR	First Degree Murder	True Bill
ALLEN BUTLER	Rape	True Bill
SAMUEL HERBERT KIRBY	First Degree Murder	True Bill
HOWARD LEO BROWN	First Degree Murder	True Bill
HOSEY CARSON	First Degree Murder	True Bill
KERMIT TINDEL	Manslaughter	True Bill
WILBUR E. BAKER	Statutory Rape	True Bill
THOMAS W. MANN, JR.	First Degree Murder	True Bill
OLLIE BAKER HENDRIX	Rape	No True Bill
JERRY MANNING	Rape	True Bill
RICHARD J. SVOBODA	Manslaughter	True Bill
GERALDINE M. SMITH	First Degree Murder	True Bill
JAMES ADAMS, JR.	First Degree Murder	No True Bill
VANDERBILT BAR, INC.	Violation of Liquor Law	True Bill
HOWARD ELLIS	First Degree Murder	True Bill
JOHN CORNELIUS GUTHRIE	First Degree Murder	True Bill
GEORGE FREDERICK FARLEY	First Degree Murder	True Bill
HELEN STARK	First Degree Murder	True Bill
JESSIE CARVER	Rape	True Bill
CLEMON FERGUSON	First Degree Murder	True Bill
FRANK MARSHALL	First Degree Murder	True Bill
CHARLES W. WILLIAMS	Rape	True Bill
H. H. HORN	7 Counts of Embezzlement pursuant to the terms of Section 812.19, Florida Statutes, relative to embezzlement by state, county, or municipal officers.	True Bill

SOUTH DADE

At the beginning of the Spring Term 1955 session, the Grand Jury was advised of several matters which required investigation, among which were the conditions existing in South Dade County. These conditions included reports of wide open bolita and cuba operations, corruption among police officers in the area, illegal sale and manufacture of moonshine liquor, indifference on the part of elected officials, and arbitrary decisions on building and zoning.

An investigation was initiated and disclosed that large scale bolita operations were being carried on in South Dade. Several gambling establishments were raided, and gambling equipment seized.

Because of widespread publicity concerning the South Dade area, we were severly handicapped in our efforts to clean up this situation. Due to the pressure of other business, and the time element involved, we are recommending to the incoming Grand Jury that they avail themselves of our records concerning this matter.

FIRE AND WINDSTORM INSURANCE PROGRAM OF THE BOARD OF PUBLIC INSTRUCTION

An extensive study was made of the fire and windstorm insurance program of the Board of Public Instruction. This study revealed that the annual cost, over recovery for losses, to the Board of Public Instruction over a five year period has been in excess of $200,000 per year. It also appears that this cost is increasing each year. The following tabulation shows the premiums paid and the losses recovered for the past five years:

		PREMIUMS	LOSSES
1950-1951	$	103,154.67	88,062.33 (hurricane)
1951-1952		244,090.19	13,937.00
1952-1953		217,284.37	89,630.67 (hurricane)
1953-1954		328,162.00	26,644.65
1954-1955		342,454.43	3,473.97
Total Premiums for 5 Years	$	1,295,145.66	220,748.62
Total Losses for 5 Years		220,748.62	
Excess Premiums over Losses for 5 Years	$	1,074,397.04	
Average Annual Cost over Losses	$	214,879.40	

It is the recommendation of the Grand Jury that the Board of Public Instruction discontinue carrying fire and windstorm insurance on school buildings and, instead, open an interest bearing insurance account of at least $200,000. Each year thereafter an amount equal to the amount which would otherwise be paid as insurance premiums should be added to the account until such time as it is felt that a sufficient fund is on hand for full protection. Such an arrangement would be in line with the $500,000 interest bearing account set up by the County of Dade to cover possible loss by damage from fire or wind to a number of county properties including the Dade County Courthouse, recent modern additions to Jackson Memorial Hospital, and others. It is to be noted that the State of Florida and other municipalities in Florida carry no wind insurance, and very little fire insurance, on any properties under their control. Most corporations carry their own fire and wind insurance, as does the United States Government. It is also to be noted that the recent school building construction is of a type termed "AAA" construction, this being as nearly wind and fire proof as is possible. Also, with the new construction which will be forthcoming under the recently approved bond issue of $34,000,000, the amount of

insurance required, and the premiums to be paid, will greatly increase, while the losses suffered will proportionately decrease.

The Grand Jury believes that a self insurance program by the Board of Public Instruction is advisable from a good business standpoint. It might be noted that the savings effected in a self insurance plan if adopted will be sufficient, if the need arises, to provide an increase in salary of $250.00 per year for 1,000 teachers without increasing the budget. Also, the savings would amount to approximately 1/3 of the interest on the $34,000,000 bond issue.

Our survey also revealed that all of the insurance carried by the Board of Public Instruction is handled by one outside agent and that all payments for premiums are paid directly to him. All records are kept by him in his office, and there are practically no records in the office of the Board of Public Instruction. There is apparently no way for the Board of Public Instruction to check or determine any details concerning any phase of their insurance business. It has been the opinion of the Grand Jury that this entire arrangement should be changed, and that a competent insurance buyer be employed to handle all insurance, including casualty insurance, etc., directly in the office of the Board of Public Instruction with all payment of premiums being made directly to the issuing company, or its agent. Along these lines, it is to be noted that on October 27, 1955, Mr. W. R. Thomas, Secretary and Superintendent, recommended to the Board of Public Instruction that the position of insurance manager be established. The duties of such insurance manager would be:

(a) Initiate, develop and maintain basic insurance records for the Board - and such records are to be kept in the Administration Building as public records the same as all other records of the Board.

(b) Explore the possibility of self insurance as recommended by the Dade County Grand Jury after complete records and data are sufficiently compiled to make feasible a complete analysis of the problem.

(c) Determine what coverage, if any, should be placed on each school facility and place needed insurance as fairly and equitably as possible.

The Board of Public Instruction, on November 2, 1955, adopted this recommendation by Mr. Thomas.

It was also discovered in our investigation that approximately 50% of the fire and wind insurance is allocated to the five board members who place their portion, or as much of it as they care to, with any agent of their choosing. This is, however, handled through the present insurance agent and payment for the premiums on this business is made directly to him and he handles all other phases of the insurance business. We recommend that this practice of patronage be immediately stopped.

This comprehensive survey of the insurance set up of the Board of Public Instruction extended over a period of five months, and its thoroughness and legal ramifications were supervised by our able special counsel and Assistant to the State Attorney, Mr. Hilton R. Carr, Jr., as were the surveys of Merchants' License Taxes and the Personal Property Tax Rolls.

PERSONAL PROPERTY ASSESSMENTS OF MERCHANTS' INVENTORIES

A survey has revealed that the amounts shown on the personal property tax rolls of the City of Miami of merchants' inventories are not in line with the actual inventory of most of the merchants. It is estimated by auditors that the increased revenue, if inventories were properly reported, would increase the revenue to the City upwards of $250,000 annually, which, incidentally, is practically enough to meet the proposed increases in salaries for the Police Department. Some method should be found to accomplish this result, and as an aid to this end, we recommend that Form 931, City of Miami Personal and Real Property Tax Return, be altered so as to require the listing of the full cash value of goods and to eliminate the words "estimated value" from the returns. It is the opinion of the Grand Jury that the

State Statute, upon which the City ordinance pertaining to personal property taxation is predicated, clearly requires the listing of the full cash value of goods. This statute, Florida Statutes 200.08 (1), provides in part:

> ".....the tax returns shall be verified by the signature and oath of the person making the same that such return is true to the best of the knowledge and belief of the person making the return, and that the valuations shown thereon are to the best of the knowledge and belief of such person the full cash value of the property described in the return."

It therefore appears to the Grand Jury that the full cash value of the goods rather than the estimated value should be listed on the tax returns.

The Grand Jury therefore recommends that the words "estimated value" be eliminated from the tax return forms and that the oath contained on the form be revised so as to include the statement that the valuations shown thereon are to the best of the knowledge and belief of the person signing the return the full cash value of the property described in the return.

MIAMI MERCHANTS' LICENSES

The Dade County Grand Jury recommended in their Interim Report of July 28, 1955, that the City License Collector use the amounts shown on the Tax Assessor's Personal Property Tax Rolls in computing the amount of licenses for merchants, thus complying with the City Charter provisions. This recommendation was accepted by the City Manager and a noticeable increase in revenue was realized at once.

TAXES AND LICENSES FOR BOTTLED GAS COMPANIES

We recommended that the City Tax Assessor and the City License Bureau look into this matter as we have been informed that these companies pay only a fraction of what they should.

ELIMINATION OF THE INDUSTRIAL DEVELOPMENT & RESEARCH DEPARTMEI OF THE CITY OF MIAMI

This recommendation was embodied in our Interim Report of July 28, 1955 as follows:

> "7. That since we have been unable to find any justification for the existence of the Industrial Development & Research Department of the City of Miami, we recommend that it be abolished, and the responsibility of this Department be placed under the City Engineer."

At a meeting of the City Commission on October 18, 1955, they decided to continue this Division and gave no other reason than that it was already set up in the current budget.

We recommend that this matter be explored further as we have been given the impression from all with whom we have discussed it, that this department is simply a political plum.

SERVING LIQUOR TO JUVENILES BY ROCKING M. B. LOUNGE

Indictments were secured and the case was handled by Assistant County Solicitor Richard Gerstein. Trial was held on October 31, and November 1, 1955, and resulted in conviction of Vanderbilt Bar, Inc. and two of its employees.

MIAMI CITY POLICE AND PUBLIC OFFICIALS

Shortly after this term of the Grand Jury was organized, we undertook to secure certain audit reports on City of Miami operations for the past several years. In examining these reports, we discovered that many recommendations made by previous auditors, at considerable expense to the City, had not been observed. The City records in many instances, did not correctly reflect the true departmental conditions and there seemed to be a tendency towards allowing the departments to manage themselves with little over-all supervision, resulting in many duplicated expenditures and increased costs to the City.

We found antiquated and inadequate bookkeeping systems almost void of any central control. We found that bank reconciliations were not reviewed by supervisory personnel; journal entries did not indicate who made such entry or upon whose authority; collections were cometimes allowed to accumulate for nearly three weeks and in amounts exceeding $50,000 before they were deposited; that amounts due the City of Miami, through various departments, were not transmitted to the Finance Department sometimes for several months; that the Legal Department, the Research Department, Publicity Department, and others, were directly receiving money due the City of Miami, and that regular and current reports were not being made on these collections.

In examining past audit reports, we found: that an audit report of January 1954 showed "a review of the detail ledger on fixed assets accounts discloses numerous differences between the detailed ledger and the journal ledger accounts"; that an audit report states "in many instances we noted that property identification numbers have not been assigned and descriptions of equipment or purchases were very vague. Confusion apparently exists regarding custodianship of equipment"; that one audit showed an inventory value of nearly $3,000,000 in excess of that shown in the books and records; that an audit report, confirmed by City of Miami internal audit report, complains of inadequate perpetual inventory records, stock cards not current, and the internal auditor stated that "the perpetual inventory records maintained by the Motor Pool contain many discrepancies. The Front Office tire records indicated 185 more tires on hand than the actual inventory count"; that an audit of September 1953 indicates failure of one or more utility companies to keep adequate records to allow Miami internal auditors to verify actual gross receipts; that although a city ordinance requires the utility companies to keep such records, the City of Miami officials did not demand compliance with this ordinance and allowed huge arbitrary deductions before computing franchise

tax; that in 1954 the City Manager was reminded that the transit company had changed its method of computing the 5% franchise tax and that the bus company "is not paying the 5% tax on renewals received from bus card advertising which in that year amounted to some $1500.00"; that in 1953 an audit of utility tax showed that arbitrary settlement of this tax on bottled gas companies alone left the City receipts short some $2100.00 per month. Some of the above irregularities have been corrected after being pointed out by this body. Others still exist and their continued existence must necessarily reflect detrimentally upon those responsible for their continuance.

