Investigating New York: Governor Alfred E. Smith, the Moreland Act, and reshaping New York State government

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INVESTIGATING NEW YORK: GOVERNOR ALFRED E. SMITH,
THE MORELAND ACT,
AND RESHAPING NEW YORK STATE GOVERNMENT

by

John T. Evers

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Abstract

Acknowledgement

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Abstract

By examining Governor Alfred E. Smith’s use of gubernatorial investigations sanctioned by law under the Moreland Act, this work details his efforts to transform New York State government from a chaotic system of boards, bureaus, commissions, and departments to a streamlined cabinet-style executive branch dominated by a strong governor. Hindered by a state constitution which severely limited gubernatorial power, Smith utilized one of the few tools open to governors to draw attention to, and then change, state government: executive investigation. In order to gain control of state administrative, budgetary, and public policy initiatives Smith challenged legislative leaders and unresponsive department heads to enact reform after his investigations uncovered corruption and inefficiency.

This study explains how Smith methodically plotted a logical course of government restructuring based on investigation. Smith’s efforts exercised a broad appeal to the citizenry highlighting both the need for government accountability and the benefits of government reform. The reforms would enable Governor Smith to push for progressive legislation granting much power to the state’s chief executive officer, who in turn, Smith stressed, could be held accountable by the electorate. Smith’s fourteen Moreland Act investigations complimented other government reform efforts, his 1919 Reconstruction Commission, the 1925 Hughes Commission report implementing constitutional restructuring amendments, and the 1915 failed Constitutional Convention, and were an integral part of his campaign to remake state government. By the end of Smith’s tenure as governor New York State had undergone a wholesale change strengthening the state’s chief executive and reordering state government. Smith’s
transformative efforts enabled future governors to hold subordinate executive branch employees accountable, check the power of the legislature in state administration, and established the governor as the state’s leading administrative, budgetary, and policy making official.
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Introduction

The examination of Governor Alfred E. Smith’s use of the Moreland Act helps explain his efforts to transform New York State government from a chaotic system of boards, bureaus, commissions, and departments to a streamlined cabinet-style executive branch dominated by a strong governor. Impeded by state law and a constitution severely limiting gubernatorial power, Smith utilized one of the few avenues open to governors to challenge both subordinate employees and the state legislature: executive investigation. In turn, Smith’s investigations strengthened calls for reform. In utilizing the Moreland Act, and other forms of investigation such as the Reconstruction Commission, Smith uncovered faults in state government, undertook broad appeals to the public, and eventually succeeded in implementing a program of reform.

Scholars have long debated how Americans reorganized their government to confront the challenges of modernity (industrialization, urbanization, and immigration). According to Alfred Chandler, business interests in the nineteenth century underwent a “managerial revolution” with industrialists stressing coordination, integration, and planning to control both internal operations and the markets.¹ The convergence of government regulation and business expansion, characterized by scholar Robert Wiebe as a “search for order”, led to specialization and administration by experts in both business

and government in order to deliver services, maximize return on investment, and create economies of scale.² How this change happened has often been insufficiently explored.

Government response to rapid change led Louis Galambos, the proponent of an “organizational synthesis” theory in American government and business, to speculate that both pursued specification and organization domiciled in new permanent structures.³ Thus by the close of the nineteenth century as business growth expanded in New York State, so did corresponding government offices to oversee the private sector, though government grew in a less rationalized manner. In the 1890s New York State added more offices and government employees to better address the changes brought about in industry, agriculture, the economy, and other areas of growth and specialization.

Scholars, such as Stephen Skowronek and Morton Keller, describe the era as one witnessing the development of new administrative capacity. Skowronek traced the “historical evolution” through administrative advances that “eclipsed the sense of statelessness” in early America.⁴ Keller described in detail a succession of “regimes”


boosting administrative capacity. However, both Skowronek and Keller focus largely along the lines of federal changes, overlooking much of what was done at the state level.\textsuperscript{5}

William Graebner and Richard Hamm build on the organizational model in explaining modernization in addressing large national issues such as labor and prohibition, but at the state level. Graebner describes the state power vacuum present in the 1910s hindering the unity of policy between the states, especially labor laws, leading to uncertainty; and, Hamm describes the activities of individuals lobbying state policy makers, and state governments, in addressing a national issue at the state level and locally.\textsuperscript{6} It is to this state level, and its lack of historiography, that this study focuses.

Governor Smith experienced difficulties at the state level while attempting to protect labor legislation in light of a hostile business lobby, a legislature dominated by Republicans, and severe constitutional constraints on the governor’s office.\textsuperscript{7} In a 1924 biography written by supporter Henry Moskowitz, Smith’s comments on the size of the state government in 1920 as compared to the late nineteenth century reveal his grasp of the growth in state responsibilities at the same time waste threatened to hinder services. Smith stated “because the activities of the State Government twenty-five or thirty years ago in comparison with to-day were very small” the governor had very little responsibility and tremendous idle time. However, Smith explained, with government

\textsuperscript{5} Morton Keller, \textit{America’s Three Regimes: A New Political History} (New York” Oxford University Press, 2007), 1-6, 174-182.

\textsuperscript{6} Keller, \textit{America’s Three Regimes: A New Political History}, 174-182.

\textsuperscript{7} William Graebner, “Federalism in the Progressive Era: A Structural Interpretation of Reform,” \textit{The Journal of American History} Vol. 64, No. 2, (September 1977), 335, 347, 355-356. Graebner credits Smith with attempting to address social welfare issues at a time when few governors did and when interstate advocacy groups such as the National Conference of Governors exerted little influence.
evolving into one hundred and eighty-nine various agencies, “there is no doubt in the minds of reasonable men that the waste in this State is due entirely to the duplication of effort on the part of the different departments.” The problem, Smith outlined, was that growth in bureaucracy had not coincided with executive officer responsibility and oversight. The state legislature had created a bureaucracy, in fact, it created too much bureaucracy. Smith believed his challenges to be reigning in the state government, making it perform its true mission (services to the citizenry), and holding state employees responsible to the governor. Smith had to cut his own path at the state level attempting to revamp the state’s bureaucracy and transform the administrative capacity of the state.

Thus, my study focuses on the governor as the impetus for change and the driving force in advancing administrative change and rational state building. Events pushed to the forefront a new class of government leaders in New York State such as Theodore Roosevelt, Charles Evans Hughes, and Alfred E. Smith. These leaders embodied a desire to check corruption and make state government more efficient while delivering new services. Further, Smith used his penchant for investigation to gather data for change and to protect and expand social welfare legislation. This study also shows that the literature on state building has a gap that needs to be filled in order to explain New York’s transformation in the 1920s: gubernatorial investigation. Further, due to the lack of research into the Moreland Act with the noted exceptions of Davies (1936), Missal (1946), and Breuer (1965) there is a dearth of scholarship in the area of Smith’s use of

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this almost unique tool in American gubernatorial history and governors advancing reform through the use of investigation.⁹

Most Smith biographers detail his rise through the legislature and into the governorship facing an uphill battle against Republicans and business opponents. However, this was only half of Smith’s battle. Smith, as I will explain in this work, had to restructure the chaotic maze of state bureaucracy to force state government employees to carry out the programs for which the offices were designed. One element that scholars writing about Smith have neglected is his attention towards his subordinate offices and his efforts to reform existing state agencies. For example, recent Smith scholarship pays scant attention to Smith’s use of the Moreland Act as a major factor in his reform program. Paula Eldot, whose work meticulously recounts Smith’s career as a reformer, only nominally discusses Smith’s use of the Act to reform milk, prisons, and transit though she does extensively explain Smith’s Moreland investigations in the defense of the Department of Labor.¹⁰ Both Christopher Finan and Robert Slayton, Smith’s most recent biographers, focused on Smith as reformer based largely on the Reconstruction Commission and his labor and social welfare programs. Both make only brief mentions of investigations (mostly the milk investigations) as a part of Smith’s overall reforming efforts.¹¹ Greater attention to Smith’s use of the Moreland Act is required to better

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⁹ Davies work is actually a 35-page report for the Institute of Public Research providing an historical oversight just before the 1938 overhaul of state government. Missall’s work provides great detail into the Act, its formation, procedure, and comparative acts in other states – which all came later or were much weaker by comparison. Breuer built on Missall by providing a brief description with bibliography on each investigation through the 1960s. None of these works explore Smith’s use of the Act as part of the holistic reform approach as I attempt.

¹⁰ Eldot, Governor Alfred E. Smith, 166, 197-199, 210-211, 227-229, 282, 286-287.

¹¹ Finan, 133-138, 147-151; Slayton, 133, 140-143, 157-164.
understand Smith reforming endeavors as he progressed through his four terms in office facing dozens of controversies in the administrative bureaucracy of the state.

The difficulty facing Smith, and all New York governors in the area of government reform, came from both business and party bosses. With both the Republican and Democratic Parties controlling most governors and legislative leaders, elected officials owed their allegiance more to the bosses than the voters. For example, the chaotic system of boards, bureaus, and commissions within the executive branch created under the 1894 Constitutional Convention hindered Governor Theodore Roosevelt in 1899-1900 but, it served Republican Party “Boss” Thomas Platt well. Platt could block most reform programs suggested by Roosevelt while simultaneously controlling thousands of patronage jobs within state government.\(^\text{12}\) In the mid-1900s discontent “with big business corporations” and government directed by political bosses led to a series of investigations into insurance and utilities that would lead to new state government forays into regulation, and the groundwork for state government overhaul.\(^\text{13}\) This discontent led Governor Hughes to enact the Moreland Act and institutionalize executive investigation.

At the time the quest for executive branch reform had begun Smith was a minor cog in the Tammany Hall Democratic machine working in the Commissioner of Jurors office delivering subpoenas on Manhattan’s lower east side. In 1904 he began his tenure as an Assemblyman. Progressing from relatively meaningless committee assignments to ever increasing roles of authority Smith mastered the complexities of law-making, state


budgets, and executive branch departments. In 1915 Smith participated in the State Constitutional Convention attempting (unsuccessfully) to modernize the state’s antiquated constitution. By 1919 Alfred E. Smith could look back on his two-decade career in government as training for his role as New York State’s reforming governor.

In tracing Smith’s legislative career a parallel development shared Smith’s attentions while he strove to master the art of efficient governance: the use of government for social welfare and labor causes. Smith witnessed the passage of New York’s initial workmen’s compensation law in 1910 and Charles Evans Hughes’ exploration of many good government initiatives such as restructured election laws, a public service commission, and insurance and utility law reform. Smith himself voted for the passage of the Moreland Act in 1907 in order to aid Governor Hughes, and future governors, gain control of the executive branch. Assemblyman Sherman Moreland crafted his act to enable governors to appoint commissioners to investigate executive branch departments after he witnesses the struggles of Charles Evans Hughes. Hughes, an experienced investigator, found that once in the governorship the New York State chief executive possessed little control over subordinates.

If Smith had been leaning towards using state government to advance social welfare measures at the time of Triangle Shirtwaist factory fire in 1911, his work on the legislative investigation in the aftermath of the fire permanently transformed Smith into a social welfare advocate. Smith, along with State Senator Robert Wagner, led the commission charged with investigating the fire, expanding the commission’s focus to

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expose the dreadful conditions in New York’s factories. The cataloging of conditions as they existed in tenements, bakeries, canneries, and the homes of the working classes changed Al Smith. Spurred by the Factory Investigation Commission reports of labor conditions in 1911, Smith pushed forward on his new liberal course. Combined with his desire to curtail and usurp the growing popularity of a Socialist Party (which sought government social welfare programs) and also to silence up-state Democratic critics of downstate Tammany brethren, Smith received the approval of Tammany boss Charles Murphy to proceed with a new legislative course. Debates as a delegate to the 1915 Constitutional Convention further strengthened Smith’s defense of the state as a tool to promote “human justice” and the new labor laws promulgated after the Factory Investigation Commission when conservative Republican critics openly contemplated ending the social welfare program Assemblyman Smith passed in the mid-1910s.\textsuperscript{15} Legislation, much of it coming after the Factory Investigation Commission, included fire protection, sanitary codes, regulation of wages and working conditions, widows’ pensions, and child labor laws, in addition to workmen’s compensation.\textsuperscript{16} A new Democratic Party focusing on using the machinery of government to help the citizenry—a purview usually reserved to the ward leader—a entered the Tammany legislative program.\textsuperscript{17}

\textsuperscript{15} Norman Hapgood and Henry Moskowitz, \textit{Up From the City Streets: Alfred E. Smith} (New York: Grosset & Dunlap, 1927), 110-111.


\textsuperscript{17} Huthmacher, “Charles Evans Hughes and Charles Francis Murphy: The Metamorphosis of Progressivism,” 29-32, 34.
Simultaneous with the Democratic Party’s championing of the working classes and a growing closeness to organized labor, developed the organized business lobby. With the birth of Associated Industries in 1914, the business community established a counter balance in state politics to the strong bonds formed between the Democratic Party and labor. Business quickly found a strong ally in the Republican Party’s reactionary wing. This new dichotomy – Republicans and business interests versus Democrats and labor – set the stage for Smith’s two decade-long battle as a top Democratic leader seeking to wrest control of the legislative and administrative machinery of government to insure liberal ideals over those of conservatives. Smith’s battles with Republicans and Associated Industries would intensify during his tenure as governor.

Smith’s new found liberal causes combined with his deep desire to create logical efficiencies in state government led him to not only reform government but use a restructured executive branch to provide services to those most in need. To Smith efficiency in government did not mean less government, but rather using government “as an agency to serve the people” in a more effective manner.\(^\text{18}\) Smith believed a new state government based on study and investigation would modernize government structure, eliminate waste and duplication, and afford a strong governor the necessary bureaucracy to distribute needed services to all of its citizens. It was to this dual task that Smith turned his attentions as he took his gubernatorial oath of office on January 1, 1919.

When Governor Alfred E. Smith began his first term of office he found the governorship – as did many of his predecessors - weak and anemic. Despite its size, in 1919 the Governor could appoint few of his department heads in an executive branch

\(^{18}\) Public Papers of Alfred E. Smith, Governor, 1928 (Albany: J.B. Lyon Company, 1938), 15.
consisting of almost 190 scattered agencies. In many cases commissioners and directors could not be removed without legislative authorization, many legislatively-appointed boards controlled entire departments, and many commissioners enjoyed set terms of office overlapping administrations. New York State lacked one clear line of authority within the executive branch.

Governors also shared the executive branch with a long list of statewide-elected officials who administered executive branch departments independently of the Governor including the Lieutenant Governor, Comptroller, Attorney General, Secretary of State, State Engineer, and Treasurer. The Governor’s two-year term also exacerbated the administrative chaos as the rapid turnover of Governors kept them from making significant changes. The Republican-dominated legislature favored this fractured and weak executive branch. With the control over appointments, confirmations, and removals, the Republican Party enjoyed a check on the executive branch and access to thousands of jobs. Thus, as Smith entered the Governor’s Mansion, he soon found New York’s chief executive officer little more than a figurehead.

To develop a plan for wholesale state government reform for submission to the legislature, Smith appointed his Reconstruction Commission. This commission studied state government and submitted a detailed plan very similar to the 1915 Constitutional Convention’s proposals. However, while the Commission deliberated Governor Smith soon found himself faced with repeated cases of mismanagement, corruption, and
incompetence within his administration. As Smith awaited the Commission report he found independent investigation under the Moreland Act his only recourse.\textsuperscript{19}

Starting on his first day in office when a milk strike threatened the public health of New York City, Governor Smith found many subordinate state officials unresponsive to his calls for action. An indifferent Commissioner of Food and Markets and an intransigent Council of Farms and Markets reporting to the legislature not the Governor, baptized Smith into the weakness of his new office. Scandals in the State Police, the State Fair, and the Soldiers and Sailors Home followed Smith’s unsuccessful efforts to compel his agricultural staff to regulate milk and protect public health. By the end of his first term (1919-1920) Smith had invoked the Moreland Act five times to find answers to the public policy and administrative problems plaguing state government.

In each investigation Governor Smith appointed qualified commissioners (mostly lawyers) to investigate state government independent of the legislature and any departmental inquiries. Smith’s commissioners used their subpoena powers to compel witnesses to testify about the operations of state government and produce documents related to mismanagement and corruption. The hearings gathered tens of thousands of pages of testimony, shed light on the problems inherent in the executive branch, and produced detailed reports suggesting courses of action. The investigations also prevented any whitewashing by departments when several claimed they could investigate themselves without the help of the Governor. In a related vein, Smith’s investigations also figuratively disarmed the legislature. When the legislature attempted on several

\textsuperscript{19} Smith wanted his report to form the core of constitutional amendments to reshape and reform the executive branch. All amendment had to be passed by both houses of two separately seated legislatures prior to ratification by the electorate.
occasions to either launch its own investigations or support palliative half measures that would not address the core issues of inefficient government, Smith merely empanelled additional investigations. And, Governor Smith made sure he published widely both the reasons why he called investigations and the results of the inquiries once completed.

Smith used the power of the governorship, and the Moreland Act, to protect and preserve the social welfare programs he championed as a legislator and broadened as Governor. Smith also witnessed the growing closeness of labor and Tammany Hall due to the intransigence of the Republican Party in the 1910s. As labor and progressives found their efforts to secure greater rights thwarted by the Republicans, Democrats stepped into the vacuum even though they exercised limited influence due to their minority party status and championing certain labor causes alienated Democratic businessmen in New York City.20 However, as organized labor and select progressive movements gained momentum in the 1910s, Smith championed these causes and continued to protect them as Governor. Smith spoke of the state’s responsibility to support additional programs to strengthen social welfare issues to improve the quality of life of New York’s less fortunate including curtailing orphanages in favor of care at home by widows, support for county health programs, better housing, and parks and playgrounds.21 Programs such as labor (workmen’s compensation) and public health (milk) found protection under Smith’s skillful use of the Moreland Act.


Smith stated that “every big change, such as reform in the interest of government of the State, has been accomplished only after investigation and public study of it.” Smith credited the creation of child welfare, workmen’s compensation, the labor code, and state reform generally, to investigation “and the proper amount of newspaper comment…backed up always by a report that interested the people.”22 In later years Smith specifically pointed out his use of the Moreland Act as a tool to investigate and correct New York’s administrative shortcomings.23

The quickness and almost stealth involved in Smith’s planning and announcement of his Moreland Act investigations also caught the legislature, the departments to be investigated, and many in the private sector compelled to testify completely off guard. On two separate occasions Smith appointed himself commissioner placing himself in the role of chief investigator of state agencies that otherwise would not be answerable to him without charges under the Public Officers Law. On several occasions legislators, private sector complainants, and scandal-ridden commissioners found themselves appearing before Moreland commissioners while uncomfortably attempting to extricate themselves from one of Smith’s investigations. During one investigation Smith even forced New York City Mayor John Hylan to testify and explain his actions in regard to a state-appointed commission.

Smith’s use of the Moreland Act not only bolstered his case for government reorganization and reform but it rehabilitated the Act itself. By appointing superb


23 Smith, Up To Now, 83; Smith, Progressive Democracy, 341-342.
commissioners with stellar reputations, many of whom were experts in the fields they were investigating, Smith placed the investigations almost above reproach. Since Smith focused his investigations on specific issues and departments, he was able to provide clear and concise recommendations bolstering reform. And, when Smith personally conducted Moreland Act investigations in 1924 (something never done before or since by a sitting Governor), he did so with such openness and fairness that in both cases those investigated apologized to Smith for forcing Smith’s hand.

Throughout the course of his four terms Smith appointed fourteen investigations exploring the operations of state government and public policy. In each case he used the hearings and reports to expose the weaknesses of his office and the shortcomings of the state constitution. The hearings showed how the legislature kept New York’s chief executive weak by design, uncovered a system of executive branch boards and bureaus purposely subverting the Governor, and an entrenched bureaucracy more concerned with its own interests than in public service. Upon completion of each investigation Smith called for reform of the agency involved and the executive branch overall. Smith’s Moreland Act investigations also complemented Smith long-term goal of restructuring state government under his Reconstruction Commission by mirroring that commission’s findings and mobilizing public support throughout his entire tenure as Governor.

As Smith’s service as Governor came to an end with his run for President of the United States his last Moreland Act investigations were turned to protecting programs and public welfare measures enacted during his tenure while simultaneously rooting out inefficiency and bolstering his calls for revamping the executive branch. As Smith began his last year in office in 1928 he looked back over his long four-term struggle and stated
that finally state government under the “confusion of boards and commissions which could not function effectively” had come to an end. Smith declared that “under reorganized government, its processes are easily understood” and state government was finally following a logical course and serving the needs of the people.24

How the Moreland Act made reform possible requires first an understanding of the history of the Act, and the conditions that led to its enactment in 1907 as detailed in Chapter One. Chapter Two shows how Alfred E. Smith rose from obscurity to Governor and also explains the problems inherent in the executive branch under the 1894 State Constitution as experienced by the governors from Hughes through Smith. Chapter Three begins Governor Smith’s experiment with the Moreland Act as he investigated several small departments in need of reform in 1919 and 1920. Smith’s struggle with nonresponsive boards and directors (State Police, State Fair, and Soldiers and Sailors Home) underscored Smith’s calls for reform during his first term. Chapter Four details Smith’s two Moreland Act investigation into the state milk industry, the structure of state government in agriculture and markets, and several smaller independent inquiries bolstering Smith’s calls for executive branch reform. Chapter Five clearly ties Smith’s three Moreland Act investigations (1919, 1924, 1928) on labor and workmen’s compensation to his social welfare agenda. With Workmen’s Compensation serving as one of Smith’s most cherished labor issues, Smith focused more attention on this issue under the Moreland Act than any other during his tenure. Chapter Five also describes Smith’s appointment of himself as an investigator in 1924, a highpoint in the history of the Moreland Act when Governor Smith personally conducted an investigation that

focused as much on complaints made by private citizens (the Board of Directors of Associated Industries) as on the state department charged with carrying out public policy. Chapter Six recounts the Moreland Act investigations into several small departments (Public Works, Canals, Transit) just prior to the restructuring of state government in Smith’s third term. By focusing on the state agencies being studied in the mid-1920s as part of New York State’s planned government reorganization, Smith took the opportunity to use the Moreland Act to provide solid examples of convoluted and ill-governed departments and boards in need of reform. During the Public Works, Canal, and Transit inquiries Smith repeatedly highlighted the similarities between his 1919 Reconstruction Commission and the 1926 Hughes Report, and the reports of his Moreland Act commissioners. Chapter Seven concludes the use of the Moreland Act under Governor Smith during the last year of his third term (1926) and his fourth term (1927-1928). It focuses on the Moreland Act investigations called after the Constitutional changes revamping the executive branch. These investigations centered on Smith’s desire to insure New York State bonds for public buildings were not being wasted, the investigation of a corrupt state official (Secretary of State), and an inquiry designed to strengthen the prison and parole system left incomplete despite the Hughes Report of 1926. Each one of Smith’s last three inquiries can be characterized as preventative in nature in that they focused on problems in areas soon to be (or already) revamped under state government restructuring. With public buildings being consolidated under a restructured Department of Public Works responsible for a ten-year multi-million dollar bond act for building, Smith tasked the State Architect with investigating the issue of public buildings and bidding practices to expose past fraud and prevent future waste. In a
similar manner, Smith’s commissioner investigating prisons repeatedly stated that assisting Governor Smith in his preparation for a new system of prisons and parole oversight was one of his goals. And, the investigation of New York’s last elected Secretary of State helped support Smith’s contention that junior executive branch officials needed to be accountable to a central administrative figure – the Governor.
Chapter 1 - The Moreland Act

The Moreland Act, the section of the Executive Law enabling New York State governors to investigate any board, bureau, commission, and executive branch of government, traces its official beginning to the legislatively-appointed utility and insurance investigations of 1905. Because of the weakness in the office of the governor prior to the 1926 reorganization of state government, the legislature often appointed special investigations to examine issues, collect facts, and then pass corrective legislation. The 1905 investigations, like most other legislative investigations, precluded a role for the governor even though the inquiry focused on the executive branch. In 1907 the counsel to the 1905 investigations, Charles Evans Hughes, began his first term as governor, but he soon found the governor’s office very weak. After much frustration over the limited control over his departments – including the insurance department which Hughes investigated less than two years earlier – Hughes turned to Assemblyman Sherman Moreland for help. Moreland, the Assembly Majority Leader, eager to please his old law professor, drafted a new law providing for gubernatorial investigations into any executive branch of state government. Days before the close of the 1907 legislative session Moreland shepherded the law through the legislature and it was signed by Hughes.¹

That Governor Charles Evans Hughes served as one of the central figures in the creation and implementation of the Moreland Act should come as no surprise. Prior to

election as governor Hughes served as a very successful attorney and government investigator. His role as lead counsel to the Stevens utility and Armstrong insurance investigations and his sensational findings of government corruption directly led to his nomination for governor. Only nominally a Republican and not active in political affairs, Hughes’ nomination to the governorship came not through his pursuit of the office but rather at the insistence of President Theodore Roosevelt and other like-minded reform elements in the Republican party eager to capitalize on the popularity of Hughes. The 1906 November gubernatorial election pitted Hughes against a Tammany-backed William Randolph Hearst. Hearst also blandished certain reform elements in his campaign by running as the cross-endorsed candidate of the Independence League (a Hearst-controlled third party favoring the municipal ownership of utilities) as well as the Democrats. Hughes narrowly beat Hearst but upon taking office in January 1907 soon began to understand firsthand how the perception of the governor as the chief executive of state government did not match the reality of the governorship as a weak administrator with severely diluted power.²

The constitutional constraints on the governor of New York State in 1907 combined with a powerful legislature soon led Hughes to grasp why his work as an investigator would only aide him as governor if he could find a way to exercise this power. Otherwise he would be reduced to a mere cheerleader for reform. Instead of simply advocating change Hughes drafted a far-ranging legislative program containing many reform bills such as utility regulation and election law reform. Hughes

simultaneously campaigned for passage of these measures through the press and at public engagements throughout the state.\textsuperscript{3} One key ally in Hughes’ quest for reform proved to be President Theodore Roosevelt who had been governor only six years earlier and understood the problems Hughes faced. More importantly, Roosevelt was ready to lend public support for Hughes as he attempted to add integrity to the office of the governor. Roosevelt saw great potential in Hughes and believed Hughes would be able to bring to fruition the changes Roosevelt could not in 1899 and 1900. Much to the benefit of Hughes, Roosevelt’s power in New York State, naturally aided by the presidency, increased during the 1900s. Roosevelt eagerly sought out Hughes as a fellow political progressive.\textsuperscript{4} Hughes realized he would have a difficult time implementing his reform programs therefore he valued the backing of both government reformers and political allies such as Roosevelt. As Hughes battled to enact reform he described his governorship as one of independence, efficiency, and allegiance to good government principles, often going so far as characterizing his election to the governorship as being “retained by the people” in order to bring change to the state.\textsuperscript{5}

In his first legislative session (1907) Hughes eagerly pursued an agenda championing many issues popular with the electorate yet unfavorable to the legislature, the business lobby, and a number of political bosses. A few key issues occupied much of Hughes’ time early in his first term as governor including the creation of a public service commission to oversee railways and public utilities and greater administrative control


over the offices within the executive branch. Theoretically a public service commission
would prevent the abuses Hughes uncovered during the Stevens investigation in 1905. In
addition to a public service commission, Hughes also sought greater gubernatorial control
over the administrative machinery within the executive branch, particularly the

The issue of control over the insurance department under Governor Hughes had
great bearing on the creation of the Moreland Act. In January 1907, Hughes decided that
the superintendent of insurance, Otto Kelsey, had to step down. Hughes did not think
Kelsey corrupt but rather ineffective. Hughes believed Kelsey too slow in implementing
the new laws enacted as a result of Hughes’ 1905 investigation of the department. In
early February 1907, with Hughes unable to secure a resignation from a resistant Kelsey,
and Kelsey boldly announcing he would welcome a review of his handling of the
department, Hughes decided to call a hearing at which time Kelsey could explain his
performance. After the hearing Hughes then asked the Senate to remove the intransigent
commissioner. Not only did Kelsey refuse to resign, but the Republican-dominated
Senate and many Republican Party officials openly sided with Kelsey.\footnote{Wesser, Charles Evans Hughes: Politics and Reform in New York, 1905-1910, 129; Davies, Moreland Investigations in New York State, 2; “Superintendent Kelsey Wins, 27 to 24.” New York Tribune, May 3, 1907.} The Kelsey affair
explicitly demonstrated the weakness of the governor’s office and the power the political
bosses exercised within state government.\footnote{Davies, Moreland Investigations in New York State, 4.}
Governor Hughes, like previous governors, had little control over who worked in many executive offices or whether or not the governor could hire individuals or, as in the case of the insurance commissioner, fire them. Under New York State’s constitution the governor lacked the power to solely appoint many commissioners, bureau directors, and executive branch employees. Many commissioners had set terms and overlapped administrations such as Commissioner Kelsey who had been appointed by Hughes’ predecessor. And since many appointments required Senate confirmation, could only be removed with the approval of the Senate, and still others were direct appointees of the legislature alone, the chief executive did not exercise control over many of the 169 departments, bureaus, boards, and commissions nominally called the executive branch.9

On many occasions executive department employees went over the head of the governor – their own boss and supervisor – by simply appealing directly to the legislature’s fiscal chairs for assistance in personnel and finance matters.10

Governor Hughes faced an intransigent legislature controlled by a bock of powerful upstate and rural Republican Party bosses heavily influenced by the business lobby who favored a weak governor and limited state regulation. Thus, in addition to limiting the governor’s power to police his own employees the legislature resisted progressive legislation, such as a public service commission, that threatened their control. What made matters worse was that in both cases – insurance and public service (utilities)


– Hughes had investigated these two areas only a year earlier and found major problems. Now as governor he had little power to actively pursue change based on his expert knowledge. While Hughes did pursue some small investigations into the department of public buildings and the National Guard, Governor Hughes was technically in charge of each of these divisions and needed no mandate to investigate. Larger departments required expert staff, additional funds, and the ability to compel witnesses without having to press formal charges under the public officers’ law.\textsuperscript{11}

In April 1907 Assemblyman Sherman Moreland unveiled a draft of his new investigation law. Moreland, himself a very powerful man in the Assembly serving as both Majority Leader and Chair of the Committee on Ways and Means, drafted the law with input from Hughes.\textsuperscript{12} On April 13 the \textit{New York Times}, \textit{New York Herald}, and \textit{New York Tribune} printed portions of the text of Moreland’s draft investigation bill and speculated on the negotiations going on behind the scenes. The \textit{Times} reported Moreland had hoped to vest the power to investigate state government in the chairs of the legislative fiscal committees, Moreland himself being one of them. However, the \textit{Times} further reported, Governor Hughes asked Moreland to change the bill to provide for investigation by a commissioner (or commissioners) appointed by the governor or the governor himself as self-appointed commissioner. The bill provided for very broad powers stating that the governor “may, at any time, and at intervals of not more than three years must, appoint one or more competent persons to examine and investigate each department, board, bureau, division, and commission of the State.” The investigations

\textsuperscript{11} \textit{New York Herald}, April 13, 1907.

were to look at methods of bookkeeping, vouchering, record keeping, and the number of employees, their functions, and salaries."\(^{13}\)

The bill further authorized the governor to appoint any number of commissioners with the power to “take testimony under oath and require the production of books, papers, and documents, and shall report to the Governor with his or their recommendations.” This broad power would allow the governor to empanel as many investigators as he saw fit to complete his examinations. The bill also allowed the governor himself to investigate with the power to subpoena and enforce the attendance of witnesses. Since the bill also required investigations every three years the law created a de facto department of investigation. The governor’s reports were to be transmitted to the legislature “with such recommendations as he may deem proper” thus promoting legislative changes from the governor’s point of view – a stunning reversal of roles.\(^{14}\)

The proposed bill embodied two radical changes to state law. First, the law changed the paradigm from the legislature to the executive in regards to investigations. Since most investigations had been undertaken by the legislature with ample notice to those soon to be investigated, this new law would not only enable the executive (in addition to or separately from the legislature) to investigate, but gubernatorial investigations could begin almost instantaneously upon appointment by a single person, the governor. Now the governor would be allowed to begin an investigation “without a moment’s warning.” Second, the law provided for a method of investigation and fact finding sorely needed to make sense out of the chaotic form state government had taken

\(^{13}\) New York Times, April 13, 1907.

\(^{14}\) New York Herald, April 13, 1907; New York Times, April 13, 1907.
in the early twentieth century. Governors could now delve into the maze of state
government in order to seek information and suggest changes in the make-up of
government. Hughes, his advisors, and Assemblyman Moreland stated publically that the
bill would allow the governor to insure departments were properly managed.\textsuperscript{15}

If enacted this new system would grant Hughes greater power than any of his
predecessors. Many speculated at the time that the bill could be interpreted as allowing
gubernatorial investigation of county and city governments – a power beyond the
executive branch and a potential violation of the concepts of separation of powers and
home rule.\textsuperscript{16} Other press reports characterized the legislature as “anxious”, “gloomy”,
afraid of the bill’s “prying” reach, and its potential use in a “house cleaning crusade.”\textsuperscript{17}
The \textit{Times} stated that the new system could amount to a “State Secret Service” with
Hughes as “chief investigator.” The \textit{Times} piece and the quotes inferring investigation
heightened long-standing rumors already circulated that the governor would begin an
investigation of state employees as soon as the bill passed to root out political cronies.
Moreland, as sponsor of the measure, merely claimed that the bill would create a more
businesslike state government under the watchful eye of the governor and his
examiners.\textsuperscript{18} That Hughes and the legislature were locked in battle over the removal of
Kelsey and a series of reform bills only exacerbated the ill feelings between Hughes and

\textsuperscript{15} \textit{New York Tribune}, May 11, 1907; \textit{Albany Times Union}, May 21, 1907.
\textsuperscript{17} \textit{New York Herald}, April 13, 1907; \textit{New York Times}, April 13, 1907; \textit{New York Tribune}, May 6, 1907;
\textit{Albany Times Union}, May 21, 1907.
\textsuperscript{18} \textit{New York Times}, April 13, 1907.
the legislature once of the new investigation bill was made public. Almost immediately many in the legislature labeled the proposal the “probe bill.”

On April 15, only two days after the draft of the bill was reported in the press, Moreland introduced the bill in the Assembly. In late April Moreland had the bill reported favorably from Ways and Means (his committee) to the full Assembly. While the bill lingered on the Assembly calendar until mid-May, Moreland, possibly under pressure from fellow legislators, amended the bill. Some party bosses, and many state employees, feared the loss of political control and local patronage if the governor could investigate various localities at will. Greatly shortened yet still containing the central mission of enabling the governor to investigate state government, the amended bill dropped the three year requirements for investigating departments and eliminated the authorization of governmental “division” investigations to preserve local government home rule. By and large, however, the bill still provided the governor with radically new controls: investigatory power, executive branch oversight, and the ability to police his own departments without recourse to legislative investigations.

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19 *New York Times*, June 5, 1907.


21 *New York Legislative Index, Constituting a complete Record and Index of all Bills introduced in the Senate and Assembly during the 130th annual session of the Legislature of the state of New York beginning January 2, 1907*, (Albany: Published by the Legislative Index Publishing Company, 1907), 215.


In early May after a prolonged struggle with the Senate Hughes lost his battle to remove Kelsey. On May 3 the Senate voted to sustain the commissioner rather than the governor, thus allowing Kelsey to retain his job while publicly humiliating Hughes.\textsuperscript{24}

The inability to remove Kelsey and the powerless position of the chief executive vis-à-vis his subordinates, further encouraged Hughes to pursue new executive investigation powers for the governor under the Moreland bill.\textsuperscript{25} Hughes stated publicly

It is inimical to honest and proper administration that when such a condition exists there should be a lack of executive power to bring administration methods up to the standard demanded by the people. I believe that the time has come when people will hold their officers more strictly to account for the manner in which they perform their duties and represent their constituencies, and that along with this increased sense of responsibility there will be a willingness to repose in their chosen representatives such power as will enable them to discharge their public trust.\textsuperscript{26}

Thus, with Moreland’s bill, he would at least be able to investigate subordinate state employees and insure their competence.

An interesting change of heart seemed to surround the bill as Moreland shepherded it through the legislature and towards passage in mid-May and early June 1907. Once shortened, the bill made its way through the committee system in the Assembly with the help of Moreland. As a member of the powerful Rules Committee, the committee charged with deciding which bills would be acted upon in the closing days of

\textsuperscript{24} See Appendix C for the official Senate Resolution sustaining Kelsey in office despite Governor Hughes’ petition to remove him leading to the creation of the Moreland Act from Investigation Case Files of Charges and Complaints Against Public Officials, Series A0531-78, Complaints Against Otto Kelsey, Box 26, folder 15.


\textsuperscript{26} \textit{New York Times}, May 4, 1907.
session, Moreland was able to position it towards passage as the session neared an end. When the bill came up for passage in the Assembly on May 22 one member rose to ask for an explanation of the bill only to be reprimanded by both the Democratic leader and the Republican leader (Moreland). Democratic leader James Oliver merely stated it’s a “good bill” upon which Moreland answered “with that statement I think no explanation is necessary.” The bill then passed without a single negative vote. No debate was had; no protests were made. Despite all of the expressions of concern just weeks earlier over the expansion of gubernatorial power the bill was sent to the Senate for its penultimate step.27

The Senate did not give in as quickly or quietly as the Assembly and several senators raised concerns in early June. The bill became part of a “special message” sent by Hughes on June 4 to the legislature outlining his favored reform measures. Hughes wanted several bills, including Moreland’s investigation measure, passed before the legislature adjourned. In a strange irony, Assemblyman Alfred E. Smith, later a great champion of the law as governor, had the floor when the message arrived in his chamber. Smith joked that the bill be sent to the “committee in charge of unfinished business” thus eliciting huge applause from a tired Assembly eager to leave town.28 Though the bill had already passed the Assembly, the Senate still held out. While stenographic reports are not in existence, the press reported that the bill faced some opposition in the Senate Finance Committee as well as on the Senate floor with a few senators vigorously opposing the bill. Even with the local government provisions (“division”) dropped from the bill and the unanimous passage in the Assembly, some still fretted over gubernatorial powers of

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27 New York Herald, May 22, 1907.

28 Albany Times Union, June 4, 1907; New York Tribune, June 5, 1907.
investigation. Some Senators understood that under the Public Officers Law of 1892 the governor already possessed powers of investigation and removal of officers by the governor but only upon approval of the Senate (as witnessed in the Kelsey affair), thus they expressed limited reservations.29 One Senator objected to the law potentially being applied to independently elected officials within the executive branch such as the comptroller. Despite complaints only four Senators cast negative votes.30

A number of factors suggest why the bill passed. Scholars have advanced a variety of theories as to why the legislature gave in and granted the governor the power to investigate state government. Missal, one of the earliest scholars on the Moreland Act, speculated that the bill may have been passed as a sop to Hughes due to the legislature’s victories over Hughes in the Kelsey fight and the weakening of the governor’s powers in the public service commission bill.31 Conversely, Robert Wesser asserted that Hughes’ victory in the public service measure, even with the bill weakened due to amendments, may have helped spur passage of the Moreland Act, a similarly viewed good government reform. And, passage may have been one means to smooth over Republican intra-party skirmishes. Merlo Pusey, one of Hughes’ definitive biographers, stated Hughes’ direct appeal to the people and Moreland’s lobbying within the legislature broke legislative

29 Chapter 681 of the laws of 1892, the Public Officers law, in Laws of the State of New York, Vol. II, Passed at the One Hundred and Fifteenth Session of the Legislature, Begun January fifth, 1892, and ended April Twenty-First, 1892, In the City of Albany, (Albany: Banks & Brothers, 1892), 1662-1668.

30 New York Tribune, June 8, 1907. The issue of a governor invoking the Moreland Act to investigate independently elected officials came up under Governor Alfred E. Smith in 1927 when he pursued an investigation of the Secretary of State, a statewide elected official. At the time the question posed by Senator McCarren twenty years earlier seemed prescient. However, the attorney general in 1927 ruled that the investigation should proceed due to the issue being investigated not the office from which the issue derived. See chapter seven,

opposition. Additionally, the legislature may have allowed this reform measure to pass because many legislative leaders counted on few “Hughes types” coming to power in the future. But that cynical interpretation can be countered by the fact that of the fifteen members of the legislature who served on either the Stevens or Armstrong investigations in 1905, nine were members of the legislature in 1907 and each one voted for the bill thus moving departmental investigations from the sole purview of the legislature to a shared status with the executive.

On June 20 Governor Hughes signed the Moreland Act making gubernatorial investigation part of the New York State Executive Law. The Moreland Act, more properly Chapter 529 of the Laws of 1907, and officially Section 8 of the Executive Law reads

> The governor is authorized at any time, either in person of by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state. The governor and the persons so appointed by him are empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material. Whenever any person so appointed shall not be regularly in the service of the state his compensation for such services shall be fixed by the governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid from the treasury out of any appropriations made for the purpose upon order of the governor and the audit and warrant of the comptroller.

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32 Pusey, *Charles Evans Hughes*, 210-211.


35 Chapter 539 of the Laws of 1907, *Laws of the State of New York Passed at the One Hundred and Thirtieth Session of the Legislature, Begun January Second, 1907, And ended June Twenty-Sixth, 1907*, In
The new law forever changed the paradigm of investigation in New York State, and by extension, served as a model for other state governors. It was a step towards centralizing administrative responsibility in the governor.\(^{36}\) Within a week the governor’s position appeared in the *Times* which reported “the Governor has left no room for doubt that he regards the present system of administration in most State departments defective and inefficient” requiring the chief executive to “go to the Legislature for relief at every arising emergency.”\(^{37}\) Now the governor could investigate his entire branch even though he was still severely limited in his powers of appointment and removal.

There were precedents for New York’s action, but they were not strong and the passage of the Moreland Act did not create a wave of such laws in other states. After the passage of the act in 1907 New York State became only the third state with provisions for gubernatorial investigations - Idaho and Montana being the others. Both Idaho and Montana had language very similar to the Moreland Act added to their state constitutions in 1889. However, neither of these states’ governors had ever utilized the power to investigate state offices or examine officials under oath. The states which seem to have emulated the Moreland Act most closely were New Jersey and Wisconsin but, those states did not pass executive investigation laws with language similar to New York’s

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37 *New York Times*, June 27, 1907.
until 1941. Thus New York moved forward with an additional gubernatorial power – investigation of state government – prior to most other states.

Armed with this new – and rare -- state power, Governor Hughes appointed his and the state’s first Moreland Act commissioner on August 20, 1907, exactly 60 days after he signed the law. Unsurprisingly, given his past experience, Governor Hughes’ first investigation under the law focused on the Department of Insurance. Hughes appointed Matthew Fleming, who had served as assistant to Hughes at the Armstrong Insurance investigation in 1905, as the first Moreland Act commissioner. Five months later in his January 30, 1908 report Commissioner Fleming recommended the removal of Kelsey. In a repeat of 1907 the Senate on February 26, 1908 again refused to remove Insurance Commissioner Otto Kelsey. Kelsey finally resigned over a year later on March 1909. Hughes followed the insurance investigation with four other investigations over the next three years targeting wastefulness or corruption in relatively minor executive branch departments.

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38 Missall, *The Moreland Act: Executive Inquiry in the State of New York*, 24-40. New Jersey established limited investigatory powers in 1931 but these were far weaker than the act passed in 1941 which closely mirrored the Moreland Act.

39 *Albany Times Union*, August 21, 1907.


During the course of his two terms as governor, Hughes commented often on the lack of power the governor exercised, stating that this situation led to, and then fostered, inefficiency in government. For example, in his 1909 inaugural address Hughes stated:

While the governor represents the highest executive power in the State, there is frequently observed a popular misapprehension as to its scope. There is a wide domain of executive or administrative action over which he has no control, or slight control.

The multiplication of executive duties incident to the vast and necessary increase in State activities has resulted in the creation of a large number of departments exercising administrative powers of first consequence to the people. The Governor has the power of appointment, but in most cases the concurrence of the Senate is necessary. The terms of these officers are generally longer than the Governor’s term. And in their creation the Legislature with few exceptions reserved final administrative control to the Senate in making the heads of departments, to whose appointment the Senate’s consent is necessary, removable only by it.

It may fairly be said to require that the executive authority, exercising the appointing power under whatever check, should be responsible for administration and should have the control upon which such responsibility must rest.42

Hughes not only understood the limits of the governorship but actively suffered under these constraints. He witnessed firsthand how government functions expanded yet central administrative control lagged. People viewed the governor as the head of government but could not fathom the restraints that limited his control over his own branch. The entangling maze of bureaus, boards, commissions, and departments and the various methods of appointment and removal of employees made the governor’s job as guarantor of government efficiency nearly impossible.43 New York State added offices when deemed necessary but rarely eliminated them; and most offices were purposely created.


with the understanding to keep them decentralized. In time the duplication and redundancy between and amongst boards and agency often overtook functionality and stifled action because no clear lines of authority or mission could be ascertained.

The governors following Charles Evans Hughes’s departure in 1910 for a seat on the United States Supreme Court found the executive office just as difficult to control as did Hughes. Between 1910 and 1918 New York governors appointed sixteen Moreland Act investigations.\(^{44}\) Some of the governors after Hughes used the act to police small executive departments so minute and arcane that, even though they were in need of reform or correction, it made the use of the Moreland Act seem like overkill. But of course these governors had no other means with which to make corrections. Some investigations provided detailed information to the governor who in turn pushed corrective legislation.

In general the use of the Moreland Act between 1910 and 1919 fluctuated between minutia and massive statewide undertakings. None of the investigations made sizeable advances in government efficiency on a very large scale. Audrey Davies, the earliest scholar on the Moreland Act, stated that the original use of the act – “to weed out corruption or inefficiency in state offices, by which he [the governor] might assert a responsibility denied him in other respects” - was converted into a “substitute for responsible executive government.” Investigation had very frequently turned into

\(^{44}\) Governor Dix (6), Governor Sulzer (8), Governor Glynn (2), Governor Whitman (2). See Appendix D for the Moreland Act Investigations from 1907 through 1918. Governor Whitman did not call any Moreland Act investigations in his second term, 1917-1918. Thus between February 1916, the issuance of the report under Whitman’s last investigation, and February 1919 when Governor Smith commenced his first investigation, the Moreland Act was not invoked for three years. See Appendix E for the list of Governor Smith’s Moreland Act investigations.
inquisition, to which the legislature often added its own investigative roadblocks to protect their prerogatives in the vast expanses of state patronage and power.\textsuperscript{45}

Besides recourse to the Moreland Act, the five governors immediately following Charles Evans Hughes advocated reform of the executive branch in public speeches and quite often in their addresses to the legislature. Many governors publicly advocated for an increase in gubernatorial powers in the areas of oversight, budgeting, and executive department efficiency. Governor Horace White, who served for three months in 1910 after Hughes’ resignation, expressed his reservations regarding the power of the governorship at Governor John Dix’s swearing in ceremony in 1911. Governor White mirrored the sentiments of Governor Hughes by explaining the weakness of the office of the governor and the need to reform state government: “The Governor is responsible to the people; and the departments, which are closely related to the success and credit of his administration, should be answerable to him.” However, as Governor White noted, most executive branch departments were not “answerable” to the governor.\textsuperscript{46}

Governor John Dix in 1911 called for “reform and retrenchment” and the elimination of excessive government spending on “unnecessary special bod[ies]” performing the work of the “constitutional officers of the State.”\textsuperscript{47} Governor Dix also undertook a series of investigations into state departments that led to better efficiencies

\textsuperscript{45} Davies, \textit{Moreland Investigations in New York State}, 7-11.

\textsuperscript{46} Governor Horace White, not having appointed any Moreland Act investigations during his three month tenure in 1910, is the lone exception of these five governors in the use of the Moreland Act. Lieutenant Governor Horace White served as governor from October 6, 1910, when Governor Charles Evans Hughes resigned, until December 31, 1910. \textit{Public Papers of Horace White, Governor, 1910}, (Albany: J.B. Lyons Company, 1911), 121.

\textsuperscript{47} \textit{Public Papers of John A. Dix, Governor, 1911}, (Albany: J.B. Lyon Company, 1912), 43-44.
and the removal of several incompetent employees. In his first message to the legislature in 1913 Governor William Sulzer recommended “the desirability of abolishing useless offices, consolidating wherever possible bureaus and commissions, with the sole object of more rigid economy and a greater degree of efficiency.” Governor Martin Glynn in his 1914 message to the legislature strongly urged “wherever possible in your judgment, the abolition or consolidation of departments or bureaus, rather than the extension thereof.” Governor Charles Whitman in 1915 advocated both administrative reforms and government efficiency in his inaugural address even stating that he would undertake a “thorough investigation of State departments” to develop “proposals for reforms and improvements.” Each one of these governors found their role as executive hamstrung by a dilution of their power amongst various offices and junior officers, and a powerful legislature fully in control of the state budget and eager to expand government – but without an increase in the power of the governor. However, as with piecemeal executive branch reform under isolated Moreland Act investigations, sporadic calls for reform from the governor made good copy for newspapers but brought few changes to state government.

Of all the Governors between Hughes and Smith, William Sulzer can be credited with one major innovation often overlooked in the area of government efficiency. Sulzer attempted, and arguably for a time succeeded in, instituting an executive agency

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49 *Public Papers of William Sulzer, Governor, January 1, 1913 to October 17, 1913*, (Albany: J.B. Lyon Company, 1913), 38.

