

NEWS

FROM THE OFFICE
OF
NEW YORK STATE COMPTROLLER EDWARD V. REGAN

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REGAN: COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT

Because the State Commission on Judicial Conduct has shielded itself from independent review by refusing to provide access to its confidential records for audit, State taxpayers will have no assurance that the Commission is operating in a fair manner, State Comptroller Edward V. Regan said today.

"The Commission has denied our request for access to confidential records and has refused to propose legislation to open its records to my Office," said Comptroller Regan. "As a result, my auditors cannot determine if the Commission is complying with applicable State laws and regulations.

"Because there is no independent review of the Commission's activities, it is operating without appropriate oversight," Mr. Regan said. "Without an effective system of checks and balances, the potential exists that the Commission may be abusing its authority by wrongfully dismissing complaints against judges without cause and justification."

In responding to the Comptroller's Office request for access to records, Commission officials invoked the confidentiality provisions of Sections 45 and 46 of the Judiciary Law which, according to the Comptroller's audit, "provide that all complaints, correspondence, Commission proceedings and transcripts thereof, other papers and data and records of the Commission are confidential and shall not be made available to anyone other than the Commission, its designated staff personnel and its agents in the performance of their power and duties."

The Commission apparently allows certain outside contractors and their employees access to confidential information as agents of the Commission. Commission officials indicated that allowing such access was necessary for the contractors to perform their work.

In order to comply with the law and provide appropriate oversight of a governmental body, the Comptroller's auditors requested that they be designated agents of the Commission. This request was denied. They also asked the Commission to propose legislation to provide the Comptroller's Office access. Once again, the Commission refused.

In their 1989 annual report, Commission officials cited similar problems in not being able to gain access to confidential records in carrying out their responsibilities. According to that report, the Commission has been unable to expeditiously obtain required material

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from records either under court seal or made confidential by statute. The report also states that no judge should be shielded from proper inquiry because the alleged misconduct is under court seal and that any concern regarding the release of such information should be allayed by the Commission's strict confidentiality mandate.

Comptroller Regan said,

"It is essential that auditors from the Office of the State Comptroller have access to all records when they audit and evaluate a program on behalf of the State's taxpayers. Historically, most State agencies have recognized the Comptroller's authority and the importance of this concept and have fully cooperated by providing full access to their records. In having access to confidential records, auditors are bound by the provisions of the law regarding not disclosing specific information that is confidential.

"For example, the State Tax Department provides our auditors access to personal and corporate tax returns. The Department of Correctional Services provides our auditors with criminal history records and inmate medical records. Schools provide our auditors with student records. The Civil Service Department has shared the actual medical claims history records of employees. To do anything less would impair the public's right to know, generically, that their tax dollars are being spent in an appropriate manner, especially in areas that are not subject to scrutiny by outsiders."

The Comptroller made these comments in releasing an examination of the Commission's financial management practices. Auditors stated that nothing came to their attention during the course of their review to indicate that the Commission was not operating in accordance with sound fiscal practices. However, auditors were unable to complete their compliance audit because the Commission refused access to certain records.

Since the Commission was established in 1978, it has reportedly handled 10,680 complaints of judicial misconduct, of which 7,615 (71 percent) have been dismissed without investigation. During 1987 and 1988, the Commission received 1,908 complaints, including 1,271 complaints against State judges and 635 complaints against town justices. The Commission investigated 12 percent of the complaints against State judges and 37 percent of the complaints against town justices during this period.

Auditors also indicated that there appears to be an inherent conflict of interest in the Commission's decision-making process. The Court of Appeals, which is a body whose members the Commission is responsible for handling complaints against, can rule on Commission determinations upon a judge's request.