RECOMMENDATIONS

We recommend that proper legislative action be taken to increase the City Commission to 7 members and that it require the vote of 5 commissioners to discharge a city manager. We feel that the city manager could perform his duties in better conscience if his position were made more free of political pressure, by the above means.

We recommend that proper statutes or ordinances be enacted to give the Chief of Police the power to promote and demote police officers above rank of sergeant and place them in uniform or plain clothes at will, conceding that if such changes are made without proof of proper charges, their respective pay scale would not be affected. The present system seems to emasculate the authority that should be vested in the Chief of Police and permits "dead heads" to attain a certain rank and thereafter remain "dead heads" ad infinitum..

We recommend that the merit system be entirely changed so that any police officer or police official may expect promotion or demotion "according to his works." The present system, the way it is operated, is a "farce."

We recommend that the city manager be instructed to comply with all ordinances or statutes with respect to nepotism.

We recommend that all municipal and county officials and employees of this area familiarize themselves with all statutes, ordinances, and regulations which directly or indirectly affect the efficient and orderly administration of their respective duties. We have noted a sad neglect in this respect.

We recommend that the salaries of the State Attorney and County Solicitor be increased to $25,000 per year to attract more competent and experienced prosecutors for the office.

SALE OF CIGARETTES TO MINORS

Section 859.06 of the Florida Statutes provides that the sale of cigarettes to minors constitutes a misdemeanor. Section 36 of the Ordinances of the City of Miami provides that it shall be unlawful to commit, within the limits of the City, any act which is recognized as a misdemeanor by state law. However, our investigation reveals that no arrests have been made for violations of this law over a long period of time. The Grand Jury feels that the apparent indifference to enforcement of this law is due to the promiscuous licensing of cigarette vending machines which makes the policing of the sale of cigarettes to minors extremely difficult.

It appears from the statute that the proprietor of an establishment in which a cigarette vending machine is located would be criminally liable if he knowingly permits a minor to purchase cigarettes from such machine.

The Grand Jury recommends that all municipal and county authorities take immediate action to enforce the provisions of Section 859.06 and, further, that such authorities require cigarette vending machines to carry in large print the warning that minors are not permitted to purchase cigarettes from such machine. Also, the Grand Jury recommends that no cigarette vending machines be permitted to be placed in any location where its use cannot be policed effectively.

JACKSON MEMORIAL HOSPITAL

This Grand Jury is of the opinion that the present administrative staff is rendering yeoman service to this area in the operation of the hospital, but is hindered in its efforts by over-crowded conditions.

The Out-Patient Building is now being utilized to its maximum extent and cases are being processed rapidly and efficiently by well trained personnel.

There remain some immediate and compelling needs, which needs are:

1. (a) Additional general medical and surgical beds.
   (b) An additional wing to the central building.
   (c) Three floors for colored patients over proposed new emergency department.
   (d) Third floor of chest unit should be completed at the earliest possible moment.
   (e) An additional floor should be added to the isolation building.

2. Adequate Morgue, Pathalogic Anatomy Laboratory space and Medical Examiner's Laboratory.

3. Mental Health Out-Patient Clinic and Child Guidance Facilities.

4. Modern Emergency Department and Observation Ward.

5. Suitable quarters for resident physicians, interns, and nurses.

6. Convalescent Patients Building for 200 patients, to include physical therapy facilities.

7. Storage space for:
   (a) Supplies
   (b) X-Ray films
   (c) Medical records

8. Education Building to contain facilities for school of nursing and other hospital teaching programs.

9. Install piped oxygen to certain critical areas in older parts of hospital.

10. Installation of Lamson pneumatic tube systems in existing buildings and proposed additions.

11. Site utilities required if additions are approved.

We urge that prompt action be taken to relieve the crowded condition of this hospital and to provide the above items in the order of their importance. We realize there is a great problem in devising ways to raise funds to erect buildings of various

kinds, but regardless of the method, considerable amounts will have to be made available soon, if this institution is to serve our community efficiently and adequately.

We add the observation that our community is constantly advertising over the country in such a way as to attract people here by the thousands, and this advertising is having its effect; yet, we continually hear excuses that the population is growing so fast that it is not possible to provide hospital space or other facilities to take care of it. When these people decide to take up residence here, they have a right to presume that those persons in authority have already taken the precautions to provide proper and sufficient facilities to safeguard health and hospital care.

REPORT OF THE FINDINGS OF THE GRAND JURY RELATIVE TO THE ACTIVITIES OF H. H. HORN, SUPERINTENDENT OF THE WATER DEPARTMENT AND SHOP OF THE CITY OF MIAMI BEACH:

On Thursday, October 20, 1955, the Dade County Grand Jury began the interrogation of witnesses with regard to an investigation into certain reported illegal activities being engaged in by H. H. Horn, Superintendent of the Water Department and the Shop of the City of Miami Beach. These witnesses were certain employees of the City of Miami Beach from the Water Department and the Shop. The object of this investigation was to determine whether or not reports that H. H. Horn, in his capacity of Superintendent of the aforementioned departments of Miami Beach, had been systematically looting both equipment and material from the city and converting it to his own use, as well as using a number of city employees to do private work for him on his farm and certain other locations while these employees were being paid by the City of Miami Beach.

The testimony of a number of employees of the City of Miami Beach showed thatnot only were these suspicions about the illegal activities of H. H. Horn well

founded, but that his activities relative to the conversion of City of Miami Beach property, and use of city employees, were even more widespread over a period of years than had been originally reported.

Testimony of employees in the Water Department and the Shop of the City of Miami Beach indicated that H. H. Horn had used several employees to work almost daily for a number of years on his farm in Hialeah. A check of the records of the City of Miami Beach showed that only on a few occasions over the years, had Horn ever reported by means of a work order the fact that these employees were being used by him. None of these employees were ever paid directly by Horn. Testimony also showed that unless such notification to the Accounting Department of the city was made by Mr. Horn, the Accounting Department had no means of checking to find out how much time was being spent by City of Miami Beach employees working for Mr. Horn privately. Bills to private individuals for the services of City of Miami Beach employees while on the city payroll are made up from work orders made out under the supervision of Horn. Specific instances and further details outlining this procedure which will show the operations of H. H. Horn with regard to the use of employees over a period of years will be discussed later in this report.

Testimony and evidence in the form of Grand Jury exhibits, which included aerial photographs and records of the City of Miami Beach, also indicated that Mr. Horn had transported considerable material and equipment, originally owned by the City of Miami Beach, to his farm in Hialeah. On only a very few occasions did the business records of the City of Miami Beach show that Mr. Horn had ever reimbursed the city for these items. The evidence indicated that thousands of dollars worth of equipment and material, formerly belonging to the City of Miami Beach, was to be found on the Horn farm, or elsewhere in his custody.

Testimony and evidence also pointed up several glaring deficiencies existing

in the accounting system of the City of Miami Beach. Testimony indicated that with regard to the man hours of work spent by employees in the Shop and Water Department, and with regard to most of the material and equipment, the word of H. H. Horn as to the disbursement of the material and equipment and as to the whereabouts of the workmen had to be relied on completely by the Accounting Department, without any further check.

Besides uncovering the fact that H. H. Horn had converted thousands of dollars worth of items formerly belonging to the City of Miami Beach to his own use, and having used the services of Miami Beach employees while they were on the payroll of the City of Miami Beach, the following facts also came to light. Even when a work order was made out which indicated that employees of the City of Miami Beach were working for Mr. Horn's private interests, Mr. Horn was not charged the 12% of the employee's pay which the City paid into a general retirement fund for the benefit of these employees. At the same time, even when these employees were working for H. H. Horn, the 6% which they would pay into the retirement fund was also deducted from their pay. The 6% deduction for the retirement fund would have been deducted normally from the pay of these employees because, although in certain instances it had been shown that Mr. Horn had been billed for their labor, the city always paid them by means of a city check. Thus, the city would also in normal fashion pay the 12% of the actual total sum received by city employees, even though Mr. Horn was billed for a certain amount of the pay they received. Furthermore, even when Mr. Horn was billed for the services of these employees, the City of Miami Beach Accounting Department was acting as a private bookkeeper for Mr. Horn.

The testimony of witnesses also indicated that on numerous occasions, a number of employees of the City of Miami Beach would purchase through Mr. Horn certain equipment, parts, and material from the city. Even when requisitions for

these pieces of equipment, parts, and materials were made out and Mr. Horn billed by the City of Miami Beach, as a result of these requisitions, no Florida Sales Tax was ever paid by these individual parties. The City of Miami Beach, of course, is exempt from the provisions of the Florida State Sales Tax Law and had not previously paid any sales tax on the items which were in stock and later purchased by private individuals through Mr. Horn. Thus, by the simple means of purchasing goods from the City of Miami Beach, through the assistance of H. H. Horn, employees of the City of Miami Beach and others could and did evade the payment of the Florida State Sales Tax.

The following is a brief explanation of the operation used by the City of Miami Beach Accounting Department with respect to the work orders and the customers' bills for work done by city employees for the benefit of private individuals and agencies other than the City of Miami Beach. This explanation of the system of work orders and billing used will aid in understanding how H. H. Horn, over a period of years, has been able to use the services of city employees, while paying the city only a minute fraction of what these services were actually worth.

The Water Department and the Shop of the City of Miami Beach employ a system whereby documents known as work orders are filled out by certain foremen and assistants of H. H. Horn under his supervision. These work orders are made out for each specific job and are supposed to indicate the time card number of the employee, or employees, working on that job, the number of hours spent on that particular job, and the person or agency for whom that job is being done.

Thus, according to this procedure, if Mr. Horn were to assign a certain Miami Beach Water Department or Shop employee to work on his farm on a particular day, then he should inform one of his assistants assigned to make out work orders that the worker in question was working on his farm, and should supply the

information concerning the number of hours worked on that day. Then, the Foreman or other person assigned to make out the work order would indicate the employee's number, the fact that that employee was "working for Mr. Horn" and the number of hours that this employee spent working for Mr. Horn. From this work order, the Accounting Department would then bill Mr. Horn for the services of the employee who worked on the farm. It is, of course, from these work orders that the information is gathered by the Accounting Department in order to bill any outside agency or individual for the services of any worker which the City of Miami Beach may have supplied.

The difficulty with this system is that the Accounting Department is completely dependent upon the word of H. H. Horn concerning the amount of time spent by City of Miami Beach employees in working for him. The daily time reports are filled out also from these work orders. Again, the word of Mr. Horn must be taken with respect to the time spent in working on his farm, or otherwise, without the possibility of any further check. Information on the daily time cards which are made out by Shop and Water Department foremen is also received from the information on these work orders. In this respect, a Foreman testified that from time to time workers would be missing from the shop with no information being supplied to him from a work order or otherwise as to their whereabouts. The Foreman, therefor, not knowing the workers' whereabouts would then simply indicate on their time cards that they were doing shop work. Thus, if any of these missing men happened to have been working on Horn's farm, this information would not have reached the shop foreman unless Mr. Horn chose to inform him to make out a work order to that effect.