50 *Glynn Public Papers 1913-1914*, 21.

51 *Whitman Public Papers, 1915*, 15.
responsible for auditing executive departments and pursuing government efficiency. Instead of solely relying on individual investigations Governor Sulzer established a Committee of Inquiry (not a Moreland Act investigation) to study government. In turn, this committee recommended the creation of a Department of Economy and Efficiency under a commissioner with the power to “issue subpoenas and examine witnesses under oath in investigations bearing on the business methods of the State Departments.” However, the legislature dissolved this short-lived agency less than a year later in 1914.

It should be noted that the increase in executive power under the Moreland Act did not diminish the frequency of legislative investigations. After 1907 the legislature still appointed dozens of joint legislative committees and temporary state commissions. The legislature still exercised its power to investigate government functions with an eye towards legislative fixes – often in a very partisan manner. The legislature’s exclusive power to enact legislation hampered the governor even after he secured the right to investigate state government. Reorganization of the executive branch required changes in legislation, constitutional amendment, or both. And since constitutional changes in the organization of the executive branch required the passage of two separately elected concurrent legislatures prior to ratification by the electorate, the legislature had a significant power and time to decide what changes would be made despite appeals by a reform governor.


53 Cumulative Index to the Joint Legislative Committees and Selected Temporary State Commissions and Alphabetical List of Chairman and Vice-Chairman, 1900-1950, (Albany, N.Y.: New York State Senate, 1966).
As in the case of New York State, within the United State government the legislature (Congress) traditionally took the lead, holding some 450 investigations between 1792 and 1940. Only after the movement towards executive budgeting in the 1920s and the reorganization of the Executive Office of the President under Franklin D. Roosevelt, did executive inquiries and investigations at the federal level greatly increase.\textsuperscript{54} A similar pattern and time frame can be seen in New York State vis-à-vis legislative and executive branch inquiries and their frequency in the latter branch. By the end of the 1910s New York State governors, legislators, and good government advocates began to entertain the idea of state government reform and greater government efficiency on the large scale, drawing the attention of the public at large. At the same time governors for the first time in New York State history began to frequently investigate state government. The state constitutional convention of 1915 also spurred studies and efforts to modernize New York State government. All of these aspects helped draw attention to the need for reform, something the Moreland Act was supposed to foster. Thomas Schick, a scholar of the 1915 convention and the modern the New York State governor, claimed modernization movements – particularly in regards to the governor’s powers - lagged in the early nineteenth century but were greatly aided by the 1915 convention.\textsuperscript{55}

The mixed results of the Moreland Act investigations prior to 1915 also lends credence to the belief that if executive reform were enacted it had to take place on a large scale. Hughes’ struggles and the creation of the Moreland Act served as steps towards

\textsuperscript{54} Missall, \textit{The Moreland Act: Executive Inquiry in the State of New York}, 2-3.

\textsuperscript{55} Schick, \textit{The New York State Constitutional Convention of 1915 and the Modern State Governor}, 22-27.
empowering the governor by shedding light on gubernatorial weaknesses. Lacking the
 corresponding power over executive branch employees, the original purpose of the
 Moreland Act – the gathering of information and the policing of the executive branch by
 the governor – morphed, or more properly, devolved, into a gubernatorial bludgeon by
 the mid-1910s used to pursue political opponents or battle the legislature over policy.
 One scholar characterized the use of the Moreland Act by the series of “incompetent
governors” after Governor Hughes as a substitute for “responsible executive
government.”  

The need for executive inquiry can be summed up in the statement: “no matter
what the character or the problems it faces, a government cannot function successfully
unless it has adequate and accurate information.” Investigations, by their very nature,
logically serve as a most useful tool in this area. The passage of the Moreland Act began
a twenty year experiment in executive investigation prior to the massive overhaul and re-
organization of state government under Governor Smith in 1926. As Missall so astutely
noted, without a “completely integrated administrative system” the Moreland Act
provided the best means to act within the “limited managerial authority” granted the chief
executive.

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56 Davies, Moreland Investigations in New York State, 6-7.


As New York State government moved from the political realignment begun in the 1890s to the reform movements, administrative and regulatory growth characteristic in most state governments in the 1900s and 1910s, executive branch reform followed slowly. Non-partisan government movements, social welfare campaigns, ballot reform, populism, and “discontent with big business corporations” moved New York State government into “regulation, administration, and planning.” By 1905 with the Hughes investigations of both utilities and insurance, the public clamor for change motivated reform and spurred new governmental systems.\(^1\) While the Moreland Act of 1907 enabled governors to investigate state agencies, chief executives of the 1910s were still severely limited in the appointment and removal of those operating them; and, the executive branch remained a tangled morass of boards, bureaus, commissions, and departments.\(^2\)

In the 1910s New York State continued to operate under a constitution that severely limited its chief executives. The voters elected a variety of executive officers such as a Lieutenant Governor, attorney general, secretary of state, treasurer, comptroller, and engineer, all of whom shared the executive branch with the governor. New York’s response to expanding government - the creation of boards and bureaus - further diluted

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the chief executive’s power within his own department. Very rarely did the legislature add new subdivisions to the executive branch with corresponding executive power and control. Thus, the governor served as a weak leader presiding over a sprawling mass of government agencies over which he exercised very limited power. Though the governor represented “the State as a whole” the separation of powers; numerous elected executive branch officers; well over one hundred and fifty boards, bureaus and commission; and extremely limited gubernatorial power to control his own branch led to near chaos.³

In the 1910s Alfred E. Smith watched - quite literally from his Assembly seat - numerous gubernatorial investigations, reform efforts, and executive branch reorganization plans attempting to modernize state government. The 1910s serve as both a decade of political education for Alfred E. Smith and the stage upon which governors and the legislature investigated government and experimented with change. Three key areas shaped Smith’s political and governmental outlook and molded his idea of how government should operate: investigations (both gubernatorial and legislative), the 1915 Constitutional Convention, and the 1919 Reconstruction Commission.

In the area of investigations in the 1910s Assemblyman Smith watched as dozens of legislative, gubernatorial, and Moreland Act investigations probed state government. As detailed in Chapter One Hughes called six Moreland Act investigations between 1907 and 1910, and New York Governors called an additional sixteen from 1910 until Smith’s administration in 1919. Smith himself participated in various legislatively-appointed investigations. Smith also served on numerous standing committees during his twelve

years in the Assembly, listening to testimony, holding hearings on bills, and gathering information on various aspects of public policy. Thus Smith knew quite well how to collect information and research issues. The movement to reform state government, especially in the time leading up to, during, and after the 1915 New York State Constitutional Convention, also shaped Smith’s ideas on government. Serving as a delegate to the 1915 convention helped Smith better understand how to revamp state government as the leading minds in government and law debated New York State’s governing document. The education afforded Smith by the convention directly led to Smith’s massive Reconstruction Commission in 1919, the precursor to New York State’s reconfigured executive branch in the 1920s. The Reconstruction Commission gathered together leading citizens and governmental experts (very similar to the 1915 convention) to further Smith’s goal of reforming and modernizing state government, something the convention of 1915 failed to enact but the Hughes Commission of 1925-1926 - sponsored by Governor Smith - accomplished. Smith’s two decades of work in state government as a legislator, delegate, governor, and investigator culminated in a revamped executive branch. However, just as did all of the governors after Charles Evan Hughes, Smith also utilized the Moreland Act numerous times due to the severe limitations of the executive prior to the overhaul of the state constitution.

Many biographies have documented Alfred Emanuel Smith’s rise from simple beginnings on the lower east side of Manhattan to the governor’s mansion. All of these biographies recount his birth to Alfred E. Smith, Sr., a hard-working trucker of goods and a quiet yet determined mother, Catherine Mulvehill. Both of his parents were first generation Americans having been born to immigrants; Alfred E. Smith, Sr. was the son
of an Italian immigrant father and a German immigrant mother. Catherine Mulvehill’s parents were both Irish immigrants. Losing her husband at a young age Catherine Smith faced the prospect of either supporting herself and her two children or face having them placed in an orphanage. Smith’s education proved brief, leaving St. James’ school in the eighth grade for full-time work to support his sister and widowed mother.\(^4\)

Smith’s employment history included selling newspapers, work as a shipping clerk in an oil company, employment in a candy shop, a messenger for a trucking company, and a job in the Fulton Fish Market.\(^5\) In most of these jobs – despite titles suggesting office work – Smith worked out of doors, on the streets of New York experiencing the hard drudgery of carting and long hours of laboring on the docks. Even his work in the small candy shop operated by his mother Smith proved taxing because Smith first attended school, delivered papers, and then worked long hours behind the counter until late in the evening.\(^7\) After several years in the Fulton Fish Market Smith found physically easier work as a shipping clerk in Brooklyn steam pipe manufacturing


\(^5\) It is interesting to note that in every one of his twelve biographical entries in the *New York Red Book* between 1904 and 1915 Smith reported having graduated from St. James parochial school (he did not graduate) and then taking charge of his father’s trucking business (it dissolved after Smith’s father died when Smith Jr. was only in eighth grade). Smith may have wanted to appear both educated and entrepreneurial by omitting his failure to graduate from eighth grade as well as the numerous menial jobs preceding his government work. Edgar L. Murlin (ed.) *New York Red Book*, (Albany: J.B. Lyon Company, 1904 through 1915 inclusive), 1904, 188; 1905, 167; 1906, 172; 1907, 155; 1908, 156; 1909, 172; 1910, 174; 1911, 169; 1912, 193; 1913, 116; 1914, 173; 1915, 186.


company. Smith’s recreation after working hours centered on acting, a skill of great use in his later years as a politician. In his autobiography Smith recounted that much of his social life revolved around St. James Catholic Church and included acting in plays, bicycling, and parish events. In 1900 he married Katie Dunn whose family had at one time lived on the lower east side but had since moved to the Bronx. Increasingly more active in Tammany Hall, Smith found local politics enjoyable and rewarding. Tammany Hall provided Smith steady employment in the Commissioner of Jurors’ office as a subpoena server, a position he held from January 1895 until 1904.

After years of loyalty to the Democratic Party (despite a few intra-party squabbles), marriage to his long-time sweetheart (Katie Dunn), and a growing family, Tammany Hall nominated Smith for a seat in the State Assembly in 1903. Winning the election easily in a heavy Democratic district, Smith began his public service as a state legislator from New York City in January 1904. Smith’s political thought and philosophy found root in his neighborhood life in Manhattan. His was a tight-knit community. The working conditions of his parents and his own toils enabled Smith to understand the working man. His Catholic religion, strict code of ethics, and strong maternal guidance shaped his morality. Smith’s identification with his Irish heritage made him conscious of the Irish’s place - and his own - in the lower echelons of American socio-economic classes. Tammany Hall and the political club house provided social contacts and an

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organization under which favors and promises were exchanged for votes, a system in which Smith thrived and advanced. Thus work, religion, ethnicity, and politics – particularly political loyalty - shaped Smith and guided him throughout his political life.\textsuperscript{11}

As a legislator Smith followed Tammany Hall’s lead and voted with the Democratic Party in a chamber dominated by upstate and rural Republicans then in the majority. Smith’s background and life experience also separated him from many of his fellow legislators. Tammany Hall and urban neighborhood life colored Smith’s outlook, a background perceived as foreign by rural, upstate Republicans, and many non-New York City Democrats. Smith found nothing illogical in his loyalty to Tammany and its system of providing for its followers, an organization despised and feared by the Republicans.\textsuperscript{12}

Understanding little of the procedure and activities of the Assembly Smith later admitted to boredom and confusion during his early years as an elected state official. Smith sat in the last row of the Assembly far removed from the rostrum and activities of the house. Smith’s committee assignments in his first year did little to add interest to his life as a legislator. Serving on the Committee on Banks and the Committee on Public Lands and Forests Smith stated he had never been in a bank except to serve a subpoena and had never seen a forest.\textsuperscript{13}

In 1905 Smith witnessed the appointment of two separate legislative investigations of public utilities (Stevens Investigation) and insurance (Armstrong


\textsuperscript{12} Becker, “Alfred E. Smith: A Personality Study of a Political Leader,” 16, 35.

Investigation). Charles Evans Hughes served as counsel to both of these legislative investigations. While Smith himself did not serve on either investigation, Smith was a member of the Assembly when these committees were appointed and when Hughes issued the final reports of the investigations, which in turn, recommended new laws to the legislature. In 1905 Smith secured a seat on the Committee on Claims while maintaining his membership on the Committee on Banks.\textsuperscript{14} Still unsure of himself as a legislator, Smith augmented his learning by religiously returning to the state library each night after session to research the bills introduced by the legislature. Soon Smith possessed an encyclopedia-like knowledge of the laws of New York and the operations of state government. By the end of his second year, Smith found himself steadily progressing in his understanding of public policy. He had self-educated himself in the ways of governance, parliamentary procedure, and legislative operations.\textsuperscript{15}

In 1906 the new Speaker of the Assembly James Wadsworth, believing Smith needed better committee assignments, appointed Smith to the Committee on Insurance then considering an overhaul of the insurance laws following Hughes’ final report of the Armstrong Insurance investigation. Even though Wadsworth and Smith bore different party affiliations (Wadsworth was a Republican), Smith’s adroitness impressed Wadsworth who in turn aided Smith by appointing him to important committees.\textsuperscript{16} This friendship, one of many across the political aisle, enabled Smith to find an outlet for both


his energy and his new eagerness to prove to himself that he belonged in the State Assembly. That Smith’s first major committee assignment followed Hughes’ investigation of the insurance industry, which directly led to the Moreland Act one year later, serves as an example of Alfred E. Smith experiencing firsthand the use of investigation as an instrument of reform.

Advancing quickly in the Democratic caucus Smith narrowly lost his bid to lead the Assembly Democratic minority in 1907 losing to a fellow New York City Assemblyman who had stronger support in Tammany Hall. Despite this minor setback, Smith continued to excel and began the session as an acknowledged leader in the Assembly. In January 1907 newly elected reform Governor Charles Evans Hughes submitted several reform measures to the legislature including a public service commission to regulate utilities. Initially Tammany balked at the creation of the new commission recommended by Hughes due to concerns over losing patronage jobs. However, Tammany gave in after strong public support bolstered Hughes. Smith followed the lead of Tammany voting for various yet weak amendments to dilute the public service commission bill only to support the final measure and also the Moreland Act. This incident, and similar anti-reform stances by Smith during Governor Hughes’ tenure, served as important learning experiences for Smith the legislator. Smith as

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governor would face similar situations: the need to appeal directly to the people in order to embarrass and pressure the legislature into acting on reform measures.\footnote{Josephson and Josephson, \textit{Al Smith: Hero of the Cities}, 325.}

Though Smith voted for both the Public Service Commission bill and the Moreland Act, he depended heavily on Tammany for guidance at this juncture in his career.\footnote{Feldman, ``\textit{The Political Thought of Alfred E. Smith},'' 32-33.} In his autobiography Smith blames much of the opposition to Hughes’ reform measures on the Republican Party, though as Democrats Smith and Tammany voted against Hughes on most occasions backing Hughes only when politically expedient. Smith also credited Hughes’ creation of a public service commission - the legislative outcome of Hughes’ utility investigation two years earlier - as “the outstanding achievement of his whole administration,” an irony since Smith initially balked at voting for it and later championed this form of government regulation in many areas.\footnote{Slayton, \textit{Empire Statesman}, 69; Smith, \textit{Up To Now}, 81.}

In addition to working on legislation as a result of the Armstrong Insurance Investigation Smith served as only one of three Democrats on the Committee on Cities and also the Committee on the Revision of the Charter of Greater New York.\footnote{\textit{Documents of the Assembly of the State of New York One Hundred and Thirty-Third Session}, 1910, Vol. I, Albany: J.B. Lyon, 1910, #5, \textit{Report of the Legislative Committee on Charter of the City of New York}.} Wadsworth again directly aided Smith by appointing him to committees dealing with New York City issues.\footnote{Colburn, ``\textit{Alfred E. Smith: The First Fifty Years, 1873-1924},'' 56-58.} In 1908 Smith served on the special committee investigating the state’s inferior criminal court system. In addition to his new role as a member of an investigation committee, Smith also served on the Committee on Electricity, Gas, and
Water Supply, the committee responsible for oversight of the burgeoning field of public utilities and their oversight. This latter committee would help Smith better understand public utilities, railroads and subways, rates and fair structures, and lead Smith to advocate for a State Power Authority.\textsuperscript{24} Smith’s broadened committee experience enabled him to attend hearings and participate in inquiries on important issues facing the state including home rule (particularly for New York City), public utilities, the court system, and an increasingly larger number of personal bills submitted by him each year on topics as varied as railroad fares, fire insurance claims, state and local government employees’ salaries, narcotics regulation, and the banning of cigarette sales.\textsuperscript{25} Smith passed legislation extending the life of a commission investigating anti-pollution methods for New York City waters and the bill for reorganizing the inferior criminal court system in 1910 based on two years of investigation. This latter effort, to reform the court system, resulted from Smith’s active work on extremely complicated court operations and investigations into the court systems in Buffalo, Rochester and New York City.\textsuperscript{26}

The Democrats took control of both houses of the legislature in 1911, something not accomplished since 1893, and chose Smith as its Majority Leader and Chairman of the Ways and Means Committee. Despite never having served on this important fiscal committee Smith threw himself into the task finding that “there is no better way of

\textsuperscript{24} Silveri, “The Political Education of Alfred E. Smith,” 52-53.

\textsuperscript{25} Silveri reports that Smith’s bill introductions increased each year between 1904 (when he first took office) and 1909 when he began his ascent into the Democratic leadership in the Assembly. Smith introduced only 6 “local and unimportant bills” in his first two years (1904 and 1905). In 1906 Smith introduced 15 bills; 1907 – 20 bills; 1908 – 19 bills. Silveri, “The Political Education of Alfred E. Smith,” 32, 49, 53-54, 64-65.

becoming acquainted with the business of the state than to study the appropriation bill.”

As one of the leading Democrats in the legislature Smith found himself shaping the state budget, deciding what bills would be passed in the Assembly, and conferring with the governor and leadership of the Senate. Smith stated that in 1911, with his elevation to leadership in the Assembly, his “intimate acquaintance with Mr. Murphy [Tammany’s leader] began.” As Chair of the Ways and Means Committee Smith watched as New York State experimented with various budgeting procedures, each of which created friction between the executive and the legislature. The power of appropriation had a major impact on executive governance, administration, and public policy – aspects of government eagerly sought by both the governor and the legislature. The drafting of state budget bills broadened Smith’s knowledge of the legislative process and the operations of state government. However, Smith’s greatest formative legislative experience would later in 1911 as the result of a horrible industrial disaster.

At 4:42 p.m. on the afternoon of Saturday, March 28, 1911 a fire erupted at the Triangle shirtwaist factory in New York City. The fire consumed the top three floors of the ten-story Asch building, killing 146 people, most of them young women. Over the next few days many groups called for an investigation. The tragedy of the fire helped unite divergent groups and created an impetus for an investigation of the fire and the conditions leading to it. By mid-April various groups coalesced around one citizen-

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27 Smith, *Up To Now*, 90.

28 Smith, *Up To Now*, 121.


30 *New York Times*, March 26, 1911.
sponsored investigation: the Committee on Safety. The near universal outrage over the fire led to cooperation between very divergent groups seeking redress and reform.\textsuperscript{31}

With the help of both reformers and prominent citizens outraged by the heavy loss of life at Triangle, the Committee on Safety charged ahead with its call for investigating fire codes and other industrial conditions. The Committee, staffed by Frances Perkins, received its funding through generous donations from some of New York City’s wealthiest people and included members from labor and the reform movement. The activities of the Committee on Safety, and other reformers, combined with the recent fire in the New York State Capitol, brought the need for an investigation into industrial conditions to the attention of the governor and the state legislature.\textsuperscript{32} In early May, Assembly Majority Leader Alfred E. Smith and Senate Majority Leader Robert Wagner, with the encouragement of the “older members of both houses in Albany,” introduced bills to establish a Factory Investigation Commission. The state legislature passed the bills which became law on June 30.\textsuperscript{33}

As leaders in their respective Houses, Robert Wagner chaired the investigation and Al Smith served as vice chair. The commission appointed two New York City lawyers as its counsels, Abraham Elkus and Bernard Shientag.\textsuperscript{34} Both would later implement many of the reforms suggested by the commission and remain key advisors to


\textsuperscript{34} Kerr, “New York Factory Investigating Commission and the Progressives,” 29; Smith, Up To Now, 92.
Smith as governor. The ensuing investigation uncovered the horrors of the fire and the abhorrent working conditions throughout New York State industry. The Factory Investigation Commission helped bridge the gap between reformers and government, particularly the Democratic Party, forming lasting alliances stretching far beyond the commission and the laws it created. The investigation, its findings, and long tenure (investigation bills were still being introduced in 1915), added considerably to the education of Al Smith and further softened the reformers’ view of Smith as a Tammany-controlled legislator. Many reform advocates, such as Frances Perkins, took the opportunity afforded by the investigation to educate Smith as to the importance of the government reform beyond just the labor movement.  

The commission provided Smith with a look into the lives of people all across the state in dire need of help. Visiting factories and hearing testimony on “matters affecting the health and safety” of New York workers laboring in thousands of bakeries, canneries, sweat shops, and tenements pulled Smith into closer orbit with labor. In its first year alone the Factory Investigation Commission staff visited over 1,800 firms and the Commission held 22 public hearings involving over 220 witnesses. Louis Silveri, an early scholar of Smith’s Assembly years, credits Smith’s work on the factory commission and the resultant labor laws as the point Smith began “to embrace something more than

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the Tammany line.” The commission made labor and factory regulation statewide issues. Faced with being on the wrong side of issues very important to millions of people, Tammany under Charles F. Murphy, eagerly moved closer to labor, an area into which the Republicans would not venture and where the left (progressives, populists, and socialists) previously dominated. Smith and Robert Wagner helped recast the image of the Democratic Party where “urban liberalism became the dominant politics of the left, absorbing progressivism and supplanting socialism.” The commission’s recommendations formed the substance of sixty bills introduced by Smith and his colleagues between 1911 and 1915 of which fifty-six became law. Legislation, including eight new laws sponsored by Smith in 1912, ranged from regulating minimum wages, hours of work, fire and health codes, and industrial regulations to a revamped labor department with greater powers to investigate and regulate industry.

The Factory Investigation Commission work influenced Smith in two overarching ways: first, he stated the investigation “dominated by politicians would employ experts” thus assuaging the fears of reformers that any state investigation would lead to a political whitewash. This important aspect would be repeated by Smith over and over in his career: dependence on expertise in assessing and investigating issues in order to arrive at the facts of the matter. Second, the investigation cemented Smith’s alliance with

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reformers, not just labor.\(^{41}\) The unique blend of Tammany politicians and reform elements combined with the use of use of experts in gathering information created an atmosphere dependent on results. Otherwise distrust would seep into the factory investigation – and indeed any investigation. Instead, objectivity and raw data analyzed by experts and committee members led to a significant record that explicitly and often times quite graphically made the case for change. These facts, in turn, led to new legislation.\(^{42}\) Smith’s investigatory efforts and acceptance of labor and reform vastly expanded his political outlook. Just as significant, the Factory Investigation Commission followed a pattern Smith would employ numerous times as governor: investigation followed by legislative reform.

Between 1912 and 1915 Smith found himself the undisputed Democratic leader in the Assembly and one of the leading Democrats in the legislature and state government. With the Democrats losing the majority in the Assembly in 1912 and again in 1914-1915, Smith served as Minority Leader and embodied the loyal opposition to the Republicans. In 1913 Smith reached what he believed to be the pinnacle of his political career – Speaker of the Assembly.\(^{43}\) Smith’s election to the speakership, combined with Robert Wagner’s election as Majority Leader of the Senate, gave the Democrats full control of the legislature. It also placed two Tammany men at the helm of each house of the legislature. In addition to control of the legislature, the Democrats controlled the


\(^{43}\) Smith, Up To Now, 124-125.
governorship with the election of William Sulzer, a Tammany Congressmen from New York City.

Upon taking office in January 1913 Governor Sulzer immediately exercised his independence claiming that he, not “Boss” Charlie Murphy of Tammany Hall led the state Democratic Party. Similar pronouncements led to hostility between Tammany and Sulzer, eventually leading to an open break between the two and a public battle over legislation, appointments, and administration of state government. Before the Murphy and Sulzer split erupted, Smith successfully passed a number of important bills including the creation of an Industrial Board with powers to regulate industry and a legislative commission to research pensions for widowed mothers and their children. However, the odd behavior of Sulzer and the fight between Tammany and the governor eclipsed most of Smith’s tenure as Speaker and after only a few months, Speaker Smith soon found himself in the midst of the Murphy-Sulzer battle. Sulzer made it clear that each Democrat must choose a side. Sulzer then traveled the state touting his independence and condemning Tammany Hall. Sulzer also commenced vetoing legislation favorable to those who would not publicly back him. Sulzer’s intransigence resulted in a legislative investigation (the Frawley Commission) to uncover evidence of wrongdoing by the governor. Sulzer, not to be outdone, commenced a series of Moreland Act investigations into various state departments in order to find evidence of corruption by state employees and contractors linked to Tammany Hall. The resulting chaos eclipsed

46 Friedman, The Impeachment of Governor William Sulzer, 115, 122-123.
the remainder of Smith’s speakership and in August 1913 Smith began impeachment proceedings against Sulzer for violations of the Corrupt Practices Act. The charges focused on the misuse of campaign funds and evidence uncovered by the Frawley Commission. The Assembly voted to impeach. In October 1913 the Senate convicted Sulzer, automatically resulting in his removal from the office of governor.

Governor Sulzer’s almost continuous use of the Moreland Act weakened its effectiveness very quickly, however, many of his investigation did uncover government corruption. The governor empanelled eight investigations in less than ten months with many of his later investigations specifically designed to try to uncover political scandals linked to Tammany Hall. This brazen witch hunt, similar to the political motivations driving the legislature’s Frawley Commission, turned gubernatorial investigation into cheap politics. The episode formed what one Moreland Act scholar called the days of “government by investigation.”

Upon Sulzer’s removal Lieutenant Governor Martin Glynn became governor. However, the November 1913 elections resulted in an overwhelming defeat for the Democrats. In both 1914 and 1915 Smith served as minority leader in the Assembly. Alfred E. Smith left the legislature after the 1915 session having accepted nomination for the office of Sheriff of New York County in November 1915. His record as an Assemblyman is impressive in that he passed numerous laws, particularly in the area of labor, despite serving in the majority party in only two of his twelve years in the

47 Davies, Moreland Investigations in New York State, 8.

48 Silveri, “The Political Education of Alfred E. Smith,” 122. Of the 79 Assemblymen who voted to impeach Governor Sulzer only 46 received re-nomination and only 17 were re-elected.
legislature. However, Smith also exhibited some of the characteristics condemned by reform groups such as the Citizens Union. While in the majority in 1911 and 1913 Smith, as a leader of the Democrats acquiesced in passing “ripper legislation” stripping Republicans of jobs in favor of Democrats, blocking direct primaries in favor of the convention system, and of course, impeaching a sitting governor of his own party.49

Smith’s years in the legislature display an ironic balance of both Tammany loyalist and emerging reformer. For example, he followed Tammany’s lead and voted against women’s suffrage, the direct primary, and the Gaynor Charter for New York City; but, he championed much of the labor legislation in his chamber after 1911, including workers’ compensation, women’s labor issues, and child welfare.50 Overall Smith’s political education in the Assembly is important because it took place at a time when New York State government underwent great change and experimentation, particularly in the use of investigation. Smith participated in three major legislative investigations, voted for the passage of the Moreland Act, worked to pass legislation introduced as a result of the Armstrong Insurance investigation of 1905, and witnessed twenty-one Moreland Act investigations while in the Assembly. Additionally, the legislature sponsored thirty-three joint legislative commission and temporary state commission between 1910 and 1915, many of which Smith must have been familiar with due to his expanding role in the Assembly leadership during the same period. Several joint legislative and temporary state commissions delved into numerous public policy issues such as water power, utility


regulation, taxation, factories, and utility regulations – all key government functions and public policy areas later explored by Smith as governor.\textsuperscript{51}

New York State executive branch scholar Thomas Schick credited the 1915 New York State Constitutional Convention with focusing efforts which eventually led to modernizing the office of governor. A reorganization of state government and the centralization of offices under the 1915 draft New York State Constitution would have made the governorship more powerful and thus less dependent on gubernatorial investigations, particularly the Moreland Act. The issue of a strong governor administering a coordinated and logical executive branch comprised of experts took hold during the convention.\textsuperscript{52} New York’s leading minds actively pursued a new business-like system of government that, in the words of the 1915 convention president Elihu Root, would insure that “responsibility and power shall always go together.” Similar to Charles Evans Hughes’ words years earlier, Root and the other delegate found that in researching New York’s executive branch “responsibility without power can never be justly enforced, and power without responsibility can never be duly controlled.”\textsuperscript{53} The convention itself served as a testing ground for ideas on how best to reshape the executive branch and the role of the governor as chief executive with even Former President William Howard Taft

\textsuperscript{51} Cumulative Index to the Joint Legislative Committees and Selected Temporary State Commissions and Alphabetical List of Chairman and Vice-Chairman, 1900-1950, Albany, N.Y.: New York State Senate, 1966. Some of the joint committees and temporary state commissions proved very important such as the Factory Investigation Commission (1911), New York City Municipal Courts (1913), Housing (1913), widows’ pensions (1913), water storage (1911), and laws related to police, public service corporations, motor vehicles, criminal procedure, and taxation. However, about ¼ of these commissions and committees dealt with issues such as battlefield monuments and anniversary events.

\textsuperscript{52} Galie, Ordered Liberty: A Constitutional History of New York, 200-201.

discussing federal efforts of his “Economy and Efficiency Commission” as they related to New York executive branch reform. Many of the leading advocates for reform at the convention, the so-called “federal crowd,” eagerly advocated a strong governor, an executive budget, and fewer executive branch agencies, often gaining support from leading Democrats of like mind such as Al Smith and Robert Wagner.

Smith’s debates in the convention reveal his interest in a reformed executive branch. Smith supported changes to allow the governor to appoint a cabinet similar to the President of the United States, to control legislative proliferation of useless offices, and make gubernatorial appointments coterminous with those of the governor. Smith specifically cited the case of Governor Hughes being unable to remove Commissioner Kelsey from the Insurance Department as an example of executive branch responsibility not matching executive power. Though the momentum to change progressed slowly prior to 1915, after the convention – even though its proposed new constitution failed at the polls - the movement to modernize and strengthen the office of governor never waned, even if it proved unpopular on occasion. With the issue temporarily shelved after

54 Documents of the Constitutional Convention of the State of New York, 1915, Begun and Held at the Capitol in the City of Albany on Tuesday the Sixth Day of April, Albany: J.B. Lyon Company, 1915, Document No. 11, Joint Meeting of the Committees on Governor and Other State Officers and State Finances with Hon. William Howard Taft, Ex-President of the United States, 2-3, 12-16.

55 Henry L. Stimson. On Active Service in Peace and War (New York: Harper Brothers, 1948), 65-67; Schick, The New York State Constitutional Convention of 1915 and the Modern State Governor, 38-40. Henry Stimson, the unsuccessful Republican candidate for governor in 1910 was also a former US Attorney and Secretary of War, served as one of the key Republican leaders known as the “federal crowd” who pushed for significant change. These Republicans, who held various national offices, included former Secretary of State and US Senator Elihu Root, former US Attorney General George Wickersham, Congressmen Herbert Parsons, and John Lord O’Brian.


its failure at the polls in 1915, many, including Alfred E. Smith, eagerly waited for another opportunity. Largely due to the inclusion of what Smith characterized as an unfair apportionment article, Smith did not support the new constitution. While expressing support for much of the document, particularly in “regard to its State officers article,” Smith voted against the document and worked against its ratification at the polls. It would take another ten years before the passage of executive branch reorganization in the 1920s. Ironically, it would not be a constitutional convention that put in motion a new constitution but rather a commission under former Governor Hughes. This commission drew upon the 1915 Constitutional Convention as well as an independent study under Governor Alfred E Smith: the Reconstruction Commission.

Elected governor in the fall of 1918 Alfred E. Smith returned to Albany. Though reform played only a small role in his nomination and campaign, Smith gained important support from labor, women, and progressives – enough support to narrowly defeat incumbent Republican Governor Charles Whitman. In his first annual message to the legislature in 1919 Governor Alfred E. Smith outlined his plans for a return to a post-war economy. Smith divided the issue of post-war “reconstruction” into two classes: “temporary” programs relating to returning veterans and programs addressing “permanent” problems such as taxation, industry, food, finance, banking, labor and a variety of issues dealing with the economy and state government. To address these issues Smith announced plans for a Reconstruction Commission comprised of leading men and women from both the public and private sectors. Smith stated the commission


59 Public Papers of Alfred E. Smith, Governor, 1919, (Albany: J.B. Lyon Company, 1919), 30-31. Hereafter throughout this paper Smith Public Papers, with appropriate year of his governorship.
would assist New York State in readjusting to peace time. Smith believed that after the commission studied a variety of economic, government, and public policy issues a list of legislative initiatives would be developed.60

The idea for Smith’s Reconstruction Commission came from Belle Moskowitz who initially discussed the idea with Frances Perkins and Bernard Shientag, a former assistant counsel to the Factory investigation Commission. Moskowitz pitched the commission idea shortly after Smith election to the governorship in November 1918.61 The commission would work to transition from a war economy (reconstruction) and modernize, reshape, and reorganize state government (retrenchment). This reform strategy would, Moskowitz explained to Smith, enlist the “federal crowd” in Smith’s efforts to reform state government and enable it to deliver better services to the people. Smith agreed and appointed Moskowitz to head the project; Moskowitz in turn hired Robert Moses as the Commission’s Chief of Staff.62 An impressive 36-member commission including men and women from government, business, finance, medicine, science, and labor comprised the commission.63

Upon its announcement in January 1919 Smith’s extensive Reconstruction Commission plan to reorganize New York State government faced a hostile legislature.

60 Smith Public Papers, 1919, 31.


63 See Appendix F for a full list of the Reconstruction Commission membership.
The legislature refused to fund the study, going so far as to label it a “rump legislature,” forcing Smith to rely on private funding.\[^64\] When the commission presented its final document in October 1919 Smith commenced a year-long battle to have the legislature adopt its recommendations. While Smith pushed the reorganization plan through the Legislature in 1920 the Assembly failed to re-pass it in 1921 as required under the constitution, so the amendments could not be sent to the voters for ratification.\[^65\] Emily Warner, Smith’s daughter, noted in her study of her father that Al Smith believed the Republicans thought of him as a “political accident” who would not be heard from again after his one term as governor. Thus, the Reconstruction Commission, and Smith’s other programs could be ignored in 1919 and 1920, and of course in 1921 when Smith returned to private life with the election of Republican Nathan Miller to the executive mansion.\[^66\] However, Smith never gave up seeking reform of New York State government even while out of office, and in 1921 and 1922 Smith worked with a number of advocates seeking reorganization. Smith also helped to form the New York State Association from the remnants of the Reconstruction Commission.\[^67\]

Without immediate restructuring of the executive branch and the implementation of other needed changes such as an executive budget, the Moreland Act remained one of the governor’s few tools to battle for administrative reform, information gathering, and

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\[^64\] Smith Public Papers, 1919, 48-51; \textit{Albany Times Union}, March 18, 1919; Smith, \textit{Up To Now}, 187; Frank Graham. \textit{Al Smith: American} (New York: G.P. Putnam’s Sons, 1945), 93. Smith requested $75,000 in state funding for the study in January 1919. A bill requesting $60,000 for the commission was defeated in the legislature in March 1919.


executive control over his own sphere of government. This irony did not go unnoticed by
the Reconstruction Commission’s final report and Governor Smith. Smith stated

Many years of experience in the Legislature and my experience as
Governor have impressed me with the necessity of simplifying the
government of this State. The people must give the Governor authority if
they want to hold him responsible.

How can a Governor be responsible for administration of over one
hundred and fifty agencies scattered all over the State and directed by
board, commissions, and individuals whom the Governor in most cases

Smith stated that the “non-partisan” Reconstruction Commission’s suggestions, if
adopted, would consolidate agencies, institute executive budgeting, and institute a reform
of government similar to that suggested by the 1915 constitutional convention. If adopted
the plan would benefit the state and “lay the foundations for better relations between the
legislative and executive branches of government.”\footnote{Report of Reconstruction Commission, iii-iv.}

The Commission Report recounted the tremendous growth in government and the
state’s budget necessitating a need for “retrenchment and reorganization.” The best way
to undertake the task, the report noted, was not “by a series of special investigations into
badly organized, overstaffed or otherwise wasteful departments.” Individual
investigations, noted the commission, “has had little permanent effect” and often gave
“rise to charges of politics and partisanship.” Rather, the Reconstruction Commission
recommended the complete overhaul of the executive branch granting the governor


\footnote{Report of Reconstruction Commission, iii-iv.}
greater power over his department, consolidating departments, power to appoint and remove subordinates, and control over the state budget.\textsuperscript{70}

The Commission recommended reducing the number of departments and placing them under gubernatorial appointees. Numerous offices would be abolished or merged, the governor’s term would be increased to four years, an executive budget system would be established, and a new agency to accompany a budget director would be established: the Division of Reports and Special Investigations.\textsuperscript{71} Along with greater control over appointing and dismissing subordinates and the power to draft and administer the state’s budget, the Commission recognized that investigations would still be necessary.

The Governor and his department heads need to have a check upon department activities in order to keep them up to the proper standard of administration. From time to time it is necessary thoroughly to investigate almost all departments or bureaus. Special investigations under the Moreland Act do not adequately fill this need. Such investigations are conducted by a new force of examiners every time, are not uniform in scope, methods or procedure, are generally instituted to sift charges of malfeasance or dishonesty, and therefore create in the departments an atmosphere of opposition rather than co-operations. A permanent central agency responsible to the Governor for budget activities and having continuous contact with the departments should also be available for special investigations at the request of the Governor or departments.\textsuperscript{72}

The Commission’s characterization of the Moreland Act, particularly as it related to its preference for a permanent office of investigation, underscored the limits of the Governor under the system the Commission strove to replace under its report. Chaos in the executive branch, limits on the governor in the areas of administration and budgeting, and

\textsuperscript{70} Report of Reconstruction Commission, 3-4.

\textsuperscript{71} Report of Reconstruction Commission, 4-5, 47-52.

\textsuperscript{72} Report of Reconstruction Commission, 48.
the inability to police his own department, may have led to the haphazard and less than stellar performance of the Moreland Act under previous governors, but, it was one of the few options weak governors could exercise. A new department of investigations, similar to the Department of Efficiency under the Sulzer Administration (though this analogy did not make the report), would have perfected the Moreland Act. However, as in the case with the entire report, the legislature ignored it.

Alfred E. Smith began the 1910s as an Assemblyman, moved into the leadership of the Assembly by mid-decade (Speaker in 1913), served as a delegate to the 1915 Constitutional Convention, and ultimately reached the governorship in 1919. In each role Smith increased his knowledge of government, eventually leading to his complete overhaul of the executive branch in the 1920s. Three key areas in the 1910s serve as precursors to Smith’s use of investigation in efforts to revamp state government: the increasing use of gubernatorial and legislative investigations; debate over reforming state government and increasing the power of the governorship, particularly during the Constitutional Convention of 1915; and, Smith’s own Reconstruction Commission of 1919. These public policy endeavors, combined with Smith’s extensive legislative background, formed the building blocks of Smith’s political education and electoral advancement; these areas also shed light on Smith’s later recourse to investigation.

However, unlike the governors who preceded him, Smith combined the use of the Moreland act with a comprehensive plan to reshape New York State government. And, Smith redeemed the image of the Moreland Act from its perception as a tool used only to investigate minor state offices or pursue political enemies to one of information gathering. In the areas of executive branch reform, piecemeal Moreland Act
investigations by governors had failed as did the attempt to overhaul state government under a new constitution (1915). Enlightened by this history, armed with the Moreland Act and a Reconstruction Commission, Smith moved to reform state government and strengthen the office of the governor in 1919.
Chapter 3 - The Small Moreland Act Investigations of 1919

Only a few months after assuming office, Governor Alfred E. Smith faced a series of potential scandals in several small state agencies nominally a part of the executive branch. These three departments – the State Fair Commission, Troop A of the State Police, and the Soldiers and Sailors Home at Bath – all serve as examples of executive branch offices operating without proper oversight. Governor Smith did not break new ground in appointing investigations into obscure agencies operating under the large umbrella of the executive branch. Smith’s predecessors also launched Moreland Act investigations into some of the more obscure departments: for example Governor Charles Evans Hughes’ investigation of the Board of Embalming Examiners in 1908 and Governor William Sulzer’s inquiry of Ventilating Systems in Schools and Public Buildings in 1913. These investigations, just like Smith’s small investigations of 1919, addressed malfeasance or mismanagement in small, isolated, and in some respects arcane, state agencies.¹

However, Smith’s use of the Moreland Act in 1919 contrasted with his predecessors in two important ways; first, Smith focused his investigations on very specific and limited areas requiring executive oversight, and second, Smith’s 1919 investigations were dwarfed in significance to the massive overhaul of government Smith simultaneously pursued under his Reconstruction Commission. Unlike the sparing use of the Moreland Act by some of his predecessors, Smith did not hesitate to resort to

¹ See Appendix D for a list of Moreland Act investigations prior to 1919.
investigation under the Executive Law. However, Smith simultaneously limited the scope of inquiry once he decided to invoke the powers of investigation. Smith’s Moreland Act investigations quickly pinpointed the problem, gathered evidence, and issued reports outlining legislative or administrative solutions. Governor Smith utilized the Moreland Act repeatedly, yet judiciously and within narrow boundaries.

Smith did not utilize the Moreland Act to investigate “any and all” executive departments like some governors before him which led to deserved charges of abuse and partisanship, particularly in the case of Governor Sulzer, and to a degree Governor Glynn. Smith’s ultimate goal remained the complete reform of government, something only the Reconstruction Commission – not the Moreland Act - could accomplish. Quite wisely, Smith pursued an overall investigation of state government as a separate and independent enterprise apart from the Moreland Act. Therefore the limited attention granted to the more localized or specialized executive departments directly contrasted with Smith’s high profile statewide Reconstruction and Retrenchment Commission researching and investigating every aspect of state government. And when his Reconstruction program led to a revamping of state government under constitutional amendment in 1926 Smith again invoked an investigation – or more properly a commission – as a tool to implement change.

Smith’s 1919 Moreland Act investigations also form two distinct classes, a pattern carried throughout his tenure: primary examinations scrutinizing some of the leading executive departments (i.e., Farms and Markets, and Labor); and second tier

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2 The noted exception to this pattern is Governor Sulzer who appointed more Moreland Act investigations, proportionately, during his nine month tenure as governor than any other governor before or since. Sulzer abused the use of the act and created investigatory chaos in the executive branch. The other governors prior to Smith named fewer Moreland Act investigations, and generally with less focus than Governor Smith.
investigations of minute executive boards, bureaus, and commissions (i.e., State Fair Commission, the Trustees of the Soldiers’ and Sailors’ Home, and the State Police). The relative newness of the State Police seems to have required outside and objective help; in the other two areas (State Fair, Soldiers’ and Sailors’ Home) the structure of the agencies under scrutiny required modernization. At one time both the State Fair and the Soldiers’ and Sailors’ home had been independent, privately operated enterprises before they were taken over by New York State and appended to the executive branch.

Some of the individuals being scrutinized under the three small investigations of 1919 alleged political motivation in efforts to embarrass and remove them by their superiors, the local district attorney, and ultimately, Smith and his Moreland Act commissioners. Smith and his commissioners handled these charges in stride and the evidence once compiled justified the hearings and bolstered Smith’s calls for reform. Claims of political witch hunts never took hold, though in some instances partisanship appeared on both sides of the investigation - those favoring the investigation versus those being investigated. In each investigation Governor Smith’s commissioners were experienced lawyers with impeccable credentials who rose above the fray. That these experienced lawyers came from outside of the department they investigated but with experience in government and state operations bolstered this perception of disinterested interest. After the investigations ended, Smith used the final reports to reform the agency in question by removing personnel, altering the administration of these agencies, and submitting corrective legislation. And, each area in question was addressed in his Reconstruction report with long term solutions suggested.
The State Fair Commission

The first of these small investigations, the State Fair Commission, began in the midst of the 1919 legislative session, and only two days after the Republican-controlled Senate and Assembly voted not to fund Smith’s Reconstruction Commission.3 On March 20, 1919 Governor Smith received a letter from John H. Walrath, the District Attorney of Onondaga County.4 Walrath informed the Governor of alleged misdeeds by the managers and employees of the New York State Fair. The allegation included the forging of payrolls, no show jobs, fraudulent contracts, and further unspecified acts which the district attorney wished to explain in detail to either Governor Smith or his representative. Walrath stated that his office, while looking into possible crimes committed by those connected to the State Fair, had limited resources for the handling of such an investigation and asked the governor to investigate under section 8 of the Executive Law. Walrath promised to present the case to a grand jury in Onondaga County if a gubernatorial investigation uncovered evidence supporting the district attorney’s original findings.5

District Attorney Walrath also wrote to Joseph A. Kellogg, counsel to Governor Smith, appending the letters with a series of clippings from newspapers from mid-March 1919 recounting the allegations of impropriety and the district attorney’s on-going

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3 *Albany Times Union*, March 18, 1919.

4 John H. Walrath served as District Attorney of Onondaga County from 1916-1919 and Mayor of Syracuse 1922-25. Elected as a Democrat from a heavily Republican County in November of 1916, he was briefly considered for the Democratic nomination for New York State Attorney General on the same ticket with Alfred E. Smith in 1918. *New York Times*, July 10, 1918.

investigation into the State Fair. Walrath noted their political leanings - the *Syracuse Journal* (Republican), *Post-Standard* (Republican), and *Syracuse Herald* (Independent) on each clipping.⁶

The concerns brought to the district attorney’s attention came by way of another investigation conducted not by state or local officials but rather by the federal government. An investigation conducted in early 1919 by federal officials into stolen army property on the state fairgrounds led to Walrath’s investigation of State Fair personnel.⁷ Walrath undertook an investigation and found probable evidence of mismanagement and presented it to a grand jury.⁸ Those summoned before the grand jury included a variety of State Fair employees including the secretary of the Fair Commission, a commission secretary, the commission’s stenographer, timekeeper, and treasurer.⁹ The *Journal* reported that at least one local politician (City Alderman Charles Wolfarth) seems to have been paid for work not performed at the State Fair due to his death thus necessitating calling his widow. Since the issue of false time cards of employees touched on the job performance of the superintendent of grounds, Walrath also subpoenaed this employee, now the Onondaga county sheriff. In a related vein, Walrath subpoenaed former Lieutenant Governor Edward Schoeneck in relation to

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⁸ *Syracuse Journal*, March 29, 1919.

⁹ *Syracuse Journal*, March 26, 1919.
“alleged padding of the payrolls” and possible use of Fair employees on his private residence.  

Despite granting immunity to some Fair employees in the apparent hopes of gaining evidence of wrong doing by other Fair employees, Walrath feared he would be unable to secure indictments. The district attorney wrote to Kellogg on March 25 informing him he was “putting in evidence before the Grand Jury today in the Wolfarth matter” but, he did not know if he would be able to secure indictments. Walrath again expressed hopes that the governor would see his way clear to start an investigation. On March 26 Walrath again sent newspaper clippings to Kellogg stating he “would be very pleased to hear from you” as soon as Governor Smith decides on the question of an investigation. The note Walrath appended to the letter proved more direct. In a handwritten note on the margins indicating the attached letter was “a sample” Walrath relayed to Kellogg the apparent sentiments of some local Democrats. Walrath’s note, addressed to “My Dear Governor” and initialed by Walrath, had the following letter attached

Are you going to let the state fair get away without being properly shown up. (sic) Many people of this city are looking to you to bring about a reorganization of this fearful management. It certainly will be against (sic) you if you don’t do something, if you ever come up again for re-election. Investigate the lavish expenditure of money just to keep the city republican ring going, that is made from their receipts. I do not know that

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10 Syracuse Journal, March 27, 1919, March 28, 1919. By statute the lieutenant-governor served as the Chair of the State Fair Commission. Later in the investigation it was revealed that Lt-Gov. Schoeneck had been accused of using materials and labor from the state fair though charges were proven false.

anybody is stealing anything in the way of cash but they certainly are throwing it away.\textsuperscript{12}

Walrath sent “further clippings” and again asked about the likelihood of a gubernatorial investigation stating he would appreciate being notified at once if Governor Smith complied with his request.\textsuperscript{13} The constant correspondence from Walrath to Kellogg underscored the district attorney’s desire to see Governor Smith undertake a new investigation, possibly due to fear of failing to secure any indictments as well as his public statement that he lacked the resources to pursue an investigation of a state commission. That Walrath was the Democratic district attorney in a heavily Republican county cannot be discounted nor can the fact that Walrath was up for re-election as district attorney in November 1919. Many prominent Republican were connected to the Fair. For instance, the Fair’s former superintendent of grounds, and one of the people under investigation, was the county sheriff; the Fair’s treasurer had served as the Comptroller of Syracuse; and the Secretary of the Commission served as secretary to the mayor of Syracuse, and later as secretary to Lieutenant Governor Edward Schoeneck. Additionally, every appointed member of the State Fair Commission, with one exception, was an enrolled Republican.\textsuperscript{14}

On March 28 the governor appointed a Moreland Act investigation. In his letter of announcement Governor Smith reprinted the district attorney’s letter to the governor with the simple additional statement that he (Smith) was “complying with this request for an

\textsuperscript{12} Walrath to Kellogg, March 26, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “State Fair Commission,” Reel 105, 260-48.