Indeed, there are several instances where the daily time cards for certain days have indicated that a certain worker spent all day in the shop where there was positive testimony that this worker was assigned for at least part of that same day

to work privately for Mr. Horn, either on Horn's farm, or elsewhere for him. These discrepancies have not been shown to be the result of dishonesty on the part of anyone other than H. H. Horn, but merely due to a general laxity and to a faulty system which is entirely dependent upon the word of the Superintendent of the Water Department and the Shop.

THIS ONE ASPECT IS ABUNDANTLY CLEAR.

The bookkeeping and accounting systems of the City of Miami Beach are entirely too dependent on the word of one man with regard to both the disbursement of city property and the working assignments of the employees of the Water Department and the Shop with no adequate means of double checking to determine whether or not the city is being given an accurate and honest account of the workers' activities.

The following is but one specific example of what has been occurring for a number of years with respect to the use of Water Department and Shop employees of the City of Miami Beach by H. H. Horn.

Employee "A", a Miami Beach shop employee, testified under oath that he had been going out to work on the Horn farm almost every day, including Sundays, for a period of several years. A foreman under whose supervision Employee "A" was supposed to be working, also testified that Employee "A" would be missing from the shop for several hours each day on six days of the week. The shop foreman does not work on Sunday. The shop foreman estimated that the approximate number of hours that Employee "A" was missing from the Shop each week would amount to about 20 hours. The foreman also stated that on these occasions when Employee "A" was missing, it would be necessary for him to be working for Horn because otherwise "A" would have to report his whereabouts to the foreman. Employee "A" himself further testified that he had worked every Sunday on the Horn farm for the past several years. His testimony indicated

that his average working time on Sunday on the farm would be about seven or eight hours per Sunday. This employee's hourly rate of pay is $1.47. Thus, for the period beginning January 1, 1955, up to and including September 30, 1955, a conservative estimate of the amount of hours worked by "A" on the Horn farm would amount to 1100 hours. At the rate of $1.47 per hour, this would mean that the value of his services to H. H. Horn would be in the neighborhood of $1617.00 for this aforementioned period. The work orders which indicate the time spent by "A" "working for Mr. Horn" add up to only a small fraction of this amount. As a matter of fact, the entire amount paid by H. H. Horn for labor performed for him by employees of the City of Miami Beach, according to the Customers'Bills Ledger of the City, for the year 1955, is $205.89.

Employee "A" further testified that he worked just about every day on the Horn farm, including Sundays, during the year 1954, with the exception of the time allowed him for a vacation period. The total amount of money paid by H. H. Horn for all labor to the City of Miami Beach for 1954, according to the City's Customers' Bills Ledger, was $283.23. It can easily be seen that the value of Employee "A's" services alone to Horn for the entire year of 1954 would greatly exceed this amount.

The following is a sample period for which all of the daily time reports of the City of Miami Beach for Employee "A" were checked. This covers a five week period from August 26 through September 30, 1955. On four different occasions, there were daily time reports indicating that "A" was "working for Mr. Horn." The daily time report for August 27 indicated that "A" worked 4 1/2 hours for Mr. Horn. A daily time report for September 5 indicated another 4 1/2 hours for which "A" worked for Mr. Horn. A daily time report for September 11 also showed 4 1/2 hours time which "A" spent working for Mr. Horn. A September 28

daily time report indicated that "A" worked for Mr. Horn for two hours. The total time that "A" then worked for H. H. Horn, according to these daily time reports, was 15 1/2 hours. This information on these daily time reports is taken from work orders. According to "A's" testimony and the testimony of the shop foreman, the amount of time that "A" actually spent during this period working for Mr. Horn was closer to 140 hours. Thus, Mr. Horn would only be billed for 15 1/2 hours of working time for "A", rather than 140 hours of time actually spent by "A" on Horn's farm. In addition, Horn would still not be required to pay the 12% of "A's" salaryfor these 15 1/2 hours which was paid by the city toward a general retirement fund. There is also no indication that Horn has ever paid anything but the actual hourly rate of the workers for the period of time he stated they worked for him.

These facts concerning the activities of "A" and the payment by Horn of but a fraction of the amount of what "A's" services have been worth to him constitutes but one example of what has been going on over a period of several years. Employee "A" testified that on just about every occasion that he worked at Horn's farm, there were other City of Miami Beach employees there also. Thus, the actual amount of money owed to the City of Miami Beach for services performed by their employees for the private benefit of Mr. Horn is many times the value of the services of "A" alone.

Here is another specific instance of the misuse of the services of City of Miami Beach employees by H. H. Horn, and the probable unlawful appropriation of materials owned by the City of Miami Beach. Employee "B", a welder employed by the City of Miami Beach, testified that he spent time amounting to eight or nine working days building a horse trailer which eventually found its way up to the Horn farm. "B" normally works a nine hour day. Thus, a conservative estimate of the amount of time spent by "B" in building this horse trailer for Horn would be 72 hours.

According to the work order which included instructions to "rebuild trailer as wanted" the total amount of time spent on this project was 11 hours. The total labor charges for which Mr. Horn would have been billed were $22.11. It must also be assumed that the material which was used in the building of this horse trailer came directly from either the City of Miami Beach Shop or the pile of scrap metal belonging to the City of Miami Beach. As a matter of fact, the testimony of Employee "B" indicates that that is exactly what occurred. Employee "B" testified under oath that some of the material was used that he had taken out of a rebuilt trailer and other material was new and taken directly from the stock room in the City of Miami Beach Repair Shop. There is no indication in any of the records of the City of Miami Beach that Horn was ever billed for any of this material. According to "B", the new material consisted of a considerable amount of either 24 or 22 gauge galvanized sheet iron, some flat iron that went around the top of the trailer and some floor plate. Employee "B" stated that the sheet iron and the floor material was procured from the Shop. Employee "B" also stated that he had a part time helper, Employee "C", who assisted him in driving rivets. Employee "B" further stated that if the horse trailer had been built in a private shop, that the private shop would have charged $4.00 per hour for the mechanic's time in the building of the trailer.

Once again Horn was billed only for the cost of the labor which he reported was put into the building of this trailer. The City of Miami Beach invoice shows that no charge of 12% of the $22.11 charged Mr. Horn for labor was billed to him for the general retirement fund.

EVADING SALES TAX

It is a fairly general practice on the part of numerous employees of the City of Miami Beach to purchase certain items which are kept in stock by the city

in the stockroom of the city's shop at 430 Alton Road. Many of these items include equipment and parts for motor vehicles which are often used when the motor vehicles of these employees are repaired in the city shop. These items are procured from the stockroom of the city shop through H. H. Horn. In instances where it is planned to bill the private individual for the material which he requests, or which is necessary on the repair of his individual automobile, a requisition for the necessary parts is made out by a stockroom clerk. This requisition states that the parts to be used are purchased by Mr. Horn. This requisition then goes to the Accounting Department and the customer's bill is made out from the requisition. This customer's bill is then sent to Horn who thereupon collects the money for the parts or equipment which was purchased by the employee or individual by virtue of the requisition. Horn after collecting this money, then transmits it to the Cashier of the City of Miami Beach. NO SALES TAX HAS EVER BEEN CHARGEI FOR ANY OF THESE ITEMS PURCHASED FROM THE STOCKROOM OF THE SHOP OF THE CITY OF MIAMI BEACH BY ANY PRIVATE INDIVIDUAL.

Here are several specific instances where bills were sent to Mr. Horn for items purchased from the city by private individuals on which a sales tax was due but not charged. (It is to be noted that the following instances are merely examples.)

City of Miami Beach Invoice #6881, dated October 14, 1955, to
H. H. Horn - One A-16 So. Way Battery $12.50 (No sales tax)

City of Miami Beach Invoice #6722, dated May 3, 1955, to
H. H. Horn - Series of Drills $7.52 (No sales tax)

City of Miami Beach Invoice #6797, dated September 7, 1955, to
H. H. Horn - 2 Bags Cement $2.50 (No sales tax)

City of Miami Beach Invoice #3719, dated April 26, 1955, to
H. H. Horn, the following items:
2 Galvanized Nipples, 1 C. T. Screw Valve, 1 Galv. Coupling,
1 Forty Five Degree Galv. Ell - Total $24.92 (No sales tax)

City of Miami Beach Invoice #6717, dated April 18, 1955, to
H. H. Horn - 1 3x5 Bulldog American Flag $2.20 (No sales tax)

City of Miami Beach Invoice #6715, dated April 14, 1955, to H. H. Horn - 4 670-650x15 Four Ply Pure Tires $45.92
4 650x15 Tubes 5.80
Total $51.72
(No sales tax)

City of Miami Beach Invoice #6640, dated March 22, 1955, to H. H. Horn - 6 A. C. Spark Plugs $2.22 (No sales tax)

City of Miami Beach Invoice #6598, dated February 14, 1954, to H. H. Horn - 40 Watt Flourescent Tubes $31.74 (No sales tax)

City of Miami Beach Invoice #6563, dated December 7, 1954, to H. H. Horn - 6 Ounce Hot Drink Cups $3.68 (No sales tax)

Once again, it is to be noted that the foregoing are merely a few isolated examples of what is apparently a widespread practice of purchasing items from the stockroom of the City of Miami Beach and thereby evading the payment of the state sales tax. Indeed, officials of the Accounting Department of the City of Miami Beach affirmatively testified under oath that no single individual had ever been charged any sales tax whatsoever on the purchase of any item from the stockroom of the City of Miami Beach. The City of Miami Beach, of course, when it originally purchased these items for its stockroom was exempted from the payment of the state sales tax because of its status as a municipal corporation.

ITEMS SECURED WITHOUT BENEFIT OF REQUISITIONS

Testimony of several witnesses shows that H. H. Horn on numerous occasions over a period of several years has procured countless items from the stockroom of the City of Miami Beach Shop for his own personal use where no requisition for these items has ever found its way into the Accounting Department so that Mr. Horn might be billed for these items. There also appears to be no indication that any fiscal year end inventory has ever disclosed any discrepancy between the amount of stock on hand in the City of Miami Beach Shop stockroom with relation to the amount of stock which was removed from the stockroom by virtue of requisitions.

The testimony of numerous employees of the City of Miami Beach has also indicated that it has been H. H. Horn's practice to appropriate for himself a number of items belonging to the City of Miami Beach which would not be easily traceable as missing. For instance, thousands of feet of cast iron pipe and other types of pipe, formerly belonging to the City of Miami Beach, and not easily accounted for, are now located on the Horn farm. Numerous lengths of this pipe now enclose an exercise area for Mr. Horn's horses which he has on his farm. Much of this pipe was probably either used pipe or slightly defective. This pipe, however, in spite of the fact that it may have been either used or defective should have been listed in an inventory as the property of the City of Miami Beach and sold as scrap with the proceeds inuring to the City. Instead, the pipe landed on Horn's farm in some mysterious fashion. According to reports, it was transported out there in City of Miami Beach vehicles, driven by City of Miami Beach employees.

The City of Miami Beach is also the possessor of a number of different types of scrap iron and scrap metal in general which are kept in two different locations in the city. Inasmuch as there is no accounting kept on the actual amount of scrap metal which the city possesses at any given time, it is a relatively simple matter for H. H. Horn to have city employees load either a city owned truck, or one of his own trucks, with this scrap metal and have it transported to his farm. Under the present accounting system now employed by the City of Miami Beach, there appears to be no possible way in which the amount of scrap metal owned by the City of Miami Beach can be checked.

Another possible source of income for H. H. Horn is the actual monetary proceeds from the sale of this scrap metal to junk yards. Here is the procedure which is normally used when scrap mefal is sold by the City of Miami Beach to some junk yard. From time to time when there is a sufficient accumulation of

scrap, a load is taken to a junk yard. Under the ordinary procedure, the junk yard upon the arrival of the load of scrap metal gives the driver a slip indicating the amount of metal received, the type, and the price paid to the city for it by the junk yard. The original copy of this slip, signed by the City of Miami Beach driver, who brought the junk, is kept by the junk yard, and a duplicate copy is given to the driver. The junk yard then pays the driver in cash the actual value of the junk received. The driver on his return to the shop then turns the money over to one or more of Horn's assistants. They, in turn, transmit the money to Horn. None of these men, however, have ever received a receipt from Horn indicating that they have turned over the proceeds from the sale of this scrap metal to him. Then, of course, Mr. Horn is supposed to turn the money received from the junk yard over to the City of Miami Beach Cashier. On numerous occasions, however, cash transactions have been noted to have occurred between certain junk yards and certain drivers of the City of Miami Beach who hauled scrap metal to these junk yards where the City of Miami Beach has no indication whatever that the money from these transactions was ever transmitted to the City's Cashier.

The following is an itemized account of certain transactions where scrap metal was sold to a scrap dealer, and cash paid to City of Miami Beach drivers where there is no record of these amounts ever having reached the treasury of the City of Miami Beach. On each of these occasions, the employees who have handled the money involved in these transactions have testified, under oath, that the money eventually arrived in the hands of H. H. Horn.

Date of Purchase of Scrap Iron by a Scrap Dealer from the City of Miami Beach	Amount Paid in Cash to a City of Miami Beach Driver
2/24/55	$ 63.25
2/25/55	$ 21.50
2/28/55	$ .50
5/19/55	$ 32.75
5/20/55	$ 48.85
6/1/55	$ 52.35
6/1/55	$ 6.00

Once again, the foregoing itemized list is merely an example of what has been going on over a period of years. Undoubtedly, the amount of money from the sale of scrap iron over a period of years, which has been received from the junk yards, and not found its way into the City of Miami Beach coffers, is considerable. Certainly, some sort of accounting should be made to determine this amount.

CONCLUSIONS AND RECOMMENDATIONS

The testimony of employees of the City of Miami Beach indicates that the procedure whereby all transactions between private individuals and the City of Miami Beach where work is done for these individuals and material purchased by them from the city are handled through Mr. Horn is indigenous only to the departments directly under the supervision of Mr. Horn. In other departments where private individuals purchase items or have work done, these individuals are billed directly. Only in the Water Department and the Shop is there the procedure where a man in the category of H. H. Horn is billed for work done for any private individual. There was testimony to the effect that the policy of handling everything in the Water Department and Shop through H. H. Horn was set by Mr. Horn himself.

According to the testimony of City of Miami Beach employees, there is no definite formula for determining the amount of shrinkage which should be allowed on gasoline kept by the city for use in the city's vehicles. Shrinkage is allowed but no definite amount has ever been set. On certain occasions, there has been an abnormal shrinkage, but there has been no check whatever to see what occasioned this unusually large shrinkage.

As a matter of fact, at least one individual employee of the City of Miami Beach openly admitted in testimony under oath that he had been freely taking gasoline

from the city's supply for his own private use. Inasmuch as a check is kept on the receipt and disbursement of the gasoline, it would appear that any unauthorize consumption of gasoline by an employee of the City of Miami Beach could be easily charged off to shrinkage.

There should be an audit made of the city's receipts and disbursements of gasoline over the period covering the last several years to determine when there was an abnormal amount of so-called "shrinkage." There should be some definite formula established for determining how much shrinkage should be allowed. Unles this is done, it appears to be relatively easy for persons like Horn who have acces to the gasoline pumps to convert a goodly amount of the city's gasoline to their own use.

The Accounting Department of the City of Miami Beach, under its present system, is forced to depend entirely too much upon the word of the Superintendent of the Water Department and Shop with regard to the disposition of its employees' time and the amount of stock taken from the city's stock room. Under the present system, there appears to be no adequate method of double checking to see whether or not H. H. Horn is making an honest report about the number of hours that City of Miami Beach employees have worked for him personally.

The practice of having City of Miami Beach employees work for private individuals during the time they are on the payroll of the City of Miami Beach should cease immediately. Unless this practice is discontinued, the city will continue to act as a bookkeeper for any private individual using city employees, will continue to pay 12% of these employees' salaries into a retirement fund, even though they are working for a private individual, and will never even be able to determine exactly whether or not an honest accounting has been given to the city with regard to the number of hours worked by an employee for a private concern or individual.

The practice of allowing employees of the City of Miami Beach to purchase items from the city's stockroom should cease immediately. Not only is there the ever present danger that numerous items may be removed from the stockroom without benefit of a requisition because of this practice, but even when a requisition is issued for the materials and a bill is eventually presented to the person purchasin these materials, that person can evade the payment of the Florida Sales Tax because the City of Miami Beach has never charged any such sales tax, and has not paid any sales tax.

An audit should be made to determine the amount of sales tax actually owed the State of Florida over the period of years since the sales tax has been in effect, by virtue of purchases of supplies from the city's stockroom by private individuals. It is to be noted that in addition to the invoices to H. H. Horn for supplies purchased from the stockroom where no sales tax was paid, there are also numerous invoices to private corporations and business concerns throughout the Miami area for purcha of large amounts of supplies from the Shop and Water Department of the City of Miar Beach. For instance, one City of Miami Beach invoice is billed to a plumbing supply company in Miami. The amount of this invoice is $578.18. If this concern were the ultimate consumer of this material, then the invoice itself is indicative of the fact that no sales tax was paid on the items listed in that invoice. A check should be mad into the invoices which indicate that materials have been sold by the City of Miami Beach to private concerns to determine whether or not the Florida State Sales Tax was or should have been eventually paid.

It is recommended that a special audit be made of all of the records pertainin to the Water Department and Shop of the City of Miami Beach by an internal auditing agency of the State of Florida. This audit should be made to determine the actual monetary amount for which H. H. Horn should be held responsible to the City of Miami Beach for items that he has converted to his own use over a period of years.

and for the actual value to the city of workers' services who have been used by Mr. Horn on his farm and elsewhere while they were on the City of Miami Beach payroll.

Restitution to the City of Miami Beach in the amount of the full value received by Horn for the services of City of Miami Beach employees over the years, and for the actual full value of all of the goods which Horn has taken from the City of Miami Beach should be made by him.

It is recommended that in any event, H. H. Horn be discharged immediately from the employ of the City of Miami Beach.

It is recommended that when an internal audit is made of the Accounting Department of the City of Miami Beach with reference to practices which have been occurring in the City's Water Department and Shop that the auditors determine the person or persons responsible for the evasion by private individuals of the payment of the Florida Sales Tax. A thorough investigation and complete audit of all of the records pertaining to the Shop and Water Department by a state auditing agency is vitally necessary. The purpose of this audit is three-fold:

(1) To determine the actual financial responsibility which H. H. Horn owes to the City of Miami Beach for his misuse of city employees and illegal conversion of city property;

(2) To determine the ultimate responsibility of other officials of the City of Miami Beach with regard to the non-payment of Florida Sales Tax;

(3) And to establish an adequate method of accounting for the City of Miami Beach so that the aforementioned illegal practices engaged in by H. H. Horn, and possibly others, will have little chance of ever occurring again.

RECOMMENDATION FOR HOLD-OVER OF GRAND JURORS

The 1954 Spring and Fall Term Grand Juries recommended:

> "The Grand Jury made a study of possible methods for improving the efficiency of Grand Jury operations. As a result, it recommends to our legislators an amendment which would make possible some form of "holdover" system under which a nucleus of experienced Grand Jurors from each term would be carried over into the subsequent term. This would assure the presence of experienced Jurors on the panel at all times; would eliminate a great deal of lost motion in getting each new panel organized and under way; and would allow continuity in undertakings which would require longer than a single six month term for successful completion.
>
> "Of suggestions received, the Grand Jury favors the one which would impanel half of the Jury every three months (alternating 11 and 12 members) instead of a completely new panel every six months."

This Grand Jury concurs in such recommendation and urges that the legislature enact such laws as may be necessary to put such recommendation into force and effect.

SUIT AGAINST THE GRAND JURY AND ITS SPECIAL COUNSEL

During the month of September, 1955, the National Union Life Insurance Company filed a complaint in the Circuit Court of Dade County against the 1955 Spring Term Grand Jury and its special counsel, Hilton R. Carr, Jr. This complaint sought a declaratory decree as to the powers of the Grand Jury; an injunction prohibiting the Grand Jury from inquiring into the affairs of the National Union Life Insurance Company; an injunction prohibiting the special counsel from being present before the Grand Jury during the taking of testimony of witnesses; the suppression of certain witness subpoenaes; the declaration of unconstitutionality of certain statutes; and the disqualification of one of the members of the Grand Jury. A Motion to Dismiss was filed on behalf of the Grand Jury and its special counsel. On September 27, 1955, a hearing upon the Motion to Dismiss of the Defendants and upon the application of the plaintiff for a temporary injunction was held by the Honorable Stanley Milledge, Circuit Judge. At the conclusion of

the hearing, Judge Milledge granted the Motion to Dismiss and dismissed the complaint with prejudice. A Notice of Appeal was filed by the plaintiff, but this appeal was subsequently voluntarily dismissed by the plaintiff.

It was the contention of the plaintiff that the Grand Jury did not have the power or authority to inquire into the affairs of a private company and that the Court should enjoin the Grand Jury from conducting such an investigation. It was the contention of the defendants that the powers of the Grand Jury as guardian of the public welfare, extend beyond conducting investigations into criminal matters and that, in any event, the Court could not exercise control over the Grand Jury by prohibiting it from conducting any investigation which it deemed advisable. The defendants contended that the scope of the Grand Jury's inquiries are not to be limited narrowly by questions of propriety, or forecasts of the probable result of the investigation, or by doubts as to whether any particular individual will be found subject to indictment. The defendants further contended that if the plaintiff's position was sustained, the result would be that the Courts could control the activities of the Grand Jury, which result has never been contemplated in the long history of Grand Jury proceedings.

By dismissing the Bill of Complaint, Judge Milledge ruled, in effect, that Grand Juries are free to conduct whatever investigations they see fit and that the Courts will not, during the course of such investigation, assert any restrictions upon their activities. This ruling very clearly illustrates the power and authority which the Grand Jury can exercise in performing its functions as guardian of the public welfare. This Grand Jury feels that every person who serves as a grand juror should realize the great potential power which he and his fellow members have with which to serve the public interest.