\textsuperscript{13} Walrath to Kellogg, March 27, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “State Fair Commission,” Reel 105, 260-48.

investigation.” The same day Smith appointed Charles E. Norris of Carthage, N.Y. special investigator with portfolio to examine and investigate the management and affairs of the State Fair Commission. Two weeks later on April 10 Governor Smith vetoed $75,000 worth of State Fair construction and improvements in the state budget. The governor vetoed the items claiming the recent Moreland Act investigations would provide information as to the necessity of such expenses.

Norris, an accomplished attorney and former New York State assistant commissioner of excise (taxation), possessed both a finance and legal background. However, Smith appointed Norris, an active upstate Democrat and political insider who served as one of the key members of the upstate Democrats “Committee of Seven” that helped pick the 1918 state Democratic ticket, including Smith, only a year earlier.

Norris’s first task as Moreland Act commissioner was to meet with Walrath and review the information gathered under the district attorney’s initial investigation.

The New York State Fair Commission and its staff served as prime examples of the sprawling and often confusing system of executive branch administration in the early twentieth century. The State Fair, a privately operated enterprise between 1841 and 1899,

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16 Smith Public Papers,1919, 128.

17 Norris’s appointment came as a surprise to those following the hearings and the rumors of Governor Smith appointing a Moreland Act at the request of District Attorney Walrath. Initially the Syracuse Journal reported that former County Judge George Reeves of Watertown would be appointed as Moreland Act commissioner.

18 Utica Herald-Dispatch, June 18, 1918.

became a State endeavor in 1899.\textsuperscript{20} The law governing the State Fair Commission and its employees was enacted in 1900 and from then onwards an eleven member New York State Fair Commission oversaw the State Fair. The Commissioner of Farms and Markets and the Lieutenant Governor served on the commission ex officio with State law designated the Lieutenant Governor as presiding officer.\textsuperscript{21}

In 1907 Governor Hughes suggested a plan for the comprehensive development of the New York State Fair grounds. This act, passed by the Legislature, created a special committee under the State Fair Commission which successfully bid the work to build permanent buildings and infrastructure on the grounds starting in 1908.\textsuperscript{22} In 1909 Hughes secured passage of legislation reducing the number of State Fair trustees while also securing more power over their appointment. The commission became a seven member board of which five were to be appointed by the governor subject to Senate approval.\textsuperscript{23} By 1909 Hughes suggested in his message to the legislature that the improvements underway would further the “comprehensive development of the State Fair.”\textsuperscript{24}

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\textsuperscript{21} Originally the State Fair Commission had eleven members with several members being drawn from various agricultural entities such as the New York State Grange. This was reduced to seven in 1908 under chapter 31 of the laws of 1908. Terms were originally three years but changed to five years in 1915 under chapter 45 of the laws of 1915.
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\textsuperscript{24} \textit{Public Papers of Charles E. Hughes, Governor}, 1909, (Albany: J.B. Lyon Company, 1910), 32.
\end{quote}
\end{footnotesize}
All of the changes brought about at the State Fair in its first twenty year history as a state enterprise seemed to indicate that it functioned properly. Governor Hughes spearheaded the consolidation and improvements of both the Fair and its Commission. In 1908 Hughes stated “the development and course [of the Fair] must be gradual and without extravagance.” “Substantial progress each year” would allow the Fair to grow according to “a suitable general plan.” Likewise, Hughes praised the commission members stating they worked hard as volunteers and, considering their expanded role, may be deserving of compensation, a provision passed in law later in 1908. In an ironic twist Hughes stated that “as the fair assumes larger proportions it is necessary, however, to consider improvements in the system of administration.”

By 1919, only a decade after these observations, Hughes’ prediction came true – a lack of administrative oversight led to allegations of mismanagement, neglect, and public calls for reform of both the Fair and the State Fair Commission.

In 1919, as in 1909, part of what made the administration of the State Fair confusing was that there existed three different levels of oversight of the State Fair: the state officials who appointed a board, the board itself, and the actual Fair administrators. There also existed three separate procedures for appointing the State Fair Commissioners: a Council of Farms and Markets, which controlled the appointment of the Commissioner of Farms and Markets (an ex officio member); the election of a Lieutenant Governor

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25 Hughes Public Papers, 1908, 29-30
every two years (an ex officio member); and five gubernatorial appointees who had to be confirmed by the Senate.  

The Commissioner of Farms and Markets, the key representative of agriculture in New York State, owed his appointment not to the governor but to the legislatively-elected Council of Farms and Markets. This eleven-member council was comprised of nine representatives elected by the Legislature, one from each of the nine judicial districts of the State; one at-large board member; and ex-officio the Commissioner of Markets of the City of New York. The members of the Council of Farms and Markets, with the exception of the Commissioner of Markets of the City of New York, enjoyed ten year terms. Thus the Commissioner owed his appointment to a diverse and scattered body of members from the various regions of New York State who met very infrequently. The Department of Farms and Markets, while located within the executive branch, was in essence directed and controlled by an appointee of a board controlled by the legislature. This layering of boards and the dilution of responsibility in the areas of agriculture and the State Fair made it very difficult for the governor to hold any one individual responsible in these areas and nearly impossible for the governor to remove or replace the Commissioner of Farms and Markets and anyone of the eleven members of the Council of Farms and Markets.  

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27 The Council of Farms and Markets was based on the Education Department’s Board of Regents.  

In detailing the procedures governing appointments to the State Fair Commission it is easy to ascertain a certain amount of confusion. As stated above, not only was the Commissioner of Farms and Markets responsible to a Council of Farms and Markets instead of the governor, but the State Fair Commission was comprised of members who by their nature of their appointments were tenured for very short terms. The Presidents of the Senate (usually the lieutenant governors) were elected every two years. The five appointed commissioners served five year staggered terms. These gubernatorial appointees had to be confirmed by the Senate at the request of a governor who also had only a two year term of office.

When Governor Smith took office in January 1919 four of the five gubernatorial appointments had been selected by his predecessors, with three of these four having terms that would end after Smith’s first term was up at the end of 1920.\(^29\) Additionally, the lieutenant governor was elected separately from the governor. Though Lieutenant Governor Harry C. Walker, like Governor Smith, was a Democrat he was elected independently of the governor.\(^30\) The Commissioner of Farms and Markets, Charles Wilson (a Republican) was appointed in 1916, three years before Smith took office. Smith had only one appointment to the State Fair Commission at the time of the


\(^30\) Lieutenant governors were elected independently of the governor until 1950 when the two offices were elected on a joint ticket. In 1924 the voters elected Republican Seymour Lowman as lieutenant governor while Smith, a Democrat, won re-election as governor. Thus Democratic Governor Al Smith served as chief executive officer of the New York State while the State Fair Commission, an agency under the executive, had Republican Lieutenant Governor Seymour Lowman as its presiding officer.
Onondaga County district attorney’s request for a gubernatorial investigation in March 1919 and that appointment was made only one month before the local district attorney requested an investigation. When Smith found problems at the State Fair he encountered a network of responsibility so diluted that it seemed no one was in charge.

In late March 1919 Norris began his investigation. In addition to meeting with the district attorney Norris began a thorough examination of the contracts let by the New York State Fair Commission in 1917 and 1918. Norris investigated over a dozen major contracts finding that almost every one of them went to the low bid, or if it did not, had been adjusted due to necessary and documented changes. In one case, the disputed bid had already been referred to the New York State Attorney General. In many cases contracts were finished under bid and below budget.31

In addition to studying the contracting practices of the Fair Commission Norris also investigated twenty-two charges of alleged wrong-doing. The first allegation addressed and dismissed regarded the use of State Fair personnel to work on the home of former Lieutenant Governor Schoeneck, a local resident who had served as the chair of the State Fair Commission from 1915 to 1918. Norris found that the state employees allegedly working on his lake house were actually digging potatoes in his garden to give to the hungry in Syracuse. One by one Norris dismissed each of the charges with logical explanations. The reports of stolen coal, lumber, fencing, plants, lead, and paint by Fair

31 “Preliminary Report of Commissioner Norris,” dated June 6, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “State Fair Commission,” Reel 105, 260-48. The report, addressed to Honorable Alfred E. Smith, bears the date June 6, 1919 on the last page and is signed by Charles E. Norris. This typewritten document has no page numbers. It is divided into three parts: 1. Contracts, 2. Charges Which Have Been Investigated, and 3. General. The official report also bears the date June 6, 1919 and is significantly shorter than the “Preliminary Report.” The final report summarizes the findings of the preliminary report in three legal size pages.
employees proved false. Many of the accused had receipts for purchases or evidence exonerating them of the charges. In some cases charges bordered on ludicrous such as the accusations that a farmer had been keeping chickens and cows on the State Fair grounds and feeding them with free grain. This in fact proved partially true since the farmer maintained his home on the grounds and though he had few chickens and only one cow, no proof was found that he feed his animals with State Fair grain. The only charge not dismissed involved the very isolated case of a padded payroll by George Ten Eyck, the brother of the County Sheriff and former Superintendent of the Fair Grounds. Norris stated that George Ten Eyck received a salary as a State Fair employee for the same period of time he worked for the federal government. But, noted Norris, the individual had already been indicted. Other cases of padded payroll could not be proven since many employees worked only seasonally and their time at the Fair did not preclude them from other work, even other local government employment.\textsuperscript{32}

Norris also delved into some very practical concerns regarding the management of the State Fair and its oversight by the Commission. The State Fair employed private engineering services instead of relying on the State Engineer. Norris also stated that discretionary purchases by the superintendent of grounds required board oversight. In a similar vein, Fair personnel did not check goods and materials before payment; and according to records available an inventory of the grounds had only been performed once in its history. Norris also found laxity on the part of the Commission in overseeing the

Fair personnel, an easy charge to prove given that an indictment in this area had already been secured.33

On June 6, 1919 Commissioner Norris submitted his final report to Governor Smith. With the assistance of “expert accountants” secured from a local accounting firm, Commissioner Norris reported that he examined all “books, vouchers, payrolls, transactions” and contracts of the State Fair Commission. The investigation uncovered no unlawful activity or mismanagement and engineers vouched for the quality of the products purchased under bid. Early on in his report Norris stated he uncovered “nothing which would reasonably warrant censure, or justify the expenses of a public hearing.”34

However, Norris stated that the investigation clearly exhibited the need to establish clear rules of procedure. The statute establishing the State Fair Commission provided for the adoption of “Rules and Regulations.” However, such rules of governance and operations were never established. Without clear rules and regulations the superintendent of grounds merely ordered materials deemed necessary and submitted vouchers for payment to the Fair’s treasurer. In many cases materials worth thousands of dollars had been purchased without bids. Even the meeting minutes of the State Fair Commission revealed that many bills for supplies and materials were never submitted for approval, they were simply paid by the treasurer. The no bid contracting system, while not illegal, appeared highly suspect in the eyes of Norris. It seems that even without


evidence of theft, State Fair employees often discarded materials or ordered more than necessary for the operations of the Fair.35

Commissioner Norris’s findings also revealed a lack of coherence in the laws governing the finances of the State Fair. Since the Agricultural Law required the Commission to turn over to the State Treasurer any funds on hand on January 1, the Fair was “left without funds to meet its current expenses pending the accrual of Fair receipts for a period of approximately five months.” To remedy this lack of funds, the Commission adopted a legally questionable practice of borrowing funds to cover expenses during this period of low receipts. Norris recommended having the Legislature appropriate sufficient funds to meet operating expenses thus precluding the need for the Fair to borrow money at any time during the year. Norris also suggested the use of a one thousand dollar threshold in the awarding of bids to insure competition when major purchases were to be made.36

On June 6, 1919, the very day Norris issued his report, Governor Smith wrote to Lieutenant Governor Harry C. Walker, presiding officer of the State Fair Commission. In his letter - also released to the press - Smith stated to Walker

I am strongly of the belief that when the integrity of a State institution is attacked, no matter from what sources, the people as a matter of right should have all the facts. An investigation following charges that discloses no irregularities is just as important to the welfare of the State as though much of a scandal were discovered. The report, however, deals with certain matters of practice that need correction in the interest of economy and a more orderly administration of the affairs of your Commission. Will

35 Smith Public Papers, 1919, 338-339.
36 Smith Public Papers, 1919, 339.
you be kind enough to make this report the subject of discussion at your
next regular meeting?\textsuperscript{37}

The following day the Walker responded to Governor Smith from Binghamton stating
that he had received his letter, a copy of the report, and promised to make it the subject of
the next meeting of the Commission scheduled for June 9.\textsuperscript{38} At the June 9 Commission
meeting Norris appeared and delivered his findings to the Commission. While publicly
stating he found no irregularities in the conduct of the Commission Norris stressed that
the operations of the Fair required change. As a result the Commission appointed
Lieutenant Governor Walker and Commission Secretary J. Dan Ackerman a special
committee to draw up a code of rules and regulations for the employees of the
Commission as suggested by the Norris report.\textsuperscript{39}

Several months after Norris finished his investigation of the State Fair, the
Reconstruction Commission submitted its report which also touched on the Department
of Farms and Markets. The Reconstruction Commission targeted the State Fair
Commission for elimination and suggested transferring its responsibilities to a new
division within the Department, the Bureau of Farm Management. This bureau would
replace the existing Farm Bureau responsible for the “management of state institutional
farms and promoting information concerning farm management” and “will also have
charge of the annual State Fair.” Henceforth, according to the Reconstruction
Commission, an independent State Fair Commission would not be required and instead a

\textsuperscript{37} Alfred E. Smith to Harry C. Walker, June 6, 1919, Official Correspondence of Governor Smith, Central

\textsuperscript{38} Harry C. Walker to Alfred E. Smith, June 7, 1919, Official Correspondence of Governor Smith, Central

\textsuperscript{39} Syracuse Journal, June 10, 1919.
Division Director, reporting directly to the Commissioner, would handle all of the responsibilities of the State Fair.\(^{40}\)

Though the State Fair investigation failed to immediately change the convoluted State Fair governance system, Norris’s findings and the recommendations of the Reconstruction Commissioner were later incorporated by Governor Al Smith in his reorganization plans. The 1925 constitutional amendments revamping state government eliminated the State Fair Commission replacing it with a State Fair Director appointed by the Governor.\(^{41}\)

The State Police, Troop A

On June 30, 1919 only a few weeks after the State Fair investigation ended, Governor Smith faced another potential scandal within a small executive agency: the New York State Police constabulary located in Batavia, N.Y. Smith initially disliked the State Police as an agency and upon taking office considered abolishing it as a waste of taxpayer money.\(^{42}\) In many ways the circumstances leading to the investigation of the state police mirrored the incidents leading to the calls for an investigation of the State Fair. Local press reports led the county district attorney to confer with the governor about the conduct of a locally domiciled state agency eventually leading the governor to a Moreland Act investigation.

\(^{40}\) *Reconstruction Commission Report*, 1919, 111.

\(^{41}\) This system is still in operation today. The State Fair Director reports to the Commissioner of Agriculture and Markets who in turn reports to the Governor. Both the Commissioner and the State Fair Director are appointees of the Governor.

\(^{42}\) Colburn, “*Alfred E. Smith: The First Fifty Years, 1873-1924*”, 124. Colburn attributes Smith’s change of mind about the Police to the personal intervention and convincing arguments of State Police Superintendent George F. Chandler.
Since New York State established the State Police by an act of the Legislature in April 1917, the agency was only two years old when controversy took hold in Troop A (Batavia). All of the troopers in Batavia, and indeed throughout New York State, had enlisted in the formative years of the institution. Many of the state police leaders knew each other from prior military or police service. Captain Linn, the commander of Troop A, came to the state police after military service as a physician in the Mexican border campaign of 1916 where he served with Major Chandler, the first and current superintendent of the State Police.\footnote{Dr. Linn, a physician, once known as “America’s best looking soldier” also served as a lieutenant in the 2\textsuperscript{nd} Ambulance Company in Rochester. His physical prowess was bolstered by his reputation as a standout football player at Colgate University. \textit{Batavia Daily News}, June 18, 1919, May 2, 1927.} It should also be noted that operating procedures and duties were also new and many of the functions of the state police were still in development. The key responsibilities of the State Police involved patrolling areas where localities lacked a local police force – a point of contention between the state police and local law enforcement and residents in Batavia.\footnote{Albert S. Kurek, \textit{The Troopers Are Coming, New York State Troopers, 1917-1943} (Bloomington: Authorhouse, 2005), 2-3, 34-35; \textit{Batavia Daily News}, July 15, 1919.}

In May 1919 Genesee County District Attorney James Kelly received complaints from several citizens of the Batavia area about Troop A and specifically its leaders, Captain Willis Linn and his deputy, Lieutenant George Chrisman.\footnote{One ironic twist in the history of Troop A is that the original second in command to Captain Linn was Lieutenant John A. Warner not George Chrisman. Warner gained promotion to Captain and command of Troop K (White Plains) in 1918 just before the scandal erupted. In 1926 Warner, by then the Superintendent of the State Police, married Governor Alfred E. Smith’s daughter Emily. Kurek, \textit{The Troopers Are Coming, New York State Troopers, 1917-1943}, 25.} In early June the head of the state police, Major George Chandler, visited the district attorney and
personally investigated the rumors of misconduct. On June 12 the district attorney visited Governor Smith in Albany and briefed him on the matter. District Attorney Kelly then formally appealed to Smith by letter for an investigation of Troop A on June 13 stating “I believe that the conduct of these men should be investigated by the State, and I therefore request that you, as Governor, take such action in the matter as you deem advisable.”

After the district attorney petitioned Governor Smith for an investigation a number of reports made the local press regarding the presence of “strange troopers” and special investigators questioning locals about the activities of Troop A. It was reported that Major Chandler would also personally investigate the problems at Troop A. After meeting with Captain Linn at Oneida, and after having personally questioned many people, Major Chandler decided to remove Linn from command of Troop A and appoint a new commander. Rumors of “misappropriation of funds, disorderly and immoral conduct, flagrant dereliction of duty” and young girls visiting with uniformed troopers at “all hours of the night” filled the press. Linn also pleaded guilty to violating the state conservation law by taking fish with explosives, something that led directly to his suspension. On June 30, even after Linn’s removal from command of Troop A, Governor Smith decided to appoint Albany attorney Joseph A. Lawson to investigate the


48 *Batavia Daily News*, June 20, 1919; June 27, 1919, June 28, 1919.

49 *Batavia Daily News*, June 30, 1919; July 5, 1919.
“management and affairs” and “the conduct” of the officers and members of the Troop A (Batavia) under the Moreland Act. It was publicly known that Major Chandler and Captain Linn shared a friendship, a probable contributing factor in Smith’s appointment of an independent probe.  

The *Batavia Daily News* reported that as a result of all the newspaper reports morale at Troop A appeared low, many troopers had left services, others planned on leaving after their terms of enlistment had expired, and some wanted to see Troop A re-organized. By the time Lawson began his hearings, the city of Batavia was awash in stories of state police corruption and misconduct as well as countercharges by Captain Linn of a conspiracy and “political frame-up.” Major Chandler stated that “whatever the outcome of the investigation, Captain Linn will be dismissed at its conclusion.”

The Lawson hearings opened in mid-July in the Batavia Court House. Captain Linn appeared with counsel, John J. McInerney, a former member of the State Assembly. Lawson stated that any member of the State Police who wished to have counsel appear with them could do so, though only Captain Linn and Lieutenant Chrisman retained counsel. Lawson appointed District Attorney James Kelly as an assistant counsel to the


51 *Batavia Daily News*, June 20, 1919, June 28, 1919, June 30, 1919.

52 *Batavia Daily News*, July 8, 1919.

53 *Batavia Daily News*, June 30, 1919, July 5, 1919; July 19, 1919, July 26, 1919. The status of Linn as a State Trooper remained an odd controversy throughout the investigation. Press reports indicated that Linn had been transferred on June 30 from Troop A and would be reassigned to Troop G in Albany. It was later reported he was suspended awaiting appointment, he would be terminated after the hearing, and finally that he had resigned during the investigation.
investigation. Lawson also stated he would allow witnesses’ counsel to “cross-examine.”

McInerney began the hearing stating that the venue should be changed from Batavia. He also asked for the removal of District Attorney Kelly from the investigation for his alleged bias against Linn, and demanded a copy of the charges against Linn. Lawson denied each request stating that the hearings were part of an investigation not a trial. On July 15, one day into the hearings, Linn officially ended his connection with the State Police when Major Chandler accepted Linn’s resignation.

Witnesses recounted a number of infractions including the rental of a farm house (nicknamed the “promise parlor”) for the alleged purpose of taking care of the troops’ horses but with the actual purpose of having parties with women where alcohol was served. Other questionable activities included drinking at the farm house, taking state food and property there, requisitioning state materials for the house, and lastly, but most damaging, late night visits to the house by women. Some witnesses stated they saw Linn take a sixteen or seventeen year old girl to the farm house on several occasions leading many to believe her identity was known to several troopers. Allegations surfaced that Linn had billed the state for dinners he did not attend, was drunk on duty, had allowed women to visit him alone in the barracks, misused state vehicles, had troopers chauffeur

54 Batavia Daily News, July 8, 1919, July 14, 1919.

55 Batavia Daily News, July 14, 1919. It should be noted that having counsel present is an interesting aide note to this and other Moreland Act investigations treated this area differently. Lawson gave great latitude during the investigation conducting it almost as courtroom with cross examination allowed.

56 Major Chandler to James A. Parsons, Counsel to the Governor, September 29, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 151, 260-124.
him about due to his drunkenness, and requisitioned state funds for purposes not approved. Allegations surfaced that Linn may have been arrested by the Rochester Police. The investigation again brought to light Linn’s part in taking game (pheasant) and fish illegally in violation of state law.⁵⁷

With the preponderance of testimony proving damaging to Linn – though he had yet to take the stand - his attorney attempted to paint the investigation as a frame up of Captain Linn. Linn also stated to the press that when called to the stand he would reveal that District Attorney Kelly and Major Chandler, and now by extension, Commissioner Lawson, were trying to ruin Linn in order to cover up Kelly’s failure to prosecute prostitution and drinking in Batavia. Linn also stated that Chandler tacitly approved the rental of the farm house and its later conversion from a place to keep horses to a recreation facility for Troop A.⁵⁸ On the last day of hearings in Batavia McInerney attempted to pull Lawson and by extension Governor Smith into Linn’s political plot theory. When McInerney tried to insert politics into his questioning Lawson cut him off. McInerney stated “has the commissioner any other commission from the Governor than the one you read at the opening of the hearing? Anything that allows him to bar evidence of a political plot?” Lawson responded that he never received any political instructions from Governor, would not be “bulldozed” by anyone, and warned McInerney to drop his conspiracy theory.⁵⁹

The conspiracy Linn explained involved the district attorney visiting the “promise parlor” in late May in order to secure complaint by neighbors against Linn. Following this Kelly proceeded to petition the governor for an investigation of Troop A. In mid-June the State Police investigated vice in Batavia and reported back to Chandler. However, nothing came of the findings thus leading Linn to believe Kelly, Chandler, and now Lawson were conspiring to overlook issues of vice in Batavia and plotting to have him discredited. However, Kelly stated he never received the report and if it does come to him he would present it to the next grand jury – just as he had in the past with other State Police investigations into vice in Genesee County - whereupon the conspiracy charges seemed to fall flat.  

On July 28 just before Linn took the stand, Lawson stated, in regards to allegations of conspiracy by Linn’s attorney McInerney, “that the evidence already offered bearing upon the question of a conspiracy, so-called, and the ruling held in abeyance, will be decided upon the conclusion of all evidence” by Lawson. Lawson would “examine the minutes and determine” if such materials merited inclusion in the official record. McInerney responded by stating “for the purpose of the record, that any statement made by me at any time during the hearing in regard to politics, in no way was intended as being any reflection or accusation against Governor Smith.” Thus McInerney ended his attempts to draw Governor Smith into any conspiracy designed to discredit Linn.

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60 Batavia Daily News, July 18, 1919.

61 In the Matter of Proceedings pursuant to section eight of the Executive Law, before – Joseph A. Lawson, As a Commissioner, to examine and investigate the management and affairs of the New York State Constabulary Troop stationed at Batavia, New York, including the conduct of its officers and members,
Once on the stand Linn proceeded to contradict almost every witness called in Batavia stating they were liars and the people of Batavia wanted him removed from command of Troop A. In answering questions about the state police raids on houses of prostitution and vice, Linn stated the local chief of police did not want Linn interfering in local matters and the district attorney ignored vice. Linn also stated that Major Chandler knew of his using state funds for the farm house, the violation of fish and game law was a frame up and Linn only paid the $100 fine because he feared he would not get a fair trial in Batavia, and his relations with the underage girl in question were wholly innocent. Linn and McInerney also attempted to place into evidence the Mid-June 1919 report made by the undercover troopers reporting the presence of vice in Batavia. Lawson, claiming the report (“Exhibit H”) had no relevancy to the case, excluded it from the record. Linn also stated that Major Chandler told him “he thought it was best not to antagonize the people [of Batavia] too much, to let them run their own show.” Linn stated he was never intoxicated in the barracks or on duty, the district attorney “threatened to ‘get’ me,” and his violation of the conservation law was only a technicality. McInerney ended his cross-examination by calling the investigation of Linn a political frame-up. The hearings ended on the same day (July 28) at which time Lawson stated that if any

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351-352, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 152, 260-124.

62 In the Matter of Proceedings pursuant to section eight of the Executive Law, before – Joseph A. Lawson, As a Commissioner, to examine and investigate the management and affairs of the New York State Constabulary Troop stationed at Batavia, New York, including the conduct of its officers and members, 359, 373, 390, 396, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 152, 260-124.,

63 Batavia Daily News, July, 29, 1919; Rochester Democrat and Chronicle, July 29, 1919
further evidence arose or the investigation required additional hearings they would take place in Albany. 64

On August 28 Lawson submitted his final report to Governor Smith, detailing the misuse of state funds and numerous violations already covered in the public hearings. 65 Lawson stated “that there is no evidence in this proceeding of any immoral acts committed by Captain Linn, or by any member of the New York State Constabulary, with any women.” However, three of five findings in Lawson’s report reference Linn’s inappropriate behavior in regards to young women. But, the report proved anticlimactic since Linn had already resigned a few weeks earlier.

In September 1919 the status of Captain Linn seemed in doubt at least to Governor Smith. A series of letters between Major Chandler and Governor Smith’s staff ensued in mid-September in regards to Linn’s employment in the State Police. The lack of direct control over the State Police seems apparent in the letters. 66 Counsel to the Governor Parsons asked Superintendent Chandler for official confirmation regarding Linn’s status stating “I think the only thing lacking is that the Governor would like to know from you as to whether Dr. Linn is still connected with the troopers, or not.” Parsons stated the Governor desired “to have that fact stated by you [Chandler], so that it may be filed with the report of Commissioner Lawson.” Chandler finally put the matter

64 In the Matter of Proceedings pursuant to section eight of the Executive Law, before – Joseph A. Lawson, As a Commissioner, to examine and investigate the management and affairs of the New York State Constabulary Troop stationed at Batavia, New York, including the conduct of its officers and members, 404-405, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 152, 260-124.

65 Smith Public Papers, 1919, 420-422.

66 Chandler to Parsons, September 18, 1919. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 151, 260-124.
to rest by affirmatively stating that Dr. Linn had resigned in July. However, the letters underscore the lack of control over another state agency by the Governor who had to write a subordinate to find that the subject of a Moreland Act investigation had resigned six weeks earlier (July 15) and only one day after Lawson began his public hearings (June 14).  

In addition to his public humiliation Captain Linn continued to suffer from hardship in his return to private life. A period of emotional and mental decline followed Linn’s removal from office due either to the stress of removal or the culmination of years of worsening mental health. After having returned to the practice of medicine his wife divorced him. In 1924 he was charged with, but never convicted of, violating the Mann Act for transporting his soon to be second wife across state borders. A few years later this second wife attempted to kill Linn by shooting him – a charge she denied and for which she was never indicted. Divorced for a second time he remarried and moved to Kentucky where he committed suicide in front of his third wife by plunging a knife into his own chest.

The Reconstruction report’s recommendations for the State Police suggested that the department be “transferred to the Attorney-General’s office as a Bureau of Police, similar to the staff in the department of the Attorney-General of the United States.” The report stated the troopers have “assisted the local district attorneys in the preparation of cases. The value of the results of these experiments is a much mooted question and the

67 Parsons to Chandler, September 22, 1919; Chandler to Parson, September 29, 1919; Parsons to Chandler, October 1, 1919. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 151, 260-124.

controversy which has arisen in this and other states has obscured to a large extent the issues involved.” This statement seemed to be an obvious reference to the Troop A controversy recently explored under the Moreland Act only three months before the publication of the Reconstruction Report. The report authors hoped that the transferring of the State Police to the attorney general would make both economic sense, balance rural and urban law enforcement, and would put the staff of the state police “in constant touch with the local district attorney.” The new oversight by the attorney general and local district attorneys and coordinated functions of state and local law enforcement would “avoid the maintenance of the present patrol duty which is criticized in many quarters.” Thus a new “Bureau of Police” would still remain under an appointee of the governor. However, neither the recommendation of placing the State Police under the attorney general nor making the attorney general an appointee of the governor ever became a reality.69

The Soldiers and Sailors Home

The Soldiers’ and Sailors’ investigation of 1919 proved to be as much a case of local political infighting as mismanagement by an obscure state agency. Governed by an aging board of trustees who jealously guarded their administration of the home, few outside of the board and employees were privy to the internal operations of the facility. Even those in state government lacked a firm knowledge of the administration of the home. Each year a boiler-plated annual report of a few dozen pages, a routine state charities visit, and occasional visits by legislators – all of them guided by staff – sufficed as oversight. Over time the board’s grasp of operations deteriorated, an aging staff

continued poor administrative practices, and decay crept in. However, any accusations of malfeasance met intransigence from a solid block of long-tenured and entrenched trustees and senior staff. In February 1919 a new trustee, actively involved in local politics, exposed the operations of the home resulting in calls for an investigation. Governor Smith also vetoed $35,000 worth of upgrades to the home in the 1919 budget stating the state should not incur additional liabilities until “the policy of the institution is determined.” Part of Smith’s concern stemmed from the steady decline in population at the home.  

In 1876 the Grand Army of the Republic (GAR), a veterans’ organization formed after the Civil War, founded the New York State Soldiers’ and Sailors’ Home in Bath, New York. The GAR raised $100,000 for the establishment of the home and then transferred its operations and property to the State of New York in 1878 as a home for disabled or elderly veteran members of its organization. The law providing for the transfer of the operations to New York State established a seven member board with three year terms chosen by the governor and confirmed by the Senate with the governor and attorney general serving ex officio. In 1909 state law added the New York State Commander of the GAR as an ex officio member of the board and the terms of trustees were increased to seven years. Between 1878 until 1919 at least two investigations were called to review the operations of the home and the conduct of its administrators. In 1883,

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70 Smith Public Papers, 1919, 133, 140.

71 New York State Soldiers' and Sailors' Home at Bath, N.Y., (Bath, N.Y.: A. Wittemann, Publisher of American Views, 1897), 1-2.

the Board of Trustees investigated “charges of mismanagement and cruelty” and in 1900 Governor Theodore Roosevelt ordered an investigation into the handling of assets of deceased residents. Both of these investigations uncovered a few cases of wrongdoing. Many of the same issues again appeared in 1919.73

In late May 1919 the Soldiers’ Home Committee of the New York State Assembly “paid its annual visit of inspection” to the Soldiers and Sailors Home. The inspection focused on the high cost associated with maintaining the facility, particularly the increased cost of goods purchased through the quartermaster. The committee also discovered problems with some plaster work that needed repair. However, the report in the local newspaper stated that the staff and commandant “were highly praised for the fine conditions prevailing.”74

Despite the minor issues raised during the May visit by several Assemblymen, nothing came of the report until August. At the August 12-13 meeting of the trustees a heated discussion arose over the operation of the home. In 1919 the board of trustees included former Speaker of the Assembly Robert P. Bush (Democrat),75 James R. Silliman (Democrat), Peter Sheridan (Democrat), Wilson R. Campbell (Republican),

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74 *Steuben Courier*, May 30, 1919.

75 Robert Bush served in the New York State Assembly as a Democrat in 1886-1892, 1894, 1911-13, 1916-17, 1918. Bush served with Al Smith in 1911-1913 when Smith served as Democratic Majority Leader (1911), Minority Leader (1913), and Speaker (1913).
John S. Maxwell (Republican), and George B. Loud (Republican). All had been appointed prior to Governor Smith. Newly appointed trustee George W. Peck (Democrat) of Elmira was accused by his fellow board members of making an independent investigation of the home and reporting his findings to the Elmira Advertiser and other local papers. Peck, the former Democratic Party Chair of Steuben County, was nominated by Governor Smith on February 3, 1919 to fill a vacancy caused by the death of trustee George Hollands only two weeks earlier but the nomination failed to gain Senate approval. However, Governor Smith nominated Peck again in May as a recess appointee with his service on the Board beginning at the June meeting of the Board. Peck had also received the Democratic nomination for mayor of Elmira on July 31, just two weeks before the scandal erupted. The reports in the press claimed that funds of the home had been mismanaged, some funds were held in below market interest bearing accounts in a bank connected to one of the trustees (Campbell), and there existed one employee for every one member of the home. At least one newspaper claimed that the criticism leveled at the trustees seemed to be non-partisan since the six members of board before the appointment of Peck were evenly split between Democrats and Republicans.

76 In 1919 George Loud was defeated by Socialist Samuel Orr for a seat in the Assembly representing the Bronx.

77 The trustees and the governors who appointed them are as follows: Bush by Governor Dix (1912), Silliman by Governor Sulzer (1913), Sheridan by Governor Glynn (1914), Maxwell and Loud by Governor Whitman (1915), and Campbell by Governor Whitman (1916). Both Loud and Bush were re-appointed by Smith in 1919 and confirmed by the Senate.

78 Elmira Telegram, April 13, 1919. George Peck, a hardware store operator and farm implements dealer by trade, was elected Mayor of Elmira in November 1919 and served from 1920-1921. Peck served as a recess appointment on the Board due to the Senate’s refusal to take action on his nomination earlier that year. Peck even traveled to Albany with his attorney to clear up the matter but to no avail. Charges of “scandal” plagued his nomination and in 1920 Governor Smith put forward a different nominee who received Senate confirmation for Peck’s seat on the board.

The trustees vehemently denied the charges of mismanagement; and Peck just as strongly denied being the source of the published charges. To clear themselves of any perceived incompetence, the trustees drafted and signed a letter – with the exceptions of Peck – requesting Governor Smith “send an investigating body to open the affairs of the Home management” and restore public confidence in the home.\(^{80}\)

After the trustees sent their letter to Governor Smith, three trustees also released a letter to the public and newspapers in order to provide a comparison of the alleged wrong-doings circulated in the press (allegedly with trustee Peck as the source) with the “real facts.” The release denied mismanagement, corrected what it claimed were erroneous employment figures, and claimed many statements made regarding the home and its management “exaggerated or else absolutely false.” Reference was again made to the trustees’ request for a gubernatorial investigation to “clear the atmosphere.”\(^{81}\)

On August 24 Peck released a letter to the press giving his side of the story. His letter lamely denied directly leaking the story. Peck stated that the reports in the press did probably come from him but, it was due to his discussion of conditions of the home with several editors not accusations made by him. He also stated he hoped the trustees themselves could solve the problems and address the issues discussed at the recent meeting of the board and detailed in the press. In regards to the accusations of mismanagement, Peck declared that every trustee and employee should want the “inmates” (veterans living at the home) to come forward with their complaints and

\(^{80}\) *Steuben Courier*, August 15, 1919.

\(^{81}\) *Steuben Courier*, August 22, 1919. The three trustees included Bush, Maxwell, Campbell, and the commandant, Morgan.
problems. Peck even went so far as to state that under the present conditions the veterans at the facility feel more like they are in a penal institution subject to intimidation by the management rather than residents of a retirement home. Peck claimed that when some inmates contacted Governor Charles Whitman in 1918 they were harassed by management – one stated he feared being forced out of the home.\textsuperscript{82} Peck also claimed he voted in favor of a gubernatorial inquiry but his vote was not recorded thus making it appear he did not favor a full investigation.\textsuperscript{83}

In late August Governor Smith, in receipt of the board’s letter requesting an investigation, wrote to Lieutenant Governor Harry C. Walker. The governor’s letter outlined the request made by the trustees “to examine into the management, general and financial” and investigate charges of mismanagement at the home and asked Walker to undertake such an investigation at once. Smith further stated that if necessary he would grant Walker additional powers to enforce witnesses and examine them under oath thus opening the possibility of upgrading the investigation to a Moreland Act Commission under the Executive Law.\textsuperscript{84}

\textsuperscript{82} It is likely that Peck was referring to one Mr. William Newman whose letter in March 1920 outlines such a story. William Newman stated that he and two other inmates (Bross and Lawlor) protested food and wages at the home to Governor Whitman. Gov. Whitman referred these individuals to the Bureau of Charities which in turn referred them back to the Trustees of the home. Newman’s letter is dated in March 1920 at which time he also sent Smith with a copy of his February 7, 1918 letter to Whitman. William Newman to Governor Alfred E. Smith, March 24, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-23.

\textsuperscript{83} \textit{Elmira Telegram}, August 24, 1919.

\textsuperscript{84} Alfred Smith to Harry Walker, August 28, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.
Although the *Steuben Courier* reported that “Governor Smith Has Ordered An Investigation of S. And S. Home” on September 5, the report was premature. Not until December 1, 1919 did Walker’s investigation receive sanction under section 8 of the Executive Law (Moreland Act). Prior to that time Walker’s investigation was simply carried out as a representative of the governor.\(^{85}\)

While Walker studied the home and its records, conversed with inmates and employees, he was apparently fed information by George Peck. In a series of letters from Peck to Governor Smith’s secretary George Van Namee in late October and early November Peck insisted on discussing the investigation with the governor. Peck stated that he feared a “white wash” or having Lieutenant Governor Walker overlook evidence crucial to the investigation. Peck’s letter of October 31 proves particularly interesting in that it both indicates his possession of some inside knowledge of wrong doing at the home and states it would be politically beneficial to the Democratic Party.\(^{86}\) Peck wrote

> We are about finishing our campaign in Chemung County. I wish you to get word to the Governor and the Lieutenant Governor that under no consideration make any move in the Soldiers’ Home matter until, at least, they see what I have got as I did not have any chance at the meeting at Bath to show the evidence I had and I can assure you it will be interesting and of great profit to the Home and Democratic party as well. I really think we will make a nice showing in Chemung (sic) County.

Van Namee acknowledged Peck’s letter of October 31 to which Peck responded again on November 8. Peck jubilantly recounted his victory as mayor of Elmira and the Democratic majority elected to the Chemung County Board of Supervisors in the early

\(^{85}\) *Steuben Courier*, September 5, 1919, October 10, 1919. \\
\(^{86}\) Peck to Walker, October 31, 1919. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150 260-123.
November local elections. Peck stated that “the next job is the Soldiers’ Home” and he expected to visit the governor in Albany to advise Smith how proceed. Peck also corresponding with Walker and insisted on shaping the investigation. Whether Peck pursued the Governor and Lieutenant Governor in the matter of the investigation of the home for partisan reasons or good government purposes is hard ascertain in the fall of 1919. However, Van Namee’s letter in response to Peck’s correspondence framed the Governor’s role in that matter by stating squarely that “apparently you misunderstood my letter of November 13th. The matter of the investigation of the Soldiers’ and Sailors’ Home is completely in the hands of Lieutenant Governor Walker.” Van Namee stressed to Peck that if he discussed the matter with Smith, Smith would tell him to talk to Walker. Thereupon the correspondence between the two apparently ceased. While this exchange may appear as plausible denial by Van Namee in refusing to continue the partisan exchange in favor of having Peck discuss his concerns directly with the investigation, Van Namee treated several such letters this way. For instance, during the investigation of the State Fair Van Namee directed many letters seeking the governor’s attention on aspects of the investigation to either Lieutenant Governor Walker (Chair of the State Fair board) or Commissioner Norris. It is also likely that Van Namee understood the issue well enough to know that any legitimate findings of the investigation would be tainted if Peck continued to seek political redress rather than

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87 Peck to Van Namee, November 8, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150 260-123.
simply bringing to light actual cases of wrong doing to the investigation and letting these cases of malfeasance speak for themselves.\footnote{Van Namee to Peck, November 17, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.}

After preliminary discussions with home staff, inmates and the trustees Walker reported to the Governor in November 1919. Upon hearing Walker’s summation, and apparently at the request of Walker who believed he should have the power to subpoena witnesses and examine them under oath, Smith appointed Walker a Moreland Act commissioner on December 1.\footnote{Steuben Courier, December 5, 1919; Smith Public Papers, 1919, 435-436.} The Soldiers’ and Sailors’ Home investigation officially moved from one of informal inquiry by the Lieutenant Governor to a Moreland Act investigation.

What appears to make the Soldiers’ and Sailors’ Home investigation important is how closely it mirrors the 1919 investigations undertaken by Lawson (State Police) and Norris (State Fair). The key difference, and complicating the matter, is the presence of an ambitious politician (Peck) who would not restrain himself in the same way that district attorneys Walrath and Kelly did. In each case local officials, state employees, and executive branch appointees to boards would not or could not make objective judgments on state agency operations; and newspaper reports discrediting the agency all but forced Smith to call an investigation. Governor Smith had to appoint an independent commissioner whom he could trust to visit the executive department in question and investigate outside of the established, yet very disjointed, board or governing structure. Lieutenant Governor Walker, a native of the Southern Tier familiar with the area,
provided Smith with an able investigator close to his administration. Walker also provided enough stature to bring respectability to the investigation without looking like a mere adjunct of the governor. When Walker began his investigation under his appointment as a Moreland Act commissioner the Steuben Courier, a decidedly Republican leaning paper, reported:

If there is anything wrong with the management of the Soldiers’ Home, in this village, it will be uncovered by Lieutenant Governor Walker, who is making an investigation under the Moreland Act. On the other hand, if there is nothing wrong everybody will get a vindication.90

This local press served as a justification of Smith’s desire to seek the truth through open hearings and a Moreland Act investigation. It also extricated the investigation from the warfare surrounding Peck and the other trustees.

Walker continued his investigation from December 1, 1919 through March 1920, interviewing staff and inmates of the home in Bath and the neighboring cities of Elmira and Syracuse. The trustees of the home retained the services of counsel to represent them at the hearings.91 Walker began his public hearings in mid-December at the home in Bath focusing on the staff of the institution and their functions.92 Walker allowed for a limited amount of cross examination by counsel representing the trustees. This gave the hearings the aspect of a trial and allowed for witnesses to explain themselves and expound upon their replies. It also added to the length of the hearings and the occurrence of recalling

90 Steuben Courier, January 2, 1920.

91 Elmira Telegram on March 21, 1920 reported that these two individuals “will present their [the trustees’] case.” A full report from Sullivan in response to Walker’s report is referenced in a letter from Robert P Bush to Governor Smith on June 2, 1920. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.

92 Hearings were held on December 29, 30, 31; January 1; February 5, 6; March 11, 18, 19, 20, 22.
several witnesses in order to refute or verify the testimony of others. That the hearings were open to the public also added to a plethora of newspaper reports.

In late February Robert Bush, Vice President of the Board, sent a printed “Circular Letter” signed by all of the trustees (except Peck whose recess appointment had lapsed) and the home’s Commandant to all of the “War Organizations” interested in Walker’s investigation. The circular letter requested the public withhold its judgment on the home until both sides were heard. The letter served as a clear delineation between the two points of view regarding the investigation: one side leaning towards condemning the management based on Walker’s hearings, and the other side supporting the board and management. After a general history of the home and an iteration of the fact that each trustee belonged to the G.A.R. the closing paragraph in Bush’s circular letter reads

You have read, or heard, only the unfavorable side of the testimony. I suggest that you refrain from rushing into print with a verdict before the testimony is all in and published. Why not send a committee to the Home and see for yourself? The Home is frequently inspected by federal and state officers, as well as by the officials of the department of the G.A.R. The comptroller, the fiscal supervisors, the state architect, the State Board of Charities, all send inspectors frequently. Can it be possible that thus far for forty-two years they have all been blind and deaf? Their reports have generally been favorable. Comrades and friends, I know you want to be just and fair. Hear both sides.⁹⁴

⁹３ In the Matter of the examination and investigation of matters and affairs of the New York State Soldiers’ and Sailors’ Home located at Bath, Steuben County, State of New York, by Harry C. Walker, Lieutenant Governor appointed Commissioner pursuant to the Provisions of the Moreland Act, Brief In Behalf Of The Institution, (Horseheads, N.Y.: Chemung Valley Reports Press, 1920), 39, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home,” Reels 150-151, 260-123.

⁹⁴ “Circular Letter – Are Two Sides to Bath Story, Dr. R.P. Bush asks withholding of opinion until hearings in Soldiers’ Home matter is finished.” February 29, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.
Bush’s role in the investigation grew more prominent after his election to the chairmanship in March 1920.95

During Walker’s investigation many findings proved damaging for some home employees and the board. In many instances the lack of oversight by the trustees proved glaring. In early March the American Legion decided to monitor the investigation apparently in an effort to bolster the image of the home and counteract negative testimony.96 The letters flooding the Governor’s office provided an expansive two-sided version of the story surrounding the home. Letters from various groups including local branches of the American Legion, Spanish American War Veterans, and several women veterans’ groups, wrote expressing either support for the home or anger towards the administration. Some letters, including the following from Mrs. Leroy Dewitt, raised the possibility of a long-term chronic problem of abuse.

I am deeply interested in the stories published of abuse of old men in the Soldiers + Sailors Home at Bath, NY. My father died at that institution very suddenly on May 9, 1907 the day before he had made arrangements to leave to make his home at my brother’s. The Home reported his death as caused by pneumonia but when we claimed his body for burial his face was found to be covered with cuts and bruises. We felt it to be useless to try to do anything about it as it is a governmental institution. Will you please do what you can to make the Home safe for the veterans who served their country in the time of need?97


96 Steuben Courier, March 22, 1920.

97 Mrs. Leroy Dewitt to Governor Alfred E. Smith, March 12, 1920. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.
One current inmate stated he signed one of the “round robin letters” of support for the management under duress.\textsuperscript{98}

In mid-March Henry M. Lechtrecher, Chief Inspector for the State Board of Charities testified to the soundness of the home’s operations, stating he had been there at least sixty times over the past twenty years, and never found the home better managed than it has been recently.\textsuperscript{99} However, Walker later pointed out in his report that the State Charities Law exempted the management and control of the home from the State Board of Charities, though that entity could visit and inspect it; the responsibility for the home lay with the trustees of the home.\textsuperscript{100}

On March 20, former trustee George Peck took the stand and gave a detailed and descriptive history of the home’s troubles and his key role in starting the controversy leading to the investigation. Peck stated that much of his information came from “inmates, relatives, and others and not from personal witnessing of any of the alleged irregularities.” Peck stated that from the start of his term as a trustee every time he brought his concerns to the other trustees they dismissed them. Peck recounted extravagant spending by the board, fiscal mismanagement, theft of inmates’ money, and

\textsuperscript{98} Mortimer Thomson to Governor Smith, May 9, 1920; Fred E. Troll to Governor Smith, May 10, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.

\textsuperscript{99} Steuben Courier, March 19, 1920.

\textsuperscript{100} Report of Hon. Harry C. Walker, Lieutenant Governor, Appointed by the Governor Pursuant to the Provision of the executive Law, as a Commissioner to Investigate the Management and Affairs of the New York State Soldiers’ Home, at Bath, N.Y., (Albany: J.B. Lyon Company, 1920), 4-5, Hereafter referred to as the \textit{Walker Report}, 1920. The State Board of Charities was itself the subject of a Moreland Act investigation only four years earlier when Governor Charles Whitman appointed Charles H. Strong to examine into the Management and Affairs of the State Board of Charities, the Fiscal Supervisor of Charities, and Certain Other related Boards and Commissions.
lack of oversight. Peck went so far as to claim the trustees and the commandant rarely visited the home’s buildings except the headquarters offices. Peck went through a variety of charges against the home including bed bugs, substandard food, theft of funds from inmates, abuse of hospital patients, and failure to buy supplies such as eggs and coal at good prices. Peck’s greatest concern involved the poor treatment of inmates by employees. Peck claimed that inmates did not want to go to the hospital, even if they were too sick to perform mandatory work. Peck recalled inmates expressing “the feeling in the Home that when you go to the hospital it means the cemetery.”