MIAMI CITY COMMISSION

Aside from the Mayor, the present Miami City Commission has given this Grand Jury scant consideration or cooperation in regard to several recommendations

we have made to them. We consider these recommendations important for the welfare of the community, both morally and financially. (See Miami Daily News 10/23/55.)

On October 21, we called the City Manager's Office and asked for a copy of the Minutes of the last City Commission meeting in October, at which time the recommendations made by the Grand Jury were discussed. We were advised that it would take at least three weeks to supply this copy. As yet, we have not received it.

NEED FOR STATUTORY REVISIONS

As a result of the investigation of National Union Life Insurance Company, it has become apparent to the Grand Jury that certain revisions in the insurance laws of this State are very advisable. Basically, these revisions relate to the conditions under which the commissioner may request that a receiver be appointed to take over the affairs of a company; minimum capital and surplus requirements for a company engaged in the insurance business in this State; limitations upon new business and expenses of insurance companies; criminal penalties for falst statements to the insurance commissioner and criminal penalties for fraudulent stock manipulations; and the powers and duties of special legal counsel to the Grand Jury.

I

STATUTORY REVISIONS RECOMMENDED AS TO POWER OF COMMISSIONER TO OBTAIN APPOINTMENT OF RECEIVER

In the opinion of the Grand Jury, the present status which gives the commissioner the power to ask for the appointment of a receiver, is ambiguous and in need of clarification. The present statute provides:

"626.12 Proceedings against insolvent or defaulting insurers, sureties, etc.---Whenever any domestic or foreign insurer, or indemnity or surety company, authorized to do business in this state under its laws:

. . . . .

(4) Has, in the case of a mutual company, failed to bring its assets up to equal its liabilities within ninety days from the date of notification thereof by the insurance commissioner; or is found to be in such condition that further transaction of business by it will be hazardous to its policy holders, creditors or stockholders; or it has willfully violated its charter or some laws of this state;"

It is apparent that the first, and obvious, interpretation of this statute would be that the power of the commissioner to ask for the appointment of a receiver for a company where the "further transaction of business by it will be hazardous" is limited to cases involving mutual companies. The Grand Jury can conceive of no reason why this provision should be limited to mutual companies and believes that such was not the intention of the statute. Upon investigating the provisions of insurance codes of other states, it was found that most of the other states have an almost identical provision granting to the commissioner or superintendent of such state the power to ask for a receiver where further transactions of business by the company "will be hazardous" and that such provision is applicable both to mutual and stock companies Further, the prior Florida Statute, from which the present Section 626.12 was derived, did not limited the "hazardous" provision to mutual companies. It is therefore apparent that the present statute is an unfortunate result of wording and punctuation which has resulted in an apparent and unwarranted limitation on the power of the commissioner with respect to stock companies. A revision of 626.12 so as to specifically grant to the commission the right to obtain a receiver for a stock company where further transactions of business by it will be hazardous to its policy holders, creditors, stockholders or the public should be adopted by the legislature.

The Grand Jury also recommends that, in addition to the revision of 626.12 as outlined above, certain other provisions be incorporated into 626.12 for the purpose of specifically giving the commissioner the right to ask for a receiver of insurance companies. These provisions would give the commissioner the power to ask for the appointment of a receiver when the company has been placed in receivership by a Federal Court or by a court of some other state. This provision would be for the purpose of preserving the assets of the company in Florida for the benefit of the policyholders and stockholders in Florida.

One further provision which the Grand Jury believes should be incorporated into 626.12 is a provision which would give the commissioner the power to ask for a receiver whenever the existing circumstances would give a stockholder or creditor of the company the right to have the company placed in receivership under the general law of this state pertaining to receiverships. The Grand Jury feels that such a provision is advisable inasmuch as the public has a decided interest in the affairs of every insurance company doing business in this State and that the commissioner, as the representative of the public, should have as much power as a stockholder or creditor when the affairs of a company reach such a state that a receivership is warranted.

It is therefore the recommendation of the Grand Jury that Florida Statue 626.12 be amended so as to provide:

> Whenever any domestic or foreign insurer, or indemnity or surety company, authorized to do business in this state under its laws:
>
> (1) has become or is insolvent; or,
> (2) has unlawfully refused to submit its books, papers, accounts, and affairs to the reasonable inspection of the insurance commissioner, his deputy or examiner; or
> (3) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policy holders, or to its creditors, or to its stockholders, or to the public; or

(4) has, in the case of a stock company, neglected or refused to observe a lawful order of the insurance commissioner to make good, within the time prescribed by law, any deficiency of its capital; or,

(5) has, in the case of a mutual company, failed to being its assets up to equal its liabilities within 90 days from the date of notification thereof by the insurance commissioner; or,

(6) whenever any officer thereof unlawfully refuses to be examined under oath touching its affairs; or

(7) if such company's condition after examination is found to be such that it could not meet the requirements for organization; or,

(8) if such company has ceased to transact the business of insurance for a period of one (1) year; or attempts to commence or prosecute any action or proceedings to liquidate its business affairs or to dissolve its corporate charter, or to procure the appointment of a receiver under any law; or,

(9) if an application is made for the appointment of a receiver of the company or its property, or a receiver is appointed by a Federal Court or such an appointment is imminent; or,

(10) if, in the case of a foreign company, such foreign company has been placed in the hands of a receiver or has its property sequestrated in its domiciliary state; or,

(11) if any officer or attorney-in-fact of such company has embezzled, sequestered, or wrongfully diverted any of the assets of such company; or

(12) if such conditions exist in the affairs of such company that a stockholder, or a member, or a creditor of such company would be entitled under the general law of this state to have such company placed in receivership;

The insurance commissioner may, the attorney general or other counsel representing him, apply to a judge of the circuit court in the judicial circuit in which the principal office of such company is located or to a judge of the circuit court of Leon County, Florida, for an order directing such company to show cause why the insurance commissioner, or a receiver to be named by the court, should not take possession of its property and conduct its business within the jurisdiction of the court, and for such other relief as the nature of the case and the interest of its policyholders, creditors, stockholders or the public may require.

It is also recommended that the grounds set forth above for the appointment of a receiver should also be grounds for revocation of the certificate of authority of the company under Section 626.08.

The Grand Jury realizes that such statutes confer broad powers upon the insurance commissioner of this state. However, these powers are no more extensive than those granted by other states, and, too, such powers are subject to the control of the courts. With such specific power being granted to him, the

commissioner will at all times be in a position to exercise firm control over companies whose affairs become such as to endanger the welfare of the citizens of Florida.

II

STATUTORY REVISIONS RECOMMENDED AS TO REQUIREMENTS OF MINIMUM CAPITAL OF INSURANCE COMPANIES DOING BUSINESS IN FLORIDA

Under the present laws of this state, an insurance or surety company may be organized to do business with only $100,000 capital stock. No surplus is required by statute but the insurance commissioner, by administrative rule, requires a company to have, in addition to the paid in capital stock, $100,000 in surplus before a certificate of authority is issued to the company to engage in business in this state. In the opinion of the Grand Jury, these minimum requirements are too low. It is recommended that the statutes be amended to provide that an insurance or surety company may not be organized to engage in business in this state unless it have not less than $250,000 capital stock and $250,000 in surplus, and that the capital stock be maintained unimpaired. It is further recommended that existing insurance or surety companies organized under the laws of this state and foreign companies presently doing business under a certificate of authority which do not possess $250,000 in capital stock and $250,000 in surplus be allowed a period of two years to meet such requirements.

It is further recommended by the Grand Jury that no insurance or surety company organized under the laws of another state shall be entitled to a certificate of authority to engage in business in this state unless it meets the same capital stock and surplus requirements of a domestic company and unless it has operated successfully in the state in which it was organized for a period of three years before applying for a certificate of authority to do business in this state.

III

STATUTORY REVISIONS RECOMMENDED AS TO NEW BUSINESS AND EXPENSES OF LIFE INSURANCE COMPANIES

As previously discussed, it is entirely possible for a life insurance company to "write itself out of business" by writing too many policies within a short period of time. For that reason, the Grand Jury recommends that the commissioner be given the power to place certain limitations upon the activities of companies. These limitations would relate to the amount of new business which a company could write during any one year; a limitation upon the "first year's" expenses, which limitation would also control the amount of commission which could be paid upon the first year's premium; and a limitation upon the amount of renewal commission which could be paid. The Grand Jury feels that such limitations would be beneficial to the entire insurance industry. However, the Grand Jury does not at this time attempt to specifically spell out the full extent and operation of such limitations but suggests that the final draft of such proposed legislation be the result of intensive study and recommendations from the commissioner, the insurance industry, and the Florida State Association of Life Underwriters, Inc.

IV

STATUTORY RECOMMENDATIONS AS TO CRIMINAL PENALTIES AS TO FALSE STATEMENTS TO INSURANCE COMMISSIONER AND AS TO CRIMINAL PENALTIES FOR FRAUDULENT STOCK MANIPULATIONS

The Grand Jury considers it advisable that a specific statute be adopted which would severely penalize the making of any false statement to the insurance commission The Grand Jury also recommends that a criminal statute, patterned after the federal statute, be adopted to punish fraudulent stock transactions with reference to the stock of any corporation, insurance of otherwise. The Grand Jury, therefore,

recommends the adoption of statutes providing essentially as follows:

(1) Any person who shall willfully make any false report to the insurance commissioner or shall testify or affirm falsely to any material fact in any matter wherein an oath or affirmation is required or authorized or shall make any false entry or memorandum upon any book, paper, report of statement of any insurance company with intent in either case to deceive the insurance commissioner or to deceive the stockholders or policy holders or injure or defraud any such company shall be imprisoned, etc.

(2) (a) It shall be unlawful for any person in the sale of any securities directly or indirectly--

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) For the purposes of this statute, the word "person" shall mean individuals, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

V

STATUTORY REVISIONS RECOMMENDED AS TO THE POWERS AND DUTIES OF SPECIAL COUNSEL TO THE GRAND JURY

The Grand Jury is of the opinion that certain revisions should be made in the statutes so as to specifically set forth the extent to which the special counsel for the Grand Jury may participate in proceedings before the Grand Jury. As is often the case, the office of the State Attorney is unable, due to its many other obligations, to engage in an extended and extensive investigation being carried on by the Grand Jury. For that reason, the Grand Jury should be able to obtain the services of a special counsel who would have the same powers as the State Attorney,

with the limitation, however, that such special counsel would not be allowed to sign indictments. And, in order that sufficient funds would be available for hiring such counsel and for carrying out investigations the Grand Jury recommends that the sum of $30,000 per year now provided by law as the special Grand Jury fund be increased to $60,000.

The Grand Jury therefore recommends that the following statutes be amended so as to read:

> 905.17 No person shall be present at the sessions of the grand jury except the witness under examination, the prosecuting attorney, the special legal counsel, if any, the court reporter, or stenographer, and the interpreter, if any. The stenographic records, notes or any transcript thereof made by the court reporter or stenographer shall be filed with the clerk of the court and kept by him in a sealed contained not subject to inspection by the public. Such notes, records and transcriptions shall be opened and released by the clerk upon the request of any grand jury for the use of such grand jury and shall be opened and released by the clerk upon the order of the trial judge for use pursuant to the provisions of §§ 905.27, Florida Statutes, but not otherwise. No person shall be present while the grand jurors are deliberating or voting. Any person violating either of the above prohibitions may be held in contempt of court."
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> 905.19 The prosecuting attorney or assistant prosecuting attorney or the special legal counsel, if any, shall attend the grand jurors for the purpose of examining witnesses in their presence, or of giving grand jurors legal advice regarding any matter cognizable by them. The prosecuting attorney or assistant prosecuting attorney or the special legal counsel, if any, shall also draft indictments, provided, however, that the special legal counsel shall not be authorized to sign any indictments.
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> 27.18 The state attorney, by and with the consent of court, may procure the assistance of any member of the bar when the amount of the state business renders it necessary, either in the grand jury room to interrogate witnesses, or to advise the grand jury upon legal points and framing indictments, or in court to prosecute criminals; but, such assistant shall not be authorized to sign any indictments or administer any oaths, or to perform any other duty except the giving of legal advice, drawing up of indictments, and the prosecuting of criminals in open court. His compensation shall be paid by the state attorney and not by the state.

NATIONAL UNION LIFE INSURANCE COMPANY

The Grand Jury, being mindful of the great effect of insurance companies upon the public welfare and of the great effect which the instability of any such companies would have upon the public welfare, undertook an investigation of the affairs of the National Union Life Insurance Company, an Alabama corporation, authorized to do business in Florida. This investigation was instituted primarily because of obvious discrepancies in the financial statement of the Company distributed to its stockholders for the period ending December 31, 1954, and entitled, "Comparati Financial Statement," as compared to the annual statement furnished by the company to the insurance departments of Florida and Alabama covering the same period of time, and as both the Comparative Financial Statement and annual statement were compared to the joint report of examination conducted by the insurance departments of Florida and Alabama for the period ending December 31, 1954. Feeling that such discrepancies indicated the possibility of a state of affairs in the company which might detrimentally affect policyholders, the insurance industry, and all of the citizens of this State, and being mindful of the opinion that a business which is subject to regulation under the police power of the State is also subject to investigation by the Grand Jury, this Grand Jury made a thorough inquiry into the affairs of this insurance company.

HISTORY OF COMPANY

The National Union Life Insurance Company was organized in Alabama and commenced business as an insurance company in Alabama in August, 1949. The company commenced business with a paid in capital of $100,000 and a paid in surplus of $100,000. A resolution adopted by the Board of Directors in 1953 provided that the main office of the company would be established in Miami, but that the principal office of the company would remain in Alabama and that the meetings of stockholders

and directors would continue to be held in Alabama. In April, 1954, the capital was increased from 100,000 shares of common stock to 150,000 shares of common stock having a par value of $1.00 per share.

In October, 1954, 10,000 shares were sold and issued by the company at $10.00 per share, $1.00 being for capital and $9.00 for paid in surplus. Of the above increase of 50,000 shares, 10,000 shares were exchanged for the main office building of the company in Miami pursuant to authorization by the board of directors.

The company sells Ordinary, Industrial, Credit, Accident and Health, Hospitalization and Group Insurance. The company's agency operation is extremely complex with a General Agency, several General Agents and many overwriting agreements.

DISCREPANCIES IN FINANCIAL STATEMENTS

As noted previously, this investigation was commenced by the Grand Jury primarily because of certain discrepancies in the various financial statements and reports of examination of the affairs of the company. To be more specific, the company issued a statement entitled "Comparative Financial Statement" dated December 31, 1954, to its stockholders. This financial statement listed total assets of $1,078,593.07 with liabilities of $613,272.09 and a surplus of $465,320.98. However, in the annual statement submitted to the Departments of Insurance of the States of Alabama and Florida for the same year of 1954, the Company listed total assets of $924,235.59 with total liabilities of $565,257.02 and surplus of $358,978.57. Neither of these statements agree with the financial statement for the same year 1954 as shown in the Report of Examination of the company prepared by the examiners of the Insurance Departments of the States of Alabama and Florida. This report showed Assets of $904,021.97, liabilities of $724,621.13, and surplus of only $179,400.84

of which surplus, in all three surplus figures, $120,000.00 represents paid-up capital. Thereafter, the company filed an amended annual statement with the insurance departments for the year ending December 31, 1954, which annual statement was made to correspond with the results of the insurance departments' examination.

INFLUENCE OF GENERAL AGENCY ON OPERATION OF COMPANY

The Grand Jury has found that many of the shortcomings of the National Union Life Insurance Company which are hereinafter set forth are a direct result of the influence exerted on the operations and policies of the company by the General Agency, which General Agency has a twenty year contract with the company. With the General Agency directly and indirectly influencing the affairs of the company, it could naturally be assumed that the operations and policies of the company would be directed toward providing special benefits for the General Agency. The Grand Jury found this to be the situation with the National Union Life Insurance Company.

As a result of the influence exerted by the General Agency, the following undesirable conditions existed in the company. First, the company had far too large an agency force for its size and capital structure. The number of agents in the summer of 1955 touched the 400 figure mark. Secondly, the General Agency contract with the company provided for the payment of commissions of up to 90% on the first year's premiums to the General Agency whereas a normal general agency rate of commission is 70% to 75% of the first year's premiums. Thirdly, with such a large agency force and with such incentives being provided by way of high commissions and liberal advances, the General Agency sold far too much new business in relation to the capital structure of the company.

EFFECT OF OVERSELLING BY GENERAL AGENCY

An extensive sales program which is highly beneficial to a General Agency will soon cause an abnormal strain on the capital structure of a comparatively new company. Even a new company prudently managed has a drain on its surplus funds from the sale of new business. The payment of such high commissions to the General Agency of the National Union Life Insurance Company, coupled with the large amount of new business sold, intensified this normal strain on the capital structure to the point where the company, through all of 1955 so far, has disbursed more cash than it has collected. The major items of expenditure are commissions to agents, substantial advances to agents against future commissions, and other production costs. As a further example, advances to agents mounted to such large proportions, over $250,000.00, that it was necessary to go outside the company for financial assistance to replace these agents' balances in the company's financial statements with admissible assets, such as cash and bonds. This happened on several occasions in 1954 and 1955. Despite the previous strain caused by the large advances to agents, the company, in the month of October, 1955, alone, advanced in excess of $100,000 to agents.

ACQUISITION OF ASSETS THROUGH EXTRAORDINARY TRANSACTIONS

Other detrimental effects have existed due to the cash expenditures exceeding cash income, which in turn was due to the influence of the General Agency. It was impossible for the company to have any consistent and sound investment policy for the simple reason that its cash expenditures kept exceeding its income. Therefore, the bulk of the assets possessed by the company were acquired in some extraordinary transactions.

Several of these extraordinary transactions came to the attention of the Grand Jury. The company has acquired, and has listed as an asset, the Casa Mona Hotel

in Fort Lauderdale. This hotel was acquired by the issuance to an individual (who later, together with his son, were employed as agents by the General Agency) of a single premium 15 year endowment policy with a face amount of $200,000. As noted in the report of the examination by the insurance departments "this policy was reinsured up to $195,000. These single premium endowment transactions should be considered carefully since they may not be profitable in all cases. In view of the fact that reinsurance premiums must be paid and that the required interest on reserves is fairly large because 82% of the total reserves of the company were set up for these premium endowment contracts, the investment return on such transactions can easily be negative." A corporation was formed for the purpose of purchasing this hotel, the plan being that each agent would contribute $1,000 for one share of stock in such corporation. A Western Union money order for $10,000 was deposited with the company as a binder on the agreement by the corporation to purchase the property. However, the transaction was not consummated.

The acquisition of the home office building was also somewhat unusual, again attributable to the lack of available investment money. This property was acquired in exchange for 10,000 shares of stock of the company. The seller was given a certificate for two shares of stock of the company, endorsed in blank. Whether the seller possessed this certificate at the time of the transfer of the property could not be ascertained. Such a transaction is subject to criticism mainly because of the arbitrary valuation of the property as a result of such an exchange. This is borne out by the discrepancies between appraisals and the book value of the property. Contemporaneously with the agreement by the company to purchase this property from the seller, there was executed an agreement by the seller and a stockholder of the company whereby the stockholder was given an option to purchase the 10,000 shares of stock for $125,000. This option was subsequently exercised. The stockholder later sold 1000 of these shares for $50,000.

Such a transaction was in effect the issuance by the company of 10,000 shares of stock to a stockholder, which should not have been done without first giving other stockholders the right to purchase their pro-rata share.

The acquisition by the company of the home office property and the Casa Mona Hotel resulted in real estate holdings in proportion to total assets far out of line from the normal holdings of a well managed company.

In another questionable venture, the company acquired the yacht "Souris" in exchange for certain debentures possessed by the company. This yacht was acquired on April 1, 1955, and it can only be assumed that the company was aware that such a yacht could not constitute an admitted asset of the company. It therefore appears that the acquisition of the yacht constituted speculation in that the company was aware that it must be disposed of prior to the preparation of the annual statement as of December 31, 1955. The acquisition of such a depreciable item as a yacht cannot be considered as a cautious and prudent investment on the part of an insurance company, particularly one whose capital structure is not too sound. This yacht was subsequently sold in June, 1955, to Basil P. Autrey, at that time a Vice President and Director of the company, Paul J. Meyer, a Director of the company, and owner of the General Agency contract, and Thomas E. Skinner, one of the largest stockholders in the company. Part of the consideration for this purchase of the yacht was debentures of the same type as the company had used to purchase the yacht.

In another transaction, by the issuance of two ten year paid up endowment policies to the owner of certain real property, the company thereby acquired a mortgage on that real property in excess of $56,000.00.

One other method which appears to have been employed on several occasions by the company in an effort to list sufficient admitted assets was the transferring of agents' accounts due the company out of the company, and the receiving in

exchange therefor cash or other admissable assets. The manner in which such a procedure was accomplished is illustrated by the following example: Agent A owes a certain amount to the company as a result of advances against future commissions by the company to the agent. Agent A would give a note to B in the amount of the sum which Agent A owed the company, plus interest. B would then transfer cash or other admissable assets to the company which could then list such assets as admitted assets. Then, the company would advance the installments on the note and charge Agent A's account. However, in at least two instances a reversing item was discovered in the form of post-dated checks. These post-dated checks were used in the following manner:

> On December 28, 1954, certain agents executed notes for their debit balances to Mr. Basil P. Autrey, co-owner of the General Agency and a Director of the company, totaling $104,062.28. These notes were endorsed over to a local bank, who gave Mr. Autrey a personal loan in this same amount secured by these notes. The proceeds of this loan were deposited in the bank by National Union Life Insurance Company against agents' debit balances. This loan was paid off by a National Union Life Insurance Company check dated January 11, 1955. This check was issued in a series of checks bearing the date of January 1, 1955. This transaction, in effect, removed from non-admitted assets, agents' debit balances in the amount of $104,062.28, and increased cash, as an admitted asset in a like amount.
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> A transaction similar to the above, occurred in June, 1955. In this transaction, the records reflect the receipt of $100,000.00 as an offset to Agents' Debit Balances on June 30, 1955. The explanation on the entry states "to record payment from P. J. Meyer for amount due us and credit agents' individual accounts as of June 30, 1955." Attached to this entry was a list of 61 agents totaling $100,000.00. These agents' accounts were not credited with these funds. The $100,000.00 was credited to Mr. Meyer's account. Mr. Meyer was at that time sole owner of the General Agency, having acquired Mr. Autrey's interest in April, 1955.
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> On or about June 29, 1955, a post-dated check was issued under date of August 15, 1955, by the National Union Life Insurance Company, payable to Paul J. Meyer in the amount of $100,000.00. The entry recording this on the records was made on August 31, 1955 as a journal entry reinstating the above amount credited to Mr. Meyer's account on June 30, 1955. This transaction is similar to that which occurred in December, 1954, in that it removed a non-admitted asset and replaced it with an admitted asset, only for a short period of time, undoubtedly for statement purposes.