As in the case of correspondence, witnesses called to testify fell into two categories: those expressing support for the trustees and management as opposed to those stating dissatisfaction with the home. Many accused the home of fostering ill treatment, abuse, theft, or neglect only to be challenged by the trustees, supporters, and employees of the home called as witnesses only too eager to refute damaging accusations. For example, Mrs. James Cooney testified that she hesitated to let her husband go to the home’s hospital because she heard talk of abuse. When she finally let him enter the hospital her husband had trouble with his throat so pronounced it almost closed up. For eight days he laid in the hospital “slowly dying” without Dr. Raymond Hill, the chief physician, visiting him or examining him. When Mrs. Cooney finally went to Dr. Hill and

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102 *Elmira Telegram*, March 21, 1920; *Steuben Courier*, March 19, 1920
complained he told her “his days are numbered and he will die anyway.” Mrs. Cooney took her husband to a different hospital where he recovered.\textsuperscript{103}  

When Walker questioned F.S. Venuto, the private concessionaire running the home’s stores and hotel, he revealed that the former commandant, Joseph Ewell, now an official with the New York State G.A.R., gave Venuto a sixty year contract.\textsuperscript{104}  Even the trustees seemed to have experienced a power struggle internally over who should be chairman, whether Peck should have been confirmed by the Senate, and how the oversight of the home should be exercised. When board Chair Robert Bush took the stand he attempted to go back and correct the minutes of the hearing regarding his conversations with various board members, functions of certain employees, and his efforts to make changes at the home under the previous commandant.\textsuperscript{105}  

To counter these charges several testified that they had very favorable impressions of the home and the care provided. William Crum, an inmate stated he had enjoyed his thirty-five year stay at the home; Dr. D.H. Smith of Bath testified to the home being well managed; and, Dr. William Shanahan, an authority on mental illness, attested to the home’s treatment of its aging population. As in the case with Henry Lectrecker from the State Board of Charities many medical experts and hospital staff discussed the lack of staffing and the acute problems of the hospital population whose average age was seventy-seven. Mathematically, if the home had 900-1000 inmates and one-third of these were in the hospital, Dr. Hill had over 300 patients on any given day. The American

\textsuperscript{103} \textit{Proceedings Before Commissioner Harry C. Walker}, 678-679.  
\textsuperscript{104} \textit{Proceeding Before Commissioner Harry C. Walker}, 1426.  
\textsuperscript{105} \textit{Proceeding, Before Commissioner Harry C. Walker}, 1767, 1780, 1782.
Legion also came to the defense of Dr. Hill and the hospital calling the charges against them absolutely false.¹⁰⁶

Dr. Hill testified several times during the course of the hearings refuting various allegations such as cruelty, neglect, theft, and abuse at the hands of hospital staff. Some allegations bordered on the outrageous such as patients being bathed in icy water. Dr. Hill stated staff that violated patients’ rights were discharged, some of whom testified against Hill. Hill also stated that inmates were allowed to maintain property (meaning money) unless they were deemed incapable of looking after personal effects. In those cases hospital management had to take steps to protect patients from theft.¹⁰⁷

In the lull between the closing of the hearings in late March and the issuance of Walker’s report in early May, the state Senate confirmed Governor Smith’s two nominees to fill vacancies on the Soldiers’ and Sailors’ Home board of trustees.¹⁰⁸ On May 7 Lieutenant Governor Harry Walker issued his report to Governor Smith. Walker stated even though some reports in the press exaggerated the situation, he found numerous problems with the home. Starting with the buildings themselves Walker stated that many of the barracks (dormitories) had second and third floors thus necessitating the climbing of several flights of stairs – something difficult for a population comprised of elderly men. Poorly designed fire escapes and bed bugs also characterized the living


¹⁰⁷ *Steuben Courier*, February 13, 1920.

quarters. Through the “carelessness and negligence of the superintendent of dining services” the food, though plentiful, was served in a manner that made it unpalatable, even after World War I rationing ended the practice of serving cornmeal mush and molasses as main meals.¹⁰⁹

Walker stated that the handling of funds at the home necessitated a complete overhaul in order to discontinue practices clearly in violation of state law. Four separate funds comprised the finances of the home, the: 1). pension fund, private funds held by the home on behalf of inmates (sort of a banking system), 2). post fund, into which proceeds from the canteen were placed, 3). posthumous fund, from which the home paid the beneficiaries of deceased home members the balance of an individual’s account in the pension fund, and, 4). transportation fund, from which trustees were paid their travel expenses. Walker stated that despite some oversight and tacit approval obtained under an attorney general’s opinion at least the sources of revenue flowing into the Post fund violated state law. Initially set-up as an account to fund a canteen and into which proceeds were deposited, the trustees had, without any state authorization, privatized this function. This for-profit venture replaced the canteen system under which inmates used to purchases goods at cost. Under the present system inmates paid higher prices and the post fund earned only $50/month in rental fees from the vender. The management and trustees then utilized the post fund for a variety of undertakings such as cigars, salaries of employees, entertainment, trustee meeting expenses, and insurances. Walker questioned not only the “exclusive privilege” granted the concessionaire but also the use of the

profits and the inflated costs of good to the inmates of the home even if some purchases benefited the inmates.\textsuperscript{110}

Walker found the trustees particularly careless and lax in the area of banking and the inmates’ access to their own money held in the pension fund. The trustees maintained the post fund in bank accounts paying well below market rates. For example, at certain times the trustees placed the home’s post fund in two Buffalo banks paying 3.5\% interest, however, they later transferred the accounts to a local banks paying only 2\%. Only after bids for banking services in June 1919 did the local bank agree to pay 4.25\% on the post fund account. \textsuperscript{111} In the area of inmates’ access to their own funds, Walker stated that since about one-third of all inmates were confined to the hospital at any given time inmates desiring to make purchases from the hospital store had to request their own money from the pension fund via hospital staff. Since hospital patients had to check all personal belongings and money when they entered the hospital the practice developed under which nurses held the inmates’ money for them. This practice led to theft and the expectation on the part of nurses of “tipping.” Those who did not tip feared loss of preference in treatment and care to “the effect that patients are chocked, assaulted, and otherwise abused and mistreated in the process of taking up this money.”\textsuperscript{112}

In summarizing the operations of the hospital, Walker stated that mistreatment, lack of help, occurrences of stolen money and goods, fire hazards, “neglect on the part of the surgeon-in-chief and his assistants,” and “absenteeism on the part of the doctors”


\textsuperscript{111} \textit{Walker Report, 1920}, 14

\textsuperscript{112} \textit{Walker Report, 1920}, 17
characterized the system. In one shocking instance, it was reported that two inmates suffering from dementia engaged in a fight while nurses stood idly by watching.\footnote{Walker Report, 1920, 17-23.}

Walker specifically singled out the surgeon-in-chief of the hospital and the commandant of the home for condemnation. Walker stated that “it is difficult to conceive of a more unsafe or improper person to be in charge of a hospital for the care and treatment of patients of advanced years” than the surgeon-in-chief Dr. Raymond C. Hill. Walker apparently placed much weight on the issue of too many patients, too few attendants, lack of proper treatment afforded to those in advanced mental deterioration, the incidents of abuse testified to particularly the documented cases of theft and inmates being allowed to fight without staff intervening. As for Commandant Morgan, Walker found Morgan failed to show an extensive knowledge of the institutional operations, exercised little oversight, lacked “sympathy for the members,” disregarded rules and regulations, and had “a marked tendency to shirk and shift responsibility at all times.” Walker stated that even given a lengthy opportunity to demonstrate his administration Morgan instead displayed a lack of memory, protracted and wandering answers, bursts of temper, and profane language.\footnote{Walker Report, 1920, 22-25.}

Walker concluded his report with four recommendations for Governor Smith: 1). the removal of Morgan, 2). the removal of Hill, 3). new hospital procedures, and, 4). younger trustees. Apparently Walker found that the age of the trustees, as well as
Morgan, limited their vigor and effectiveness as managers.\textsuperscript{115} Walker’s report prompted an almost immediate response from the trustees.

On May 12 the trustees issued a statement in regards to Walker’s report. The statement contained the signatures of all the trustees except Rogers. On the very first page of the “response” the trustees stated that the accountant appointed by Walker “spent several weeks at the Home examining the books and accounts of the Quartermaster and the cashier, but his findings do not appear in the evidence.” The trustees stated the investigation acted in a manner that implied “condemnation and criticism” from its very beginning. However, in the same letter of protest the trustees use the accountant’s letter thanking the trustees for their “very courteous treatment” while he investigated as proof of the board’s and staff’s management competency - a near ridiculous assumption. The trustees further claimed that their counsel was unfairly precluded from cross-examining witnesses (he did in fact question witnesses), the recent changes made in bank deposits should be praised rather than condemned (since it remedied past banking practices), the Post fund actually provided a service and had been reviewed by the Attorney General, and “several instances of cruelty and harsh treatment” were equally rebutted in testimony.\textsuperscript{116} The report weakly attempted to tackle the issues raised by Walker. For example, the trustees agreed they must upgrade fire escapes but they lacked funds; bed bugs were present, but a recent inspection found they were “fewer in the barracks than in


\textsuperscript{116} Statement of Trustees in regard to the recent Investigation by Hon. Harry C. Walker, and his Report thereof. Approved by Trustees Bush, Loud, Sheridan, Campbell, Maxwell and Wagstaff, May 12, 1920, 1-5, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 151, 260-123.
most hotels”; and the commandant was “subject to the infirmities of old age, but his declining years have not lessened his efficiency.”

The trustees failed to explain years of failing to invest the post fund to gain maximum return on investment yet at the same time the trustees utilized the fund to make purchases outside state procurement practices. The board also stated that several alleged incidents of abuse or wrong-doing could not be blamed on the board since they had no knowledge of them – “no case of this kind has been reported to the Board, at least in several years.” Overall, the statements by the trustees merely repeated many of the denials to the allegations posed during the investigation and attempted in a somewhat desperate manner and tone to claim persecution or, conversely, ignorance as an excuse for management failings.

The rebuttal from the trustees’ attorneys, undated but no doubt received by Governor Smith after June 2, focused on Peck and his private campaign to discredit the home after his failure in 1919 to secure confirmation by the Senate to a full term as a member of the board. Twenty-five pages of the forty-one page brief attacked Peck and challenged much his testimony. However, the brief, like the testimony on which it was based, formed a concatenation of accusations and denials, charges and explanations.

Quotes from the testimony supporting Dr. Hill and Commandant Morgan contradicted the charges made by trustee Peck and other witnesses. The report attempted to cast doubt

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117 Statement of Trustees in regard to the recent Investigation by Hon. Harry C. Walker, and his Report thereof. Approved by Trustees Bush, Loud, Sheridan, Campbell, Maxwell and Wagstaff, May 12, 1920, 2-5, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 151, 260-123.

118 Robert Bush to Governor Alfred Smith, June 2, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 151, 260-123.
upon the findings of neglect or abuse of patients and inmates. Affidavits challenging the testimony of witnesses alleging hospital complicity were produced. Further, the report claimed the “vicious newspaper campaign” clouded the judgment of Commissioner Walker leading to his unjust criticism of the home, its trustees, and employees.\textsuperscript{119}

In addition to the extensive report issue by the trustees’ lawyers, Joseph E. Ewell, Commander of the Department of New York G.A.R. issued his report.\textsuperscript{120} Ewell, who as noted had once served as the home’s commandant, actually praised the investigation and the home with the exception of the hospital and its procedures. Ewell stated that even if the two most severe incidents of physical abuse and theft discussed in the hearings and final report did in fact occur, they hardly merited the wholesale condemnation of the hospital, let alone the management of the home. Several small procedures warranted correction such as classification of hospital inmates according to mental faculties to facilitate proper treatment and better oversight of the post fund. Ewell made mention of the good hospital conditions, the positive inspections of the facility by state and federal overseers, and the almost complete lack of complaints reported to the hospital chaplains who, noted Ewell, confer confidentially with the patients daily.” Basically, Ewell acknowledged several small problems but took great pains to clear the hospital (Hill) and

\textsuperscript{119} In the Matter of the examination and investigation of matters and affairs of the New York State Soldiers’ and Sailors’ Home located at Bath, Steuben County, State of New York, by Harry C. Walker, Lieutenant Governor appointed Commissioner pursuant to the Provisions of the Moreland Act, Brief In Behalf Of The Institution, (Horseheads, N.Y.: Chemung Valley Reports Press, 1920), 39. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.

the home (Morgan). Ewell summed up his report by stating “on the whole, the State investigation has done much good.”

In June the National Home for Disabled Volunteer Soldiers transmitted the report made by its Inspector General of the Soldiers’ and Sailors’ Home to trustee chairman Robert Bush. The National Home’s report, conducted on May 23 – two weeks after Walker released his report - investigated the areas Walker found lacking: food, medical care, the handling of inmate funds, and the performance of both the surgeon-in-chief and the commandant. The inspector general found the food “sufficient in quantity and well prepared.” The medical care presented no cause for concern and he did not uncover any “authentic cases” of abuse. The surgeon (Dr. Hill) “has been virtually alone for several months” at a time and the hospital suffered from medical help due to the war. However, the report praised Dr. Hill as having “fine recommendations.” In regards to the issue of theft of funds or problems with inmate funds in the infirmary the inspector general credited the Lieutenant Governor with recently suggesting “a plan whereby the members’ money would be safeguarded.” While the report expressed satisfaction with Dr. Hill, it noted he badly needed additional help to care for all in his charge. The Commandant received lukewarm support with the report noting that though “advanced years, is mentally alert” and “surrounded by a good corps of officers.”

The two page report did


little to add anything new to the vast array of investigations, stories, newspaper articles, and state reports.

Undaunted by these additional reports (and quite possibly bolstered by support found in parts of them) Governor Smith’s secretary Jeremiah F. Connor\(^\text{123}\) wrote to Robert Bush stating that the board’s letter in response to the investigation had been forwarded to the Lieutenant Governor. Secretary Connor further stated

I am writing, by direction of Governor Smith, for the purpose of calling to the attention of the Board of Trustees to the following recommendations made by Mr. Walker as such commissioner; viz:

1. That Samuel Maurice Morgan be removed as commandant for reasons hereinbefore stated;

2. That Doctor Raymond C. Hill be removed as surgeon-in-chief in charge of the hospital for reasons hereinbefore stated;

3. That the rules for the admission of members to the Home; the rules for admission of members into the hospital and the conduct of said hospital be revised in accordance with the suggestions hereinbefore made.

The Governor requests that the Board of Trustees advise him what action, if any, has been taken upon these recommendations. Trusting that you will call this matter to the attention of the Board of Trustees as soon as possible and that the Governor may have a prompt reply.\(^\text{124}\)

Governor Smith had made it clear – Commandant Morgan and Doctor Hill must be fired.

On June 26 Bush responded to Governor Smith stating that having had no word from the Governor prior to the June 9 meeting they took no action. Bush stated that now that they have heard from the Governor “I will bring the matter before the Board, as the Governor

\(^{123}\) Jeremiah F. Connor replaced George R. Van Namee as Secretary to the Governor on April 2, 1920.

\(^{124}\) Jeremiah Connor to Robert Bush, June 24, 1920. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123.
requests” on July 14, the next regularly scheduled meeting. The letter received by Connor and marked by him “Gov Walker” also had the date of the next trustees meeting circled in a bold. On July 15, the day after the trustees meeting Bush wrote Smith informing him of the retirement of Morgan effective September 1, 1920. Smith’s office put out a press release on July 22, 1920 stating the retirement “in accordance with the recommendations of Lieutenant Governor Harry C. Walker who recently investigated the institution as a Commissioner under the Moreland Act.” The linkage of the retirement to the investigation boded ill for Dr. Hill. However, the status of Dr. Hill remained unaddressed and trustee chairman Bush requested a date to see Governor Smith to discuss “several matters of importance in connection with the investigation to which I wish to call his attention before he acts in the matter.”

At the same time Joseph Ewell, of the GAR wrote Governor Smith to protest the treatment of Dr. Hill. While Ewell again granted that some changes had to be made based on report findings, the employment status of Dr. Hill should be left to the board of trustees. Ewell wrote

Dr. Hill served in the hospital as Assistant Surgeon and Surgeon about ten years while I was Commandant at the Home. During that period I visited and inspected the hospital practically daily and was all the time in close touch with officials, employees and patients. I am thus able to state of my own knowledge that Dr. Hill was competent, efficient and painstaking in a high degree, and that he was deeply interested in his work.

125 Robert Bush to Jeremiah Connor, June 26, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 260-123

126 Robert Bush to Jeremiah Connor, July 15, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 150, 20-123.
If I might be permitted to make a suggestion it would be that the matter of retaining Dr. Hill in his present position be relegated to the Board of trustees where it belongs. The Board is composed of men of the highest ability and character and four of them are of your own appointment. They are on the ground and have better opportunities to know the facts and arrive at correct conclusions than any outsider can possibly have. The law places the duty upon them and if they are not capable of properly performing it they are not fit for the office of trustee. But they are fit and entirely competent and should be free to act upon their best judgment.  

Despite the reports condemnation of his performance and the call for his dismissal, Dr. Hill continued to serve as surgeon-in-chief of the Soldiers’ and Sailors’ Home for the remainder of 1920 though the assistant surgeon resigned. While Hill remained in office, Governor Smith did not, suffering defeat in November 1920 in his re-election bid. Under Governor Nathan Miller the Home’s trustees continued to retain Dr. Hill as well as hiring a new first assistant surgeon as well as a third staff surgeon. Dr. Hill continued to serve as chief surgeon after the return of Governor Smith to the governorship and ultimately until 1929 when the Home was transferred to the federal government.  

The Reconstruction report addressed the subject of the Soldier’s and Sailors’ Home under its section on the proposed reorganization of the Departments of Mental Hygiene, Charities, and Corrections. In outlining the reorganization of the soldiers’ and sailors’ home and the other “thirty-nine so-called state hospitals, charitable institutions and prisons” the report stated these institutions served almost 8% of the state’s population. “Over twenty departments, boards and commissions” shared responsibility for inspection, visitation, oversight and administration of these facilities. The

127 Joseph Ewell to Hon. Alfred E. Smith, July 19, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 151, 260-123.

Reconstruction commission desired a simplification of the present system to move away from the “illogical and wasteful” system currently operating. The commission proposed transferring the home to the Department of Military and Naval Affairs. The report stated “the number of inmates of the soldiers’ home is of course smaller every year. These institutions will ultimately be turned over to the Department of Mental Hygiene.”  

The Home itself underwent changes in its trustees’ structure as a result of the Walker investigation and legislation in 1921 increased the board to twelve members. The trustees were to include the governor, attorney general, state commander of the G.A.R., state head of the Spanish-American War veterans, and eight trustees chosen by the governor subject to confirmation by the Senate. In 1922 the governor and attorney general were removed as ex officio members of the board and World War I veterans were officially allowed entrance to the home.  

Since Smith’s Reconstruction Commission’s suggestions and the reorganization of New York State government did come about until 1926, the home remained under its own board until then. In 1926 the home officially transferred operations to the Division of Military and Naval Affairs under Smith’s Constitutional re-organization of state government and a revamped executive department. In 1929 the home, now called the “State Camp for Veterans,” transferred to the federal government and state government ceased to have a role or responsibility in the home’s operations and administration. Dr.  

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129 *Reconstruction Commission Report, 1919*, 169, 176, 194, 200, 227, 229, 232. The other veterans’ institution to be transferred to Military and Naval Affairs was the Women’s Relief Corp at Oxford, N.Y.  

Hill also retired from the home at that time and transferred to the Rochester State Hospital.  

The three small Moreland Act investigations of 1919 exhibit Governor Alfred E. Smith’s methodical and deliberate move towards rational and ordered state government. The investigations examined small agencies in need of executive oversight. On their own these small agencies either couldn’t or wouldn’t reform themselves – it took outside help. Smith’s use of the Moreland Act enabled an independent third party to investigate and offer suggestions as to how reform should be carried out. Public hearings and well publicized investigations provided for a transparent process. Commissioners gathered information and testimony, investigated the agencies and state employees in question, and calmly and methodically developed a report offering suggested courses of action. Various interest groups attempted to influence the outcome but little evidence was found that showed they had any success. For example, George Peck desperately wanted a seat on the board of directors of the Soldiers’ and Sailors’ Home and consistently criticized the administration and trustees of the home. Even though Peck failed to gain Senate confirmation to the board twice, Peck’s stature rose in November 1919 with his election as mayor of Elmira. However, Governor Smith allowed Commissioner Walker a free hand and directed Peck’s suggestions about the home to Walker. Similar occurrences could be found in the cases of the State Fair and the State Police – and in both cases Smith and his staff directed complaints to the investigators. Smith assessed the agencies and appointed Moreland Act commissioners; he did not enter into plots or ploys under the guise of the Moreland Act to embarrass local officials or state employees. Similarly, there

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131 Rochester Democrat and Chronicle, June 6, 1933; Yott, The New York State Soldiers’ and Sailors’ Home, 29.
is no evidence that he appointed Moreland Act commissioners to help local officials despite some pleas by local district attorneys (and Peck) that could be interpreted as borderline partisan. The investigation of the State Fair had little, if any, role for the district attorney who asked for it; and despite touting it as his idea, the investigation did not result in a ground swell for Walrath’s re-election and he faced defeat at the polls in November 1919. Likewise, in Batavia the local district attorney found participating in the hearings exposed him to much criticism since it called into doubt whether or not local police and his office actually enforced the laws against drinking and prostitution. In all three investigations, those found guilty of misconduct, malfeasance, or misfeasance failed to prove any abuse of the Moreland Act or partisanship on the part of Smith’s investigators. The commissioners merely investigated and offered remedies to Governor Smith. Even the head of the state police deferred to Governor Smith since he (Major Chandler) believed an independent investigation would best serve his agency, then only two years old and still in the midst of clarifying its mission and role. This acquiescence to external investigation took personal politics out of the way, especially since Smith publicly expressed hostility to this agency in his 1919 annual message to the legislature. Smith did not condemn the State Police under the guise of the Moreland Act or use the incident as an excuse for abolition of the State Police.

The 1919 Moreland Act investigations also showed how chaotic state government had become and the need for reform. In the cases of the State Fair and the State Police, the local district attorney noted that certain state agencies in their area were not operating properly. It seemed apparent that if a remote state agency operated in a manner necessitating calls from locals to the governor asking for an investigation, then the state
system required better supervision. The governor had to act. In the case of the Soldiers’ and Sailor’s Home, the trustees of the home asked for an investigation of their own agency, unwittingly sealing their own fate. Each agency lacked proper oversight, a clear chain of command, and specified rules and regulations. In each case Smith’s commissioners provided the remedy and bolstered the suggestions promulgated by the Reconstruction Commission busily examining each and every aspect of state government, particularly those in need of modernization or redefinition: the State Fair Commissioner, the Soldiers’ and Sailors’ Home, and the State Police.
Chapter 4 - The Milk Crisis

Governor Alfred E. Smith’s Moreland Act investigations of the 1919 milk crisis capped years of milk strikes, market volatility, rising food prices, and several attempts to address the issue by prior governors; the legislature; local, state and federal agencies; and the milk industry itself. Smith’s Moreland Act investigations centered on two agencies located within the executive department, the Council of Farm and Markets and the Department of Farms and Markets, the entities responsible for overseeing the milk markets in New York State. However, before any investigations Governor Smith first attempted to settle the milk issue by a variety of means such as working with industry and its trade groups and collaborating with various government agencies. In August 1919 – after a series of stop gap measures, some of them failures - Smith finally invoked the Moreland Act and appointed two investigations within a few weeks of each other. As in the case of his other Moreland Act investigations in 1919, the Governor sought independent, expert assistance from commissioners who would examine the problems and then offer solutions.

As Smith began his first term as governor he inherited a milk strike, a dairy industry with several decades of turbulent history, and a convoluted Department of Farms and Markets whose responsibilities and functions underwent dramatic change since its inception in the 1880s. While Smith unveiled a clear plan for addressing the issue of milk, the animosity between milk producers and milk distributors portended a long and drawn out battle. The uncertainty regarding state oversight and market regulation also led to interagency disputes, partisan battles regarding legislative solutions, and open hostility
between the governor and the Department of Farms and Markets. The milk issue served as one of the most convoluted, troubling, and long lasting issues Smith faced during his first term in office. The situation, in Smith’s own words in 1919, had “probably been misrepresented to a greater extent and to a greater degree than any other problem that we have had to deal with in this State in some time.”¹ The Moreland Act investigations disclosed that the governor exercised no control over the milk markets and no control over the executive branch agencies charged with overseeing the markets. The inquiries bolstered Smith’s case for executive reorganization and ultimately vindicated his handling of the issue.

New York’s Milk Industry

The dairy industry in New York State underwent a significant transformation from local milk producers scattered throughout the state in the late nineteenth century to a multi-million dollar, many tiered statewide system of production, processing, and distribution by 1919. This system transported milk from the upstate “milk shed” to growing downstate and urban markets of the 1910s. This growth and expansion between the 1870s and 1910s had often proven difficult with producers (farmers) often fighting over the price of milk with processors, distributors, and marketers (milk companies).

Consumers, particularly in New York’s metropolitan areas, comprised the third part of the milk equation, dependent on both producers and marketers and oftentimes adversely impacted by price wars between the two. Commonly accepted as “a necessity for infants and growing children” the availability and affordable of this nutritious food product

¹ “Meeting of Agriculturalists, Distributors and Public Officials – Adequate Milk Supply,” speech on November 23, 1919, Smith Public Papers, 1919, 786.
among the urban populations led to milk being treated as a public health issue.

Considered a near perfect health food, market volatility and high consumer prices fed the debate over whether the state should take a more active regulatory role in order to protect consumers.²

As in most industries in the late nineteenth century, milk companies began to standardize procedures, centralize production, develop specialization in the workplace, and hire experts to transport and market their products from central locations.³ Farmers sometimes resisted these modern business practices steadfastly valuing their independence, though in some cases they did organize for mutual aid and support. Farmers had few options and often depended on the milk companies to buy and then process milk for resale to consumers in emerging urban markets. Farmers soon found that the power to set prices rested more with the middleman – the large dealers aggregating, pasteurizing, processing, and marketing milk – than with consumer demand and retail markets. Without these milk companies, often dubbed the milk trust, farmers had few ways to get their product to new markets.

Several milk pricing systems evolved in the nineteenth century. The milk companies controlled most of these systems, such as the Milk Exchange formed in 1882 to help set the prices for milk in New York State. The Milk Exchange had its charter investigated by the New York Attorney General in 1891 and dissolved by order of the New York State Supreme Court in 1895 on the grounds that the exchange acted as an


illegal combination in restraint of trade. The Exchange reincorporated and continued in another form as the Consolidated Milk Exchange thus continuing a dealer-friendly means of setting prices.\(^4\) With limited access to independent or producer-owned processing facilities and transportation companies farmers had few options but to sell to these large milk companies such as Borden Farms and Sheffield Farms. The companies paid rates set by themselves or boards sympathetic to the dealers (such as the Milk Exchange) not rates reflecting cost of production.\(^5\) Besides setting milk rates, companies often mandated the quality they would accept and the quantity they would buy from producers. Between 1894 and 1916 farmers failed on five separate occasions to break the hold of the dealers in order to set prices for their own product.\(^6\)

In 1907 several Orange County dairy farmers decided to organize the Dairymen’s League, an association based on union principles, with the goals to “furnish funds with which to organize, pay the expenses of continuing the organization with the idea of getting a better price for milk.” The organization promoted these efforts before the legislature, the general public, with consumers, and in the communities comprising its membership.\(^7\) Largely dormant after its formation until the mid-1910s the League

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nonetheless showed that dairy farmers desired more control over the price of milk and sought a means to educate both the public and lawmakers about the true cost of milk production. By the late 1900s producers, distributors, and consumers all exhibited a movement towards organization for the mutual benefit of their interests.

In 1909-1910 the milk situation led to another investigation by the New York State attorney general – only a decade after milk pricing had led a State officials to investigate and dissolve the Milk Exchange. Attorney General Edward O’Malley found that prices in the 1900s were largely set by dealers just as they had been in the 1890s. Further, many producers were legally obligated under contract to accept the price offered by dealers before the prices were actually set. O’Malley found that under some formulas farmers produced milk at a loss, especially if the producer shipped to New York City markets. Since most producers had no other option but to accept prices from milk companies as set by the Exchange (or rates very similar) many producers shifted to cheese and butter manufacturing, attempted to find other “oftentimes irresponsible” dealers to buy their milk, or abandoned their farms. O’Malley’s report argued for state regulation of milk “so that the consumer and producer will not be at the mercy of the middleman [the milk companies].” The report outlined plans for a new state board comprised of gubernatorial appointees empowered to examine the industry, gather

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8 Dillon, *Seven Decades of Milk*, 97; O’Malley Report, 10-11.
information from all of its component segments, fix prices and profits, and regulate milk traffic.\(^9\)

Despite investigation producers remained constrained by the price set by the milk companies and no new method of establishing wholesale milk prices between producer and dealer were developed. By the 1910s New York City Health regulations, new pasteurization requirements in certain areas, and improved shipping practices, left farmers even more dependent on the milk companies who possessed the expertise and bureaucracies needed to comply with a transformed and modern industry. Since milk processing and pasteurization facilities required a tremendous financial commitment, farmers found the construction of independent facilities beyond their capabilities.\(^10\)

In 1915 and 1916 the growing demand for milk created an opportunity for producers to increase their market share however, the milk companies still maintained strong control over the price paid for milk. With milk companies sensitive to consumer opinion in New York City, as the costs of distribution increased, the distributors dealt with the added cost of doing business by paying farmers less for their product.\(^11\) Dealers did not want to upset consumers with higher milk prices so they lowered the price paid for milk from the producers. This could be done, according to Roswell Cooper of the

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\(^10\) Barron, Mixed Harvest, 88-92; Bulkley, “Agrarian Crisis in Western New York,” 392.

Dairymen’s League, because of the milk companies’ control over wholesale pricing. Many dairy farmers, Cooper claimed, faced sales at below the cost of production.12 Agriculture historian Gould P. Colman of Cornell University claimed that the cost of equipment by both farmers and distributors to supply fluid milk to New York City markets increased faster than income in 1915 and 1916. As a result dealers, under pressure to not increase consumer prices, lowered the price paid to producers. This price of course benefited the consumers and milk companies, not the dairymen.13

During the legislative session of 1916 a Joint Commission on Dairy Products, Live-Stock and Poultry conducted an investigation of conditions in the dairy business statewide. The Wicks Committee, named after its chairman Senator Charles W. Wicks, began public hearings in June 1916 and met through December 1916. The Wicks Committee claimed to be the first legislative committee to “investigate fully into the conditions surrounding the production and distribution of agricultural products in this State.”14 Convening in cities, towns and villages in almost every part of the state, over seventy hearings helped build a comprehensive record of the dairy industry.15

The publicity surrounding the Wicks Committee helped bring into the open the problems facing dairy farmers. The Wicks Committee found that dairymen required a higher price for milk to make their operations profitable, something also found in

12 Cooper, Origins and Development of the Dairymen’s League, 4.
14 Wicks Report, 6.
15 Wicks Report , 3-8.
O’Malley’s investigation only six years earlier.\textsuperscript{16} The Wicks Committee bolstered producer efforts to increase the price of milk by publicizing the difficult issues facings farmers including higher feed costs, unfair pricing, declining profitability, and the unrestrained competition in New York City creating excessive and unnecessary distribution costs passed onto consumers and producers.\textsuperscript{17} The Wicks Committee’s major finding centered on the common dealer practice of holding consumer prices steady in order “to move along the line of least resistance” and pass increased distribution costs onto farmers instead of consumers. This practice all but guaranteed low profits, if any at all, to farmers. The Wicks Committee proved the contentions of Cooper and the Dairymen’s League – distributors held both producers and consumers hostage.\textsuperscript{18}

Another key finding of the Wicks committee involved the uncovering of waste and duplication in the area of distribution. The duplication of milk routes and the operation of competing distribution companies in the same geographic areas created upward pressure on milk prices to recoup investment costs. To remedy this situation the Wicks Committee suggested legislation “to permit the elimination of all unnecessary investments both of labor and capital and effectively control the business operations of the remainder” or, in other words, state regulation of the markets as a public service enterprise.\textsuperscript{19}

\textsuperscript{16} Barron, \textit{Mixed Harvest}, 93; Dillon, \textit{Seven Decades of Milk}, 97; Wicks Report, 38.

\textsuperscript{17} Colman, “Government and Agriculture in New York State,” 47; Wicks Report, 576-577.

\textsuperscript{18} Wicks Report, 291-292, 294.

\textsuperscript{19} Wicks Report, 578-579, 604-605.
Just as the Wicks Committee helped focus attention on the plight of milk producers, another ally – a New York State agency – weighed in on the side of the dairy farmer. The New York State Department of Food and Markets, created in 1914, was charged with aiding and assisting in the organization of “cooperative societies among producers and consumers for the purpose of securing more direct business relations between them.” This new state agency empowered its commissioner to “assist in the location and establishment of local markets whenever he determines that public necessity or the welfare of the community requires such markets.” Hence the department possessed significant power to assist farmers and producers in marketing their goods.

Empowered by these provisions, the department’s commissioner, John J. Dillon, a well-known agricultural writer, worked with producers and the Dairymen’s League to help set a price for milk. In September 1916 the League’s Executive Committee arranged to sell its members’ milk “through the agency of the New York State Department of Foods and Markets” at a “minimum, uniform price” for six months. Soon after this announcement milk dealers found they could not enter into contracts for milk unless they dealt with the Dairymen’s League at the rates set in cooperation with the State.

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20 Chapter 245 of the Laws of 1914. Bills of the Senate of the State of New York, Nos. 1596 to 1666, Inclusive, Printed During the One Hundred and Thirty-Seventh Session of the Legislature, Vol. XI (Albany: J.B. Lyon Company, 1914). Senate Bill 1622, 3. The department also had the power to “hear complaints and suggestion” and take testimony and evidence. The department had the power to compel witnesses and issue subpoenas. Dillon did not utilize these powers in the milk impasse of 1916 or its aftermath.

21 Colman, “Government and Agriculture in New York State,” 46.

22 Cooper, Origins and Development of the Dairymen’s League, 6, 9, 10-12, 19; Dillon, Seven Decades of Milk, 84; Wicks Report, 305, 338. The Wicks Report contains several pages of letters and testimony from officers of the Dairymen’s League outlining the 1916 milk strike and the negotiations settling the strike. Jacob Brill, the president of the Dairymen’s League criticized Commissioner Dillon during the Wicks hearings stating “he was a nuisance” and “the dairymen could and would have got better terms with Dillon out than with him in.” Cooper later criticized Dillon for his “libelous, vindictive and abusive attacks against the League and its officers” in Dillon’s publication the Rural New Yorker in 1917.
Initially many milk companies refused to buy the milk. Milk dealers objected to buying milk through the League at the price set by the producers. In September 1916 the Dairymen’s League called a milk strike. Supported by about 18,000 farmers the strike blocked 75% of New York City’s milk supply.\textsuperscript{23} In many instances striking producers destroyed or dumped their milk.\textsuperscript{24} By October milk companies agreed to purchase milk at the price set by the Dairymen’s League. The strike ended with dairy farmers benefiting from higher prices for their product. However, the Dairymen’s League success in shifting the power to set milk prices from the dealers to the producers did not last long. The role of the League also changed after the 1916 milk strike with some favoring a greater role for the League in the pooling of milk, cooperative processing, and marketing for the membership with others (notably John Dillon) favoring small scale and local independent cooperative efforts by farmers. The Dairymen’s League eventually moved towards a cooperative system to which all producers in the association sold their milk.\textsuperscript{25}

The Department of Food and Markets under Commissioner Dillon also lost an opportunity to help “farm organizations when their bargaining power was rapidly increasing in Albany.” Many within the Dairymen’s League believed that Dillon acted too cautiously as their bargaining agent often proving more of an obstruction than an asset. The Wicks Report stated “the State as a whole was practically without knowledge of the [milk] situation prior to July 1916” (a criticism aimed at the Department of Food

\textsuperscript{23} Barron, \textit{Mixed Harvest}, 95.

\textsuperscript{24} Irwin G. Jennings, \textit{A Study of the New York City Milk Problem} (New York: The National Civic League, 1919), 1.

\textsuperscript{25} Cooper, \textit{Origins and Development of the Dairymen’s League}, 18-19, 22-23; Dillon, \textit{Seven Decades of Milk}, 104-111.
and Markets) and that Dillon’s department failed to study or handle the issue properly. According to the committee, the episodes leading to the dangerous strike situation should have been handled differently. In 1917 the legislature, based on the findings and recommendations of the Wicks Committee, restructured the Department of Food and Markets merging it with several other agencies into a new Department of Farms and Markets. A new ten member Council of Farms and Markets appointed by the legislature would oversee the department. Thereafter this new department exercised much more caution in the area of bargaining on behalf of producers and dealers. However, the Council membership charged with overseeing the new departments came largely from those sympathetic to the farm community.

Dillon, in his department’s official report for 1916, credited the partnership between the producers and the department as the reason for securing a better price for farmers and blamed “unreasonable and excessive” distribution costs as a main problem to be addressed. Dillon outlined a proposal to have “local grocery, butcher and delicatessen stores” distribute milk instead of milk wagons. Dillon also advocated for the establishment of a state-owned pasteurization facility in New York City. The report stated the department also played a role in securing milk from “independent dealers” to help supply New York City during the strike – a logical inconsistency in light of Dillon’s

26 Wicks Report, 337-339.

27 The first Council members were appointed by the governor with future members receiving their appointments from the legislature.


29 Dillon also testified before the Wicks Committee stating his belief that state owned plants would aid in fostering competition and thus lower prices to consumers. Wicks Report, 379-380.
role as agent of the Dairymen’s League and producers. The report proved to be Dillon’s last one as commissioner and after the 1917 departmental reorganization Dillon returned to writing fulltime, though his ideas regarding state regulation of the milk industry, particularly in processing and distribution, remained popular and reappeared in many future investigations.

It should be noted that New York City Mayor John P. Mitchel’s “Food Supply Committee” of 1914 was still operating in 1916 when the Wicks Committee began meeting, and in 1916 Governor Charles Whitman appointed a “Special Committee to Investigate the High Cost of Food Commodities.” On December 28, 1916 the Wicks Committee, the Governor’s Committee, and the Mayor’s Committee, in a cooperative effort, decided to issue a “Joint Report on Food and Markets.” Combined these investigations advocated a state market department, a recommendation never implemented. After the Wicks Committee investigation and the 1916 milk strike New York City Mayor John Mitchel, at the request of the city’s health commissioner, appointed a milk committee to investigate the rising cost of milk in 1917. Through hearings and public meetings the Mayor’s committee found the price asked by the producers under recent contracts justified. The committee also recommended an in-city

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32 Wicks Report, 867-869.

pasteurizing plant for city institutions and the exploration of a centralized and
coordinated distribution system (as had Dillon as noted above).\textsuperscript{34} Again, all of these
recommendations, though not implemented at the time, would be repeated by future
investigations as well.

The entrance of the United States into World War I in 1917 set in motion federal
price regulations often resulting in lower margins for producers, and in some cases rates
below the cost of production. The clash between the Dairymen’s League and the Federal
Food Administrator, Herbert Hoover, resulted in press stories vilifying dairy farmers and
the League. In one instance the New York District Attorney brought charges (later
dropped) against some League officers and directors for conspiring to raise the price of
milk. The dropped indictments against the producers combined with the Dairymen’s
League entrance into the cooperative system also led to the successful passage of
legislation in 1918 defining collective sales of product by associations of
farmers/dairymen as a legal transaction, not a conspiracy under the Donnelly Act. This
provision, favored by upstate farmers, would strengthen the Dairymen’s League’s
position in negotiations.\textsuperscript{35}

World War I also led to a variety of special food commissions; legislation to alter
the state agencies overseeing food, markets and agriculture; and an industry experiencing
consolidations and plant closures. The United States Food Administrator and the United
States Interstate Commerce Commission both studied these issues extensively.\textsuperscript{36} With

\textsuperscript{34} Spencer, \textit{An Economic History of Milk Marketing and Pricing}, 188-189.


\textsuperscript{36} Spencer, \textit{An Economic History of Milk Marketing and Pricing}, 201-202.
demand for food in European markets pushing the cost of food upwards, food prices in
the United States also increased.\(^{37}\) In November 1916, President Wilson blamed the
“middleman” for increased food prices and the Department of Justice investigated the
food industry for illegal combinations and violations of the Sherman Anti-Trust Act.
While Wilson stated that increased production would lower prices, renowned business
executive George Perkins, now chair of New York City Mayor John Mitchel’s food
supply committee, advocated more government intervention, study of the food production
industries, and a reform program by state and federal governments.\(^{38}\) Most dramatic,
however, were the 1917 February and March food riots brought about by skyrocketing
food prices in New York City, Philadelphia, and Boston. In New York City between
2,000 and 5,000 angry women marched on City Hall demanding local action and, when
finding none forthcoming, wrote to both the President and Governor seeking help.\(^{39}\) By
December 1917 Federal Food Administrator Hoover complained that he required more
power to set prices due to the high profits of American industry. Hoover feared corporate
gains came at the expense of consumers.\(^{40}\) One avenue explored by the federal
government included various studies and public hearings under the Federal Milk
Commission and the United State Food Administration. The Federal Milk Commission
hearings resulted in a suggestion for state control and reorganization of the milk industry.

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However, despite sending these recommendations to Governor Charles Whitman, no state action resulted.  

Historian William Frieburger noted that the problem of high prices “was never really ‘solved’; it was simply absorbed” into America’s entry into World War I. By 1919, as Governor Smith would find, the problem reappeared once again when the war ended and federal control ceased. With prices set by the federal government from the start of American participation in World War I through December 1918, milk producers and dealers had no other option than to operate within price guidelines, though producers often claimed this system benefited dealers more than producers.  

In mid-December 1918 in light of the Armistice the Federal Food Commission announced it would no longer set the price for milk in New York State. The League and milk dealers (represented by the New York Milk Conference Board) began negotiations for January 1919 prices. Debates soon led to charges of conspiracy and the New York district attorney began a John Doe investigation of the milk industry. In late December with no agreement reached, the League declared a milk strike effective January 1, 1919. That same day Governor Alfred E. Smith was sworn in as Governor of New York State.

The 1919 Milk Strike and Al Smith

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42 Dillon, *Seven Decades of Milk*, 133-135.

With a strike by milk producers already underway on New Year’s Day Governor Smith addressed the issue of milk in his first annual message to the legislature. As part of his legislative program Smith stated “the present high cost of milk is a public menace” and an inadequate milk supply leads to “misery, disease and death.” Though the end of the war witnessed food inflation generally, milk proved a particularly troubling issue because it was used so widely to supply crucial nutrition to children. The economic implications and potential health impacts on so many New York citizens, particularly the poor and working classes, led Smith to focus attention on the milk situation. In an attempt to summarize the situation Smith stated that the three principle parties interested in the milk markets - the producer, the distributor, and the consumer - all deserved having their interests safeguarded, but not at the expense of the others. Therefore Smith proposed a commission of members from these three groups to investigate the “milk situation and to make recommendations” as speedily as possible in order to develop legislation to remedy the situation and safeguard all affected.44

In the same message, Smith also addressed the issues of farming and agriculture generally. He struck a balance between the rural and urban populations of New York State. Smith stated “the farmer must have sufficient returns to make his work attractive and worthwhile” and “the producer and consumer, the city and the farm, should work together for the accomplishment of this end.” The complexity of this seemingly simple equation was not lost on Smith. He outlined the various points of weakness, the tortuous path of farm production and market distribution, and the need for careful study by trained persons. According to Smith the difficulty of the “distribution and marketing problem”

44 Smith Public Paper, 1919, 36-37.
required “a well-considered continuing policy of progress and correction.” The duplication and overlap between the various state agencies charged with agriculture, public health, transportation, and consumer markets created a mass of intertwined, duplicative, and often competing departments. Smith wanted to establish a “simple, clear, and economical” process for milk marketing. Smith did not want the consumer caught in a battle between the producer and distributor, particularly since infants, children and the sick were most at risk during a milk shortage.

Bolstering his case for an investigation of the milk issue, Smith also included food as an issue to be investigated under his Reconstruction Commission. War necessitated productivity, innovation, and increased production; Smith wanted the state to capitalize on these lessons and carry wartime gains in productivity into peacetime. Smith specifically stated that “food of every kind should be made available at decreased prices,” something not currently occurring in New York. Smith’s Reconstruction Commission would also study the composition of the state departments charged with overseeing agriculture and the milk markets.

The Governor’s announcement of an investigation met with some skepticism by those involved with an on-going John Doe milk inquiry by the New York District Attorney Edward Swann begun in 1918 to investigate the milk industry. The New York City magistrate charged with overseeing the district attorney’s investigation volunteered

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45 Smith Public Papers, 1919, 39.
46 Smith Public Papers, 1919, 7-8.
47 Requesting an Appropriation of $75,000 for the Work of Reconstruction Following the war and Appointing the Reconstruction Commission, January 20, 1919, in Smith Public Papers, 1919, 50.
to send the Governor the entire case record if requested, going so far as to call Smith’s planned inquiry “a work of supererogation.”

Prior to Smith’s announcement of an investigation lawmakers, government officials, and the milk industry had witnessed numerous investigations, panels, hearings, and inquiries. Smith’s committee would be only the latest in a long line of inquiries into the milk issue. In light of all of these recent investigations Smith’s desire to appoint an investigation to end the strike may have seemed both redundant and naïve. Nonetheless Governor Smith now advocated another investigation.

Three days into the strike, on January 3, 1919, New York District Attorney Swann wrote to Governor Smith informing him of the findings to date of the investigation made by his office with assistance from Mayor John F. Hylan and New York City Health Commissioner Dr. Royal Copeland. Copeland, fearing for the public’s health, claimed that “when the city awakens tomorrow [January 3] it will find itself face to face with a milk crisis.” Swann stated his strong belief that the Donnelly Act amendments exempting the dairymen’s actions from anti-trust violations and acts of conspiracy under state law must be repealed and that the actions taken by both producer and distributor


49 Jennings, *A Study of the New York City Milk Problem*, 2. Jennings stated in his 1919 study “that a most pressing demand has arisen for an *unprejudiced* inquiry into the facts and the law.” (Italics added).

50 Spencer, *An Economic History of Milk Marketing and Pricing*, 17-18. Milk historian Leland Spencer noted the list of investigations into New York milk and food prices proved very extensive between 1917 and 1919 and included inquiries by the New York City Mayor’s Office (1917), the New York Legislature (Wicks Committee – 1917), Governor Whitman’s Market Commission (1917), the United States Interstate Commerce Commission (1917), United States Food Administration (1918), and New York State Reconstruction Commission (1919). Spencer’s list did not take into account the Department of Justice, local district attorney investigations, and Smith’s gubernatorial commissions in the spring and fall of 1919.

caused serious public health risks. The district attorney condemned the Dairymen’s League for directing the state’s milk producers to withhold milk. Swann also complained about the head of the Division of Food and Markets, Eugene Porter, a Director of the Dairymen’s League in 1918, who Swann claimed had been in contact with the striking producers after the strike had been called – a possible violation of his public duty. Swann also informed the Governor of the intransigence of the milk distributors calling them “the most pernicious and heartless of monopolies that oppress the people.” The same day (January 3) the milk supply in New York City fell by one million quarts.\textsuperscript{52}

Governor Smith publicly stated on January 3 he was watching the milk situation and gathering information. In case of emergency Smith claimed the New York City Commissioner of Health possessed the requisite power to commandeer the milk supply – a substantial threat possible designed to pressure the leaders of both the strike and the milk companies to end the impasse.\textsuperscript{53} Despite Smith’s and Copeland’s concerns milk shipments greatly increased the following day reaching close to 50% of “normal” supply. Some distributors claimed resumption of full capacity within days, partly due to shipments of milk from other states. On January 5 and 6 the New York Times reported a weakening of the strike with some upstate farmers leaving the Dairymen’s League and resuming shipments to New York City. Despite an increase in milk shipments and rumors of a weakening strike, the leadership of the Dairymen’s League held out.\textsuperscript{54}

\textsuperscript{52} New York Times, January 4, 1919.
\textsuperscript{53} New York Times, January 4, 1919.
\textsuperscript{54} New York Times, January 5, 1919, January 6, 1919
Undaunted by the continued strike the New York Milk Conference Board, representing the milk companies, ran full page advertisements in New York City newspapers reporting that farmers in other parts of the country received lower prices for their milk than did New York farmers. The Milk Board also appealed to the public claiming the Dairymen’s League had refused a fair price and had commenced destroying milk.\textsuperscript{55} The Dairymen’s League immediately countered that the Milk Board misled the public in its advertising by omitting the higher prices paid for milk in many large east coast cities. The Dairymen’s League ran its own advertisements in the press advocating pricing based on expert studies of production costs.\textsuperscript{56}

With the battle between producers and milk companies raging in the press, Governor Smith met with District Attorney Swann, Mayor Hylan and various city officials in Albany on January 6 to plan a strategy to end the milk crisis. Swann contended that both the producers and distributors engaged in a conspiracy to deny New York City milk going so far as to enlist the railroad industry, and commit crimes as heinous as arson to stop milk shipments.\textsuperscript{57} Smith listened to Swann’s suggestions to amend state law to allow the prosecution of producers and distributors and any other illegal combination directly impeding the free markets. The group also discussed the contingency of having the state take over the milk markets. Concerns regarding the Donnelly Act’s exemption of the dairymen from anti-trust prosecution led Smith to charge his counsel, Joseph Kellogg, with researching this act and other legislation.

\textsuperscript{55} *New York Times*, January 5, 1919, January 6, 1919.

\textsuperscript{56} *New York Times*, January 6, 1919; January 7, 1919.

\textsuperscript{57} Edward Swann to Alfred E. Smith, January 3, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148.
suggested by the New York City officials. The Governor then announced he wanted the Dairymen’s League executives to meet with him.  

When Smith met with the Dairymen’s League officers in Albany Roswell Cooper, the representative of the Dairymen’s League, claimed the district attorney and the Milk Board purposely misled the public by linking a fair return on the production of milk with price gauging. Further, Cooper claimed, the milk companies and the district attorney used the public outrage to try to discredit and destroy the Dairymen’s League. After the meeting Governor Smith traveled to New York City and met with the producers and milk companies in a joint meeting in an attempt to personally broker a deal. Cooper stated to the press that Governor Smith “was very fair” though Cooper noted Smith sympathized with the producers when he questioned the Milk Board’s representatives regarding the lack of an investigation into how they (the distributors) set their price to the consumer. Smith also criticized the representatives of the Milk Board for refusing to pay a higher price for milk from New York farmers when the Board currently paid well above that rate to dealers supplying milk during the strike – some of them out of state producers.

After meeting with both sides Smith announced the members of his promised milk investigation commission, something likely discussed with the producers and distributors in advance. In his message of appointment Smith stated he “succeeded in bringing together the representatives of the distributors and producers in conference” and now “with the assistance of the citizens representing the consuming public” this new

commission would end the impasse. Smith appointed two representatives each from the Dairymen’s League, the Milk Conference Board, and consumers and asked them to immediately meet to discuss a solution to the strike. Smith appointed Robert E. Dowling, a fellow commissioner on the Factory Investigation Commission and past chairman of the state’s Workmen’s Compensation Commission, the chair of the committee. Smith stated “volumes of testimony have been taken on the subject,” the state did not need further investigation but rather action. In his public papers Smith later characterized the commission as “entirely without power”, “intended for the purpose of meeting the situation in relation to the shortage of milk,” and he “never intended that this conference would have any powers to investigate or settle in any definite way the milk problem.” Governor Smith’s commission acted as a gubernatorial-sanctioned negotiations board. The panel would end the strike, not solve the long-term structural pricing system.

Smith asked the board to begin its deliberations while the district attorney held in abeyance his investigation until the Governor’s milk commission got underway, though

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61 Smith Public Papers, 1919, 453. The Governor named Robert E. Dowling, President of the City Investing Company, and Dr. Royal Copeland, Commissioner of Health for New York City representing the consumers; Isaac Van Bomel of Sheffield Farms Company and Charles Weiant of Borden Farm Products Company, representing the New York Milk Conference Board; and, Roswell D. Cooper and John Miller, both of the Dairymen’s League, representing the producers. Dr. Copeland resigned within a few days because he believed he might be forced to exercise “police controls” in securing milk for the city, as noted earlier, a not so subtle threat possibly meant to pressure the two warring factions into settling the strike.


64 Smith Public papers, 1919, 447-448. The section from which this information is taken is entitled “The Milk Problem.” The general outline for this section and many of the letters and statements are also contained in Smith’s official correspondence files.
this brief pause in the New York City investigation only lasted a few days and soon conflicted with the meetings of the Governor’s milk commission. Soon after meeting the Governor’s milk commission chair, Robert Dowling, rebuked the producers’ representatives for making an ultimatum regarding the price for milk acceptable to the Dairymen’s League. Reporting to Smith on the status of the contentious meetings, Dowling was told by the governor to “keep at it.” Following Smith’s orders Dowling worked out a compromise price with the milk companies indicating that if the producers did not accept it and end the strike, there would be no point having the commission continue meeting. At such a point, Dowling stated, the legislature would be asked to take more “drastic” action to effect a settlement. Dowling announced this scenario after consulting with Governor Smith.

Dowling’s negotiations continued for about a week, coming close to settlement numerous times. On January 17 with a tentative agreement in hand Dowling phoned Governor Smith to outline the settlement. Minutes later the deal fell through and a depressed Dowling asked Governor Smith to “relieve him from further service on the commission.” Smith convinced Dowling to remain at which time Dowling stated one final conference would be held. This last conference proved successful and the strike finally ended. Ironically, the level of milk reaching New York City approached eighty-


seven percent of normal supply on the very day the Governor’s Milk Commission reached a compromise.\textsuperscript{68}

The final agreement included the price farmers wanted for January with lower prices in February and March as a concession to the milk companies. Chairman Dowling stated that “the matter is settled, at least for the present.” Dowling announced that the Governor’s Commission would meet again to check on the progress of the agreement and the Commission would continue to meet on the 15\textsuperscript{th} of each month and as needed in the case of disagreements. A clearly exhausted Dowling further stated that “if either side tries to put over any tricks, I will get out. In such a case the whole matter will be put squarely up to the public so that it, the court of last resort may act.”\textsuperscript{69} The milk strike of 1919 had ended.

Irwin G. Jennings, a contemporary expert on the economics of milk, summed up the 1919 strike as a lack of coordination between the producers, distributors, and to a degree, the consumers. These three conflicting interests had, Jennings claimed, consistently failed to coordinate the market thus leading to a repeated series of conflicts and strikes. The obvious solution would be state regulation. Without central control inefficiencies in production and distribution would continue to add to consumer costs. Consumers, used to an antiquated delivery structure, had also limited their role in the market to short term concerns regarding lower prices, not structural changes to insure a

\textsuperscript{68} \textit{New York Times}, January 18, 1919.

\textsuperscript{69} \textit{New York Times}, January 19, 1919.
long term solution. Jennings summarized his long range plan for avoiding future market disruptions in the *New York Times* right after the milk strike ended.\(^70\)

Jennings’ overarching theme, that “a Milk Commission undoubtedly could be appointed by state authority endowed with the police power” and “that a properly constituted milk commission would be able to exert a most beneficent influence upon the industry” mirrored many points in the Wicks report. Jennings partly based his assumptions on his belief that the milk business tended towards monopoly, the nature of the business entailed a public benefit, and the health and welfare of the public depended on the milk production and supply systems. Jennings compared milk to the public water supply system and provided court case histories bolstering his contention that a milk public service department would stand legal challenge.\(^71\)

The 1919 milk strike served as the opening event in the year-long milk crisis. Though Governor Smith and his commission temporarily settled the strike after a few weeks of intense negotiations, the problem simply lay dormant until the next round of milk contracts. As the history from 1870 through 1919 showed, the battle between the producers and the milk companies over the price of milk was not only contentious, it was complex. Smith’s milk commission, while effective in January 1919, proved a mere stopgap measure unable to furnish a long-term regulatory apparatus with the ability to compel a fair price for milk and insure an uninterrupted milk supply on a consistent basis.

\(^70\) *New York Times*, January 19, 1919.

As the milk strike entered what would be its final days Governor Smith decided to seek help from the state regulatory agencies responsible for overseeing food and markets. It made sense that under such circumstances the Governor would direct the government agency responsible for overseeing dairy markets to remedy the situation. However, Smith soon found this executive branch department, recently removed from direct control of the Governor to a Council of Farms and Markets in 1917, unresponsive to Smith’s appeals for help. Though the strike ended right after he approached the Council, Smith’s determination to enlist the help of the Department of Farms and Markets did not lead to more state assistance, but rather a new phase to the milk crisis: state regulation of the markets.

One factor influencing Governor Smith to explore action by the department was the Donnelly Act’s exemption of dairy farmers from treatment as an illegal combination in the marketing of milk. Many believed, such as the New York County district attorney, this law allowed a monopoly to operate in the area of milk supply. The Dairymen’s League believed farmers required this legal exemption since it allowed a pooling of their milk, securing for all farmers a price reflective of production costs. Many producers wrote to Smith requesting him not to change the act.72 Earlier in the year Smith discussed this issue with several Republican leaders only to be informed that he should not expect a repeal of the Donnelly Act by the legislature.73 An obvious reason for such intransigence can be attributed to the upstate and rural composition of much of the Republican


73 Smith Public Papers, 1919, 448.
majors in both houses of the legislature – areas heavy in agriculture and dairy production. Thus the issue fell along the lines of the urban versus rural split often associated with the upstate, small town Republicans versus the urban, and largely New York City, Democrats. Smith also knew that if the repeal of the act passed with his assistance – something of which he was not yet convinced would be a good plan - the Democrats risked losing the farm vote in the future.\textsuperscript{74}

Before a settlement was reached Smith wrote to the Council “requesting advice as to what action has been taken in regard to the supplying of milk within the state.” The Governor reminded the Council of its power under state law to “investigate and report to the Legislature what plan in the judgment of the council should be established by law for the purpose of securing amply supply of pure milk in centers of population.”\textsuperscript{75} In view of the milk strike and the dire situation in New York City the Governor desired to know what steps the department had taken in regard to protecting New York’s milk supply.\textsuperscript{76}

On the day the strike ended (January 18), John Mitchell, President of the Council of Farms and Markets, responded to Governor Smith. Mitchell stated the Council would discuss Smith’s request at its next meeting scheduled for January 20. However Mitchell took the opportunity in writing to Governor Smith to review the recent history of milk pricing and the steps taken to insure adequate supply. During the war, Mitchell claimed,

\textsuperscript{74} Paula Eldot, \textit{Governor Alfred E. Smith: The Politician as Reformer} (New York: Garland Press, 1983), 278.

\textsuperscript{75} \textit{Smith Public Papers, 1919}, Governor Alfred E. Smith to the Department of Farms and Markets, January 16, 1919, 447-448; Chapter 802 of the Laws of 1917; \textit{Bills of the Senate of the State of New York, Nos. 1669 to 1881, Inclusive, Printed During the One Hundred and Fortieth Session of the Legislature, Vol. IX} (Albany: J.B. Lyon Company, 1917), 17 (Senate Bill 1849).

\textsuperscript{76} \textit{New York Times}, January 17, 1919.
the department depended on the Federal Food Commission in the area of dairy pricing and supply and he outlined the work of the federal government’s control over the production, distribution, and pricing of milk from November 21, 1917 until December 19, 1918. During this period a federal panel, on which Mitchell served, held hearings around the state, gathered information regarding price methods, investigated distribution systems, and heard from all segments of the industry. Mitchell stated that at no time “was there any evidence indicating an inadequate supply of milk in the territory shipping milk to New York City, or to other cities or towns in the State of New York.” One key point relayed to Smith involved the cost disputes under the federal system, largely attributable to a milk glut not a shortage in 1918. Mitchell also recounted the problems arising after the federal government withdrew its control over pricing in December 1918 and the appointment of a panel of United State Department of Agriculture employees to work with producers and distributors to set prices for 1919. These efforts failed to find common ground between producers and distributors resulting in the 1919 strike.77

One question of Smith’s Mitchell did answer involved the department’s investigation of the milk markets. Mitchell stated that Dr. Eugene Porter, Commissioner of the Department of Food and Markets, had authorized a study into milk pricing. This study, begun in December 1918, focused on systems utilized in other major cities in order to ascertain the differential between the price paid to the producer and the price of milk to the consumer. However, Mitchell concluded, the person working on this study for Dr. Porter recently died and the report had not been finished.78

77 Smith Public Papers, 1919, John Mitchell to Governor Alfred E. Smith, January 18, 1919, 449-450.
On January 21 the Council of Farms and Markets responded as a body to Governor Smith. The report restated most of Mitchell’s contentions regarding the subservience of state regulators to federal food administrators during the war, even going so far as to claim “during the war the regulation of food matters was national and not state.” Smith seemed unimpressed with the report for he scribbled on the margins “This is the history of what others have done not what Farms Markets (sic) did.”

In regards to the current milk situation the Council stated that it had not been “jointly invited” as required under the Farms and Markets Law to “mediate or arbitrate any of the differences” existing between the milk producers and distributors. Further, in regards to a study by the department, the Council concluded that it had not the money for such a vast undertaking. The Council concluded its report by informing the Governor that its recommendations to the Legislature included a request for $25,000 to study the milk situation. The Council also proposed amending the Farms and Markets Law to allow local municipalities to purchase and sell food and fuel in emergency situations (such as the recent milk strike), the “power to offer its services as mediator,” and “the power to investigate the merits of the question in dispute and report to the Governor, with its recommendations, the facts in the case.”

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If the inaction of the department proved troubling in light of the milk strike, the statements of some of its employees also damaged the department’s image. At various times during the New York district attorney’s John Doe investigation of the milk business employees of the New York State’s Department of Farms and Markets gave testimony before the hearing. Dr. Eugene Porter, Commissioner of Food and Markets, testified that he supported the dairymen’s dumping of their milk rather than selling it at prices below those being offered by the milk companies. Porter, it was revealed, had previously served as a director of the Dairymen’s League.82 In a similar vein, the district attorney heard testimony alleging corruption among officials and inspectors at the Department of Farms and Markets.83

Only weeks after Governor Smith outlined the role and function of the Department of Farms and Markets in his legislative program, he found himself hearing of conflicts and corruption within the department while simultaneously learning that the department failed to carry out its public mission. Once Smith began his inquiry into the department he found another example of an agency in need of proper oversight and accountability. By 1919 the Council of Farms and Markets and its various departments and sub agencies formed a convoluted mass of departments and bureaus. Governor Smith now had to make sense of these departments and compel them to act in the interest of the people and the markets even though the Council and its departments did not report to the governor.

It should be noted that the situation Smith found within the Department of Farms and Markets in 1919 did not always exist. From 1884 with the creation of Dairy Commission to its transformation into the Department of Agriculture in 1893 until the legislature created the Council of Farms and Markets in 1917, the governor supervised the agencies overseeing the state’s dairy industries.\(^{84}\) State law provided for a State Dairy Commissioner appointed by the Governor with advice and consent of the Senate for a two year term. The commissioner and his staff of “experts, chemists, agents, and counsel” worked to prevent “deception in sales of dairy products.” The Commissioner exercised sweeping power to examine any and all products believed to be in violation of state law.\(^{85}\) Still headed by a commissioner appointed by the governor with advice and consent of the Senate, the Commissioner of Agriculture and his staff, typified the expanding government oversight and regulation common in the 1890s and 1900s. The office, its structure, and functions changed slightly in 1914 with the addition of a Department of Food and Markets, an agency to assist in marketing and study of food stuffs and costs, whose commissioner was appointed by the governor. Much of the functions of the department focused on consumer protection but not price protection.\(^{86}\)

In 1917 the legislature drastically altered the department by creating two divisions within a newly reconstituted Department of Farms and Markets: the Division of

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\(^{86}\) *Governor Smith On The Milk Problem, What Has Been Done To Bring About Its Solution*, dated November 9, 1919, 1, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148-1.
Agriculture and the Division of Food and Markets. To oversee these divisions the legislature created an eleven-member Council of Farms and Markets based on the Board of Regents. While this department still maintained the power to regulate markets, the administration of this agency rested with the Council of Farms and Markets. After initial appointments to staggered terms by the governor, future council members were to be appointed by the legislature. Smith soon understood that in appointing council members the Republican-controlled legislature exercised more influence over the Council than the Democratic governor. And, since the majority of council members came from the rural regions of the state, they had more in common with the dairymen than the governor. The Council in turn appointed the Commissioners of Agriculture and the Commissioner of Food and Markets. The Council, as a body, served as the head of the entire Department and enforced the laws regulating farms, food, and markets through its appointed commissioners and staff. The commissioners served at the pleasure of the council, not the governor.87

While the appointment power of the legislature freed the Council from gubernatorial control, the initial appointments in 1917 also guaranteed partisanship. Smith noted that it would be “impossible to change its [the Council’s] political complexion until one party was in control of the legislature for more than five (5) years in succession.”88 The Republican legislature had successfully removed the governor from


the oversight of the state’s agricultural departments two years prior to the election of a Democratic governor eager to exercise gubernatorial oversight.

When Governor Smith inquired about the department’s actions during the milk strike he obviously understood the tasks assigned to the Council under law but, he found the department in a sort of no-man’s land between the legislative and the executive branches. Smith had no control over the department and the legislature seemed content to merely appoint council members. The Council also possessed the power to “investigate the cost of food production and marketing in all its phases”, “investigate delays in transportation”, “act as mediator in any controversy between producer and distributor” and “prevent illegal acts or practices in the sale or distribution of food.” Most importantly, the department, as noted in Smith’s letter to President Mitchell of the Council, had the power to investigate the state’s milk situation. However, the department refused to carry out these responsibilities and Smith had no way to compel the Council to do so.

In March and April 1919 Governor Smith actively pursued a legislative course of action to force the department to discharge its duties in addition to his own prodding of the Council of Farms. Smith solicited the expertise of the various agricultural societies in the state in this task. Earlier in 1919 Smith had also inquired of the Council about its operations and personnel, corresponded with members of the Council, and researched the

89 Chapter 802 of the Laws of 1917; Manual For the Use of the Legislature of the State of New York, 1919, 389.

functions of the departments. Letters from Council President John Mitchell and Commissioner Jonathan Day of the New York City Department of Public Markets, who also served on the state Council, reveal Smith’s probing of the state’s oversight of agriculture, farms, and markets. After weighing the situation Smith called a conference at the Governor’s Mansion which included John J. Dillon of the Rural New Yorker (past Commissioner of the Department of Farms and Markets), Roswell Cooper of the Dairymen’s League, and a number of other agricultural leaders and outlined his plan to revamp the state departments related to agriculture and markets. Smith stated that this “unofficial body” endorsed his plan for a “single headed commission and a lump sum appropriation to the Department which would enable the commission to re-organize.” This ad hoc committee also agreed to lobby the Republican legislative leadership for Smith’s legislation creating a single commissioner of agriculture. The Governor then presented the plan in person to the Council of Farms and Markets which, Smith later recalled, supported the plan and agreed to lobby to the legislature for its enactment.

On April 7, 1919 Smith sent a message to the legislature outlining his plan and the logic behind it. The governor stated that the legislation establishing the new department in 1917 only diluted the power of the department by creating two divisions with eighteen bureaus under a Council intended to serve as an advisory board but now loaded down with administrative duties. All through his message to the legislature Smith referenced


92 Governor Smith On The Milk Problem, What Has Been Done To Bring About Its Solution, dated November 9, 1919, 14, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148-1. Smith listed Senate bill introduction 1371 by Senator Mackrell as the bill carrying forth his reorganization program.
the chaos in the department. Smith claimed the department “over-manned, extravagant”, “too far removed from the people” and “an organization top-heavy and unwieldy.” Further, Smith stated, “it is agreed by everybody that the plan of two administrative heads” and divided authority had failed. Instead of two commissioners the Council should appoint a “single Commissioner of Agriculture with a salary ample enough to induce a man of the highest attainments” to oversee the department. This new commissioner “should be given absolute power to revise the division of work in the Department and that he should not be hampered by the present provisions.”

Smith’s desire to alter the administrative machinery of the Department of Farms and Markets rested on his arguments for efficiency and appeals to “the best interests of the State.” The legislation Smith introduced did not propose the elimination of the Council rather it attempted to make the commissioner, not the Council, the chief executive of the department. Smith stated that meetings and discussions regarding the Council “confirmed [his] opinion that the only way to get this important function of our government out of the political arena and give it stability” was to appoint a single commissioner. However, only four days later (April 11) President Mitchell of the Council of Farms and Markets informed Smith that the Republican legislative leadership would not take up the Governor’s bill. The Governor found that despite appeals to revamp the

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93 Governor Alfred E. Smith to the New York State Legislature, April 7, 1919, 1-2, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148; New York Legislative Record and Index, A Complete Record, Of all Bills Introduced in the Senate and Assembly during the 142d annual session of the Legislature of the State of New York beginning January 1, 1919 (Albany: The Legislative Index Publishing Company, 1919), 133. Introduction Number 1371, Print Number 1668. Democratic Senator Mackrell of Troy submitted Smith’s bill on April 7.
internal operations of the department – not the Council itself – the legislature would still not act.94

The public attention resulting from both the milk strike and Smith’s appeals to the legislature to reform the Department of Farms and Markets led to additional legislative proposals in the Senate and Assembly. Several legislators submitted bills to amend the powers of the Council, change its structure, or create new departments. The proposals included bills repealing the current department, the election of the commissioner of agriculture, a five-member dairy commission appointed by the Governor, a new bureau of milk in the Department of Farms and Markets, a New York City commissioner of milk supply, a legislatively-appointed three member state food commission, the inclusion of milk as a commodity regulated under the Public Service Commission, and a State Milk Commission.95 Many of these were discussed by the governor and the agricultural community in April; none of these passed the legislature. One bill tangentially addressing the powers of the Department of Farms and Markets passed only to be vetoed by Smith at the request of the State Commissioner of Health who expressed strong reservations about the “duplication of duties and conflict of authority” created under the proposed law.96

94 Governor Alfred E. Smith to the New York State Legislature, April 7, 1919, 1-2, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148.

95 New York Legislative Record and Index, A Complete Record, Of all Bills Introduced in the Senate and Assembly during the 142d annual session of the Legislature of the State of New York beginning January 1, 1919 (Albany: The Legislative Index Publishing Company, 1919), 302-303, 330-331.

96 Smith Public Papers, 1919, 465-466.
Smith decided to await more information and the seating of a new legislature to attempt another legislative change, partly in an effort to educate the public.\textsuperscript{97}

With the legislature’s refusal in 1919 to streamline the department thus forcing new action in the area of market oversight, a second course of action involved classifying milk as a state regulated commodity. Smith stated

\begin{quote}
no where in our law is there given the power to regulate in any way, the price of milk either to the producer, the distributor or the consumer. Not only is this true as to milk, but the state has never exercised its sovereign power by law to delegate to any person, body, board or commission, any power to regulate the price of any commodity.\textsuperscript{98}
\end{quote}

If the state legislated the treatment of milk as a public utility, the state could act; until then the most the state could do would be to have the proper agency discharge its public duty to investigate problems and attempt remedial regulation. The legislature refused to entertain either option. When the legislature refused to pass the Governor’s reform bill Smith stated “without legislative action of any kind, I was left helpless except for the power of investigation given me under Section 8 of the Executive Law popularly known as ‘The Moreland Act.’”\textsuperscript{99}

On April 18, less than two weeks after Smith attempted to draw the agricultural community together around a bill to amend and empower the state’s departments

\textsuperscript{97} Smith Public Papers, 1919, 788, “Meeting of Agriculturalists, Distributors and Public Officials – Adequate Milk Supply,” speech on November 23, 1919.

\textsuperscript{98} Governor Smith On The Milk Problem, What Has Been Done To Bring About Its Solution, dated November 9, 1919, 3, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148-1.

\textsuperscript{99} Governor Smith On The Milk Problem, What Has Been Done To Bring About Its Solution, dated November 9, 1919, 4-5, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148-1.
overseeing milk, the Council of Farms and Markets submitted its long overdue report on milk. Much of the committee’s report focused on the cost of milk on the farm and the distribution of milk in up-state cities. The committee expressed its desire to avoid duplicating the investigations of the Wicks Committee (1916) and the Federal Milk Commission (1918).\(^\text{100}\) The report found that “producers, generally, have not been making any large profits” and “the [recent] demands of the Dairymen’s League were justified.” In the area of distribution the report stated “that in every city there are too many dealers and that there is a large duplication of routes.” Even with unrestrained competition “milk distributors have been fairing somewhat better than milk producers.” With too many added distribution costs the consumption of milk has fallen off, an unfortunate development with corresponding health impacts on consumers.\(^\text{101}\)

The report acknowledged the incompleteness of its study since it only addressed up-state markets. To expand its research statewide the committee requested a $35,000 appropriation to study the New York City milk problem ($10,000 more than it requested only months earlier), engage an expert to analyze the data from the Federal Milk Commission report of 1918, and gather information from the other investigations by state and federal authorities into milk prices and distribution.\(^\text{102}\) However, the department did not publish a follow-up study.\(^\text{103}\) And, federal-state cooperation involving the department


\(^{103}\) From 1919 through the early 1920s the department published a series of statistical studies on the dairy industry, but not an investigation into the New York City milk pricing issue.
proved non-existent since Governor Smith, cognizant of the department’s lackluster performance in investigating, took an increasingly larger lead role in working with the Department of Justice, the U.S. Attorney General, and other federal officials examining food, milk, and corruption.104

The First “Milk” Moreland Act Investigations of 1919
Martin Glynn-John Finley

In July and August 1919 William Randolph Hearst published a series of news stories, editorials and political cartoons in the New York Evening Journal and New York American attacking Governor Smith and the rise in the price of milk. Milk provided William Randolph Hearst with a convenient issue to publically harass and embarrass Governor Smith. Hearst’s anger over losing the Democratic gubernatorial nomination to Smith in November 1918 still festered in late 1919. Smith’s inability to immediately implement municipal ownership of utilities, a key Hearst program, also compounded Hearst ire. Another key slight of Hearst centered on Smith’s refusal to appoint some Hearst supporters to government posts. To exact revenge on Smith Hearst used his newspapers to falsely portray Smith as the cause of the milk crisis. At first Smith ignored the articles, a characteristic weapon used by Hearst against personal enemies, but when

people Smith trusted began question the milk situation, Smith acted. Hearst’s
invectives partly led to Smith’s attempt under the Moreland Act to explain the limited
role the governor exercised in the area of milk regulation.

On August 6, 1919 Governor Smith wrote to ex-Governor Martin Glynn and
Commissioner of Education Dr. John H. Finley appointing them “as a committee to
inquire into the high cost of living in this State.” Governor Smith requested an extensive
inquiry into “the cost of the production of food products and of their distribution.” The
Governor wanted Glynn and Finley to look into “any illegal or unfair practices”
contributing to the rising costs of foods, particularly milk – recently the subject of so
many Hearst newspaper articles. Smith desired to know if current law adequately
addressed any adverse condition uncovered and, if not, what new laws the commissioners
would suggest. Ironically, these tasks should have been routinely carried out by the
Council of Farms and Markets as part of its public mission. Smith closed his letter
offering his support and any powers he possessed that may further the investigation – a
possible reference to expanding the commissioners’ power under the Moreland Act.

On August 12, 1919 less than a week after Smith asked Glynn and Finley to
investigate the food markets, Smith conferred the powers of the Moreland Act on the
investigation. Smith also reframed the investigation by making the Department of Farms
and Markets the subject of the inquiry. By changing the focus from a blanket
investigation of the food markets to the role of the department in the areas of food and


106 Smith Public Papers, 1919, 456.

107 Smith Public Papers, 1919, 456.
milk, Smith finally began his own inquiry into the performance of the department. Smith’s insistence on having Glynn and Finley look into whether or not the Department of Farms and Markets “has exercised the power conferred upon [it] by chapter 802 of the Laws of 1917 and acts amendatory thereof, in reference to the securing of an ample supply of milk in centers of population of this State” essentially put the Council on trial.\footnote{Smith Public Papers, 1919, 457.}

Glynn and Finley worked quickly reporting to Smith on August 23, 1919. The report contained three parts: “State Department of Farms and Markets”, “The Milk Problem” and “General Food Investigation.” In comments addressing the situation at the Department of Farms and Markets the commissioners stated that “charges of inefficiency, political influence, and even of corruption” against the department in the press necessitated an investigation. However, Glynn and Finley stated “such an investigation as you have directed will necessarily require undivided attention and will take more time than we can possibly devote to it with the other duties imposed upon us.” The commissioners asked Governor Smith to relieve them “of this part of the proposed work” and requested the Governor to “appoint another commissioner or commissioners, under the Moreland Act, to investigate fully the workings of this Department.”\footnote{Preliminary Statement of the Commissioners Appointed by Governor Smith to Report to Him in the Matter of the High Cost of Living, August 23, 1919 Also Recommendations for Creation of a Clearing House Commission, September 17, 1919, 67, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Fair Price Milk Committee for New York City”, “Fair Price Milk Committee for First and Second Class Cities,” Reel 154, 260-148-3. Hereafter Glynn Finley Preliminary Report, 1919.} Glynn and Finley chose to concentrate on the milk and food markets – topics Smith asked them to investigate on August 6 prior to their appointment as Moreland Act commissioners. Thus,
Smith would have to appoint a second Moreland Act investigation to investigate the Department of Farms and Markets.

In the area of milk Glynn and Finley stated that “the milk problem has been investigated and investigated and investigated.” Milk had continued to increase in price as had food prices generally. The report blamed foreign markets as part of the problem due to its upward pressure on domestic markets. Citing the cases of Boston, Chicago, and Philadelphia, the report stated that New York City markets forced consumers to pay more per quart than comparable large cities. Despite not finding evidence supporting higher distribution costs, distributors “professed an ability to give good reasons for these differences.” The report claimed consumers paid more than $6,000,000 per year more for milk than the people of Philadelphia; $3,000,000 more than in Chicago, and $1,000,000 more than in Boston. Though Glynn and Finley conceded that it costs more to do business in New York City than in other large cities, the situation needed either “explanation or reformation.”

Since New York City consumed milk valued at over $140,000,000 per year the fiscal impact on the economy in addition to the health of New York City required the Governor to take immediate action. The report suggested the Governor urge the Attorney-General of the United States to pursue violations of the Interstate Commerce Act (since milk from surrounding states entered the New York markets). Further, the

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110 Glynn Finley Preliminary Report, 1919, 68.

report suggested requiring all district attorneys in the State to proceed with investigations into possible violations of existing laws in the sale and shipment of milk.¹¹²

Lastly, Glynn and Finley recommended the appointment of a Fair Price Milk Committee for New York City based on the Fair Price Committees established by the federal government in a number of commodity areas, another issue Smith had already explored. This joint city-state committee would give its attention primarily “to the system and cost of distribution, for, so far as we are able to determine, the farmer, the producer, is not receiving an exorbitant price for his milk.” If the distributors claimed they could make a case for increased cost, the new committee would hear their testimony. This committee, to be comprised of the New York State and New York City commissioners of health and New York City commissioner of markets, would also include three appointees each by the governor and the mayor of New York City. Mayor Hylan, a political ally of Hearst, took the opportunity to appoint William Randolph Hearst’s wife to the committee.¹¹³ If this venture failed to secure “fair prices” thus threatening the health of children, Glynn and Finley recommended “legislation which would make it possible for the state or municipality to regulate the distribution and sale of this necessity of life.” This course meant treating milk as a regulated public utility according to an eleven-point plan under a “State Milk Commission.” This commission would regulate and license distributors, help establish municipal milk distribution systems, investigate milk costs,

¹¹² Glynn Finley Preliminary Report, 1919, 70.

¹¹³ “Fair Price Milk Committee for the City of New York”, in Smith Public Papers, 1919, 455-456. Herman Biggs, State Commissioner of Health; Royal Copeland, New York City Commissioner of Health; Jonathan Day, New York City Commissioner of Markets. The governor appointed Francis Martin, Bronx County district attorney; Sophie Irene Loeb, a member of the Child Welfare Committee; and, Lee Kohns, from the milk distribution industry and an associate of Nathan Straus. Mayor Hylan appointed Preston Lynn and Mrs. William Randolph Hearst, both of New York City, and State Senator Charles Russell of Brooklyn.
insure a milk supply at low cost to those in need, and cooperate with the health department regarding sanity issues. In essence, Glynn and Finley advocated one last commission to investigate the milk issue to either solve it or make the industry a public utility.\footnote{114} “What is needed now,” Glynn and Finley underscored, “is to avoid duplication of investigations and secure unison in effort.” The commissioners stressed that a conference of the “various investigating agencies” and leaders from state and local government would produce a coordinated “plan of action” capable of producing results.\footnote{115}

The ambitiousness of the call to bring all of the parties together held the potential to end the year-long series of investigations and meetings focusing on food, milk and the rising cost of living in New York State. Glynn and Finley suggested inviting the Attorney General of the United States, each county’s district attorney, the mayors of the cities, the Reconstruction Commission, various state and federal officials, and representatives from business and agriculture. To aid in the work of all, Glynn and Finley urged the Governor to work with the press to stress that increasing production and the avoidance of squandering would also help “counterbalance the vast destruction of the war and its consequent derangement of the normal conditions of industry and commerce.”\footnote{116}

At the urging of Glynn and Finley, Governor Smith seized on the recommendations made by Glynn and Finley and in quick succession followed through on all of them “with the exception of a special session of the Legislature for the purpose

\footnotetext{114}{Glynn Finley Preliminary Report, 1919, 71-72.}

\footnotetext{115}{Glynn Finley Preliminary Report, 1919, 74.}

\footnotetext{116}{Glynn Finley Preliminary Report, 1919, 70.}
of passing food legislation.” On August 25 the governor appointed another Moreland Act commissioner to investigate the Department of Farms and Markets; on August 27 Governor Smith announced his appointments to the Fair Price Milk Committee for the City of New York; on September 4 Governor Smith invited other cities in the state to appoint city-state milk committees and he appointed an agriculture-trucking commission. Lastly, on September 10 the governor announced that the state conference of all officials involved in milk, food, cost of living issues, and all related investigations would be held on September 17 in the Executive Chamber.

At this juncture Smith seemingly separated the issue of the Department of Farms and Markets (now being investigated under a new Moreland commissioner) from the issues of milk, food markets, and the high cost of living (now subject to federal and state investigations). The Fair Price Milk Committee would investigate on behalf of the state; the U.S. Attorney and the Department of Justice would investigate federal trade

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119 Letter sent by the Governor to Mayors of first and second class cities, outside of New York City, dated September 4, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Fair Price Milk Committee for First and Second Class Cities,” Reel 154, 260-148-4. These cities included Albany, Binghamton, Buffalo, Elmira, Rochester, Schenectady, Syracuse, Troy, Utica and Yonkers.

120 Smith Public Papers, 1919, 464.

violations and price gauging in both food and milk. However, the state conference to
gather all investigatory bodies and interested parties held the potential to focus and
coordinate state and federal efforts drawing information from all sources and sharing
reports and strategies. Smith also confided to Sophie Loeb, recently appointed by Smith
to the Fair Price Milk Committee, his desire to await the new milk committee’s report (as
suggested by Glynn and Finley), before “preparing the entire matter for submission to the
Legislature.” Smith expressed frustration to Loeb over the false information circulating
about the milk situation and the people not realizing that “relief, if it ever comes, must
come through the Legislature.”

To make his case, Smith needed reports from both the
Fair Price Committee and the second “milk” Moreland Act commission.

In a related vein, Smith also separated the issue of agriculture and transportation
from the milk issue. As noted above, in September the governor appointed a committee
with responsibility to investigate the interaction of these two industries. With
transportation forming the middle part of the equation between production and
distribution of produce and dairy farming, Smith desired a report on the best avenues to
give “farmers a more direct outlet for his produce and in supplementing the existing
transportation facilities.” Smith wanted the committee to examine the state’s highway
construction and improvement plan, “stimulate interest in the development of rural motor
truck transportation,” and suggest plans to protect and assist “truck express lines.” This

122 Alfred E. Smith to Sophie Loeb, September 5, 1919. Official Correspondence of Governor Smith,
Central Subject and Correspondence file, 13682-53A, “Fair Price Milk Committee for New York City,”
Reel 154, 260-148-3.
committee strove to address and offer recommendations in a key economic area facing farmers: the expansion of motor truck transportation of farm goods.\textsuperscript{123}

On September 17, 1919 the conference suggested by Glynn and Finely brought together an impressive array of elected officials including the Attorney General of the United States, dozens of mayors and district attorneys, and the leading state and federal officials investigating food and markets. Commissioners Wilson of Agriculture and Porter of Food and Markets as well as recently appointed Moreland Act commissioner George Gordon Battle who was charged with investigating these two individual and their department were present. Both Abram Elkus, Chairman of the Reconstruction Commission, and Mrs. Belle Moskowitz, Secretary of the Commission appeared.\textsuperscript{124}

Chairman Elkus informed the conference that the Reconstruction Commission had spent the last year studying the problems relating to food, food distribution, and milk including “urging the development of the rural motor truck express as a means of aiding food transport” – a suggestion already being explored by Governor Smith. Elkus pointed out that during the war federal arbitration of transportation complaints significantly cut down on delays, a system he suggested revisiting. Most importantly, Elkus stated that New York State needed “real control over food production and distribution.” One

\textsuperscript{123} Smith Public Papers, 1919, 464.; Smith Public Papers, 1920, 271-272. Smith appointed five individuals to the committee including the State Superintendent of Highways, the Chairman of the Council of Farms and Markets, representatives of both the State College of Agriculture at Ithaca and the Motor Truck Express committee of the National Automobile Chamber of Commerce, and former Congressman Peter Ten Eyck, whom Smith appointed as chairman. The committee issued its undated report sometime after January 7, 1920. Governor Smith transmitted it to the legislature on April 15, 1920. The report called for a permanent government staff to continue to improve and foster motor transportation use by farmers.

\textsuperscript{124} Press Release announcing the September 17, 1919 Food Conference in the Executive Chamber, “(For release Wednesday morning papers, September 10\textsuperscript{th}),” Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Food Conference in Executive Chamber, September 17, 1919,” Reel 154, 260-148-5.
suggestion involved “licensing of the wholesale dealers in food stuffs” and greater regulatory power under the Council of Farms and Markets to govern licensing regulations. To implement “real control” New York State should codify its food laws, improve its public markets, better enforce the weights and measures law, fix the standard of grading eggs, and strengthen the cold storage laws.  

Elkus also stated the Commission studied the milk situation for several months providing many conclusions and recommendations to Glynn and Finley “who quoted from them, thus endorsing them.” Elkus stated the final Reconstruction Commission report dealing with milk “will be delivered to the Governor shortly.” The Reconstruction Committee suggested that “the mort (sic) important problems of this period is that of securing the enactment of progressive food laws and a dependable enforcement of them.” To this end, Elkus stressed, “this is the time when all agencies should co-operate to bring about this improvement, -- Legislatures, District Attorneys, Attorney Generals, Fair Price Committees, every agency should be adapted to this end.” Elkus ended his statement urging “a unified program.”

In addition to the suggestions made by Chairman Elkus, Glynn and Finley suggested the appointment of a “clearing house” comprised of the New York State Superintendent of Banks, the State Commissioner of Health, and a representative chosen by the Council of Farms and Markets to act as an emergency food committee in times of

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126 Hon. Abram I. Elkus Speech on High Cost of Living, 1919, 2-5.
crisis.\textsuperscript{127} Since banks often held such properties and the goods contained in them as collateral, banks had need for strict inventories of warehouses. Farms and Markets Law empowered that agency to investigate the storage and transportation of food. The Department of Health, due to its oversight of public health matters and former jurisdiction over food storage, rounded out the new clearing house as constituted by the governor.\textsuperscript{128} This new committee suggested by Smith’s first milk Moreland Act investigation provided an emergency council able to report on large quantities of food should the need arise in the future.

The Second “Milk” Moreland Act Investigation of 1919

George Gordon Battle

Though Glynn and Finley repeatedly stated the milk and food issue had been subject of exhaustive, even redundant investigation, they made it clear that Governor Smith should name another Moreland Act commissioner to look into the Council of Farms and Markets and its subordinate agencies. Smith named George Gordon Battle his commissioner on August 25, 1919 to pick up the investigation of the Council of Farms and Markets, incidentally the same day the New York District Attorney resumed his inquiry into the milk markets.\textsuperscript{129} The Battle investigation, not the Glynn-Finley investigation, would serve as Smith’s chance to probe the Department of Farms and Markets and its management. The choice of Battle for the investigation reflected both Smith’s personal trust in him after years of friendship and the desire to name an eminent

\textsuperscript{127} \textit{Smith Public Papers, 1919}, 463.

\textsuperscript{128} \textit{Glynn Finley Preliminary Report 1919}, 75-77.

and skilled attorney. Battle, a member of Tammany Hall and law partner of U.S. Senator James O’Gorman, combined strong legal credentials with a reputation for civic duty.\textsuperscript{130} Battle, known as “Mr. Chairman,” due to his chairing of many philanthropic endeavors, served as assistant district attorney for New York for five years (1892-1897) under the renowned jurist DeLancey Nichol. Battle lost his own bid (with Tammany backing) for New York district attorney to Republican Charles Whitman (later Governor) in 1909. Though a Tammany Democrat, Battle’s reputation as an able jurist and respected civic-minded individual overshadowed his political affiliation.

Battle’s investigation could not be criticized as narrow. Over the course of three months Battle solicited information from every segment of the industry and the department, interviewed dozens of witnesses and poured over hundreds of exhibits and documents. Battle named John B. Coleman of New York City the counsel to the investigation and William T. Chantland, former chief investigator of the Federal Trade Commission, as the head of the investigation staff. Coleman brought with him prior experience as special Deputy Attorney-General in the investigation into the charges of conspiracy against milk distributors in New York City in 1909-1910 (O’Malley investigation). Chantland added an expert knowledge of criminal inquiry and reputation that would bring him acclaim as a leading special investigator in the 1920s. Battle’s public hearings began in New York City on late August 1919 with Commissioner Eugene Porter of Farms and Markets as the first witness.\textsuperscript{131}


On October 9 Battle submitted his “preliminary report” to the Governor. Battle opened his report outlining the legislative changes made in 1917 to the Department of Agriculture and its transformation into the current department, the Council of Farms and Markets and the Department of Farms and Markets. Battle reinforced the contentions made by Governor Smith throughout 1919 that the new configuration in this area of the government precluded a role for the Governor in the oversight of farms, foods, and markets. Not only did the Governor lack any oversight of the new department or input into its governing body (the Council), but Battle pointed out that the Council itself allowed the department to fall into a state of chaos, mismanagement, unclear roles, and illegal activities.\(^{132}\)

Battle’s preliminary report mainly focused on the performance of Commissioner Eugene Porter with particular emphasis on Sections 55 to 61 of the Agricultural Law – the section regarding the producers of milk. Battle revealed that Porter’s administration of the Bureau of Licenses routinely waived bonds required by distributors (purchasers of milk) for those who had bonding agreements with the Dairymen’s League. Porter exempted so many from bonding requirements that the list of those with bonding agreements with the Dairymen’s League looked like a list the department – the entity charged with this responsibility under state law to protect individual farmers – should have maintained. The result: defrauded farmers forced to try to work through the Dairymen’s League rather than the state as their right under law when distributors defaulted on payment. In one case of default by a dairy company, Battle revealed that

Country Milk left sixty farmers unpaid with no recourse. Porter refused to prosecute the company and its president, Roswell Cooper, incidentally also the President of the Dairymen’s League.\textsuperscript{133} Battle also revealed that Porter had requested the transfer of Bureau of Licenses to his division in May 1918 – implying Porter specifically sought responsibility over the bonding issue.\textsuperscript{134}

The most damaging evidence uncovered by Battle involved Porter’s continued involvement with the Dairymen’s League after his appointment to state office. Porter served as President of the Broome County Dairymen’s League in 1917 and “about December 5, 1917” was elected to the board of directors of the state Dairymen’s League. On December 17, 1917 Porter became Commissioner of Food and Markets while still maintaining his seat on the board at the Dairymen’s League. Further, throughout 1918 Porter accepted the rate of $10 per day plus expenses when performing the duties as a board member (about $600 a year) while collecting his salary as commissioner.\textsuperscript{135}

In probing Porter’s record Battle also found that Porter gave full and public support to the enactment of the law exempting dairymen from combination restrictions under Chapter 490 of the Laws of 1918 – the controversial amendments to the Donnelly act. On several occasion Porter used his position to actively assist the Dairymen’s League such as a letter urging the League to send someone to Rochester during a milk strike in 1918 to “look after League interests.” Porter used department stationary in a letter pressuring a Binghamton ice cream company to join the Dairymen’s League. Though he

\textsuperscript{133} Battle Preliminary Report, 1919, 13-14.

\textsuperscript{134} Battle Preliminary Report, 1919, 4-6, 11-15.

\textsuperscript{135} Battle Preliminary Report, 1919, 7-8
was unable to following through on the request by President Cooper of the Dairymen’s League due to time constraints, Porter considered using his influence to try to get a change of venue requested by Cooper for several Dairymen’s League officials indicted by the New York District Attorney. Porter claimed it would have been “a proper thing to do” despite his public responsibility as an enforcer of state law.136

Battle found evidence that Porter shared the vision of the Dairymen’s League to control the output of milk by controlling all of the milk gathering stations in the New York milk shed. Porter used his office to assist in this plan that “would run contrary to the laws prohibiting combinations or conspiracies in restraint of trade, or to fix prices.” When questioned by Battle about the sharing of proposed regulations with Dairymen’s League officials prior to promulgation, Porter stated he wanted to insure “some line of concentrated action between the League and my Division.” Porter, in Battle’s opinion, also made decisions in the areas of eggs and cold storage that benefited the industry rather than the consumer, in many cases risking public health. Battled claimed Porter took “no steps to ascertain the true cost of the distribution of milk in New York City.”137 While Porter stated he did not in any way participate in the 1919 milk strike, when asked what he did to investigate the situation responded, “I did nothing.”138

When questioned, the Council members stated that they feared Porter’s actions undercut his effectiveness. Most Council members agreed the conflict between Porter’s public duties and the Dairymen’s League seemed inappropriate. Even if some Council

137 Battle Preliminary Report, 1919, 9, 15-18, 23.
members expressed dissatisfaction with Porter’s conflict of interest or job performance, Battle revealed that several had ties with Porter such as John Pembleton, who had worked as counsel to the Dairymen’s League, and John W. Gerow, past president of the Dairymen’s League.\(^{139}\)

In addition to expressing support for the farmers’ exemption under the Donnelly Act President William Dana, the chief executive of the Council and Department of Farms and Markets, considered Porter’s treatment of the milk issue proper. When asked why the price of milk was higher in New York City than other cities Dana stated “I would like to account for it, but cannot.” Dana stated that in 1917 he approached Governor Whitman for $25,000 to investigate the milk situation at which time the Governor replied the situation had “been investigated to death.” Dana then conducted an investigation of milk pricing outside of New York City stating he believed distributors were receiving more than their fair share under the pricing system but the department never took any action.\(^{140}\)

Battle ended his preliminary report recommending the immediate dismissal of Porter from office stating he “lacks the necessary experience and knowledge for this most important position.”\(^{141}\) Battle not only indicted the performance of Porter but he also stated that “neither the Council nor Commissioner Porter seem to have taken any great interest in devising or putting into execution any plans for the benefit of the consumer.”

\(^{139}\) Battle Preliminary Report, 1919, 18-21.


\(^{141}\) Battle Preliminary Report, 1919, 23. Battle did state Porter had once been State Commissioner of Health.
Battle noted that since only the Council could remove Porter, he suggested the governor recommend Porter’s dismissal to the Council.¹⁴²

On the very day (October 9, 1919) Commissioner Battle submitted his preliminary report, Governor Smith wrote to the Council of Farms and Markets recommending the Council remove Porter from office.¹⁴³ Only one day later (October 10) Porter countered the calls for his dismissal with charges that Democratic leaders wanted control of the Council of Farms and Markets for patronage reasons. Porter further asserted that the report contained many misstatements.¹⁴⁴

The Council refused to remove Porter at its October meeting. The Council wrote to Governor Smith citing the preliminary nature of the report and Battle’s intention “to submit at a later date a final and complete report.” The Council would await the final report along with all related evidence and exhibits giving “careful consideration to the recommendations contained in your letter of October 9th and to any further recommendations that you may desire to make at a subsequent date.”¹⁴⁵ Since the Governor had no power over the Council except to seek wholesale impeachments of each


¹⁴³ Alfred E. Smith to the Council of Farms and Markets, October 9, 1919, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Investigation – Council of Farms and Markets,” Reel 154, 260-148-2. This letter superbly summarizes in one page the relationship of the Council of Farms and Markets and the Executive and Smith’s powerlessness over the department. It also states his reluctance to “interfere in any way with the administration with your duties” until forced to do so under the executive law (Moreland Act). See Appendix F for full text of the letter.


member – a political impossibility due the Republican control of the legislature - Smith had to wait as well.

In early October 1919 as Battle prepared his preliminary report William Randolph Hearst simultaneously resumed his attacks on Governor Smith. On October 22 Smith released to the press his letter to New York City Mayor Hylan (as already noted a Hearst ally) explaining his recent actions in attempts to settle the milk issue and answer Hearst’s charges of gubernatorial inaction. The letter stated that Hearst’s newspapers purposely misled the public by claiming the Governor had the power to set the price of milk – something Hearst and his reporters knew to be false. Further Smith wrote, “This is part of his [Hearst’s] dirty, lying campaign to destroy the Governor.” Smith publicly responded to Hearst’s attacks – particularly ones claiming Smith could, but refused, to control the price of milk. The Governor called Hearst “a low caliber of man” eager to breed “dissatisfaction and discontent by lying about other men.” Smith noted that Hearst’s own wife served on the Fair Price Milk Committee as evidence that Hearst knew the Governor adamantly sought an end the milk problem.146

The Governor followed his public denunciations of Hearst with a public challenge to Hearst to debate him at Carnegie Hall on October 29; however, Hearst failed to appear. Smith took the opportunity to tell the 4,000 people in attendance the entire milk story from the day he took office to the present.147 The Governor also explained why Hearst attacked him including Smith’s refusal to follow Hearst’s suggestions on patronage


matters. He recounted occasions of Hearst’s fabrication of stories and the twisting of facts. Smith wanted to solve the milk problem but could not due to the limitations on the Governor’s power. Rather than acknowledge this situation Hearst pandered to the poor and attempted to blame Smith for the milk shortage. Smith refuted these often repeated false claims by Hearst and his papers going so far as to characterize Hearst as a “liar” and a “pestilence that walks in the dark.” The crowd of several thousand gave Smith a rousing chorus of support. The occasion helped Smith set the record straight and gave Smith a forum to end his silence. However, the Carnegie Hall “debate” served only as a diversion - albeit an important one - in the actual work being done to address the milk dispute in New York City.