In addition to the above, in March, 1955, there was discounted with a local bank, $133,052.83 of Agents' Debit Balances. National Union Life Insurance Company co-signed the notes. As the payments on these notes became due at the bank, National Union Life Insurance Company would make the payment and reinstate the amount paid for each agent to their account. The discount charged by the bank was charged to each individual agent by the company.

INADEQUACIES OF ACCOUNTING PROCEDURE AND INTERNAL CONTROLS

Comment should also be made of the general inadequacies of the accounting records and internal controls of the company. Specific items which should be noted are:

1. Although the accounting records were in the hands of the company's auditors almost continuously up to November 3, 1955, it was determined that the accounting system of the company needs radical revision. In the first place, the system is very slow in producing a statement at the end of any accounting period because of the complicated accounting necessary for allocation of agents' commissions. For example, there may be as many as 7 agents and overwriting agents getting a commission on one policy. In the second place, the system of journal entries used make it extremely difficult to follow a transaction from the general ledger back to its original data. There are no permanent records maintained for journal entries. These entries are prepared on work sheets instead of being in permanent record books. As an example, the company does not maintain a detailed check disbursements journal. In order to prove the disbursement of expenditures, it is necessary to make an actual addition of many accounts to arrive at a total figure.

2. Actuarial and other statistical records do not exist which can give a rapid picture for basic data such as insurance in force, amount of business reinsured, true lapse rates, amount of business in force by policy types, amount of premium income in force at any given accounting date. Also, there is no ready record to check the amount of matured coupons left on deposit with the company.

3. Policyholders service was entirely inadequate. Policy Loan records have never been kept properly. Some policies which were surrendered with matured coupons were still in the file, no attempt being made to dispose of the coupons for the policyholder.

4. The company's top level decisions, in general, have been made without making basic studies of the accounting situation or actuarial background of the action to be taken. For example: insurance coverage was sold in a tropical country at the same standard rates used in the United States; the company's actuaries were not consulted before the business was sold. In another case, a stock dividend was declared in July, 1955, by the Board of Directors, subject to the approval of the Alabama Insurance Commissioner, right in the middle of an audit of the company, and without prior consultation with the accounting department as to the possibility of a surplus being available for the dividend.

5. There is abundant evidence of lack of control over general office expenses. For example, there is the over-purchasing and overpayment for office supplies, furniture, and other equipment. There is also lack of control on telephone expenses. For example, there are seven telephone lines leading into the company which have been used, without central control, for personal business extensively. There is also evidence of the abuse of air travel cards.

INSURANCE DEPARTMENT INVESTIGATION OF AFFAIRS OF COMPANY

The National Union Life Insurance Company submitted its regular annual statement for the year 1954 to both the Alabama and Florida Insurance Departments on March 21, 1955. This report was audited by the Florida Department on the same date. The Florida Insurance Department questioned the statement and found it unacceptable because of the sudden increase in real estate holdings over the 1953 statement in amounts larger than what the company should prudently hold, because

of errors in the consistency of certain figures in the statement, and because the company's holdings of government bonds did not meet the statutory requirements. In pursuance of its duties to the policy holders, the industry and the public, the Florida Insurance Department, headed by J. Edwin Larson, State Treasurer and Ex-officio Insurance Commissioner, immediately contacted the Alabama Insurance Department and it was arranged to call a regularly scheduled examination of the company as soon as possible.

The examination of the National Union Life Insurance Company was called to start April 4, 1955. Two examiners from the Alabama Insurance Department and one from the Florida Insurance Department participated in the examination of the company. The examination took three weeks and the examiners determined, in general, that the administration of the company was weak; accounting procedures were poor; the annual statement for 1954 submitted to the Insurance Department was not only faulty in detail but seriously incorrect from a proper accounting standpoint in that certain assets were overstated in the amount of $23,511.64 according to the accounting standards established by the National Association of Insurance Commissioners; liabilities were understated or not shown at all in the amount of $176,668.56. In final substance, the financial condition of the company, as reflected in the annual statement submitted by the company for the year ending December 31, 1954, was materially different from the condition as determined by the examination of the Insurance Department.

The company was in need of several major improvements in addition to the need to strengthen its capital structure. It needed a revision of its administrative methods and procedures. It needed, in the actual operation of the business, more executive personnel with knowledge of the insurance business. It needed key supervisory personnel. Its agency activities were too expensive and pitched on too large a scale for a company of its size. As pointed out previously, its investment policies

were in the nature of unusual transactions which were definitely not in keeping with sound insurance activity. Its advertising program was grandiose and misleading to the general public on more than one occasion.

There was found to exist, therefore, a situation which required new executive personnel and a general program or rehabilitation, administratively speaking, of the company. The Report of Examination was released by the Alabama Insurance Department on May 10, 1955.

The general program needed for the company was taken out of the preliminary and preparatory stages and put into motion by the Florida Insurance Commissioner by requesting the company to cease its sale of their largest selling policy as of September 1, 1955, because of the fact that such policy was being sold in a misleading manner and the public interest was not being served by such sales. Another policy sold by this company has been cut off as of December 31, 1954, by the Florida Insurance Department for the same reason.

This action as to the policy was followed by a ten point letter, on July 18, 1955, from the Florida Insurance Commissioner to the President of the company, stating that it was necessary for the company to discontinue certain misleading advertisements and slogans, to correct certain extraordinary investments, and to correct certain methods in handling policy holders records. The company's reply to the ten point letter was indefinite on many points.

A Rule to Show Cause was issued by the Commissioner to the company ordering it to show cause why the Commissioner should not issue his order requiring the company to cease and desist in the use of certain misleading advertisements. A hearing was held upon the Rule and the Commissioner issued his order requiring the company to discontinue advertising itself as "Miami's Own" and "Florida's Own" company.

Early in June 1955, the company hired an outside firm of certified public

accountants, and a firm of actuaries and insurance consultants to make a certified audit of the condition of the company. This audit was going on concurrently with the moves being made by the Florida Insurance Commissioner. Following the hearing on the Rule to Show Cause, an examiner of the Florida Insurance Department was sent on special assignment to the company to determine the progress of the audit, and to ascertain more definite answers to the ten point letter of July 18, 1955. The examiner found that steps were being taken to comply with the cease and desist order as to misleading advertising. Other items, such as the disposal of the Casa Mona Hotel, had not been corrected. The sale of the yacht "Souris" had been accomplished, even though it was sold to Basil P. Autrey, and Associates. It was found that the accountants and actuaries were having difficulty in completing their work because of the condition of the company's records which was noted in the examination report of the Alabama and Florida Insurance Departments.

Upon receiving the report of the examiner on special detail, the Florida Department asked for a continuation of the examination of the company to start September 5, 1955. One of the department's senior examiners, William O. Downs, with thirty years insurance experience, was called of his assignment on the Aetna Life in Connecticut, and brought back to Florida to participate in the examination and to acquaint himself with the problems of the company. He was joined by an examiner from the Alabama Insurance Department and another examiner from the Florida Insurance Department. The auditors hired by the company were still working to produce their report, but as the completion of the audit was postponed on several occasions, and as the Florida Department was awaiting the financial statement of the company in order to take further steps in its plan of rehabilitation of the company, it was decided to hire another firm of certified public accountants, Abess, Morgan & Altemus, to represent the State of Florida. This firm was hired and joined with the State Examiners in an effort to speed up development of an

accurate financial picture of the company. The firm of Abess, Morgan & Altemus started their examination on September 26, 1955. After a conference with the Commissioner on September 29, 1955, it was decided to remove all of their accountants, except two, in order not to interfere with the preparation of a September 30, 1955 report by the company's auditors. On October 21, 1955, at the request of the Department, upon the insistence of the company's auditors, all of the accountants of Abess, Morgan & Altemus were temporarily withdrawn. Examiners of the Florida Department are still engaged in an examination of the company as of the date of this report.

STEPS TO REHABILITATE THE COMPANY

The Florida Insurance Commissioner, upon becoming aware of the condition of the company, instructed the company through its directors that either the company must immediately effectuate drastic changes in the management and operation of the company, or the Commissioner would ask for the appointment of a receiver to take over the company and/or would revoke the certificate of authority of the company to do business in Florida. It was made clear to the company that the changes in management and operation of the company proposed by the Commissioner had to be accomplished immediately, even if the audit and examination which were then in progress should show the company to be solvent. It was made clear that if the audit and examination should show the capital of the company to be impaired the Commissioner would, regardless of any changes in management and operations, require that such impairment be immediately corrected, and if this was not done, ask for the appointment of a receiver and/or revoke the certificate of authority of the company to do business in Florida. The Commissioner informed the company that it would be necessary for Basil P. Autrey to be entirely divorced from any participation whatsoever in the management and operations of the company.

A change in management of the company was made by the Board of Directors, in compliance with the Commissioner's directions, and Basil P. Autrey resigned as Executive Vice President and General Manager, and as a member of the Board of Directors. On October 18, 1955, the Board of Directors named William W. Downs, senior examiner for the Florida Department of Insurance, as Executive Vice President in charge of operations for the company. The Board of Directors also approved a contract between the company and Mr. Downs, which contract gave to Mr. Downs very broad powers in the reorganization of the operations of the company. Under this contract, Downs was given authority to employ and discharge such employees as he saw fit; to adopt such accounting procedures as he deemed advisable; to reorganize the operational organization of the company; to recommend the abolition of certain offices in the company, the removal of any persons occupying any offices, and the election of certain persons to such offices, all of which recommendations were to be approved by the Board of Directors under the terms of the contract.

Mr. Downs immediately assumed his duties as Executive Vice President of the company and has occupied that position up to the time of this report.

DELAY IN AUDIT REPORT

Early in June, 1955, the company employed a firm of certified public accountants for the purpose of making an audit of the five year period ending June 30, 1955. This audit was being made preparatory to securing the approval of the Securities and Exchange Commission for the issuance of preferred stock and public sale of additional stock which had been previously authorized by the Board of Directors. The company advertised that the results of the audit would be published in the newspapers around July 15, 1955. However, it has never been published. During the course of the audit, the company abandoned the idea

of an S. E. C. Audit, and its publication, for the period ending June 30, 1955. Instead, the company decided to extend the period up to and including September 30, 1955. During the period of time between June 30, 1955, and September 30, 1955, several demands were made by the Florida Department of Insurance upon the company for the financial statement of the company as of June 30, 1955. The company never furnished such a financial statement. The company then advised the department that there would be no statement as of June 30, 1955, but that a statement would be prepared as of September 30, 1955. The Board of Directors adopted a resolution that a copy of such financial statement would be furnished to the department. From September 30, 1955, to the date of this report, the department has made numerous demands for the statement as of September 30, but, as yet, no statement has been provided to the department. This refusal has continued in spite of a final ultimatum given by the Commissioner to the company that the statement had to be delivered no later than November 2, 1955. Although an original and one copy of a tentative financial statement was delivered by the company's auditors to the Board of Directors in Birmingham on November 4, 1955, with the promise that the copy would be delivered to the department, the company refused, on November 5, 1955, to provide the statement to the department. Such conduct of the company can only be considered as a flagrant defiance of the Insurance Department of the State of Florida.