In late November 1919 Smith gave a speech at a gathering of agriculturalists, distributors, and public officials addressing the subject of milk. While briefly recounting the history of the problem and his inability to obtain any legislative action in 1919, Smith dedicated the bulk of his talk to the unremitting nature of the obstacle. The issue of high milk prices and volatile milk supplies would continue to plague New York until the government implemented a permanent solution. In this battle, Smith proclaimed, the people needed to voice their concerns. Part of the milk problem, claimed Smith, rested with “the lack of interest on the part of the people themselves.” The legislature adjourned without addressing the issue “because there was not behind them the force of public

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150 *New York Times*, October 30, 1919
opinion that is required to pass any forward-looking progressive statute in Albany.” If no one forced the legislature, the state government, or the industry to act, the public shared in the blame. After many investigations, some of which would soon issue their reports, Smith stated the milk industry should be treated like a public utility. However, Smith warned the public, “don’t you expect to see it if you don’t take a hand in the fight.”

Lacking help from his own departments, the legislature, or the milk industry, Smith appealed directly to the people for their help in remedying the issue.

In December each investigation submitted their final reports. In an ironic twist, on December 1 the New York Times reported that the Council of Farms and Markets desired its own investigation in order to gather information to help them compile legislative recommendations for 1920. Almost unbelievably this action by the Council – which never came to fruition - came eleven months after Governor Smith requested the Council’s legislative recommendations regarding the milk crisis. The federal government’s investigation under the U.S Attorney announced the transmission of its final report to U.S. Attorney General Palmer on December 1. Commissioner Battle’s final report came less than two weeks later on December 11. On December 19 the New York County Grand Jury investigating the milk issue reported no evidence of a conspiracy had been presented by the district attorney. On December 27 Dr. Royal Copeland, Commissioner of Health for New York City and Chairman of the Fair Price Milk

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Committee, transmitted to Governor Smith the committee’s final report. Copeland stated the report “received the unanimous approval and endorsement of the Committee.”\textsuperscript{154}

The Fair Price Milk Committee based its report on three months of hearings, investigations, and research. The committee also benefited from the participation of many of its members in the Governor’s Food Conference on September 17 and the interaction between committee members and the other on-going investigations into food and milk. At one point Chairman Elkus of Reconstruction Commission even offered to have his commission pay for the research being done by the Fair Price Milk Committee.\textsuperscript{155} In the midst of the committee’s work its chair, Dr. Copeland, also investigated (at the request of Governor Smith) tainted milk and cooperated with federal investigators into alleged price gouging by milk distributors.\textsuperscript{156}

The Fair Price Milk Committee’s final report stated its main goal as insuring an “unfailing supply of milk at a fair price.” To secure this end the report classified milk as a public health essential necessitating government regulation as a public utility. After careful study into milk and its public health impact the committee reported “the public demand that the milk business be classified with the public utilities and brought under

\textsuperscript{154} Dr. Royal Copeland to Alfred E. Smith, December 27, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Fair Price Milk Committee for New York City,” Reel 154, 260-148-3.

\textsuperscript{155} List of Attendees at the food conference held on September 17, 1919 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Food Conference in Executive Chamber, September 17, 1919,” Reel 154, 260-148-5; Alfred E. Smith to Herman Biggs, State Commissioner of Health, September 19, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Food Conference in Executive Chamber, September 17, 1919,” Reel 154, 260-148-5; Governor Smith On The Milk Problem, What Has Been Done To Bring About Its Solution, dated November 9, 1919, 20, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Milk Investigation,” Reel 153, 260-148-1.

\textsuperscript{156} New York Times, October 23, 1919; November 7, 1919.
The government had the responsibility to guard the public against market manipulations by powerful men threatening the health and welfare of the public. The health of the city – and its most vulnerable – led Copeland and the committee to state emphatically that milk must be treated differently than any other commodity or food product. Underscoring the public health argument for regulation, the report suggested the creation of a municipal milk plant to insure a milk reserve sufficient for “Baby Health Stations.” This would insure the Department of Health would not have to “go out and beg for milk” to keep its babies from starvation as it did in 1919.

To explain their contentions about the severe public health impact of milk shortages on New York City Copeland enlisted his public nurses to study over 11,000 families and 19,000 children throughout the city. Strikes and increased prices led many families to utilize substitutes with little nutritional value for milk. The study revealed malnutrition, anemia, undernourishment, and underweight children, conditions also found in a separate study of children in a sampling of Manhattan schools. The committee stated these studies justified the state “in taking whatever steps may be necessary to so regulate the flow of milk and to so control price that this essential food may be within reach of the very poorest of our citizens.”

After making its case based on public health and the effects of milk shortages on children, the committee explained the long and multi-step processes involved in the

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production and distribution of milk. The committee undertook this step to explain how each phase added to the cost of milk. In so doing, the committee showed how unnecessary and superfluous layers added to cost. The vastness of the system proved impressive: 1,150 creameries, 40,000 farms, six states and the Dominion of Canada, combining for 2,000,000 quarts daily supplied to the consumers of New York City; the distances traveled ranged from 40 miles to 500 miles from farm to New York City markets. But, the committee stated, “milk is milk” and too many steps in the process added cost and time to the system, ultimately leading to an increased financial burden on consumers. The markets needed regulation and simplification.\textsuperscript{160}

Under the heading “Steps Adding to the Cost of Milk” the report listed twenty-five layers, factors, and issues adding to the cost of milk. Beginning with “Delivery from Farm to Creamery” running all the way to “Profit and Loss” the report focused on suggestions to trim costs from production and lower delivery costs. In the area of production, the committee stated the industry supported far too many county receiving stations accepting milk from farmers, a myriad of overlapping rail and freight routes, too many stations aggregating milk for shipment into New York City, and, too many terminals inside the city accepting milk from the terminals outside of the city.\textsuperscript{161} The redundancies in aggregating, pasteurizing, shipping, and receiving milk added cost at each step, also pushing up costs due to the superfluous infrastructure requiring on-going use and increased charges to the next purchaser (consumer) in order to cover operations and indebtedness.

\textsuperscript{160} Report of Fair Price Milk Committee, 1919, 9.

\textsuperscript{161} Report of Fair Price Milk Committee, 1919, 11-14. The Committee submitted a detailed flow chart exhibiting the numerous steps and convoluted system.
The committee found individual delivery “one of the chief factors in increasing the price of milk to the consumer.” Routes overlapped, several companies serviced the same areas, union rules lowered the amount each driver could deliver (as compared milk markets in the city of Philadelphia), and the wholesale can and retail bottle system used to deliver the milk created a logistical problem. The bottle and can system led to waste in both materials and increased costs to delivery companies and, in the case of milk cans, to farmers.\(^\text{162}\)

The report stated that almost every segment of the industry operated as if completed isolated, performing tasks and processing steps that could be performed collectively at much lower costs. For example, both the farmer and the distributor partly bore responsibility for the physical examination of cows; the industry employed inspectors and bacteriologists that could be better handled and coordinated by the state government; and, products replacing glass, such as paraffin lined paper containers could be developed to eliminate glass bottles, but the industry lacked the initiative. Companies maintained duplicate fleets of delivery vehicles, as well as the usual company infrastructure such as advertising, accounting, and executive staff, adding more cost to the product.\(^\text{163}\) The report stressed that the milk industry as currently comprised “is broken into various parts, and no composite picture is possible” either in collaboration between the sundry parts or the streamlining of the system to make it more efficient as a whole, unless the government took an active role.\(^\text{164}\) The report stated


It is the opinion of the Committee that there should be provided by law an agency of some sort that would give similar attention [as the public service commission] to the dairy interests, would investigate its weaknesses, would point out to the improvident and unscientific farmer, if there are any, the defects in the management of his particular dairy, would undertake with sanction and with the support of the State to provide the farmer with every facility in the way of information and assistance to increase his output and improve its quality.

It certainly is the business of the State to protect the citizen, whether the citizen be a producer or a consumer, and there is wisdom enough in the Legislature of the State of New York to devise some plan of governmental control of the price of milk to the farmer that will amply protect him and, at the same time, insure the consumer that the basic price of milk as paid to the farmer is just and fair.

…there can never be public satisfaction and content unless some governmental and presumably disinterested, public official or body shall investigate the reasons advanced by the producer and distributor as to why a given price is a fair and proper one.165

The report outlined another key factor in the high cost of milk: diversion of New York products to overseas markets and the resulting inflationary pressure on fluid milk in New York City. This “paradoxical” situation involved the processing of milk into shelf-stable products, such as condensed milk, and selling it in European markets struggling to recover from the war. In many cases milk companies such as Nestle and Borden concentrated first on foreign markets and then on local markets. Despite proximity to production, concentration of the market in one large city, and high demand, milk companies diverted almost 55% of local milk to overseas markets; in the case of Nestle, they shipped 85% to 95% overseas. This “unrestricted manipulation of the milk

production” had resulted in New York markets having some of the highest consumer prices for milk.\footnote{\textit{Report of Fair Price Milk Committee, 1919}, 24-30.}

To remedy all of these failings the Fair Price Milk Commission suggested legislation establishing a body similar to the public service commission created years earlier to regulate utilities. The commission also submitted an addendum of legal cases supporting it. The proposed three-member body to be appointed by the governor, and removable at his pleasure, would set the rates for milk. The new commission would enjoy the power to subpoena producers and distributors of milk, and their books and records. The seventeen section draft bill created a commission to address every aspect of the industry. The commission would investigate whenever necessary, consolidate processing infrastructure when deemed appropriate, and fine violators of commission orders. The Fair Price Milk Committee supported the creation of an all-encompassing board that would “investigate and supervise the milk industry, from the cow to the consumer.”\footnote{\textit{Report of Fair Price Milk Committee, 1919}, 37-39.}

Within a few weeks of the Fair Price Milk Commission’s report George Gordon Battle submitted his final report to Governor Smith bringing to a close the second “milk” Moreland investigation. Battle made seven recommendations to Governor Smith: elimination of the Council, a restructuring of both the Division of Agriculture and the Division of Food and Markets, the dismissal of both division’s commissioners (Porter and Wilson), an overhaul and codification of all food laws, repeal of the Donnelly Act’s
exemption of farmers from anti-trust violations, and the creation of a Milk Commission.\textsuperscript{168}

Battle’s report accomplished two overarching goals. First, it summed up the Governor’s powerlessness in the area of agriculture and markets boosting Smith’s call for change to remedy a department plagued with problems yet responsible to a near lifeless board that refused to fire subordinates even after presented with evidence of incompetence.\textsuperscript{169} Second, Battle’s in-depth investigation of the milk markets spotlighted the dire need for reform and regulation. After detailing the problems inherent in the milk industry Battle showed how the state consistently failed to enact reform in the areas of the milk. The report revealed that the Council met only eight or ten times per year including occasional special meetings. Further, “no member of the Council has exercised any supervisory authority over the affairs of the Departments” except at Council meetings,” and “none seemed to have any thorough acquaintance with the actual workings of the machinery of the Departments.” The report stated that no such body, meeting so infrequently, could act as an effective governing agent, and most subordinates, particularly Porter and Wilson, operated without any oversight.\textsuperscript{170} Many employees worked on issues involving serious conflicts of interest benefitting them monetarily. The report summarized the chaos in the Department

\textit{It is clear that this system providing for a Council and two Divisions tends inevitably to divide responsibility. It permits, to an intolerable extent, the abuse popularly known as “passing the buck.” The Council can shift

\textsuperscript{168} Second Battle Report, 1919, 30, 34, 86-87, 98, 124-126.

\textsuperscript{169} Second Battle Report, 1919, 15-16.

\textsuperscript{170} Second Battle Report, 1919, 16-18.
responsibility to the Commissioners, and the Commissioners shift the responsibility to each other, and from one bureau to another. The whole organization is so poorly co-ordinated that even with the best intentions in the world, it would be quite impossible for the Department to do any genuine and effective work or produce satisfactory results. 171

In the words of the report, the “Council cannot point to-day after two years of existence to a single accomplishment of importance to the public.” Battle recommended abolishing the Council and replacing it with commissioners appointed by the governor. 172 The Department of Agriculture would be re-established to replace the Division of Agriculture and a Department of Markets and Storage would replace the Division of Food and Markets. 173 By addressing these areas, Battle provided a course of action based on examination: restructure and reform the Department of Farms and Markets and create a state milk commission – both with gubernatorial input. In regards to Commissioner Porter – still in charge of the Division of Food and Markets despite Battle’s preliminary report suggesting his termination two months earlier - the report expanded its condemnation of his performance. The report found Porter lax in his handling of cold storage warehouse inspections to the point where he may have consistently placed the public’s health at risk. The filing systems, accounting methods, and oversight of employees in regards to attendance exhibited severe flaws. Porter - and the department generally - worked so poorly in conjunction with the Attorney General’s office that an inordinate number of cases passed the statute of limitations. In many cases Porter and his

counsel interpreted laws so loosely that it appeared they openly sided with business and industry instead of the consumer.\textsuperscript{174}

Criticisms of Commissioner Wilson of the Division of Agriculture included blatant politics and patronage, mishandling (and possible corruption) in administering the laws governing the animal industry in the state (i.e., horses, cattle, sheep, etc.). Wilson’s staff failed to protect the public from tubercular beef in the public markets and mismanaged operations governed by the state’s dog laws. Historian Paula Eldot characterized the areas of Battle’s report pertaining to the animal industry as reading like “passages out of \textit{The Jungle}.”\textsuperscript{175} Several employees in Wilson’s division profited personally under a variety of deals involving companies they were supposed to regulate resulting in obvious conflicts of interest. When questioned during the investigation as to what suggestion he could offer to improve internal operations the only “concrete suggestion” proffered by Wilson was “enlarging the list of seeds that would come under jurisdiction or control of the Department.” The report consistently characterized Wilson and his staff as “lax.”\textsuperscript{176} Wilson seemed to lag in his responsibilities to such an extent that employees commonly referred to the Division of Agriculture as “The Second Division.” Battle found Wilson not only poorly suited for leadership but lacking in “self-assertiveness” and “backbone” and “unfit for the important position which he occupies.” The report stated that in addition to a lack of oversight of by the Council, the Division of Agriculture (Wilson’s division) and the Division of Food and Markets (Porter’s division)

\textsuperscript{174} \textit{Second Battle Report, 1919}, 58-60, 70, 79.

\textsuperscript{175} Eldot, \textit{Governor Alfred E. Smith: The Politician as Reformer}, 287.

\textsuperscript{176} \textit{Second Battle Report, 1919}, 33, 37.
rarely cooperated or worked together creating unfortunate gaps in the administration of the laws protecting both farmers and consumers.\textsuperscript{177}

Part of the problem in the Department of Farms and Markets and its two divisions, resulted from the lack of clarity in the laws governing food and markets and state oversight. In reviewing the faults and failings of the department the report stated that a codification of law would “prevent unnecessary duplication and simplify the distribution of the labors of the Department.” Some responsibility had been shifted to the Department of Health, others between the two divisions, and still other functions fell into gray areas of dispute leaving no clear understanding of who had particular responsibility. To remedy these deficiencies the report suggested the codification of all laws governing food, markets, storage, and milk thereby protecting the public in the areas of food safety, proper functioning markets, and lower prices to consumers.\textsuperscript{178}

The largest criticism in the report centered, as to be expected, on the department’s handling of the milk markets. The section of the final report pertaining to milk began by stating that the most important matter entrusted to the Council of Farms and Markets is insuring the state’s milk supply and, when necessary, investigating the milk markets and suggesting remedies to the legislature. But, the Council never directed its subordinates to undertake a large scale study and the investigation begun by the Division of Food and Markets, as noted earlier, proved extremely limited. The department took no action whatsoever in addressing the milk strike, the milk shortage, and escalating milk prices.

\textsuperscript{177} Second Battle Report, 1919, 32-36, 43-49, 52, 79-80, 122-123.

\textsuperscript{178} Second Battle Report, 1919, 106, 112.
Even if such a report seemed repetitive, the responsibility for investigating milk markets and their operations rested with the department.\textsuperscript{179}

As in his preliminary report, Battle again condemned the Dairymen’s League for monopolistic tendencies despite their exemption under amendments to the Donnelly Act in 1918. Battle found it reprehensible that the actions of the milk producers if undertaken by any other industry would merit prosecution as a conspiracy. Armed with this provision the League, with the help of Porter, planned “under the guise of co-operative associations” a system to control all of the milk production in New York State.\textsuperscript{180}

Additionally, the Dairymen’s League collected one cent for every hundred pounds of milk sold thus providing the association about $275,000 in fees used to create this monopoly and bolster its position. Porter stated in his testimony that with such control the producers could charge whatever they wanted for milk – “twenty-five cents or even twenty-five dollars a bottle.”\textsuperscript{181} Porter’s conflicts of interest extended so far that not only consumers suffered due to higher prices, but rank and file producers faced possible financial hardship under the Dairymen’s League cooperative system. Battle stated that the control of a $350,000,000 market in fluid and processed milk products hung in the balance.\textsuperscript{182}

Battle claimed a State Milk Commission would solve the problems resulting from the de facto monopoly under the Dairymen’s League (producers) and the milk companies

\textsuperscript{179} Second Battle Report, 1919, 84-85.

\textsuperscript{180} Second Battle Report, 1919, 85-90.

\textsuperscript{181} Second Battle Report, 1919, 86, 92.

\textsuperscript{182} Second Battle Report, 1919, 91-95.
(distributors). Essentially Battle proposed creating a public service commission for milk. The report noted that the idea for a milk commission had been discussed many times over the last ten years.\(^{183}\) Though no mention was made of the recently concluded Fair Price Milk Committee, that committee’s final report also recommended the establishment of a state milk commission, something of which Battle was probably aware since Battle’s milk commission idea mirrored the Fair Price Committee’s recommendation very closely.

Battle’s proposed State Milk Commission would remove all aspects of milk regulation from Department of Farms and Markets supervision. A three-member authority appointed by the Governor for five year terms would serve as a public service commission over the industry. The new commission would “supervise the entire milk industry of New York State, both in fluid and in the manufactured condition, from the cow to the consumer.”\(^ {184}\)

The State Milk Commission would license all industry segments, have the power to commandeerk milk supplies (in conjunction with the health department), and investigate the industry with subpoena power. The commission’s authority also extended to the New York City milk distribution companies and when advisable divert product to insure proper supplies in “large centers of population.”\(^ {185}\)

Battle concluded his report by urging the Governor to present these recommendations to the legislature. In an approach similar to the report of the Fair Price Milk Committee, Battle also submitted a memorandum supporting the constitutionality of

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\(^{183}\) *O’Malley Report*, 16-18.

\(^{184}\) *Second Battle Report*, 1919, 98; Fair Price Mill Committee Report, 37. The Fair Price Milk Committee and Second Battle Report used the exact same phrase, “from cow to consumer,” in characterizing the extent to which a state three member commission would supervise the milk industry.

\(^{185}\) *Second Battle Report*, 1919, 98-100.
his proposed milk commission. This research included case law and legal precedents for a milk commission. Citing a series of landmark cases, Battle constructed a detailed argument supporting the regulation of milk as a public service enterprise. The state possessed police power - and it had exercised this power on many occasions involving various goods and services without infringing upon the rights of ownership - thus argued Battle, milk can be regulated by the state. Further, due to a universal demand for this food product as a recognized necessity, the regulation of the milk industry should encompass the corporations producing, shipping, and marketing milk; the product itself (milk); and, the cost of the product to the consumer(s) at various stages. Without government regulation the public risked hardship and calamity under a milk shortage (real or contrived), particularly since a “virtually a monopoly” existed in New York State due to geographic restrictions. Battle stressed, regulation of the milk industry was not only justified, it stood the test of constitutionality under a variety of very similar scenarios.\footnote{Second Battle Report 1919, Appendix A, 137, 139, 147, 148; Jennings, A Study of the New York City Milk Problem, 48-49. Irwin Jennings followed a similar line of argument in his work “A Study of the New York City Milk Problem.” Jennings cited Munn v. Illinois, among other cases, as his justification for “a properly constituted milk commission” to regulate milk in a manner similar to common carriers, water, and other public utilities. Since the U.S. Supreme Court sustained the State of Illinois’ oversight of grain storage companies as regulation designed to protect the general public under Munn v. Illinois (1876), Battle argued for the adoption of a similar system of governance over the milk industry in New York State. Similarly, under Mobile v. Yuille (1841), the courts also sustained the government’s role in regulating the cost to consumers of certain goods and services in an effort balance “the common good” with “reasonable compensation.” The question to be settled, according to both the court and Battle, was not the rights of business to operate a “franchise or privilege emanating from the Government” but the extent to which the government should regulate these enterprises to insure the public good and safety. In this sense, argued Battle, the state can and should license, oversee, and regulate milk as it had other industries on which the public depended: grain, ferries, bridges, water, gas, light, and numerous other public benefit and common carrier corporations.}

As his duty to Governor Smith came to an end in December 1919 Battled performed one
last task and assisted Smith in drafting his message to the legislature seeking the passage of a milk commission bill.\textsuperscript{187}

Soon after receiving Battle’s final report Governor Smith wrote to the Council of Farms and Market transmitted a copy of the report to that body and repeated his recommendation for the removal of Porter, and also “the removal of Charles S. Wilson as Commissioner of Agriculture, for general laxity in the discharge of his office.” Smith reminded the Council that on October 17, 1919 the Council (through Dana) stated it would study Battle’s preliminary report but would not take action until the issuance of the final report. Since the final report had been received by the Council, Smith pointed out that the Council, not the Governor, has the power to remove these two office holders. Smith asked the Council to now fulfill its duty and dismiss both individuals.\textsuperscript{188}

Within a few days of Battle’s report, both the milk companies and the Dairymen’s League condemned the findings and suggestions for a state milk commission. Sheffield Farms president Loton Horton called the proposal “idiotic.” Horton complained about federal investigators and the various state and local milk investigations vowing never to appear before another inquiry unless compelled by a subpoena.\textsuperscript{189}

On January 7, 1920 Governor Smith stated in his annual message to the legislature that not only should the state regulate the milk industry, but he would have


\textsuperscript{188} Governor Alfred E. Smith to the Council of Farms and Markets, December 22, 1919, \textit{Smith Public Papers, 1919}, 551-552.

\textsuperscript{189} \textit{New York Times}, December 30, 1919.
subsequent recommendations for legislative action based on the Battle’s investigation. Smith highlighted the issue of both milk and the Department of Agriculture and Markets in an effort to make it known these would be priorities in the 1920 legislative session.

In January 1920 Smith also repeatedly wrote to William Dana, President of the Council of Farms and Markets urging action on Battle’s recommendations stating that the Council had no excuses in delaying action since they possessed all of the reports, “letters, records, and documents from the files of the Council of Farms and Markets” utilized in the investigation. With “a commissioner of the standing of Mr. Battle” recommending the dismissal of two state commissioners based on specific evidence of incompetency and inefficiency, the Governor believed “public opinion would compel the speedy determination by your Council of the issue.” Governor Smith ended his correspondence with Dana by stating “the people of the State will be impatient for an answer to these charges, and any unnecessary delay in the examination and determination of this matter will tend to further decrease public confidence in your department.” Dana responded to Governor Smith stating “the entire matter would be laid before the Council” at its next

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Yet, the Council at this meeting again ignored Smith’s recommendation and both Wilson and Porter continued at their posts.

Only a few days after the Council’s inaction, Governor Smith addressed the New York State Agricultural Society in Albany and attempted to present his case directly to the farmers of New York State. Smith bluntly stated “as the Governor of the State I am personally dissatisfied with the present organization of the agricultural interests in this State.” The state required “a single, responsible head” not a Council refusing “to relieve any individual of any responsibility for what is taking place.” Smith stated he desired accountability and employees responsive to the farmer and consumer.

In late January and early February Governor Smith sent copies of all the reports from the various investigations and commissions to the legislature. In his letters of transmittal the Governor urged lawmakers to give careful consideration to the recommendations made in these reports, particularly state regulation of “the production, distribution, and price of milk.” Smith noted that every one of the 1919 investigations recommended the state regulation of milk. And, many investigations leading up to the milk crisis of 1919 also recommended state regulation as a permanent solution to the issue. Smith urged the legislature to adopt the recommendations by his investigations stating “the people are demanding efficiency in government”, not only in state

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193 William Dana to Governor Alfred E. Smith, January 17, 1920, Smith Public Papers, 1920, 513.


departments but in the oversight and regulation of milk.\textsuperscript{196} The Governor stated that “it is the unanimous opinion of all those who have made any study of the subject that the solution lies in State regulation, to the end that an adequate supply be always available at a price within the reach of all.”\textsuperscript{197}

On March 3, Governor Smith sent the legislature the report from the Reconstruction Commission’s committee on food production and distribution. This would be the final report from Governor Smith and his investigations and commissions involving milk and the Department of Agriculture and Markets. Smith noted in his letter of transmittal that “existing laws, or the ones I am herein recommending, its seems to me, will avail very little until agriculture, food and farming interests of the State are presided over by a single head with some fixed responsibility” to enforce these laws.\textsuperscript{198}

The Reconstruction Commission food production and distribution committee’s report addressed a variety of concerns also raised by Battle, including the confusing mass of laws governing the various state departments charged with overseeing the food

\textsuperscript{196} George Gordon Battle to Governor Alfred E. Smith, February 18, 1920 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Investigation – Council of Farms and Markets” Reel 154, 260-148-2; Message From the Governor Transmitting the Final Report in the Matter of Investigation by George Gordon Battle, Commissioner, into the Department of Farms and Markets (Albany: J.B. Lyon Company, 1919), 6; Smith Public Papers, 1920, 320-321. Battle and Smith differed in whether the restructured department should have two commissioners or one. Smith favored a single commissioner of Agriculture with subordinate divisions reporting to the commissioner. Battle favored a commissioner of agriculture and a commissioner of markets and storage. Battle also favored domiciling an assistant attorney general in the department to help facilitate legal matters requiring adjudication. Smith vetoed such a proposal on May 14, 1920 – despite Battle’s support of it – stating it “seeks to compel the Attorney-General to do something that he now has the full power to do by section 61 of the Executive Law.”


markets, the cold storage industry, and agriculture. The committee noted that the
Reconstruction Commission did not undertake its own milk investigation but “held
conferences with various food interests and with representatives of the different phases of
the milk industry.” The committee also utilized information from studies such as the
Wicks Committee report. The report stated that nearly all of the previous investigations
suggested that milk “should be subject to regulation as a public utility.”

The Reconstruction Commission recommended a state regulating body with the
power to license, set rates, establish delivery routes, promote collaboration between
producers and supplies, insure bonding of firms, address consumer complaints,
investigate the industry, and assist municipalities to “acquire and operate” distribution
systems when approved by the commission. This new commission would establish a
public service commission to regulate milk similar to other public utilities complete with
the necessary power to investigate and regulate almost every aspect of the milk
industry. Smith now had the full support of his Reconstruction Commission in
establishing a state milk commission. With the suggestion of the Reconstruction
Committee mirroring the suggestion of his other investigations, Smith ended the
investigatory phase of the milk issue and the Department of Farms and Markets and
awaited action on his legislative program.

199 Report of the Reconstruction Commission on Food Production and Distribution, January 30, 1920, in
Smith Public Papers, 1920, 167-168. The Commission listed all of the recent milk inquiries in its report.


Simultaneous with the transmission of the various reports to the legislature, a number of bills were introduced during the 1920 session seeking to implement Smith’s regulatory and restructuring program. Republican Senator George F. Thompson of Niagara County introduced both of the measures recommended by the Fair Price Milk Committee – a state milk commission and a New York City municipal pasteurization plant.\(^\text{202}\) The proposed state milk commission legislation called for a three-member panel appointed by the governor to “control the productions, distribution, sales, and prices of milk and the transportation, manufacture, and storage of milk products, and price fixing not only the producer but by the middleman and retailer.” Senator Thompson’s bill pertaining to New York City authorized the Board of Estimate and Apportionment “to build or purchase and operate a pasteurization plant” in order to insure the municipality a steady supply of milk in cases of emergency.\(^\text{203}\)

Senator James “Jimmy” Walker of New York City, the Senate Democratic Minority Leader, and Assembly Democratic Minority Leader Charles Donohue, both political allies of Governor Smith, submitted the Governor’s bill proposing the elimination of the Council of Farms and Markets and replacing it with a single commissioner of agriculture appointed by the Governor. The bill, based on Battle’s report, would make the department subject to the Governor and part of the executive branch in a true sense, as opposed to it being controlled by a legislatively-appointed


council. Walker also submitted legislation repealing the farmer exemption from
conspiracy under the Donnelly Act.204

Throughout the legislative session the Governor received letters regarding the
proposed milk commission, the restructuring of the Council and department, and Smith’s
call for the dismissal of both Porter and Wilson. In each case Smith responded, as he did
to A.F. Spooner of the St. Lawrence County Dairymen’s League, that various
investigation have made suggestions and these suggestions have been placed before the
legislature in an attempt “to find a solution of the problem, which is deemed to be of the
utmost importance.”205 At one point the New York Milk Conference Board representing
the milk companies and distributors circulated a series of memorandums opposing
Smith’s milk commission bill claiming the program would cripple the private sector,
stifle production, and artificially set prices without regard to cost of production. The
memos were designed to enlist opposition to Smith’s milk commission based on free
market arguments.206 The New York State Grange also condemned Smith’s milk
commission proposal and wrote to the Senate Agriculture committee chair expressing its

204 New York Times, February 17, 1920; New York Legislative Record and Index, A Complete Record, Of
all Bills Introduced in the Senate and Assembly during the 143rd annual session of the Legislature of the
48, 51.

205 A.F. Spooner to Governor Alfred E. Smith, February 8, 1920, George Van Namee to A.F. Spooner,
February 17, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file,

206 Belle Moskowitz to James A. Parsons (Counsel to the Governor), February 28, 1920, Official
Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Investigation –
Council of Farms and Markets” Reel 154, 260-148-2; Memorandum No. 1 through 4, “Reasons Why the
Proposed Legislation for Price Control and Regulation of the Dairy Industry Should Not be Enacted”
Complied by New York Milk Conference Board, Inc. (attached to Moskowitz letter); New York Times,
February 16, 1920.
opposition as early as February.\(^\text{207}\) Opposition to a milk commission, municipal milk facilities, and departmental reconfiguration grew over the course of the legislative session. In early March the Senate Agriculture committee held a public hearing on the Thompson bills (milk commission and municipal milk plants). In addition to opposition from the Dairymen’s League (producers) and the Milk Conference Board (the milk distributors) various chambers of commerce and agricultural societies expressed their disapproval. The State Grange and Dairymen’s League claimed the bills “would open the way for State control of all business.”\(^\text{208}\) I. Elkin Nathan, secretary of the New York Milk Conference Board, capitalized on fears brought about by the red scare claiming the legislation socialistic, a stance timed perfectly considering the Assembly’s expulsion of its Socialist members.\(^\text{209}\)

Speaking for the supporters of milk regulation, Dr. Royal Copeland and many members of the Fair Price Milk Committee testified in defense of the bills claiming the public’s health depended on affordable milk.\(^\text{210}\) But, Copeland’s arguments made little impact on the non-New York City legislators. Governor Smith was probably not surprised to find the Republican-controlled Senate and Assembly opposed to his plans. Senator J. Henry Walters, the Republican Majority Leader in the Senate, had stated as early as mid-February that the Thompson bills should not be passed. Senator Walters


equated the milk commission with the confiscation of private property. In March Smith began to openly state that he believed the Republican legislative leadership would “wait until just before adjournment and then let the whole thing go.” Smith surmised that the Republicans believed they couldn’t lose in the 1920 legislative and gubernatorial elections and would simply ignore the proposals until a Republican Governor took over in 1921.

Despite overwhelming legislative opposition Smith continued to make his case for both a milk commission and a restructuring of the Council and Department of Farms and Markets before the general public and in various speeches. Smith followed this strategy throughout 1920: investigation, followed by lobbying the legislature for action based on the findings of these investigations, and, failing legislative success, direct appeal to the electorate in an effort to pressure the legislature. For example, on March 13 at a speech in Buffalo the governor summed up the situation within the Council of Farms and Markets in a humorous manner, drawing attention to the fact that few actually knew the identities of the men charged with overseeing New York State’s farms and markets. In spite of great problems to be solved in transportation, marketing, science, and cost, “we have a politically organized Council of Farms and Markets that is unable” to function properly and find solutions to many problems, not just the milk issue. Smith stated

Who, in this room, knows who makes up the personnel of the Council of Farms and Markets? Nobody knows anything about it. It is a large board of nine people, with overlapping terms, elected by the Legislature. It is not a legislative function to elect an administrative officer. The legislative function is law making. Administration belongs to the government; to a

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man who ought to be responsible, and who everybody thinks is responsible. Well I can’t even get the right time from the Council of Farms and Markets.\textsuperscript{213}

Without a means to implement agricultural policy within his own executive department Smith stated he had to appoint a Moreland Act commissioner to investigate the Council of Farms and Markets. This investigation issued “one of the most comprehensive reports that I have ever read, clear, closely defined” proving departmental inefficiency. However, Smith noted, the legislation submitted to correct the situation, unless the public gets behind it, will likely “travel the same route that I am afraid the rest of them go” – nowhere. The same could be said about Smith’s milk regulation bill. The bill, quite simply, would regulate one commodity – a very important necessity of life – to insure that no longer could “three or four men in this State can sit down around a table” and “declare that six million people in the city of New York will not have milk for three days.”\textsuperscript{214} Smith stated the legislature wasted time and money expelling the Socialist members of the Assembly but risked the health of millions of city residents through inaction. The interests of the cities were being sacrificed to interests of the farm lobby.\textsuperscript{215}

Time eventually did run out on Governor Smith and on April 14, days before the session adjourned, the Senate debated the Thompson bills all day. The debate proved particularly heated pitting New York City’s Democratic Senators against the upstate Republican Senators, the Chair of the Agriculture Committee, and the Dairymen’s


League. One Senator even stated “if there are any starving babies it is the result of mothers failing to buy milk for them because they have been persuaded by the newspapers that milk cost too much. Milk does not cost too much; it is the cheapest food on sale anywhere.” The Senate defeated Thompson’s milk commission though every Senator from New York City voted in favor of the failed measure. Thompson’s other bill establishing a New York City-owned pasteurization plant passed, but the Assembly refused to take up this, or any other milk-related, bill.

Defeated by a Republican-dominated legislature, Governor Smith found his seventeen month long crusade to establish a milk commission and a restructured department of agricultural a failure. None of the bills submitted as a result of the various milk investigations passed both houses. Governor Smith released the following statement after the Senate refused to pass his milk commission legislation:

It is a matter of great regret that the majority in the Senate have seen fit to defeat the bill providing for a commission to regulate the cost of production, transportation and distribution of milk.

Without regard to party affiliations, thinking men throughout the State recognize in this measure a distinct and forward step in the interests of general public health and welfare.

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218 *New York Legislative Record and Index, A Complete Record, Of all Bills Introduced in the Senate and Assembly during the 143rd annual session of the Legislature of the State of New York beginning January 1, 1920* (Albany: The Legislative Index Publishing Company, 1920), 26, 48, 51-52, 138-139. These additional bills included such acts as those repealing the restraint of trade and conspiracy amendments to the Donnelly Act, regulating diseased animal meat, laws governing tuberculosis infected cattle, laws governing feed and grains, and repealing the 1917 law establishing the Council and reverting back to the prior Department of Agriculture.
Humanity’s cause has been sacrificed on the altar of selfish desire and the interests of the whole people have been subordinated to the wishes of the few, thoroughly misguided as to their conclusions.  

A disheartened Smith noted on April 24, 1920 that “the Legislature of 1920, just adjourned, adds no luster to our history.” Smith, however, predicted that “victory is only postponed.” For the remaining seven months of his term Smith faced a continuation of the volatile producer-distributor milk pricing system and an intransigent Department of Farms and Markets. The Battle report, Smith noted, “showed not only incompetency, but also what closely approaches open scandal” at the department. Now Smith had to continue to work with an agency head (Porter) found incompetent in two Moreland Act investigations and another commissioner (Wilson) whom Smith characterized “as a floorwalker from an Elmira department store.”

Even after the legislature adjourned Smith continued to advocate for greater gubernatorial control in the areas of milk and the Department of Farms and Markets. In his nomination acceptance speech Smith claimed he met defeat in his attempts to reform the state departments overseeing farms and markets because Republican leaders were more concerned with patronage than reform. Smith stated its seemed “almost incredible” that the state suffered market disruptions and friction between consumer and producer due to “petty, partisan politics.” Arguably, this criticism could be leveled at the

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220 “Statement by the Governor at the close of the Legislative Session of 1920, April 24, 1920,” Smith Public Papers, 1920, 580-581.

221 New York Times, March 6, 1920

Republicans for their entire treatment of Smith’s reorganization of state government under the Reconstruction Commission not just the agriculture and milk issues.

The Democratic Party, fearful of losing the upstate farm vote nominated George Fitts, a farmer, as Smith’s running mate when current Lieutenant Governor Harry Walker received the Democratic nomination to run for the United States Senate. Fitts, the president of the Tompkins County Dairymen’s League, a State Fair Commissioner, and an active Farm Bureau member became, in the words of the Democratic Party, “the first real, active farmer who has been nominated on either ticket for a State office within our memory.” Two weeks after the Democratic convention Nathan Miller, the Republican nominee for Governor, announced his opposition to state milk control. Miller’s opposition to state regulation of milk in light of Smith’s support for a state milk commission enabled the Republicans to portray Smith as a proponent of government control of private industry – an overt reference to socialism. In a tight race coinciding with a presidential year Smith lost his re-election bid to Miller by 74,000 votes, though the Republican presidential ticket carried New York by over one million votes.

Governor Smith’s utilization of the Moreland Act enabled him to investigate both state departments and the milk industry gathering enough evidence to justify a plan of correction to the legislature. Since the Department of Farms and Markets refused a thorough investigation of the milk problem the Moreland Act provided Smith the power to act. The continual effort from January 1919 through April 1920 to settle the milk issue

223 A Plain Statement of the facts as They Exist and What Has Been Accomplished During the Past Two Years, Issued by the Democratic State Committee, 1920, 2; Alfred E. Smith Private Papers, SC12626, Box 1, Folder 1, “Agriculture Part I”; Smith Public Papers, 1920, 441.

and strengthen the governor’s control over his own departments exhibited a clear example of the weakness of state government. Through the milk investigations Smith and his commissioners attempted to educate the public as to the true nature of the governor’s weak powers and compel the legislature to pass corrective legislation. Smith’s only option was to go over the heads of the legislature and appeal to the people directly. Worse, the public had little understanding of the governor’s true authority under the constitution, thus the public often blamed Smith for state failures - a scenario on which William Randolph Hearst capitalized. To further acerbate the problem, the Republican legislature refused to empower the Governor through statutory changes to the law while simultaneously and erroneously characterizing Smith’s reform measures as attempts to subvert free markets and establish a milk commission to limit private enterprise – something many viewed as a socialistic endeavor.

Throughout his first term in office Smith also studied state government through his Reconstruction Commission and developed a plan to both strengthen the executive branch and improve the operations of state government. Ironically, no mention of a milk commission made it into the final Reconstruction Commission report even though the committee on food production and distribution highlighted the issue in 1920. In the area of milk control Smith had to depend on his Moreland investigations. This reconstruction scenario played out on the small scale under the milk investigations suffered the same fate as Smith’s final Report of the Reconstruction Commission. In both areas, Smith failed to have the legislature enact his reform measures. The Reconstruction Commission suggested changing the structure of the Department of Farms and Markets. The Commission restated the standard argument by Governor Smith and Commissioner Battle
a legislatively-appointed Council serving as the head of an executive agency precluded a role for the governor, the head of the executive branch. However, the Commission did not recommend abolishing the Council but rather limiting its role to the appointment of a single commissioner of a unified Department of Agriculture and Markets. The Commissioner of Agriculture and Markets would completely revamp and simplify the department into seven bureaus responsible to the commissioner.\textsuperscript{225} The Commission stated the “internal reorganization of the Department is of even greater importance than the change in the Council and such internal reorganization is a stepping stone towards complete centralization of authority.”\textsuperscript{226} This change preserved the Council as an advisory body while simultaneously empowering a single commissioner to oversee all subordinate bureaus. However, the legislature ignored the entire Commission report leaving the Council and the Department unchanged as Smith left office in 1920. The Council itself would survive until the mid-1930s when Governor Lehman eliminated it.

Even with Governor Smith replaced by Governor Miller in 1921, Smith’s movement for change within the Department of Farms and Markets continued. Under Chapter 475 of the Laws of 1921 the legislature consolidated the administration of the Department by centralizing responsibility in a Commissioner of Farms and Markets appointed by the Council of Farms and Markets.\textsuperscript{227} The Council, in turn, ceased as an administrative body becoming an advisory panel. In addition to central authority being vested in a Commissioner of Farms and Markets in 1921, the department maintained its

\textsuperscript{225} Reconstruction Commission Report, 1919, 107-110.


two main divisions each with its own commissioner, Agriculture and Food and Markets. In 1921 Charles Wilson was replaced as commissioner of Agriculture though Eugene Porter continued as Commissioner of Food and Markets for another year. Chapter 22 of the Laws of 1922 eliminated the two subservient divisions and its commissioners replacing each with assistant commissioners reporting directly to the Commissioner of Farms and Markets.\(^{228}\) Smith’s ideas came to fruition but because of politics a Republican legislature waited until they had a Republican Governor to enact the well-researched and logical legislative changes suggested by Smith and his commissioners.

Though the departmental restructuring suggested by the Reconstruction Commission and Governor Smith became a reality under Governor Miller, the issue of a milk control board did not. It was not until 1933 after the legislative investigation into milk under Senator Perley Pitcher of Watertown, did New York State experiment with a “Milk Control Board.”\(^{229}\) The new state office’s functions included regulating and investigating the industry, and service as a mediator and arbitrator in controversies and disputes.\(^{230}\) Much of the impetus for New York’s milk regulation, and at least fourteen other states, came as a result of the great depression, economics problems, and distribution issues followed by state attempts to regulate, “stabilize and protect the industry.”\(^{231}\) Under the New York Milk Control Law a program suggested in theory by Smith under his 1919 Moreland Act investigations became a part of the larger national


\(^{229}\) Dillon, *Seven Decades of Milk*, 203-204.


movement towards addressing economic issues in the dairy industry. However, the system established in New York in the 1930s became part of a larger federal-state milk system in the late 1930s.²³²

While Smith’s efforts to structurally change government to strengthen the executive branch under his “milk” Moreland investigations failed in 1919 and 1920, these investigations helped bolster Smith’s restructuring efforts leading up to the Hughes Commission in 1926. Though the creation of a public service commission for milk was hotly debated in 1919 and 1920, the milk issue was always secondary to Smith’s efforts to revamp the executive branch, particularly the Department of Agriculture and Markets. First and foremost, Smith desired executive power to compliment executive responsibility. The milk problem revealed that the state’s chief executive did not possess power coterminous with the public’s perception of gubernatorial responsibility. Smith used the Moreland Act to investigate the milk issue which in turn demonstrated the powerlessness of the governor’s office. The “milk” Moreland investigations provided Smith with the information needed to reform and restructure government in the public’s best interest even though the investigations recommendations did not prove successful in 1919 and 1920 in the face of heavy Republican intransigence. Public opinion needed cultivation – something interrupted by Smith’s lost re-election bid in 1920.

Chapter 5 - Smith’s Labor Department Investigations: 1919, 1924, 1928

Since his days as an Assemblyman on the Factory Investigation Commission (1911-1915), Alfred E. Smith maintained a strong interest in both organized labor and laws to protect workers. Smith carried this attitude with him into the governor’s office and he consistently used state government to address labor problems and protect workers.¹ During his governorship Alfred E. Smith used the Moreland Act three times to investigate the labor department - more than any other state agency. In 1919, 1924, and 1928 Smith used the Moreland Act to examine the administration of the Labor Department with each investigation paying special attention to the operations of the workmen’s compensation system. Besides appointing himself a Moreland Act commissioner in 1924 (a unique phenomenon never explored by any other New York governor before or since) Smith named three nationally recognized experts to examine the Department of Labor.²

In all three of his labor investigations Smith demonstrated the importance of the Department of Labor and its function as guardian of the workmen’s compensation system. Smith’s labor investigations also proved significant because they created a base upon which succeeding investigations built. From 1919 through his last year in office


² Governor Smith appointed Jeremiah Connor in 1919 and Lindsay Rogers in 1928 as commissioners to investigate the department of labor. In 1919 Governor Smith and Commissioner Jeremiah Connor secured the appointment of Miles Dawson as counsel and assistant to Connor during the 1919 Moreland Act Investigation of the State Industrial Commission.
(1928) Smith used this series of Moreland Act investigations to defend the Department of Labor while simultaneously reforming its operations, rooting out corruption, and strengthening the system of workmen’s compensation. Each investigation produced draft legislation designed to improve the workmen’s compensation system, however, not all of these bills found favor with the legislature. Smith also utilized the Moreland Act to create an atmosphere conducive to investigating critics of the department whether they were state employees, members of the legislature, or private citizens. Thus Smith extended the authority provided New York’s governor under the Executive Law, often stretching his interpretation to include individuals even tangentially involved in allegations of wrongdoing or, still even further removed, individuals with any knowledge of misconduct in state agencies. In 1928 allegations made by a legislative body, the Industrial Survey, led Smith’s investigator to call sitting members of the legislature before the inquiry to explain their allegations. By independently examining the labor department, Smith implemented policy changes to sustain and strengthen a program dedicated to the protection of workers that otherwise would not have been passed into law. Smith’s tenacity also assisted organized labor in its battles with business and the Republican Party throughout the 1920s.

A state agency responsible for labor issues in New York State began as earlier as 1883 with a Bureau of Labor Statistics. In 1886, the legislature created an office of factory inspector. The legislature established another agency in 1886, the Board of Mediation and Arbitration, to help ease New York’s transition to the industrial age. A decade later the state added female inspectors to the public payroll and increased the number of factory inspectors to keep pace with New York’s expanding industrial and
manufacturing sectors. By 1901, all three of these new agencies were folded into a newly reformed Department of Labor under a commissioner appointed by the governor.³

In the twentieth century the Department of Labor continued to grow and expand as did most other state agencies newly created to supervise the growing industrialization characteristic of America in the late 19th and early 20th centuries. In 1907, the department added mercantile inspection to its responsibilities; and just prior to World War I, industrial hygiene, immigration labor, “homework” industries, and workmen’s compensation came under the supervision of the Department of Labor.⁴ The creation of new labor bureaus within state government in the 1910s is directly attributable to the work of the Wainwright Commission (1909), the Factory Investigation Commission (1911-1915), and New York State’s legislative experimentation with workmen’s compensation between 1909 and 1915. Under the leadership of Senator Robert Wagner and Assemblyman Alfred E. Smith, leaders of the Democratic Party in the Senate and Assembly respectively, the legislation suggested by the Factory Investigation Commission created a labor code making New York State a leader in industrial relations. Smith and Wagner passed dozens of the labor laws establishing this new and innovative system.⁵ In 1913 alone the legislature created a Workmen’s Compensation Commission,


⁵ New York Legislative Record and Index, A Complete Record of All Bills Introduced in the Senate and Assembly during the 135th session of the Legislature of the State of New York beginning January 1, 1912 (Albany, N.Y.: The Legislative Index Publishing Company, 1912), 379; New York Legislative Record and Index, A Complete Record of All Bills Introduced in the Senate and Assembly during the 136th session of the Legislature of the State of New York beginning January 1, 1913 (Albany, N.Y.: The Legislative Index Publishing Company, 1913), 448, 470, 645; James Malcolm (ed), New York State Red Book, 1913.
a State Insurance Fund (to assist in underwriting workmen’s compensation insurance),
and an Industrial Board to investigate, supervise, and enforce the labor law in the state.  
This new system would provide insurance coverage to certain employees within
classified high risk occupations while simultaneously establishing a universal system of
insurance – and thus actuarial certainty - for all employers.  

In each reconfiguration of the Department of Labor and its various boards and bureaus, confidence in the permanency of the department and its functions fluctuated. The vicissitudes in labor policy was partly attributable to the rapid changes in leadership and party control within both the executive branch and the legislature. For example, between 1909 when the Republican-dominated legislature established the Wainwright Commission to investigate employment and labor issues through 1921, the state had witnessed eight governors, four each from the Democratic Party (Dix, Sulzer, Glynn and Smith) and the Republican Party (Hughes, White, Whitman and Miller). The leadership of the Assembly and Senate had also fluctuated between the Democrats and the Republicans several times with many changes resulting in the passage of new laws

(Albany, N.Y.: J.B. Lyon Company, 1913), 150. Al Smith sponsored most of the labor laws recommended by the Factory Investigation Commission in 1912. Democratic Assemblyman Edward D. Jackson, who also served on the Factory Investigation Commissioner, sponsored much of the legislation suggested by the commission in 1913 when Smith, as Speaker, was precluded by custom from submitting many bills himself.


impacting the configuration and administration of the Department of Labor. In each case the state attempted to respond to labor issues in the midst of shifting politics and an ongoing battle between an increasingly pro-labor Democratic Party and the openly pro-business Republican Party supported by Associated Industries, the state’s business lobby.

As Governor Smith pointed out so often, many state agencies had grown and expanded to the degree that they no longer operated as they were intended or they created overlapping and confusing functions vis-à-vis other agencies. The labor department and its various boards and bureaus proved no exception to this contention. In 1913 and 1914 the commissioner of labor continued as the chief administrator of the department while a newly created Industrial Board, comprised of four members (appointed by the governor with consent of the Senate) plus the commissioner of labor, served as the state body responsible for overseeing “the Labor Law, and the rules and regulations made by the Board thereunder.” To oversee the new workmen’s compensation system the legislature created a five member State Workmen’s Compensation Commission appointed by the governor and confirmed by the Senate, as well as a State Insurance Fund. The independent State Workmen’s Compensation Commission was folded into a restructured Department of Labor after only two years in 1915 and transformed into a bureau under the supervision of a deputy commission of the State Industrial Commission.

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8 The Republican majorities controlled the Assembly every year from 1909 through 1921 with the exceptions of 1911 and 1913. The Republican majorities controlled the Senate from 1909 through 1921 with the exceptions of 1911 through 1914.


10 Chapter 816 of the Laws of 1913.

11 Chapter 674 of the Laws of 1915.
In 1915 the legislature combined the offices of Commissioner of Labor and the Industrial Board (renamed the State Industrial Commission) to serve as the administrative body governing the Department of Labor, similar to the supplanting of a Commissioner of Agriculture by a statewide Council of Farms and Markets as the administrator of that department. From 1915 through 1921, the State Industrial Commission, a five member body appointed by the governor and confirmed by the Senate (with one member designated the chair by the governor), served as the governing body of the Department of Labor. With Republicans in control of both the executive and legislative branches they likewise controlled the Industrial Board with one of its members, Louis Wiard of Batavia, simultaneously serving as a Vice President of the Board of Directors of Associated Industries (the state’ manufacturing lobby).

Part of the 1915 restructuring of the department included the addition of an Industrial Council comprised of five representatives of employers and five from employees with the body itself electing a chair from outside the council. The Council advised the Industrial Commission on all matters referred to it by the department. Though advisory in nature, many of its members provided upstate influence for the manufacturing community and included manufacturers such as Edward Barcalo of Buffalo (founding president of Associated Industries), Carleton Chase of Syracuse (first vice president of

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the board of Associated Industries), G.E. Emmons (district vice president of Associated Industries), and R.C. Stofer (member of Associated Industries’ board). The Industrial Council elected two Republicans as chairmen: J. Mayhew Wainwright of Rye in 1916-1917 (of the Wainwright Commission) and Henry Sayer of Long Island in 1918-1920 (an Industrial Commissioner).

In addition to industrial regulations, labor and industry debated workmen’s compensation. As noted above, the legislature altered the structure and power of state regulation in the areas of labor throughout the 1910s. In 1909 the legislature passed a law establishing a commission to investigate employers’ liability, workmen’s compensation, industrial accidents, unemployment, and other labor issues. This commission, named after its chairman Senator J. Mayhew Wainwright, issued an extensive report in 1910 laying the groundwork for the first workmen’s compensation system in the United States. The far-reaching study addressed the recent rise industrialization and the corresponding increase in the number of deaths, injuries, and accidents. Wainwright found that under the “common law” system only a small percentage of workers injured received compensation, only one-third of employers’ insurance premiums went to the insured, as


15 Manual For the Use of the Legislature of the State of New York, 1917 (Albany: J.B. Lyon Company, 1917), 513; Manual For the Use of the Legislature of the State of New York, 1918 (Albany: J.B. Lyon Company, 1918), 457; Manual For the Use of the Legislature of the State of New York, 1921 (Albany: J.B. Lyon Company, 1921), 465-469; Minutes of Associated Industries, September 9, 1920, 4. By 1920 Edward Barcalo and Governor Alfred E. Smith discussed (over dinner) the Governor’s dissatisfaction with the “activities of the Council and that Smith believed the Council could be made more useful as Advisor (sic) to the Industrial Commission.” Barcalo admitted to Associated Industries’ board that several employers on the Council had resigned, one moved out of state, one in poor health, and one left manufacturing. Barcalo proposed four manufacturers whom he asked to serve and whose names he proposed to send to the Governor. The point proved mute when Governor Whitman eliminated the Council in 1921 while simultaneously installing a majority of upstate Republicans to control a restructured Industrial Commission with Republican Henry Sayer as Industrial Commissioner and John Higgins of Oswego as Industrial Board Chairman.
much of one-half of eventual awards were consumed by court and legal fees, awards were often delayed creating hardship for the injured or surviving families, and a state of antagonism had developed between employees and employers. To remedy these problems and extricate the system from the courts, the Wainwright Commission suggested moving from the finding of fault under common law to the creation of a faultless system focused on compulsory compensation in which all workers and employers were placed.  

The legislature passed Wainwright’s suggestions for a system of workmen’s compensation in 1910. Almost immediately the law became the subject of a legal challenge. Under Ives v. South Buffalo Railway Company (1911) the courts ruled against the new system declaring it unconstitutional on the grounds it violated due process. The court ruling upholding company property rights came on March 24, 1911 - one day before the Triangle Shirtwaist Factory fire which killed 146 factory workers. In 1913 the legislature put the question to the voters in the form of a constitutional amendment. The workmen’s compensation amendment passed overwhelmingly in November 1913.  

In 1913 and again in 1914 the legislature, empowered by the new constitutional amendment, passed a new workmen’s compensation law removing industrial injury claims from the courts and placing them within the jurisdiction of a new state agency.  

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18 The constitutional amendment passed on November 4, 1913, the new workmen’s compensation act passed in a special session in 1913 (Chapter 816 of the Laws of 1913) but due to technical difficulties it was necessary to re-pass it in again 1914 (Chapter 41 of the Laws of 1914).
Though the new law admittedly covered only select employment, it re-established a system better able to address workers’ concerns, particularly compensation for workplace injuries devoid of heavy legal fees, court costs, and the common law restrictions involving proof of fault. Workmen’s compensation would, in the words of the Wainwright Commission, “do away with some of the unfairness in theory and practice, and increase the workman’s chance of recovery under the law.”

After only one year the legislature - despite the strong objections of the Democratic minority (of which Alfred E. Smith was leader) - amended the workmen’s compensation law to authorize the direct settlement of claims between parties. This 1915 amendment enabled employers and employees to “dispose of disputable issues by consent” without a hearing before the Workmen’s Compensation Bureau. Under the new amendment, settlement agreements between employees and employers could be negotiated, agreed to, and then filed with the Workmen’s Compensation Bureau along with attestations by physicians. In the case of an agreement, the bureau could either ratify agreements or set them aside as inconsistent with the law. Insurance companies (acting on behalf of employers) negotiated settlements by attempting to get injured workers to accept quick settlements instead of exercising their right to a hearing under the workmen’s compensation system. The “pro forma” review system of agreements filed with the Workmen’s Compensation Bureau coupled with the huge number of claims sent to the bureau for investigation, created an atmosphere conducive to the disposal of as many cases as possible. If settlements conformed to the law and had been agreed to by


both parties, the bureau simply ratified almost all of the agreements. This system proved advantageous to employers eager to settle claims quickly through offers of quick cash to injured workers in return for the dropping of workmen’s compensation hearings. However, this “agreement system” also led to strong allegations of unfairness for employees who found that quick settlements, while appearing good at the time, deprived them of long-term resources they could have secured if they entered the full hearing process. Between 1915 and 1918, the number of settlements grew leading to calls from labor to reform of the system.21

Just as New York State adopted its modern labor code under the leadership of then-Assemblyman Alfred E. Smith in 1911-1915, New York State’s leading businessmen formed a permanent association to counterbalance labor’s growing power. Associated Industries’ early period of growth coincided with Alfred E. Smith’s period of education in the areas of labor and social legislation. Thus, as Smith grew closer to labor, ultimately campaigning for the governorship with the help of labor and the unions, various businessmen and manufacturers formed tighter bonds with each other under the guidance of its new trade group: Associated Industries. The differences in opinion regarding government’s role in business regulation, labor, and social legislation placed Smith (as both legislator and governor) and Associated Industries at opposite end of the public policy spectrum. Additionally, and most importantly, Associated viewed the role of government as limited whereas Smith favored using government as a tool for active assistance. Associated Industries often manipulated government by using it to its full

advantage through control of Republican minions claiming laissez faire yet in reality actively maneuvering government to help business interests. During the 1910s as well as Smith’s first term as governor, Smith and Associated Industries squared off against each other on many occasions. However, as Associated Industries grew in membership, experience and power, the 1920s – a reactionary period conducive to pro-business, conservative, laissez faire influences in government – emboldened the business lobby even more than past experiences.

Associated Industries traces its origins to the state’s business community’s response to New York State’s modernization of its labor code in the mid-1910s. In 1914 numerous local or regional manufacturers’ associations existed in New York, however, business and industry lacked a statewide organization. Some of these manufacturing groups such as the Employers Association of Buffalo and the New York State Manufacturers Association supported the formation of Associated Industries. Similarly, since the Chamber of Commerce of the State of New York operated on a regional or town level it lacked the power of a statewide business organization. The newly forming association envisioned a vast organization encompassing manufacturers, owners of industrial property, and large merchants. The defense of business and industry on the state level unified them. The group decided that such an organization would create a new and strong voice for business to counter the chorus of reformers, unions, and pro-labor supporters. Cognizant of how they might be portrayed if they came out against the

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22 Minutes of Associated Industries, March 27-28, 1914, 1.

legislation created in the aftermath of the Triangle Shirtwaist fire, the minutes of the initial meeting of the group reflect some caution in their purpose, claiming their efforts “would be constructive in its aims rather than destructive.” Similarly, the founders present favored forming an association to oppose legislation only “after necessary and thorough consideration of all the laws and rules” were exhausted.  

Edward J. Barcalo of Buffalo (the founder and later the first President of Associated Industries) told his fellow industrialists that they need to look at laws to promote the welfare of business but not overlook their workers who, in light of these new laws, “are reminders of our negligence or oversight” in the past. The industrialists acknowledged the need for some change but, they believed the legislature had gone beyond what was reasonable. One manufacturer attending the meeting stated that if they had been more active in 1911-1914 businessmen could have helped shape the new labor laws. These men did not want to let the opportunity to influence future legislation slip away so easily.

The owners decided to set up an organization with a full-time staff to carefully monitor the legislature. The organization gained quick support from the business representatives present and letters of support (“scores of them”) from western New York companies and local manufacturing associations were read aloud. On March 28 the group proceeded to form “Federated Industries” (soon changed to Associated Industries in April 1914). The new entity’s executive committee drafted a plan of organization, adopted a

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constitution, and appointed an executive secretary. The board chose Mark A. Daly, a career newspaper reporter, whom they empowered to conduct the daily operations of Associated Industries.\textsuperscript{27}

Membership increased rapidly throughout 1914, growing from 40 in May, to 150 in June, to 348 by December.\textsuperscript{28} Associated Industries also merged with the State Manufacturers’ Association adding approximately 100 new members in May 1915. The association’s rapid expansion continued throughout the remainder of the decade making it a statewide enterprise with thousands of members from across New York State.\textsuperscript{29}

In the 1910s Associated Industries began meeting with the State Industrial Board and association members made appearances before that Board in Buffalo, Rochester, and New York City. Daly also planned a strategy for addressing a re-codification of certain sections of the Industrial Code.\textsuperscript{30} Since the state law mandated a workplace labor code, Associated Industries sought to insure these rules were not excessively costly to employers. Associated Industries attempted to amend existing laws such as the workman’s compensation act and block the passage of dozens of other labor bills from

\textsuperscript{27}Minutes of Associated Industries, March 27-28, 1914, 8-11; Minutes of Associated Industries, April 23, 1914, 1-10 (page 1 is labeled as page 12).

\textsuperscript{28} Minutes of Associated Industries, May 20, 1914, 2, Minutes of Associated Industries, June 16, 1914, 33; The Monitor, Vol. 1, No. 7 (December 1914), 15.


\textsuperscript{30}Minutes of Associated Industries, May 5, 1914, 2-3; Minutes of Associated Industries, May 20, 1914, 3-5.
1915 onwards. In an effort to help their cause with individual legislators, especially in the area of workmen’s compensation, Associated Industries enlisted the help of area chambers of commerce, boards of trade, and local manufacturers associations. Daly stated that lawmakers listened and understood the association’s point of view, but Daly soon found that “the lawmakers themselves were to be the smallest part of our educational campaign.” There were other forces exerting a tremendous influence in Albany: organized labor, social welfare organizations, and hundreds of other individuals with selfish interests. Daly reported that the State Federation of Labor laughed at them when they explained their bills, thought that all manufacturers’ associations were “‘cut out of the same cloth and were determined to beat anything we fathered if it were possible.’”

Throughout the late 1910s and early 1920s two key disagreements between labor and Associated Industries revolved around the hours of work legislation, the so-called forty-eight hour bill, and minimum wage laws. The forty-eight hours bill would limit the number of hours women could legally work during any given week whereas a minimum wage would assure workers a set wage rate established by the government. Labor issues such as these drew organized labor, the women’s movement and its key players, and the

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31 Minutes of Associated Industries, May 5, 1914, 3; Minutes of Associated Industries, May 20, 1914, 3-5; Minutes of Associated Industries, December 11, 1914, 3; Annual Report of Secretary of Associated Industries, December 11, 1914 in Meeting Minutes of December 11, 1914, 5-36. The Annual Report detailed Mark Daly’s first year as secretary of the association and detailed his interaction with the legislature, administration, and department of labor. Legislative reports were given at most board of directors meetings thereafter.

32 Minutes of Associated Industries, March 5, 1915, 1.

Democratic Party closer together. This alliance pitted Democratic Governor Smith and his labor allies against Associated Industries and the reactionary wing of the State’s Republican Party. Associated Industries fought the passage of the forty-eight hour bill and any other legislative measure limiting hours of work (such as “One-day-of-Rest-in-Seven”) in every session during Smith’s four terms as Governor, with each legislative session adding more tension to the dispute. This on-going conflict spilled into other labor areas such as the workmen’s compensation statute.  

Between 1908 and the 1920s many states, including New York, adopted laws governing the hours of service for women in various occupations. Under a series of court cases that first upheld a ban on limiting women’s hours of work and later shifted towards select limitations on employment hours, victory in court solidified many of the relationships between female reformers, industrial experts, and politicians championing labor legislation, such as Al Smith.  

Major court victories emboldened reformers, labor, and Governor Smith who placed the regulation of the hours of employment in the forefront of their legislative agendas.  

In addition to wage and hour regulations, workmen’s compensation issues, particularly the cost to maintain coverage for its factories under threat of fines and


36 Upholding a ban on limiting women’s hours of work: Lochner v. New York (1905) and Muller v. Oregon (1908); limitations on employment hours: People v. Schweinler Press (1915), Adkins v. Children’s Hospital (1923), and Radice v. New York (1924).
prosecution, led many businessmen to urge a curtailment of the program. Any effort to reduce the cost or limit coverage found a hearing within the business lobby, particularly if it could be shown that the State squandered tax dollars or premiums paid to the State Insurance Fund. With the help of Republican legislative leaders Associated Industries defeated or held in committee many labor bills, such as an eight-hour day, by characterizing these bills as socialistic. Mark Daly’s efforts often worked and social welfare and labor legislation was dramatically reduced or curtailed from 1919 through 1924 while simultaneously the power of the business lobby increased.³⁷

Smith’s campaign for governor in 1918 contained many labor planks, but his election did not draw the immediate condemnation of business. Rather Associated Industries, the state’s leading business organization, heaped praise upon Smith after his election in November 1918 predicting he will give everyone a “square deal” and prove successful even in light of having Republican majorities in both houses. Associated Industries editorialized in November 1918 that Smith was both “bigger than Tammany” and “knows more about the affairs of New York state than any other man.”³⁸ Despite this praise, much of it obsequious in nature and probably designed to welcome the unwanted labor-backed governor as best they could, the business lobby and Smith would soon clash over the administration of the Department of Labor.


1919 – Moreland Act Investigation of Workmen’s Compensation

Smith stated in his first address to the legislature in 1919 the need to investigate the costs of workmen’s compensation to business and the amounts being paid to injured workmen. Thus, on February 21, 1919 Governor Smith appointed Jeremiah F. Connor, Esq. of Oneida as a Moreland Act commissioner “to examine and investigate the management and affairs of the State Industrial Commission.” Smith charged Connor with investigating the cost of workmen’s compensation to business as well “the amount actually received by injured workmen and their dependents.” Further, Smith wanted Connor to examine the impact of the direct settlement on the system and suggested submit “remedial legislation” at any time during his investigation to correct any problems uncovered. The appointment of Connor as a Moreland Act commissioner came three days after the Senate confirmed Frances Perkins as a member of the State Industrial Commission giving the Democrats three of five seats on that board and spurring speculation that Governor Smith would actively pursue several labor bills including minimum wage and maximum hours of work legislation. Besides Perkins, Chairman John Mitchell, the famed mining and labor leader, and James Lynch served as Democratic appointees to the Commission. Associated Industries, on behalf of employers in the

39 Message to the Legislature 1919 in Smith Public Papers, 1919, 38.
350-351.
40 Smith Public Papers, 1919, 350-351.
41 Mitchell had previously served as Commissioner of Labor (1913), a member of the Wainwright Commission by appointment of Governor Charles Evans Hughes (1909), the Workmen’s Compensation Commission (1914-1915), and had for a period of time been a member of the Progressive Party. New York Red Book, 1919, 93; Wainwright Report, 1.
state, strenuously yet unsuccessfully lobbied the Senate against the confirmation of Perkins, even requesting Governor Smith withdraw the nomination claiming her unqualified. Associated Industries further alleged the appointment would add another pro-labor person to the board unfairly creating a system of “taxation without representation” for business on the Industrial Commission (a body currently without any employers’ representatives).43

Jeremiah Connor seemed an appropriate choice to head an investigation into workmen’s compensation. Governor Smith chose Connor because he had been counsel to the Workmen’s Compensation Commission in 1914 and 1915 when the new system was re-established. A graduate of Cornell University, Connor was admitted to the bar in 1902 and served in a number of local offices in Oneida including City Clerk, Corporation Counsel, and City Judge. Connor served as Deputy Attorney General (1911-1913), Counsel to the State Conservation Commission (1913-1914), and counsel, in succession, to the Workmen’s Compensation Commission and then the Department of Labor.44


44 Smith Public Papers, 1919, 351; Official Appointment of Jeremiah Connor as Moreland Act Commissioner February 21, 1919, 1-2, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.
1916 Connor authored a legal study of the workmen’s compensation system when he returned to the private practice of law.\textsuperscript{45}

The initiation of the investigation drew the immediate condemnation of many Republican legislators who claimed Smith desired to use Connor’s investigation to overturn the settlement clause in 1919 - something both labor and the Democratic Party failed to block in 1915. Republicans also made charges of Democratic job grabbing and suggested Smith sought the wholesale firings of Republican incumbents as the true purpose of the investigation. Associated Industries even characterized the investigation as “Connor rummaging about to discover what good jobs might be had for political purposes.”\textsuperscript{46}

Connor coordinated closely with the Governor’s staff. Connor called upon the Governor’s office for information from the counsel’s office and legal advice, while the Governor’s office forwarded Connor complaints from parties seeking their workmen’s compensation cases be reheard.\textsuperscript{47}


\textsuperscript{46} “Governor Smith Names Connor to Delve into Doings of Industrial Commission”, The Monitor, Vol. 5, No. 9 (February 1919), 40.

\textsuperscript{47} Jeremiah Connor to Joseph Kellogg, February 20, 1919; George Van Namee to Jeremiah Connor, February 25, 1919; George Van Namee to Jeremiah Connor (telegram), February 26, 1919; George Van Namee to Jeremiah Connor, February 28, 1919; Jeremiah Connor to Joseph Kellogg, March 17, 1919; Joseph Kellogg to George Bayle, March 21, 1919. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36. For example, in his letter to Mr. Bayle Judge Kellogg stated “I have forwarded your letter to Mr. Connor, who has been appointed a commissioner to investigate the workings of the Industrial Commission generally.” This language was repeated in dozens of letters to persons seeking help in the area of workmen’s compensation or those seeking to offer information regarding the operations of the department. All of these letters were forwarded to Commissioner Connor by the Governor’s staff.
Approximately one month after his appointment Connor suggested direct settlement be ended, for more than one-half of the cases he examined resulted in underpayment to injured workers, some by as much as $2,000 (an exceedingly high figure for 1918). Connor stated that “some of the conditions disclosed are almost unbelievable” including individuals who lost fingers, use of limbs, suffered fractured skulls, and sustained irreparable and career-ending injuries. Each settlement resulted in only minor insurance company payments to the injured. Some of the injured unwittingly signed general releases ending any claim at all in exchange for a small stipend. Of these same 1,000 cases, 714 lacked physician’s statements and 214 had no employer report of the accident or injury, both violations of the workmen’s compensation law. Further, Connor claimed, injured workers in 1918 alone lost a collective $500,000 in compensation underpayments. In many aspects, the settlement system figured no better for injured workers than the system in place prior to workmen’s compensation.48

In light of so many adjustments and findings of incomplete cases (which the Commission ratified despite violations of law), Connor petitioned Smith for a $25,000 special appropriation to investigate and rehear every settlement case approved pro forma by the commission since the implementation of the 1915 settlement clause. Connor claimed that had Smith not commenced his investigation these individuals would never

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have gained what was due them under the law, and thousands of others may now be saved from the same fate after rehearing.\textsuperscript{49}

Connor also claimed that the settlement issue hid the true statistics related to workplace safety, accidents, insurance payouts, and cost of workmen’s compensation under the system. With so much information missing from the case files and so many settlements misstating the true extent of injuries and compensation, even the Chief Statistician of the department claimed that the records in 1916, 1917 and 1918 were so incomplete as to be deemed “worse than ridiculous.”\textsuperscript{50} Accurate insurance figures and expense-to-premium ratios likewise could not be calculated under the current system, again largely due to the settlement clause. The internal operations of the department did not seem to help in the area of efficiency either and Connor revealed that over the five year history of the program over 200 different forms had been developed by the department adding a bureaucratic obstacle impeding the hearing process.\textsuperscript{51}

According to Connor, the state failed to protect the worker from the same system of insurance swindles prevalent \textit{before} the establishment of workmen’s compensation. The settlement, according to Connor, replaced the employer with the insurance company. Insurance companies in turn corrupted the system by enticing injured workers to agree to quick cash payouts in return for dropping their right to a compensation hearing. Connor recommended that each and every case be heard before a commissioner, even if that

\textsuperscript{49} Direct Settlement Special Report, 1919, 353; John Mitchell to Alfred E. Smith, July 14, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

\textsuperscript{50} Direct Settlement Special Report, 1919, 354.

\textsuperscript{51} Direct Settlement Special Report, 1919, 355.
meant adding more staff. He also submitted a draft bill to legislatively end the direct settlement and address the hearing abuses he uncovered in his month-long study.\footnote{Direct Settlement Special Report, 1919, 355-356.}

Soon after Connor’s report on the settlement issue Smith urged the legislature to abolish the direct settlement claiming it the “duty of the State to protect the poor, the helpless and those who are without knowledge of the law, and without any idea of their rights.” In an effort to gain public support, Connor held four additional hearings on the direct settlement in State Industrial Commission offices around the state. Connor enlisted the support of Van Namee by asking him to “handle it with the newspaper men in some way” and have local news coverage. Van Namee complied and issued a press release on April 15 – the waning days of the legislative session – highlighting the efforts of Connor in hearing testimony on abuses of the settlement clause.\footnote{Jeremiah Connor to George Van Namee, April 11, 1919; Governor’s Office Press Release April 15, 1919 announcing public hearings of Connor investigation, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.} Governor Smith also secured the support of State Industrial Commission Chairman John Mitchell. Mitchell lobbied Senate Majority Leader J. Henry Walters (Republican of Syracuse) on behalf of the Governor claiming that “a plan may be worked out that will overcome defects in present law.”\footnote{John Mitchell to Governor Alfred E. Smith, telegram, April 3, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.} In the closing days of the session and with a message of necessity from the governor allowing them to take up the bill immediately, the legislature passed Connor’s
The amendment ended the settlement procedure by providing for the adjudication by the workmen’s compensation commission of “every claim on the part of an injured man, or on the part of his relatives in the event of his death.” The new law also provided funding to rehear hundreds of cases. In his approval message Governor Smith directly credited Commissioner Connor for convincing the legislature as to the need to “do full justice to all claimants” and provide for the hearing of all cases.

Faced with such public outcry and press reports detailing the abuse of the injured at the hands of insurance carriers, the Republican had no option but to accede to Connor’s bill. Though the legislature passed Connor’s bill on compensation hearings, it attempted to legislatively alter the membership of the Industrial Commission, the board overseeing the state insurance fund and the workmen’s compensation bureau and tip the balance away from the Democrats. Associated Industries lobbied for the passage of the bill in order to force a balance on the Commission between labor and employers (business owners), particularly in light of Perkins’ conformation, stating that for years business had fewer representatives on the board than did labor. The legislature decided to mandate a balance on the five member commission between representatives of employers and employees with a fifth commissioner representing neither group akin, apparently, to the Industrial Council (though that body was only advisory in nature). Smith, believing the bill ridiculous, pointed out that any member of a public body or court should “represent and protect all of the ten millions people of the State, and not act as an advocate for any

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56 *Smith Public Papers, 1919*, 278-279, 292; Chapter 629 of the Laws of 1919.
fraction of the whole.” Commissioners should be chosen, Smith argued, based on their “impartiality” and ability and nothing else. Smith, believing the Commission analogous to a judicial body requiring objectivity, rejected a mandate requiring any “special interest, however powerful” in choosing commissioners and vetoed the bill. Though Smith did not cite political balance, the law already mandated that no more than three of the five members could be of the same political party and, as noted above, the Industrial Council mandated a balance of five members each from employers and employees.\textsuperscript{57}

In mid-May Connor wrote to Governor Smith giving him advanced notice of the “surprising” results of his soon to be released preliminary report (second report).\textsuperscript{58} This coordination would later seem prudent since the more extensively Connor investigated the State Industrial Commission, the State Insurance Fund, and the administration of the workmen’s compensation program, the more Connor and Smith risked placing the department in an unfavorable light with labor, State Industrial Commission, and the State Insurance Fund. Connor and Smith, apparently realizing this, had to uncover any wrongdoing or criminal activities without tainting the entire workmen’s compensation program – a challenging balancing act.\textsuperscript{59}


\textsuperscript{58} Jeremiah Connor to Governor Alfred E. Smith, May 13, 1919 (2 letters), Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

\textsuperscript{59} Jeremiah Connor to George Van Namee, July 1, 1919; Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
Connor released his preliminary report (second report) on the State Insurance Fund in May 1919. Connor reported that the State Insurance Fund appeared healthy due to strong years in 1917 and 1918. This good performance was attributed to the war-time economy and high employment. However, despite the announcement of a 10% dividend in 1919 – the first by the fund since 1915 – Connor found that the State Insurance Fund suffered from many serious financial and administrative shortcomings. After some opening statements praising the fund, the report devolved into criticism of departmental staff. Connor’s investigation found the premium collection system by staff extremely weak. The laxity in collecting premiums and slowness in referring unpaid overdue bills to the attorney general resulted in significant losses of revenue. Connor blamed much of these problems on mediocre employees who neglected their duties and failed to properly audit accounts. Between 1917 and 1919 over 1,000 fewer employers utilized the fund – some account losses were due to a shrinking economy while other losses were attributable to the State Insurance Fund’s failure to market the program and retain and attract new business.

Connor claimed favoritism, manipulation, and the abuse of injured workers’ rights riddled the system. The workmen’s compensation fund comprised twenty-five special groups, and six general groups. These groupings of certain industries assisted the fund in keeping track of certain industry classes and better balancing risk. However, Connor

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60 Jeremiah F. Connor issued three reports under his commission to investigate the State Insurance Fund: March 31, 1919 (Settlement Clause), May 27, 1919 (State Insurance Fund), and November 17, 1919 (Final Report).


found that the staff failed to implement a universal profit and loss accounting system within and between the funds. For example, some general funds paid high dividends while other general funds had to be bailed out by the state treasury. Further, the operations of some special funds were as corrupt as the settlement system since employer’s “claims agents” often attempted to keep compensation payments low (by offering employees settlements) in order to report low financial losses to the fund. Keeping compensation awards low and dividends high deprived injured workers of financial benefits owed them. Actuarially the reduced premiums could not sustain future claims resulting from the true risk associated with the industry insured. The limiting of compensation awards, other payouts and expenses, and the inconsistencies between funds – some of which were bailed out by non-fund state money - enabled the State Insurance Fund to claim success and offer a 10% dividend. Connor even questioned the rationale behind the 10% dividend figure claiming it arbitrary. Though the balancing of risk through the creation of special and general groups (approved by the Attorney General) enabled the funds better actuarial certainty, Connor claimed many of the funds in both categories defied logical and appeared to favor certain employers and trade classifications over others.63

Connor discovered an entire industry of special brokers claiming they could manage workmen’s compensation issues, safety programs, and premium billing to insure companies participating in the state insurance fund better financial returns, much of it allegedly based on safety training and accident prevention. However, Connor found that such enterprises utilized the same poor accounting methods as claims agents pursuing

settlements with workers, pressure on workers to return to employment despite injury, and the hiding of true experience ratings from the state fund. In some instances both state employers and private companies funneled injured workers to favored doctors resulting in medical reports beneficial to employers and thus lower compensation payouts to injured workers. Again Connor excoriated the State Insurance Fund for not investigating such obvious fiscal and medical schemes to defraud both workers and the state fund.64

Connor ended his preliminary report on the State Insurance Fund by stating “what I have discovered is only a scratch on the surface” and the department needed a complete overhaul. Connor reported “little cooperation” from the fund in his investigation thus leading him to “recommend that the whole State Insurance Fund be investigated from start to finish by a competent actuarial accountant.”65 Connor had been working with Governor Smith as early as April 1919 to secure the services of Miles M. Dawson, a national renowned actuary currently undertaking an investigation of both the Pennsylvania State Insurance Fund and the U.S. Shipping Board and Emergency Fleet Corporation. Dawson would later accept the invitation of Smith and Connor and join the investigation in August though Dawson also offered his professional advice on the draft legislation submitted by Connor in March 1919.66

66 George Van Namee to Miles Dawson, April 10, 1919; George Van Namee to Jeremiah Connor, April 10, 1919; Alfred E. Smith to Miles Dawson, May 10, 1919; Miles Dawson to Alfred E. Smith, April 23, 1919; Miles Dawson to Alfred E. Smith, August 12, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
The timing of Connor’s report coincided with the expiration of many workmen’s compensation policies in June thus causing some businesses to write letters of protest to the State Industrial Commission and the Governor. For example, the Atlas Furniture Company wrote to the State Industrial Commission questioning the “Governor’s motives” and lamenting “the State Fund being made the butt of political investigations.” To bolster the position of the State Industrial Commission as the protector of the injured, Connor suggested to George Van Namee the advisability of Governor Smith “writing a letter to the Commission asking that all direct settlement cases be investigated.” Further, after consulting with William Archer, Deputy Commissioner in charge of the Bureau of Workmen’s Compensation, Connor stated the investigations “would result in the payment of a million dollars to the claimants.” Since Archer would “probably undertake the investigation anyway” the “Governor might as well get credit for it” since the re-hearings would not have taken place unless Connor undertook the investigation. In his letter to the Governor Connor even enclosed a draft letter Archer planned on sending to the 1,000 cases under review. The Archer letter offered an opportunity for “further compensation” for any injured worker who settled their cases without a hearing. As a result of Connor’s prodding Smith wrote to Chairman Mitchell on June 27 recommending “that the State Industrial Commission investigate every agreement case approved without


68 Jeremiah Connor to George Van Namee, June 17, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.
hearing since the direct settlement became effective.”69 The investigations started almost at once with Smith deflecting some of the criticism of the investigation due to its positive impact on injured workers under the proposed re-hearings. Connor and Smith attempted to balance an investigation into corruption and mismanagement in the workmen’s compensation fund with a steadfast commitment to workmen’s compensation.

The manager of the fund, Spencer Baldwin, and the entire State Industrial Commission responded negatively to Connor’s attacks. Baldwin’s extensive answer to Commissioner Connor was both defensive and sarcastic. Baldwin pointedly asked how Connor could justify claiming the fund fiscally sound yet mismanaged.70 Baldwin shifted the blame for shortcomings from the fund to the State itself. In the areas of poor collection of premiums, failure to track money owed to the fund, laxity in the workforce, and a disappointing record of working with the Attorney General’s staff in collecting overdue debts, Baldwin claimed his department understaffed. Baldwin included excerpts of his testimony to the legislature showing his request for additional collection agents and staff in each year from 1916 through 1919. Baldwin characterized Connor’s criticism of his staff and their ability as inept or lax as mere opinion. However, Baldwin provided no explanation for some of the documented missteps by staff claiming many were isolated incidents.71

69 Alfred E. Smith to John Mitchell, June 27, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.


In the areas of lost business between 1918 and 1919, Baldwin blamed the conversion from wartime to peacetime economy and the corresponding loss of both individual companies and entire industries. Further, intense competition with private sector insurance companies kept the State Insurance Fund from gaining larger market share. Baldwin also claimed that when losses of individual companies were compared with the number of employees covered, the State Insurance Fund seemed to be insuring more individuals in 1919 than during the war. Baldwin attributed this phenomenon to the retention of larger companies with higher employment as compared to more numerous smaller companies with fewer employees – many of which went bankrupt or left the fund. Baldwin also claimed Connor unfairly attacked the fund’s ability to grow since the State Insurance Fund had only five years of experience versus the decades of experience found in private sector insurance companies. In some areas Baldwin specifically stated Connor’s report read the facts wrong or engaged in falsehoods.72

In three key areas of contention Baldwin very strongly defended his employees and the state fund: medical systems, the Wynkoop company (a workmen’s compensation management firm), and payments of dividends. Baldwin defended the fund’s use of specially chosen physicians as a means to keep costs down. Baldwin expressed little regard for doctors chosen by other sources stating they simply did not have the expertise to act as workmen’s compensation doctors or they favored the claimants unfairly. Baldwin stood by his characterization of his medical staff as superior to any others saying ‘it is impossible to satisfy everybody.” As for the Wynkoop firm and its questionable practices of negotiating settlements, splitting the premiums savings with clients,

providing safety training the state could provide for free, and getting so-called “tips” from fund staff to determine what clients would be open to Wynkoop services, Baldwin either simply denied any improprieties or praised the partnership. Baldwin openly stated that Wynkoop brought in new clients and helped the fund. Baldwin even defended the gift of an automobile to a staffer from Wynkoop as a private matter and not a gift to be construed as a bribe. Lastly, Baldwin claimed the recently announced dividend of 10% on general classes exemplified the financial soundness of the fund, stating if Connor had his way he would bankrupt the fund through improvident dividends with little regard to the fund’s long-term future.73

Baldwin characterized the Moreland Act investigation as “unscrupulous” and full of “misrepresentations.” Although Baldwin said he “welcomed” another investigation, he said the fund had been investigated enough and the agency lacked the adequate force to conduct another one. Clearly Baldwin wanted the State Industrial Commission to agree that the fund operated on a sound fiscal basis – even offering a modest dividend for the first time in five years. By stressing the smallness of the issues involving staff and finances, and characterizing many as insignificant or erroneous, Baldwin claimed several items could be addressed internally, if needing any attention at all.74

Though the Industrial Commission initially sided with Baldwin and supported his contentions, the letter of support came only one week after Baldwin’s response to Connor – very little time to digest the State Insurance Fund’s (Baldwin’s) month-long internal


investigation and Connor’s own report of May 1919. The Industrial Commissioners agreed to implement all of Connor’s recommendations to the extent possible since they stated that some were “at variance with the facts.” The Commission’s initial support for Baldwin had the contrary effect on Connor who quickly attempted to sway the Governor and the Commission to his characterization of the workmen’s compensation system and state fund as deeply in need of reform. Connor’s belief that Baldwin not only mismanaged the State Insurance Fund, but now also attempted to mislead the Industrial Commission by reporting that the Moreland investigation had the facts wrong in a number of serious areas including bribery, collusion, mismanagement of state money, and favoritism in medical systems and special rating pools apparently spurred Connor’s desire to undertake an expanded inquiry.\(^7^5\)

The support of Baldwin from the Commission seemingly placed Moreland Act Commissioner Jeremiah Connor and Smith’s Democratic allies on the State Industrial Commission, Mitchell, Perkins, and Lynch, on opposite sides.\(^7^6\) Chairman Mitchell wrote to Governor Smith stating his department had been receiving numerous requests for copies of its response to Connor’s preliminary report. Mitchell urged the Governor to commence printing the document in order that the commission may disseminate the official departmental response at once. Mitchell further informed the Governor that the Central Federated Union of Greater New York recently appointed a committee to investigate the workmen’s compensation issues – a development that would risk placing

\(^7^5\) *Answer of the State Industrial Commission to the Report of Jeremiah F. Connor, 1919*, 17.

\(^7^6\) *Answer of the State Industrial Commission to the Report of Jeremiah F. Connor, 1919*, 3-17. The Commissioners wrote in answer to both Governor Smith’s letter of June 7, 1919 transmitting Connor’s report to them and fund manager F. Spencer Baldwin’s answer to Commissioner Connor dated July 2, 1919. The Commission’s support letter for Baldwin and the State Insurance Fund is dated July 9, 1919.
the administration at odds with labor.\textsuperscript{77} Even prior to the response from Baldwin, Bernard Shientag, the new Counsel to the Industrial Commission appointed on May 1, corresponded with Smith about some of the matters being investigated by Connor.\textsuperscript{78} Shientag, a personal friend of the Governor, and former counsel to the Factory Investigation Commission, eagerly sought a meeting with Governor Smith in early June to discuss a variety of matters pertaining to the investigation. For the month of July it appeared that the Governor faced a dilemma regarding his investigation of the State Industrial Commission by a trusted and renowned jurist (Connor) and the operation of the Commission by his fellow Democrats – one of whom (Perkins) he just appointed. Smith had to find a way to investigate the fund and root out any problems without ruining the reputation of the workmen’s compensation system and risk losing clients. Further, Smith did not want to look as if he was attacking the fund merely to fire Republicans, and he surely did not want to damage the Democrats who only recently took over the helm of the Commission – even though they initially backed the rather apologetic response from the embattled fund manager Spencer Baldwin.\textsuperscript{79}

\textsuperscript{77} John Mitchell to Alfred E. Smith, July 17, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36. The delay in printing the Commission’s response later drew complaints from those being investigated by Connor due to the appearance – if not fact – that the Governor wanted to downplay the Commission’s initial support for Baldwin.

\textsuperscript{78} Bernard Shientag had a very extensive legal and governmental career up to his appointment as Counsel to the State Industrial Commission. A graduate of City College of New York (1904) and Columbia Law School (1908) he practiced law with the prominent jurist Abe Elkus. Shientag served as assistant counsel to Elkus on the Factory Investigation Commission (1911-1915), assistant to State Senate Leader Robert Wagner (1913), and assistant to the president of the New York City Board of Alderman, Alfred E. Smith (1918).

\textsuperscript{79} Bernard Shientag to Alfred E. Smith, June 5, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 133, 260-36.
In July Connor repeatedly met with Governor Smith and outlined his next steps in his investigation in light of the response from Baldwin. At the same time Connor and Smith also repeatedly consulted with Miles Dawson in order to get his expert opinion and discuss the possibility of securing his actuarial services for the investigation. Dawson’s experience in insurance matters included investigations of the Ohio and Pennsylvania insurance funds, several books on insurance, and work on the Armstrong Insurance Investigation in 1905 and 1906 under Charles Evans Hughes. Dawson provided Governor Smith with a tremendous wealth of objective advice based on his years of insurance investigatory work, on-going discussions with Connor, and review of the reports pertaining to the investigation to-date. Dawson stated as early as April 23, 1919 that he would consider it “an honor, a privilege, and a pleasure to co-operate with” Governor Smith to “undertake a careful and painstaking study of the transactions and conditions of the State Insurance Fund.” In early June Dawson wrote to Governor Smith candidly summarizing his various telephone discussions with Connor stating the investigations had unearthed “conditions very distressing and exceedingly serious” at the state fund. Dawson advised the governor that

from a political standpoint, there is no advantage to either party in suppressing the facts or in causing injury to result to the institution because of the shortcomings of men. The State Fund was founded by a democratic administration and its head appointed by that party. The next man to the head likewise was a democratic appointment, with some

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81 Miles Dawson to Alfred E. Smith, April 23, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
political complications. The two men who have counted most as regards the State Fund in the Commission are Mr. Lynch, a thorough-going democrat, and Mr. Mitchell, a man with democratic leanings, though for a time a member of the progressive party. On the other hand, of course, for several years the Commission has been predominantly republican. So neither party is free from being implicated and neither is wholly responsible.  

Dawson stated he opposed “some of the features which have attracted Mr. Connor’s special notice” though he reminded Governor Smith that he (Dawson) has “no personal axe to grind,” rather, his only desire being to use the investigation to benefit the administration. Dawson informed the Governor that he would await his decision as to whether he would be appointed to the investigation.  

The candor of Dawson’s letter apparently resonated with Governor Smith. In early August, after Connor and the Governor’s staff had ample time to dissect Baldwin’s response and agreed to pursue a third investigation of the State Insurance Fund, Governor Smith finalized his negotiations with Dawson. Dawson finally received his appointment on August 7, 1919.  

82 Miles Dawson to Alfred E. Smith, June 2, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.  

83 Miles Dawson to Alfred E. Smith, June 2, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.  

84 New York Times, August 8, 1919.
under Governor Smith (three, with a fourth beginning only two days after one investigation officially ended).\textsuperscript{85}

After months of investigation, rebuttals, and speculation regarding the State Insurance Fund and its oversight, Dawson began his actuarial investigation in August 1919. Reporting to Governor Smith that he was “deeply into the investigation of the State Insurance Fund and [had] already turned up some exceedingly startling things,” Dawson and his staff reviewed materials prior to a planned series of public hearings to ascertain the true status of the state fund.\textsuperscript{86} Connor likewise wrote to Smith stating that Dawson had made great progress in determining “the exact conditions” of the State Insurance Fund. Connor informed the Governor that public hearings would commence in September 1919 following which a final report could be expected by November 1, 1919. In the meantime Connor relayed to the Governor the grave nature of underpayments to claimants beyond those found under the settlement system. Connor promised a complete record though he thought the Governor might want to use some of preliminary information “in connection with your [Smith’s] address before the State Federation of

\textsuperscript{85} Governor John Dix apparently had three separate Moreland Act Investigations underway at two different points during his administration: March-April-May 1911 and August-September 1912. The activity of these investigations is based on the date of appointment and the release of a final report. However, in the case of Governor Dix, his two investigations under Commissioner Dawes did not release final reports until 1914 after both Dix and his successor, Governor William Sulzer, left office. The issuance of reports after an appointing governor has left office does not seem to violate the understanding of the powers of the commissioners under the Moreland Act if the work was completed under the governor who issued the commission. However, work of a Moreland Act investigation ceases after the appointing governor leaves office unless the commission is continued under a succeeding chief executive.

\textsuperscript{86} Miles Dawson to Alfred E. Smith, September 5, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
Labor.” Once again Connor attempted to assist Smith and his investigation by reaching out to organized labor by portraying the investigation as favorable to the working man.  

In early September Smith lost an ally on the Industrial Board, and labor generally, when Chairman John Mitchell died in a New York City hospital. A few days later Connors opened his public hearings in New York City Hall. In his opening statement as counsel, Dawson noted “neither witnesses or parties are entitled to be represented by counsel or take part in proceeding” and all evidence and witnesses must come first before the counsel, “otherwise a hearing of this sort will be likely to denigrate into a mere squabble or contest.” Dawson assumed the lead role in questioning witnesses and introducing evidence.

On the first day of the hearings (September 17), the Wynkoop Service Company, a vendor that had benefited greatly in the workmen’s compensation system under Baldwin, submitted a letter complaining about the investigation. The letter officially protested the delay in disseminating Baldwin’s July 2, 1919 letter refuting Connor’s initial findings. Wynkoop claimed a conspiracy since the letter initially garnered the

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87 Jeremiah Connor to Alfred E. Smith, August 22, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

88 As further evidence of Smith’s close cooperation with Connor and Dawson, on August 23, 1919 Connor wrote to James Parson, Counsel to the Governor, requesting he review the “form of subpoena” Connor planned to use in the investigation. Parson approved the form but also sent Connor copies of subpoenas “used in times past.” Jeremiah Connor to James Dawson, August 23, 1919, James Dawson to Jeremiah Connor, August 26, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

support of the Industrial Commission, though now the Governor and Moreland Act investigation would not release it. Wynkoop stated that such a withholding of the letter caused “great damage” to his reputation without the “opportunity to officially disprove or rebut” these allegations.\footnote{State Industrial Commission Hearing, 1919, 120-124.} Wynkoop also protested his lack of counsel under the investigation – a privilege not afforded witnesses in such proceedings. Wynkoop “demand[ed] the right of representation by counsel, and the opportunity to publicly answer and refute any charges made.” Wynkoop specifically noted his objections to the investigation’s limitations on his “right to introduce evidence” pertaining to the “suppressed” report.\footnote{State Industrial Commission Hearing, 1919, 121-122.}

Dawson addressed Wynkoop’s concerns by stating in a letter read into the proceedings that the Commissioner would, “as the occasion arise, pass upon the request of any person, whether submitted by Counsel or otherwise, that certain testimony be offered,” if it “pertinent to the Investigation.” As for the response by Baldwin and the Chairman of the Industrial Commission so eagerly sought by Wynkoop for public consumption, Dawson stated it would be “spread upon the record in full during the progress of the hearing.”\footnote{State Industrial Commission Hearing, 1919, 123-124.} Basically, Dawson stated that Wynkoop would be afforded no special privileges and evidence including the Baldwin rebuttal would be addressed when the investigation deemed it relevant.

The hearings lasted just over a month with several dozen witnesses called to testify in the investigation. The hearings proved sensational with Connor and Dawson
exposing numerous crimes at the state fund including bribery, gambling, “shake downs,” collusion with favored companies for inside information (“tipping off”), special fund groups for favored clients, and a network of “runners” who misled injured workers in order to gain kick-backs after settlements were made.\textsuperscript{93} Throughout the hearings the New York County district attorney presented evidence to a grand jury which resulted in several indictments of fund employees on charges of graft.\textsuperscript{94} After only one week of testimony George Van Namee wrote to Connor stating

Now you are doing something. You received more publicity in two hearings than you did for all the rest of the reports put together. Keep at it and you will do a lot of good. I want to congratulate you on the information you have brought out. We hear lots of it up here in Albany.\textsuperscript{95}

Connor revealed an intricate system under which employees of the fund reviewed files to find when certain injured workers would appear before hearing officers to determine what they were entitled to under a “final adjustment” – a hearing to award lump sums to the injured akin to settlements. Connor identified at least nine employees involved in a graft ring under which they approached injured workers and offered to help them secure a large “lump sum” in return for a pay-off, sometimes as high as \textit{50\%} of the final award. These unsuspecting claimants erroneously believed they needed the assistance of these employees and accepted their advice not realizing they had no need for them and were

\textsuperscript{93} \textit{State Industrial Commission Hearing, 1919}, 140-141 (runners), 240 (inside information), 250, 261, (tipping off), 270-275 (bribery), 625-627 (confidential records disclosed), 1038-1043 (special groups), 1232-1240 (settlement system).


\textsuperscript{95} George Van Namee to Jeremiah Connor, September 22, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
essentially giving away their settlements for no additional services. After the awards these fund employees helped the claimants cash the checks with a friendly banker at which time they pressured the injured worker for a percentage. In some cases the “shake downs” amounted to over $1,000 of a $3,000 settlement. The fund employees would then share the money between the members of the graft ring. In order to find ways to maximize the settlements one employee even coached injured workers on how to testify in front of the state hearings and what to say to physicians assigned to give medical reports. Connor stated for the record “this system of graft sprang up early in the year 1918” and is largely attributable to crooked employees taking advantage of both the settlement clause and the custom of granting lump sums under “final adjustment.”