IMPAIRMENT OF CAPITAL OF THE COMPANY

It appears to the Grand Jury that the capital of the company has been impaired on at least several occasions, and is impaired as of the date of this report.

As of December 31, 1954, the company in its annual statement to the Insurance Departments of Florida and Alabama, showed assets of $924,235.59

and liabilities of $565,267.02 with a paid in capital of $120,000.00, and a surplus of $238,978.57. However, the joint examination conducted by the Insurance Departments of Florida and Alabama reduced the assets to $904,021.97 and increased the liabilities to $724,621.13 thus leaving a surplus of $59,400.84. Of this surplus, $60,000 represented the write-up of the value of the home office property above its value as determined by qualified appraisers. This, therefore, results in a deficit in the capital of the company to the extent of $599.16. It is to be further noted that this deficit existed in spite of transferring agents' accounts out of the company and the depositing of cash in the account of the company on or about December 28, 1954, in the amount of $104,062.28, which sum was immediately paid out again by the company by means of the post-dated check procedure previously described.

After the audit as of June 30, 1955, was completed, the company was orally informed by the auditors that an impairment existed in the capital of the company. Since no written report of the audit was ever made, the extent of the impairment was not ascertained by the Grand Jury. This impairment is undoubtedly the reason why the report of audit for the period ending June 30, 1955, was never delivered or made public as promised.

As of September 30, 1955, the capital of the company was impaired to the approximate extent of $132,000.00. This deficit occurred despite the fact that from June 30 to September 30, $150,000.00 in cash and $90,000.00 in debenture bonds to finance agents' debit balances had been deposited with the company through a trustee agreement whereby agent debit balances were assigned to the trustees of the trust for the benefit of beneficiaries under the trust, which beneficiaries were mainly stockholders and directors who had advanced the money, and put up the debentures. $50,000.00 was also obtained by the sale of furniture, fixtures, and equipment which were then leased back to the company for $250.00 per month.

Under the Manual of Valuations promulgated by the National Association of Insurance Commissioners, the debenture bonds must be recognized as admitted assets although there is no open market value for these bonds. To illustrate the deterioration of the cash of the company, the cash on hand at a local bank decreased from over $300,000.00 on or about June 30, 1955, to an actual overdraft at the same bank in August of approximately $52,000.00. This was caused by the very heavy writings of the company during August 1955 of approximately eight million dollars of new business, mostly in ordinary life, and the resulting high commissions and advances against future commissions. This influx of buxiness caused additional burdens on the company in that additional office help, equipment and supplies were required. Another contributing factor to the impairment of the capital was that the financing of one of the industrial debits resulted in a loss to the company of in excess of $160,000 over about an eighteen month period ending September 30, 1955. This loss does not include claims and overhead office expenses. In the over-all picture, the establishment of the present industrial business of this company has cost approximately $40.00 for each $1.00 in premiums placed on the books whereas conservative management would permit an expenditure of not more than $20.00 for every $1.00 in premiums.

As pointed out, the impairment as of September 30, 1955, was approximately $132,000.00. Since that date, a further impairment of approximately $100,000 has occurred during the month of October, 1955. This sum of $100,000 represents mainly advances to agents, auditing and examination fees, and losses sustained through claims paid on group accident and health and hospitalization.

As a result of the impairment of the capital of the company, an ultimatum was made upon the company by the Florida Insurance Commissioner on November 5, 1955, that the company must produce $500,000 in cash, or negotiable government bonds, together with a copy of the tentative financial statement of the company as of September 30, 1955, in his office in Tallahassee by 9:00 A.M. on November 7, 1955.

This ultimatum was not complied with by the company. Thereupon, the commissioner, on the afternoon of November 7, 1955, issued to the company his notice of intention to revoke its license under the provisions of Section 626.08 of the Florida Statutes. The company has 30 days under the statute within which to correct the impairment of capital.

The Commissioner has assured this Grand Jury that, in the event the impairment in capital is corrected, the firm of Abess, Morgan and Altemus will return to the company to complete their audit in conjunction with examiners from the Insurance Departments of the States of Florida and Alabama.

PROPOSED MERGER OF NATIONAL UNION LIFE INSURANCE COMPANY WITH ALL STATES LIFE INSURANCE COMPANY

On November 4, 1955, the department was informed of a proposed merger between National Union life Insurance Company and All States Life Insurance Company, an Alabama corporation. A copy of the Merger Agreement was delivered to a representative of the department. Due to the lack of time, the merits of such a merger have not been ascertained by the department or this Grand Jury. The Merger Agreement recited that the All States Company had a surplus of $380,000. Thus, this merger, if consummated and approved, could possibly cure the presently existing deficiency in the capital of National Union Life Insurance Company. However, considerable doubt as to whether the merger is a bona fide transaction has been raised in that newspaper reports state that certain men named as officers and directors in the merger agreement have denied having any knowledge of the merger and have denied any connection whatsoever with the transaction.

Since the All States Life Insurance Company is not authorized to do business in this State, application would have to be made by the proposed new corporation to the Commissioner for a certificate of authority to do business. The Commissioner

has assured the Grand Jury that in no event will any merger be approved insofar as activities in this State are concerned, until a complete examination of the merger and the merging companies have been conducted by the department. The Commissioner has also assured the Grand Jury that no certificate of authority will be issued until such time as the proposed new company has been thoroughly investigated and found to fully qualify for such certificate under the laws of Florida.

ONE MAN OPERATION OF THE COMPANY

In his ten point letter of July 18, 1955, to the company, the Florida Insurance Commissioner stated:

> ".... the Officers and Directors should take a more responsible and active participation in the affairs of their company. This appears to us to be too much of a one-man operation."

The Grand Jury concurs in the view of the commissioner that the company has been operated as a one-man operation, and that one man is Basil P. Autrey.

Mr. Autrey was one of the original subscribers to the stock of the company and acquired 35,000 shares of the original 100,000 shares. The stock transfer ledger of the company shows that from the date of incorporation of the company until August 24, 1955, he had acquired, disposed of, reacquired, and redisposed of, over 100,000 shares of the stock of the company. The stock ledger of the company showed that as of August 24, 1955, Mr. Autrey owned only 908 shares of stock. However, of that 908 shares, 550 shares did not belong to him in that he had already sold 150 of those shares and 400 of the shares had been borrowed by him from another stockholder. It is, therefore, quite apparent that Mr. Autrey was very active in financial transactions with reference to the stock of the company.

Mr. Autrey was originally the co-owner of the Autrey-Meyer Insurance Agency which general agency held a 20 year contract with the company and, as has been previously discussed, provided for exceptionally high commissions

by the company to the agency. Mr. Autrey sold his interest in the agency to Mr. Meyer in April of 1955. However, when the Board of Directors complied with the insistance of the Florida Insurance Commissioner that Mr. Autrey be divorced from any participation in the management or operations of the company, Mr. Autrey announced that he had on October 11, 1955, acquired the general agency from Mr. Meyer.

A very obvious example of the manner in which Mr. Autrey acted as if he were the sole owner of the company occurred in July, 1955. On July 13 and 14, 1955, nineteen checks were executed by various individuals and firms, some of which checks were made payable to Basil P. Autrey, and others to Paul J. Meyer. The total of these checks amounted to $300,000. These checks were endorsed by Basil P. Autrey and to Paul J. Meyer. The total of these checks amounted to $300,000. These checks were endorsed by Basil P. Autrey and Paul J. Meyer and were deposited to the account of National Union Life Insurance Company, checks totaling $250,000 being deposited on July 13, 1955, and checks totaling $50,000 being deposited on July 14, 1955. On July 13, 1955, National Union check in the amount of $300,000 was issued, signed by Basil P. Autrey, and countersigned by another official, payable to an attorney and agent, which check was taken by the attorney and agent to the bank and a cashier's check obtained on July 13, 1955. Several of the checks of the individuals which were made payable to either Basil P. Autrey or Paul J. Meyer were on out of town banks. However, it is to be noted that the National Union check was issued prior to the time that all of the checks were deposited and also prior to the time within which such checks would have cleared through normal banking channels.

Another illustration is the fact that he was permitted to have access to the safe deposit box of the company upon his sole signature although the lease agreement with the bank required two authorized persons to sign and to examine

the contents of the box at the same time.

Mr. Autrey represented to the representatives of the Florida Insurance Department and to actuaries that the group business of the company on government employees in a central American country amounted to over eight million dollars. No records of such business were to be found in the regular files of the company. However, upon further investigation as to the extent of such business, it was revealed that the actual amount was only approximately $830,000 and that the records of such business were kept in files in the office of Mr. Autrey.

Investments were made by Mr. Autrey on behalf of the company without the knowledge of any other officers, directors or other officials of the company, and such investments were not recorded for proper accounting.

Where securities were hypothecated to enable the assureds to borrow against their policies through banks, such hypothecation was done by Mr. Autrey without the knowledge or consent of the Board of Directors or the executive and finance committee or any other official of the company.

A number of the officers and directors of the company appeared before the Grand Jury and the Grand Jury was amazed at their total lack of personal knowledge of the affairs of the company.

CONCLUSION TO REPORT OF INVESTIGATION OF NATIONAL UNION LIFE INSURANCE COMPANY

The Grand Jury has spent many hours in investigating the affairs of National Union Life Insurance Company. If this investigation results in securing the future public confidence in insurance companies in that the public may know that such companies will continue to be subject to strict supervision from the Florida Insurance Department, and from bodies such as this Grand Jury, then the efforts of this Grand Jury have been well spent. This investigation certainly illustrates the need for strict laws and strict supervision of insurance companies

whose affairs affect intimately the lives of so many citizens of the State of Florida. The Grand Jury is proud to state that the insurance department and the insurance commissioner of the State of Florida have conscientiously, fearlessly and untiringly performed their duty, and more, in their efforts to protect the citizens of this State. The Grand Jury, in its recommended legislation hereinabove set forth, proposes certain legislation which would increase the power and authority of the commissioner to control the activities of insurance companies.

The insurance department and the commissioner have extended every aid and assistance possible to this Grand Jury and the Grand Jury is deeply appreciative of the hard, and often frustrating, task which has been accomplished by the commissioner and each of his representatives in assisting the Grand Jury in this investigation.

CONCLUSION TO REPORT OF GRAND JURY

The members of this Grand Jury desire to express their gratitude and sincere thanks to the Honorable J. Fritz Gordon, Circuit Judge, for his wise counsel and the valuable assistance which he rendered on many occasions.

The Grand Jury is also grateful to the Honorable Marshall C. Wiseheart, who assisted this Grand Jury so willingly while Judge Gordon was absent on vacation.

The members of this Grand Jury would also like to thank all other officials and persons, whose names are too numerous to mention, who assisted this Grand Jury in carrying out its duties and responsibilities to the citizens of this county.

Respectfully submitted,

Edwin Wilson
Foreman

Attest: Grace B. Shull
Grace B. Shull
Clerk