In addition to this ring of grafters, Connor uncovered a system of “runners” similar to the system established by corrupt state employees seeking cuts of lump sums. These “runners” milled about the hearings in the hope of finding unsuspecting injured workers not aware of their rights, and under a system similar to the “shake down” ring of state employees, offered to stand with the claimants before the hearing making it appear that they were the party responsible for final settlements. In many cases state employees derided the presence of runners “making themselves at home” in the fund offices. Connor likened the runner system to “ambulance chasing” lawyers. When questioned on reports of corruption involving defrauding injured workers by Connor fund manager Spencer Baldwin claimed he investigated but dropped the issue when all he could find were

“rumors to back them up.” Baldwin also failed to bring the charges to the attention of the State Industrial Commission.\textsuperscript{97}

Connor questioned Spencer Baldwin repeatedly about his connection with the Wynkoop Company and its dealings with the state fund. Connor found that on at least one occasion records proved Baldwin had allowed officials from the Wynkoop Company to both review the files of a client of the State Insurance Fund and leave the building with the client’s file. Upon further probing Connor found that the Wynkoop Company hired a key employee, R.T. Black, who had access to privileged information on state fund clients. This enabled the Wynkoop Company to capitalize on Black’s knowledge of the records, dividends, groups, history, and injury records of hundreds of state fund clients. Wynkoop would then approach these companies and offer their services in safety, consulting, and workmen’s compensation program management, in order to attempt to lower their premiums. Once premiums were lowered Wynkoop would split the savings with clients fifty-fifty. In addition to the charges already made in May by Connor that the Wynkoop Company pressured injured workers to accept small settlements in an effort to keep premiums low, the company also benefited from a series of shady practices such as collecting premiums from clients but delaying payments to the State Insurance Fund, pressuring the fund for the creation of special rating groups without approval of the full Commission, bribes of fund staff to lower premiums, and access to staff and records not provided to other fund customers.\textsuperscript{98}

\textsuperscript{97} New York Times, September 19, 1919, October 9, 1919; Connor Final Report, 1919, 17-19, 35; State Industrial Commission Hearing, 1919, 1066-1067.

\textsuperscript{98} New York Times, September 25, 1919, September 26, 1919, October 2, 1919; Connor Final Report, 1919, 17, 35-40.
Connor’s harshest criticism in his final report centered on Baldwin and the “loose management” style of the fund staff. With the benefit of testimony from various fund employees – including Baldwin – Connor provided corroborating witnesses and evidence. Connor revealed that the employee who gained from the gift of an automobile from the Wynkoop Company – an issue revealed in May yet not attributed to an employee - was none other than Baldwin himself who accepted the gift on behalf of his wife. Baldwin claimed he cleared the gift with the then chairman, John Mitchell, who died in early September and thus could not corroborate the claim.\footnote{State Industrial Commission Hearing, 1919, 1944-1950.} In defense of his gift of a car to Baldwin (actually Baldwin’s wife), Wynkoop stated to the \textit{New York Evening Sun} that Chairman Mitchell had been made aware of the gift prior to its receipt by Baldwin. In the same letters to the press explaining the gift of the car, Wynkoop also denied any financial connection to the fund, any improper gifts to fund employees, and no special favors from state employees. However, Connor presented testimony from Mitchell’s secretary refuting the timing of the gift claiming Mitchell was informed of the gift after it was made not before as Baldwin and Wynkoop claimed.\footnote{State Industrial Commission Hearing, 1919, 1944-1948.} Additionally, Baldwin accepted loans, favors, and gifts valued at over $113,000 from the Wynkoop Company. Connor revealed numerous other gifts of cars, tires, and money from Wynkoop and the Window Cleaners Protective Association to fund employees including one to the chief medical advisor.\footnote{Connor Final Report, 1919, 17, 36, 41; New York Times, September 20, 1919.}
Connor uncovered several brazen cases of corruption involving one Deputy Commissioner and several staffers in the Fund Manager’s office. Connor discovered that the secretary-treasurer for the International Tunnel Workers’ Union whose job it was to represent his union members before hearings also worked as a “runner” before Deputy Commissioner Thomas Curtis, incidentally the president of the same union. Upon questioning, the union representative claimed his president (the Deputy Commission) was aware of the “presents” from members of the union for his services, usually 10% of each award. Additionally, once Connor revealed that Baldwin’s secretary actively pressured fund employees for campaign contributions to the Republican Party in the fall of 1918 the employee disappeared and could not be located for several weeks. The missing employee was later “discovered” in Portland, Oregon. Upon questioning staff also revealed that former Industrial Commissioner Louis Wiard (a Republican) also participated in the political campaign donation scheme. Connor also criticized the medical system run by Dr. Meyer Wolff. This system denied workers their own physician or any other physician not approved by Dr. Meyer and came under criticism by the Medical Society. This monopolistic scenario netted Dr. Wolff’s practice in excess of $75,000 over the past eighteen months for services Connor claimed treated injured workers very poorly.

A few days after he ended his public hearings, and while he prepared his final report, Connor wrote to Governor Smith stating “that under Governor Whitman’s...
administration, commencing in early 1918, a system of graft grew up in connection with handling the State insurance fund cases.” Connor also stated the “investigation became so much broader and the hearings took” much “more time than we contemplated.” As he did during many stages of his investigation Connor again requested a meeting with Smith to review information. Connor also stated some of his recommendations in his upcoming final report would lend themselves to legislation.106

On November 15, 1919, after a full month of investigation and numerous indictments by the grand jury, Connor and Dawson issued a final report to Governor Smith.107 The report reaffirmed Connor’s findings from March (direct settlement), May (dysfunction within the State Insurance Fund), and refuted Baldwin’s July response to Connor’s preliminary report. With the assistance of Dawson, Connor compiled over 2,700 pages of testimony from dozens of witnesses, along with 290 exhibits, focused on the need for a complete overhaul of the State Insurance Fund.108

Connor took pains to state he believed the Industrial Commissioners “honest, efficient public servants.”109 Connor and Dawson also stated that the fund itself, while in need of “stricter general management,” had adequate reserves and sound insurance.110 During the testimony Connor seemingly crafted his investigation in such a manner that it

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106 Jeremiah Connor to Alfred E. Smith, October 24, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

107 The report also contained a separate actuarial study issued by Miles Dawson.


110 Connor Final Report, 1919, 72, 77.
fell into two distinct categories: stressing the solvency and soundness of the fund and its operations despite the need for greater scrutiny, and an exposition of those embroiled in the corrupt practices left unchecked by managers. For example, Albert Mowbray, Secretary of the Commission, testified to the absolute soundness of the fund; Acting Commission Chair Edward Lyon claimed Baldwin’s attitude bothered him and he resented the revelations that even the possibility of corruption had not been reported by Baldwin to the board; and Counsel Bernard Shientag and Deputy Commissioner William Archer discussed making workmen’s compensation mandatory as one way to circumvent the laxity of department and industry employees.\footnote{New York Times, October 4, 1919, October 7, 1919, October 17, 1919.} Commission Chair Lyon complained that Baldwin’s performance would result in a loss of business for the state Fund.\footnote{State Industrial Commission Hearing, 1919, 2200-2205, 2219, 2290-2297.}

Connor kept the State Industrial Commission from blame by stating in his final report that the Commission’s initial reply defending Baldwin “was based almost entirely upon a report made to the Commission by the manager of the State Insurance Fund, which…is full of misstatements and deception.” Commissioner Sayer stated that the report from the Commission was based almost entirely on what Baldwin presented to the Commission. In other words, very little additional investigation had been undertaken by the Commissioners.\footnote{State Industrial Commission Hearing, 1919, 551-552.} When questioned by Dawson and Connor Commissioners Lynch, Sayer, Lyon, and Perkins reversed their initial support of Baldwin as expressed in their letter to Governor Smith accompanying Baldwin’s report of July 2, 1919. Both
Commissioners Lynch and Perkins stated the Commission would correct its letter and resubmit it to the Governor as a result of the hearing.\footnote{State Industrial Commission Hearing, 1919, 1522, 1528, 2545, 2583-2584.}

Basically, Connor argued, it was not the Commission’s fault that the State Insurance Fund had decayed, but rather the fault of a poor manager who had deceived the Commission.\footnote{Connor Final Report, 1919, 29.} This deception had resulted in approximately $5 million in lost compensation to injured workers; a department plagued by gambling, extortion, bribery; collusion between fund employees and favored companies and individuals to the detriment of injured workers; about 15,000 employers not carrying mandatory insurance; and, a tremendous loss of confidence in the fund by the public.\footnote{Connor Final Report, 1919, 16-22, 43-46, New York Times, December 1, 1919.} Even Associated Industries, often times a critic of the investigation, admitted that the investigation yielded little to condemn the Commission or the Democratic Party generally. However, added Associated Industries, the Commission should not be commended for the “manner in which [it] has done business.”\footnote{“The Industrial Commission,” The Monitor, Vol. 6, No. 6 (November 1919), 17-18.}

Connor and Dawson also proved that Baldwin and his actuary attempted to fool the State Industrial Commission and the Governor by stating in a July 19, 1919 letter that the New York workmen’s compensation system rates were lower than Ohio’s in an attempt to prove better management by New York State fund managers. Upon inspection, Dawson and Connor proved that the states had comparable compensation and benefit
payments but New York, not Ohio, cost more to administer. Once again, Baldwin’s management and fiscal oversight seemed questionable.\textsuperscript{118}

To attempt to separate the good aspects of the fund from the crimes uncovered, Connor focused on two major problems at the fund. First, Connor exposed a culture of corruption centering on the settlement clause and the final adjustments (lump sums) under which a cadre of unchecked corrupt state employees perpetuated a system of fraud thus cheating injured workers from their just compensation. Second, Connor detailed wholesale mismanagement at the fund and the employment of extremely poor business practices from the manager of the fund downward through subordinate staff. Connor condemned Baldwin for lax oversight of staff and failure to root out corruption. Connor also accused Baldwin of corruption, acceptance of bribes, and participation in questionable business decisions.

To correct the system Connor issued 27 recommendations: 15 requiring legislative changes, 12 designed to reorganize the fund through action by the Commission.\textsuperscript{119} The amendments to the compensation law included the elimination of “runners”, an additional deputy commission in charge of death claims, extending the time for filing claims an additional year, use of panels of physicians for claims, granting speedy hearings on death claims, increasing compensation benefits generally, creating an industry advisory board, and several fund and reserve requirements for private carriers. Internal operational changes included defined procedural limits on lump sums and final settlements, mandatory hearings of all cases whether under state or private coverage, a

\begin{footnotes}
\item[118] Connor Final Report, 1919, Exhibit B, 49-58.
\item[119] Connor Final Report, 1919, 16-22, 43-46.
\end{footnotes}
rehearing of certain special group claims, medical advisors at each regional office, revamping of the entire medical division, rehearing of denied claims by Commissioners as opposed to staffers, overhaul of the check issuance system, strict reconciliation of all funds, an annual accounting review, and the elimination of all profit-making institutions such as the Wynkoop Company and Wolff Medical Services from the fund.\textsuperscript{120}

The subject of much of Connor’s report, Spencer Baldwin, announced on November 20, only a few days after Connor released his final report, that he would resign effective December 31, 1919. Baldwin released a statement to the press on December 28 blasting the investigation and Connor’s methods. Baldwin called Connor’s report “a scandal and reproach” claiming the attempts to blame him for employee graft and the abuse of the settlement as “maliciously unfair.” Baldwin also continued to claim that Wynkoop Company and Wolff Medical Service served a good purpose bringing in additional business for the fund. Though the report unearthed serious problems and criminal activity, Baldwin painted the entire investigation as an “inquisition” fostered by “stool pigeons.” Baldwin predicted it would take “extraordinary resourcefulness on the part of the management to repair the losses inflicted” by Connor’s report.” Baldwin seemingly blamed the investigation – not the problems unearthed – as the reason why the fund faced an angry public.\textsuperscript{121}

Wynkoop also lambasted the investigation in late October by releasing a copy of the Industrial Commission’s letter accompanying Baldwin’s response of July 2, 1919. Released to correspond with Connor’s final report, Wynkoop attempted to use the


\textsuperscript{121} \textit{New York Times}, December 29, 1919.
Commission’s initial support but, since reversed, to discredit Connor. Wynkoop also questioned the legality of Connor’s investigation under the Moreland Act by stating that “no authority is conferred by the act to investigate any private business.” Wynkoop also wrote to Mark Daly of Associated Industries on December 17 proclaiming the “incompleteness” of Connor’s report and seeking the help of his “very important organization” in publishing his side of the story in \textit{The Monitor}. Wynkoop did not “characterize the conclusions of the report” or deny any of the issues directly involving him such as bribery, however, Wynkoop condemned Connor for not allowing his side of the story into the record. Wynkoop also hinted at collusion between the Governor and Connor for not releasing the Industrial Commission’s July 1919 letter of support for Baldwin until November. Daly and Associated Industries printed Wynkoop’s letter and that of the Industrial Commission’s from July (since refuted by the Commission), but \textit{The Monitor} offered no editorial support for Wynkoop.

Baldwin’s and the Wynkoop Company’s objections failed to make any noticeable impact on the investigation. By the time he released his report Connor made sure to explain the Commission’s misplaced faith in Baldwin. The Commission, under Temporary Chairman Edward Lyon, had even written to Governor Smith stating it would

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124 \textit{The Monitor} was the official monthly publication of Associated Industries.

cooperate with both Connor and the New York County District Attorney “in any proceeding.” By the time Connor began drafting his final report Connor had the full assistance of the Commission, the New York County District Attorney, and the Governor. In late November Connor claimed “all the matters connected with the investigation are now closed up with the exception” of billing issues.\footnote{Edward Payn to Alfred E. Smith, September 19, 1919, Jeremiah Connor to George Van Namee, November 28, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.}

Two weeks after accepting the report Governor Smith released it to the public in early December 1919. Connor worked with the press and the Governor’s office to craft a news release to highlight the success of the investigation. In one case Connor worked with the political editor of the \textit{New York Morning Telegraph} prior to release of the report on a ten-plus page summation to be released upon approval of Secretary to the Governor George Van Namee.\footnote{Edward Staats Luther to George Van Namee, undated letter most likely November 26, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36. Since the Governor’s office received the report on November 17, 1919 but did not release it to the public until November 30, 1919 the letter from Luther to Van Namee stating the date as “Wednesday morning” is most likely Wednesday, November 26, 1919, just before the release date of Sunday, November 30. The letter also seems to be the one referenced in Jeremiah Connor to George Graves, November 26, 1919 stating Mr. Luther would mail you a copy of his “digest of the report” which you will receive sometime today [November 26, 1919].} Connor also requested the report be sent to over 3,000 people accompanied by a “short letter” from Governor Smith soliciting “their comments” with the postage to be covered by the investigation.\footnote{Jeremiah Connor to George Van Namee, December 2, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.} Though it is unclear if the Governor fulfilled this request, the Governor called all of the members of the Industrial
Commission and Bernard Shientag to the Executive Mansion on December 10, 1919 to review the report and “discuss it in a plain business way.”

As the report became public, organized labor and individual labor unions pressed the governor’s office to expand the Moreland Act investigation of the State Insurance Fund to private sector insurance carriers offering workmen’s compensation coverage. Writing at the request of the New York State Federation of Labor and the Central Federated Union of New York City, the unions wanted the Governor to investigate every carrier of workmen’s compensation in order to ascertain if similar occasions of “extortion” and corruption existed in private insurance. Additionally, the unions asked for a comparison of the compensation premium rates of New York State compared with Ohio with the desire to adopt state fund coverage similar to Ohio. If the premium rates proved lower in Ohio than in New York’s after the compilation of necessary data, labor wanted to see New York adopt mandatory state-sponsored and administered workmen’s compensation insurance.

Connor addressed the union letters almost at once desiring to end the speculation that his investigation did not address the issues deemed important to the unions. Connor’s


in-depth investigation of many cases – some from stock companies, self-insurers, and mutual companies – found that only one case involved a non-state fund claim. Despite this one minor case, Connor stated that “no organized system of graft exists in connection with claim agents of insurance companies and self-insurers.” Connor took great pain to reassure labor that the investigation rooted out the problems and the workmen’s compensation system was safe.\textsuperscript{131}

George Van Namee coordinated his response to the letters with Commissioner Connor. Van Namee noted any further exploration of private insurance companies would have to be undertaken by the legislature, not the Governor.\textsuperscript{132} Connor told the Governor the best way to answer these letters was to send each petitioner a copy of Connor’s final report, state that the issues the unions wished to have addressed have “already been thoroughly investigated.” Again, Connor wanted to spare the reputation of workmen’s

\textsuperscript{131} Connor Final Report, 1919, Exhibit B, 53-54, Jeremiah F. Connor to Ernest Bohm, Corresponding Secretary, Central Federated Union, New York City, November 14, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

\textsuperscript{132} George Van Namee to Hugh Hackett, Secretary of the Cigarmakers International Union of America, December 4, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36. Van Namee volunteered his belief that the Moreland Act limited the Governor’s power of investigation into the private sector.

I would call your attention, however, to the fact that that (sic) part of your resolutions which call for the Governor to direct his investigating commission to make a full and complete inquiry into the affairs of the stock companies especially in relation to possible conspiracy to extort, and in relation to the activities of claims agents, is a subject of investigation wholly without the limits allowed by the Moreland Act, under which the Commissioner of the Governor is acting.

The Moreland Act, which is Section 8 of the Executive Law, only allows investigations of Departments or branches of the government, and would not allow the investigation of stock companies or private enterprises. This can only be done or investigated by a Legislative Committee.
compensation while replacing incompetent employees without engaging the unions in a public debate.\footnote{133} 

After receipt of Connor’s letter outlining his suggestions, George Van Namee added a sentence that explained that such concerns had been investigated and the letters would be forwarded to Mr. Connor and the limits of the Moreland Act.\footnote{134} The issue, though important at the time, faded once Connor assisted Governor Smith in drafting a legislative program for the overhaul of both the State Insurance Fund and the workmen’s compensation law. Much of Smith’s agenda contained programs favorable to labor such as an expansion of compensation benefits. It should be noted, however, that Van Namee’s contention that the governor’s power under the Moreland Act was severely constrained in its ability to investigate the private sector did not match Connor’s response that his investigation had already followed such a course – even if only on a small scale. Connor’s own words testify to the fact that his investigation, while not focusing on the private sector, did tangentially probe the operations of private sector entities, namely insurance company claims departments and compliance with the workmen’s compensation law. Those found guilty of crimes had been dismissed from office and prosecuted by local district attorneys.

After they issued their final report in late 1919 both Connor and Dawson continued to work with Governor Smith and his staff well into 1920. Governor Smith

\footnote{133} Jeremiah F. Conner to Carpenters & Joiners Union of Gloversville, N.Y., December 8, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.

\footnote{134} George Van Namee to Frank Giroux, Secretary, Journey barbers Union, New York City, December 11, 1919, George Van Namee to Alice M. Chase, Recording Secretary, Brotherhood of Railway Clerks, Troy, N.Y., December 22, 1919, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 132, 260-36.
asked Dawson for his professional opinion on personnel within the State Insurance Fund. In response to the Governor’s request Dawson wrote to Smith on December 20, 1919 submitting, “as requested… suggestions of who might be considered in connection with the management of the State Insurance Fund.” After Baldwin’s departure Dawson reported that a number of employees were “dissatisfied” with both the low pay and the lack of promotions. Dawson singled out George Mowbray, the actuary, for promotion. Dawson stated that the fund required full-time dedicated employees – something lacking in the past due to the laxity in the performance of duties. Dawson also revealed in his letter that Governor Smith had been seeking “a manufacturer upstate, Republican in politics.” Ironically, Dawson suggested Edward Barcalo of Buffalo, the President of Associated Industries. Dawson also mentioned an alternate business choice for the Commission and a slate of candidates from various backgrounds such as the New York State Insurance Department, private insurance companies, and insurance officials from both Ohio and Pennsylvania. Dawson also highly recommended Deputy Commissioner William Archer from the fund as a good choice. With a clear majority of Democrats in control of the State Industrial Commission, loyal staff such as Shientag and William Archer at the state insurance fund, and new employees being hired to replace those fired or indicted, Smith began to reshape the department. The administrative changes suggested by Connor found a sympathetic hearing within the revamped department.

In mid-January 1920 Governor Smith laid out his workmen’s compensation legislative program. In addition to Connor’s final report, Smith sent the legislature

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recommendations based on the investigation and input from the Industrial Commission. Smith stated that the State Industrial Commission had already begun addressing “recommendations in relation to procedure and reorganization of [its] departments.”

Smith closely mirrored the changes suggested by Connor and charged Bernard Shientag, Counsel to the State Industrial Commission, with drafting the new amendments. Shientag completed his draft in late January 1920 and reviewed the program with Connor, Dawson, and the Industrial Commission.136 On April 2, 1920 during the latter part of the legislative session Governor Smith appointed Jeremiah F. Connor Secretary to the Governor upon the resignation of George Van Namee, recently appointed to the Public Service Commission. Connor’s appointment placed the former Moreland Act commissioner in the role of chief of staff and top policy advisor to the governor from which position he exerted great influence over the governor’s legislative program, particularly workmen’s compensation.137

The legislative session of 1920 witnessed two controversial events that would influence Governor Smith’s legislative program. The first involved the expulsion of the Socialist members of the Assembly; the second involved a fierce battle between the League of Women Voters and Associated Industries, particularly its lobbyist, Mark Daly. The Red Scare only tangentially impacted Smith due it creating an opportunity for the


137 George Van Namee served as Secretary to the Governor from January 1, 1919 through April 2, 1920. Jeremiah F. Connor served as Secretary to the Governor from April 2, 1920 through December 31, 1920.
Republican Party and the business lobby to link much of Smith’s labor and social welfare legislation to socialism. The growing power of Associated Industries, major allies of the Republican legislative leadership, also created a drag on Smith’s labor program by using “pseudo-patriotic propaganda” to paint social welfare and labor legislation as “undesirable.” Daly and Associated Industries supported the New York League for Americanism, a shadowy propaganda organization with ties to the insurance lobby that actively lobbied to curtail labor legislation and workmen’s compensation in the name of anti-socialism. The League of Women Voter’s report on the “Daly Lobby” in 1920 brought to light the connection between Associated Industries, the Republican Party, the League for Americanism, and the Red Scare.\footnote{Belle Zeller, \textit{Pressure Politics in New York}, 51-53, 274; \textit{Report and Protest to the Governor, Legislature and the People of the State of New York, Danger Confronting Popular Government, The Daly Lobby and Propaganda and the So-called New York League for Americanism} (New York: Published by the New York State League of Women Voters, March 1920), 3-4, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3.}

Smith’s steadfast commitment to social welfare measures and workmen’s compensation despite the “Red Scare” made him one of the few “rational voices” advocating government services increasingly portrayed by conservatives as socialistic.\footnote{Smith, \textit{The Citizen and His Government}, 145-153; David Richard Colburn, “Alfred E. Smith: The First Fifty Years, 1873-1924” (PhD Diss., University of North Carolina at Chapel Hill,1971),146-148.}

The legislative session proved partly successful in the area of workmen’s compensation despite dominance by the Republican Party and the supposed socialism of Smith’s labor program.\footnote{As noted in Chapter 5 Smith stated the1920 session witnessed of few Smith victories, but Smith witnessed the passage of about half of his workmen’s compensation bills as opposed to the complete failure of his legislative program seeking the restructuring the department of agriculture and the creation of a milk commission.} Of the fourteen changes suggested by Connor and Smith as amendments to the workmen’s compensation law almost one-half were passed into law:

\begin{itemize}
\item \footnote{As noted in Chapter 5 Smith stated the1920 session witnessed of few Smith victories, but Smith witnessed the passage of about half of his workmen’s compensation bills as opposed to the complete failure of his legislative program seeking the restructuring the department of agriculture and the creation of a milk commission.}
the banning of “runners,” a Fourth Deputy Commissioner to rule on death cases, a vested interest and lien provision for claimants in compensation cases, provisions to allow the State Insurance Fund to utilize premiums and other fund moneys to pay operating expenses subject to legislative oversight, and a general increase in compensation and death benefits for survivors. The legislature did not pass the provisions to unify the regulation of stock companies, mutual companies, and self-insurers, to mandate certain reserves and trust fund balances in workmen’s compensation coverage or to expand workmen’s compensation coverage beyond the manufacturing sector. Governor Smith decided not to pursue Dawson’s suggestion to force all companies who failed to carry coverage into the State Insurance Fund thus bringing New York State closer to the Ohio state government monopoly model. Rather, Smith urged further study by the Industrial Commission prior to exploring a compulsory state-operated workmen’s compensation insurance fund. Smith also successfully lobbied for the passage of an additional amendment – not a part of Connor’s report - to broaden workmen’s compensation


142 Governor Smith followed through on his study of a closed system of workmen’s compensation insurance coverage operated by a state fund similar to the State of Ohio. In 1923 Judge Joseph Kellogg, formerly Counsel to the Governor in 1919, undertook a thorough comparison of private workmen’s compensation insurance versus a state fund monopoly. Kellogg concluded that legislation mandating a state monopoly should be opposed for a variety of reason including the sizable network and fiscal reserves of private sector insurance carriers, efficient medical services, qualified agents, and a good safety record. Further, Kellogg stated there would be no ascertainable compensation gain for workers if private carriers were excluded. Joseph Kellogg to Alfred E. Smith, January 31, 1923, Alfred E. Smith to Joseph Kellogg, February 1, 1923, and “Memorandum In Opposition To Propose Legislation To Give The State Fund A Monopoly Of Workmen’s Compensation Insurance, And To exclude Private Carriers From That Field,” Joseph A. Kellogg, January 31, 1923, especially pages 8-15, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Minimum Wage,” Reel 35, 200-20-1.
coverage to include “occupational diseases” thus affording coverage previously denied many industrial workers due to technicalities.\footnote{State of New York Department of Labor Special Bulletin, No. 99, June 1920, New York Labor Laws Enacted in 1920, prepared by the Bureau of Statistics and Information, 5-9; Smith Public Papers, 1920, 68-73, 403-5, 646.}

In addition to passing many of Smith’s workmen’s compensation amendments the legislature passed a joint resolution establishing a joint Senate-Assembly Committee to “Recodify and Revise Labor Law and Workmen’s Compensation Law.” This committee, chaired by Senator John Knight, spent the next two years studying the structure and function of the Department of Labor. While ostensibly looking to improve the department, the recommendations made, particularly while Smith was out of office, would reshape the department more to the liking of the businessmen and Republicans than labor and Democrats.\footnote{Cumulative Index to Joint Legislative and Selected Temporary State Commissions and Alphabetical List of Chairmen and Vice-Chairmen Thereof, 1900-1950 (The Senate of the State of New York, Albany, 1966), 128.}

Overall, Smith’s appointment of a Moreland Act investigation into the Department of Labor in 1919 can be considered a success and resulted in two major and overarching changes. First, Smith invoked the Moreland Act to successfully highlight problems in an executive department over which the Governor exercised limited control. Without recourse to the Moreland Act, Governor Smith would not have been able to investigate and suggest solutions for reform. Second, the investigation led to an overhaul of the State Insurance Fund’s administration of the workmen’s compensation program, including the removal or firing of eight employees, four of which were convicted of
The investigation also resulted in the resignation of both the Manager of the State Fund and his assistant, the 1919 overturn of direct settlements, and the enactment of several 1920 statutory amendments increasing the level of benefits for injured workers and survivors. Smith preserved the system of workmen’s compensation while also demonstrating the serious flaws in New York’s executive structure.

1924 - Moreland Act Investigation of Associated Industries

While looking back on the work of the Moreland investigation of 1919 and the legislative changes it brought about, Smith would describe the workmen’s compensation program as being passed by a Democratic Legislature, signed by a Democratic Governor, weakened by a Republican Legislature and Republican Governor, and “strengthened again by the efforts of a Democratic Governor.” However, even as Smith worked to revamp the State Industrial Commission, the Workmen’s Compensation Bureau, and the State Insurance Fund, the seeds for the next major Moreland Act investigation under Governor Smith were sown in the form of disgruntled businessmen upset with increased workmen’s compensation costs and stricter enforcement of the labor laws. Smith’s key opponent in 1924 - in fact, throughout his career as a champion of labor – came from the state’s business lobby, Associated Industries.

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147 *Smith Public Papers, 1920*, 664, 671.
Though Associated Industries claimed it supported the new workmen’s compensation laws passed as a result of Jeremiah Connor’s investigation in 1919, the new changes resulted in at least one large upstate insurance company – probably indicative of the entire industry - to characterize their lower percentage of earnings in 1920 as compared with 1919 as attributable to both Jeremiah Connor’s investigation and the mandated 10% increase in benefits effective May 5, 1920. Governor Smith also found the manufacturers of New York State, as represented by Associated Industries and their lobbyist, Mark Daly, disturbed by the overall cost of workmen’s compensation insurance. In a series of letters between Governor Smith and Associated Industries in July and August 1920 Associated Industries mapped out a plan to investigate the costs of workmen’s compensation. Daly wrote to Smith on July 22, 1920 stating “there is considerable dissatisfaction throughout the state among employers” regarding “premium rates for compensation insurance…when compared with the expense of administration and the loss ratio.” Daly proposed a “thorough and impartial investigation of the entire subject” if they could secure the participation of the state departments, particularly the State Industrial Commission and Insurance Department. Governor Smith agreed and wrote to Associated Industries relaying his support of an investigation and notifying Daly

148 At its Technical Advisory Board meeting on February 19, 1920 the committee voted to oppose legislation increasing compensation rates for injuries and deaths. This recommendation was then presented to the full board at its March 4, 1919 meeting. Meeting Minutes of Associated Industries Board of Directors, March 4, 1919, 1, 6; Agenda: Meeting of the Technical Advisory Board, February 19, 1920, At Syracuse, N.Y.; “Governor Signs Number of Compensation Bills,” The Monitor, Vol. 6, No. 12 (May 1920), 36.

that both Insurance Superintendent Jesse Phillips and Industrial Commission Chairman Edward Boyle would be informed of the Governor’s support for such an investigation.150

Smith’s cordiality with Associated Industries is reflected in a letter from Edward Barcalo, the President of Associated Industries, on August 3, 1920 just after Smith approved of the business lobby’s plan to investigate the costs of workmen’s compensation and ordered his departments to assist. Barcalo wrote to thank Smith for his “fine hospitality” and to assure the Governor that despite “the fortunes of politics” he would continue to work with the administration to address the problems facing business and labor. Smith also received responses from both Commissioner Phillips and Chairman Boyle stating they would assist in the endeavor. Phillips stated his department would “very gladly give the representatives of such Association data showing the basis for the present compensation insurance rates” and any other materials in its possession to assist the inquiry. Likewise, Chairman Boyle responded to Governor Smith stating “I need hardly say that the State Industrial Commission is in entire accord with the spirit and purpose of your reply [to Associated Industries] and stands ready to cooperate unreservedly to the desired end.”151

150 Mark A. Daly to Alfred E. Smith, July 22, 1920; Alfred E. Smith to Mark A. Daly, July 30, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.

In early August 1920 Jeremiah Connor began his active participation in the study and met with Mark Daly and various business leaders to commence planning. At the same time Connor began his meetings with Associated Industries, Industrial Commission counsel Bernard Shientag undertook an aggressive campaign to punish employers who did not comply with mandatory workmen’s compensation coverage. Since late 1919 Shientag had been actively pursuing employers who failed to provide insurance, report injuries, and violated child labor laws. To better handle these violations and avoid local courts—which Shientag often found non-responsive—Shientag developed a system to have first offenses addressed before the Commission. While this action gained the praise of Associated Industries, it also increased the power of the Commission by enabling Shientag to address alleged violation of the labor law much more quickly than did rural, upstate courts often sympathetic to local manufacturers.

However, the early cooperation between Associated Industries and the Smith Administration in July and August 1920 did not last long. In September 1920 Associated Industries editorialized that “the ratio of industrial accidents has increased to an almost unbelievable extent, despite every effort on the part of employers and insurance carriers to check its spread.” Associated Industries partly placed the blame an “excessive and unjustifiable awards under the compensation act” which led to a culture of carelessness in

152 Mark A. Daly to Jeremiah Connor, August 6, 1920; Jeremiah Connor to Mark A. Daly, August 10, 1920, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Industrial Investigation and Commission,” Reel 131, 260-36.


154 “Shientag Attacks Up-State Judiciary For Failure to Co-Operate With Him,” The Monitor, Vol. 6, No. 7 (December 1919), 28.

its members’ factories. Despite claims of good safety and investigating costs of insurance (which it did with the blessing of the state), Associated Industries continued to claim the workers themselves caused an increase in the cost of workmen’s compensation.\textsuperscript{156}

The defeat of Governor Smith in November 1920 led to the formation of an administration more sympathetic to Associated Industries and the business sector. In 1921 newly elected Republican Governor Nathan Miller and the Republican-controlled legislature (partly based on Senator John Knight’s study of labor and workmen’s compensation laws) began a two year restructuring of the Department of Labor yet again.\textsuperscript{157}

The new structure called for an Industrial Commissioner, similar to a commissioner of labor, appointed by the governor and confirmed by the Senate to oversee the department and serve as the executive in charge of the agency. The Industrial Commission (reverting to the name “Industrial Board,”) was retained, though reduced to three members appointed by the governor and confirmed by the Senate. The new board oversaw a variety of labor issues including workmen’s compensation, industrial safety, and the labor codes governing business and industry, however, the Industrial Commissioner would oversee the department. Legislative changes also created a definite division between administrative functions (commissioner) and judicial functions.

\textsuperscript{156} “What is the Cause,” \textit{The Monitor}, Vol. 7, No. 4 (September 1920), 17-18.

(entrusted to the board).\textsuperscript{158} The Workmen’s Compensation Bureau and State Insurance Fund were also separated into two distinct offices.\textsuperscript{159} Drastic cuts in departmental appropriations – and thus personnel - also accompanied the restructuring by Miller. Lastly, and possibly most importantly, the statutory creation of this new department allowed the Republican Party to appoint all new officials to key posts. The restructuring terminated many Democratic office holders, most significantly, all of the Industrial Commissioners appointed by Governor Smith in 1919 and 1920. By the time Smith returned to office in 1923 the department he reformed under his 1919 Moreland Act investigation looked very different, and many of the people appointed by Governor Smith to carry out his legislative changes had been removed.

When Governor Smith returned to office in 1923 he inherited a Department of Labor facing some of the same problems Jeremiah Connor addressed in his 1919 Moreland Act investigation. The troubles festering within the department between 1921 and 1923 came to a head in January 1924 when Associated Industries requested Smith investigate the department yet again. When Associated Industries made public allegations of corruption and mismanagement at the Department of Labor on January 11, 1924, Governor Smith quickly acted. Rather than appoint a commission or have the department undertake an internal inquiry, Smith became the first and only governor to appoint himself a Moreland Act commissioner. Smith’s speedy action also made the investigation

\textsuperscript{158} This split would form part of the problem to be addressed by the Moreland Act investigation under Lindsay Rogers and part of the impetus behind complaints stemming from the Industrial Survey Commission and its research under its survey, \textit{The Workmen’s Compensation Problem in New York State}, 15, 25-27.

into Associated Industries the shortest Moreland Act investigation in New York State history. Smith’s investigation lasted only two days and cost just $660 in expenses.

The investigation vindicated Smith and the labor department, something particularly important for Governor Smith as he advocated a major legislative initiative limiting the hours of employment for women in industry (the forty-eight hour bill). The inquiry revealed the political motives behind Associated Industries’ request for an investigation of the department. Once underway, Smith’s investigation revealed serious missteps by the Miller administration in the operations and budgeting of the workmen’s compensation program during 1921 and 1922 – areas now being addressed by Smith’s appointees after two years of Republican control.

The investigation also exhibited Smith’s strength and decisiveness as governor. As Moreland Act commissioner Smith personally investigated - and publicly chastised - the board of director of the state’s leading business organization for their disingenuous motives, claiming to be reformers under false pretenses. Smith conducted the two day investigation in a controlled manner, almost like a judge presiding over a courtroom. Over the course of two days Smith refuted every one of Associated Industries’ allegations of mismanagement in the department while simultaneously revealing the problems he inherited from Governor Miller after a two year hiatus. Once he completed the inquiry Smith claimed victory stating that the hard work underway by his administration helped reverse the problems inflicted on it by the Republicans.

When the Board of Directors of Associated Industries met on January 10, 1924, Mark Daly, General Secretary of the Association, briefed the board on a bill pending in
the legislature governing the hours of work for women, the so-called forty-eight hour bill, and the issue of workmen’s compensation. The board first discussed the forty-eight hour bill and authorized Daly to “enter into negotiations with the Legislature with instructions to exercise his best judgment to make the best arrangement possible.” The board then “discussed at some length the administration of the Labor and Workmen’s Compensation laws.”

Secretary Daly presented to the board a letter he had drafted requesting Governor Smith appoint an investigation under Section 8 of the Executive Law to examine the administration of the Department of Labor and the Workmen’s Compensation Act. The letter provided eight “reasons” for such an investigation. The letter stated a breakdown in the Department of Labor particularly in the area of workmen’s compensation. Despite an extra appropriations by the 1923 legislature to expedite workmen’s compensation claims thousands of claims were still delayed, despite additional referees cases were handled less promptly, the State Insurance Fund had exceeded its expense ratio in 1923 and would do so again in 1924, and the Industrial Board exceeded its authority in adopting a rule under the Industrial Code. The letter also alleged that politics had interfered with departmental operations and inefficient management would soon cause a public burden if left unchecked. The board appointed a committee to review the letter which Daly then mailed to Governor Smith.

In an obvious effort to embarrass the Governor, Associated Industries also issued a press release that included the letter to Governor Smith, thus insuring wide publicity.

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160 Minutes of Associated Industries, January 10, 1924, 5-7.
161 Minutes of Associated Industries, January 10, 1924, 7-8.
On Monday, January 14, newspapers across New York State began running articles stating that Associated Industries had demanded Governor Smith investigate alleged irregularities plaguing the Department of Labor. The press release also included a political cartoon depicting Governor Smith and Industrial Commissioner Shientag as stranded motorists complaining about an automobile with the words “Department of Labor” on its side. Smith is portrayed as sitting in the car with a cigar in his mouth giving orders to commissioner Shientag. The *New York Evening Telegram* on Monday, January 14 reported Governor Smith had not yet made up his mind about the possibility of an investigation because, as far as he was concerned, he could see nothing amiss. More probably Smith attempted to control the story in light of his surprise by the simultaneous receipt of a letter demanding an investigation of a state agency along with requests from reporters demanding a statement on such an investigation.¹⁶²

By January 15 and 16, the Tuesday and Wednesday following the Associated Industries’ Board meeting of Thursday, January 10, various pro-labor groups and unions also joined the growing fray by defending the Department of Labor. The New York State Federation of Labor’s Committee of [Workmen’s] Compensation, headed by former Deputy Industrial Commissioner Thomas Curtis, stated his organization looked “with a keen sense of humor on the associated industries statement regarding the administration of the State fund.” Curtis claimed that the workmen’s compensation program under Governor Miller greatly reduced state appropriations to administer the program and

Associated Industries had colluded with the private insurance companies “to bulldoze referees” and hinder the program. Under Governor Miller, the labor union argued, the number of referees had declined (due to budget cuts) while the number of cases increased. Various labor groups proposed the creation of an independent inquiry made of up of legislators to probe the operations of Associated Industries and its “powerful lobby at Albany.” Many labor groups also wrote to Governor Smith encouraging him to aggressively defend his department and reply to Associated Industries’ attack. The New York State Federation of Labor claimed the entire matter a “smoke screen” to serve “political purposes” and weaken the Department of Labor now that Commissioner Shientag had begun reversing the decay brought about under Governor Miller.

Governor Smith believed that the request from Associated Industries was an attempt to “becloud labor legislation, which was coming up before the Legislature” in the form of the forty-eight hour bill. The Allied Printing Trades letter of support for Governor Smith and the Department of Labor, echoed Governor Smith’s concerns about Associated Industries’ ulterior motives stating the business lobby has “done everything possible to emasculate the labor laws now on the books.”


164 *New York Times*, January 16, 1924.

165 John B. Andrews to Alfred E. Smith (telegram), January 14, 1924. Mr. Andrews served as the Secretary of the American Association for Labor Legislation; Thomas Curtis to Alfred E. Smith, January 16, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3.


As the debate between labor and business over an investigation into the Department of Labor played out in the press, the controversy resurrected the ire of the League of Women Voters. The League had publicly clashed with Mark Daly over a number of issues particularly the forty-eight hours bill in 1920 and now joined labor in calling for an investigation of Associated Industries. In the legislature pro-labor Democratic Senator Nathan Straus of New York City announced he was considering a legislative resolution calling for an investigation into Associated Industries. Straus gained support from John Fitzgibbons the former Auburn mayor and current union representative for the Brotherhood of Railroad Trainmen in Albany.

On January 16, in the midst of the charges and counter charges by Associated Industries and labor, Governor Smith publicly announced that he would personally undertake the investigation and the inquiry would start with the Board of Directors of Associated Industries. Noting that Section 8 of the Executive Law stipulates that “the governor is authorized at any time, either in person of by one or more person appointed by him” to appoint an investigation, Smith decided to appoint himself commissioner. In several articles appearing on January 16 Governor Smith stated “I find in studying the law that I can conduct the investigations myself or find some one (sic) else to do it. I am going to grant the request of the Associated Industries and I shall be the investigator.”


170 Niagara Falls Gazette, January 16, 1924; Albany Evening Journal, January 16, 1924; Brooklyn Daily Eagle, January 16, 1924.
The Governor’s press release announced that subpoenas had been issued for the entire board of the Associated Industries and its secretary Mark Daly compelling their appearance before an inquiry commencing January 22 at the State Capitol in Albany. The list of those subpoenaed totaled forty-four individuals from every part of New York State.

Governor Smith also wrote to Bernard Shientag, now the Industrial Commissioner (previously the Counsel to the Industrial Commission), requesting his attendance on January 22. Charles Andrews, the Vice Chair of the Advisory Committee of the Workmen’s Compensation Bureau, and Industrial Board member Frances Perkins also wrote to Governor Smith refuting Associated Industries allegations and providing information prior to the hearing.

The speed in which Governor Smith both appointed himself commissioner and issued subpoenas for the appearance of Associated Industries’ board seems to have shocked many of those who were served, some of whom expressed annoyance and anger at having to answer for charges of which they were not aware. Only five days after

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174 Frances Perkins to Alfred E. Smith, January 22, 1924; Charles Andrews to Alfred E. Smith, January 22, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3.

175 *New York Times*, January 17, 1924.
Associated Industries drafted their letter requesting an investigation, Governor Smith ordered county sheriffs throughout New York State to serve subpoenas on the directors of Associated Industries, news of which made some local newspapers that reported on the local board members caught in the “probe.”¹⁷⁶ Some of these directors immediately wrote or called Governor Smith with “bewildered requests” stating they did not attend the meeting of the board on January 10 in Syracuse and had no personal knowledge of the complaints made in their name.¹⁷⁷ The *Gloversville Morning Herald*, representative of many upstate, industrial, small cities, reported that after subpoenas were served “calls began to reach the Capital from front offices in great industrial plants wanting to know why the boss was ordered to appear. The answer back that anyone who knew anything wrong about the labor Department must come forward and prove it.”¹⁷⁸ Governor Smith sent at least one of these request letters – and possibly all of them – to the Attorney General for his review.¹⁷⁹ Deputy Attorney General Edward Griffin responded to J.R. Schoemaker’s letter of January 18, 1919 (of the Hygeia Refrigeration Company) stating

> It is my opinion that your evidence is competent, material and necessary. You will therefore, obey the subpoena, but in view of your engagements,

¹⁷⁶ *Auburn Citizen*, January 17, 1924; *Binghamton Press*, January 15, 1924. Secretary to the Governor George Van Namee, working through Deputy Attorney General Edward Griffin, provided an initial deposit of $200 cash for use in reimbursing county sheriffs mileage for the serving of subpoenas. Bernard Shientag served a number of subpoenas on “the gentlemen with whom he is officially connected.” Deputy Attorney General Edward Griffin to Alfred E. Smith, January 19, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3.

¹⁷⁷ *Watertown Daily Times*, January 21, 1924.

¹⁷⁸ *Gloversville Morning Herald*, January 18, 1924.

¹⁷⁹ Deputy Attorney General Edward Griffin to Alfred E. Smith, January 19, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3. Deputy Attorney General Edward Griffin specifically requested that Governor Smith inform his office as to “who notifies you as to his intention of coming or not coming to the hearing” in order to make his “list complete.”
it gives me pleasure to say that the Governor will take your evidence on Wednesday, January 23, at the hour stated in the subpoena rather than on Tuesday, January 22nd.  

While Governor Smith excused some of the directors who did not attend the January 10, 1919 board of directors’ meeting due to special circumstances, two of the excused individuals stated that in addition to not attending the meeting or having any knowledge of the allegations, they only learned of the board’s letter in the press - not from their own trade association.

Smith also received two letters from Commissioner Shientag prior to the start of the hearing. Shientag wrote to Smith on January 17 complaining about several changes made by the Board of Estimate and Control (the precursor to the budget director) “without consulting” the department and after the Advisory committee approved the submitted budget. The cuts impacted several key members of the audit staff and would hinder Shientag’s department. Ironically Shientag would point to budget cuts such as these only days later as proof of legislative manipulation within his department by Republican politicians. Shientag also wrote Smith on January 19 explaining several issues which he (Shientag) would testify to “in the course of the investigation this week.” Shientag characterized the administration of workmen’s compensation hearing system

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182 Bernard Shientag to Alfred E. Smith, January 17, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 33, 200-20.
upon his return in the winter of 1923 as “appalling.” Shientag further stated “he was very
glad, indeed, that you are to make this investigation yourself” and informed the Governor
that he welcomed being questioned along the lines laid out in his letter.\textsuperscript{183}

Shientag and Smith prepped for the investigation thus insuring each other of the
line of questioning and matters to be revealed. Ironically, in a series of letters on January
7-9, 1924 Smith and Shientag wrote to congratulate each other on the favorable press
coverage afforded the speedy handling of workmen’s compensation cases in the
\textit{Rochester Times Union}. Shientag’s only complaints in the area seemed to be the “willful
and deliberate misrepresentations” by a certain Dr. Meyer Wolff, a past subject of the
1919 Moreland investigation, who “is no friend of my [Shientag’s] administration.\textsuperscript{184}

This back-and-forth between Shientag and Smith in regards to favorable press moved
quickly towards a focus on compiling facts to defend the department and attack
Associated Industries.

Commissioner Shientag also found after writing to the Office of the Referee at the
Workmen’s Compensation Bureau that the “average lapsed time” between the notice of
papers filed and hearing when Shientag took office in April 1923 was “nine months.”\textsuperscript{185}

Delays in hearing time, it appeared predated both Shientag and the return of Smith to the

\textsuperscript{183} Bernard Shientag to Alfred E. Smith, January 19, 1924, Official Correspondence of Governor Smith,

\textsuperscript{184} Bernard Shientag to Alfred E. Smith, January 7, 1923; Bernard Shientag to Alfred E. Smith, January 8,
1924; Alfred E. Smith to Bernard Shientag, January 9, 1924 in George Graves Papers, B1383-93, Box 36,
“Industrial (State) Commission (Hon. Bernard Shientag)”\textit{; Rochester Times Union}, December 31, 1923,
“Increase Shown in Compensation Cases Settled.”

\textsuperscript{185} William C. Archer to Bernard Shientag (Inter-office communication), January 21, 1924,
Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A,
governorship in January 1923. Speculation about the line of inquiry also made the press
and some newspapers reported that many believed the investigation would turn “of its
own momentum” into “an investigation of the organization that made the charges
against” the Labor Department in sort of a “boomerang” fashion.\textsuperscript{186} At least one paper
reported the possible limitations on the Governor’s power under the Moreland Act stating

\begin{quote}
The governor, acting under the Moreland act, may ask any question he
sees fit of the witnesses, and still another group of observers at the Capitol
advanced the suggestion that Governor Smith might attempt to go into the
lobbying activities of the organization. The witnesses, however, are not
compelled to answer the governor’s questions, if they do not care to, it
was believed, and there is no way they can be made to answer them.\textsuperscript{187}
\end{quote}

Despite these questions surrounding the Executive Law, one reporter found that the
friends of the Governor believed Smith’s clever decision to use the Moreland Act in
subpoenaing and compelling the testimony of the Board of Directors of Associated
Industries “the most astute ever made by the Chief Executive during all the years he has
been in public life.”\textsuperscript{188} Smith himself stated just prior to commencing his investigation
that Associated believed “the labor laws are being enforced to strictly… and the shoe is
beginning to pinch.”\textsuperscript{189}

Governor Smith began the investigation on January 22, 1924 in the Executive
Chamber in the New York State Capitol by stating he was undertaking the investigation
into the labor department under section 8 of the Executive Law. The executive chamber,

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\textsuperscript{187} \textit{Binghamton Press}, January 22, 1924.
\textsuperscript{188} “Affairs at the Capitol” by Raymond Borst (International News Service), \textit{Dansville Breeze}, January 24,
1924.
\textsuperscript{189} \textit{New York Times}, January 17, 1924
\end{flushright}
so full with witnesses, reporters, and staff, was standing room only and stacked four deep beyond the allotted chairs. Governor Smith, acting as commissioner, then proceeded to read the letter sent to him by Associated Industries on January 10 containing eight allegations of misconduct and mismanagement at the labor department. Smith stated that “before any witness is called I want to say that if there is anything the matter with the Labor Department there is not a man in the State who wants to find it out quicker than I do.” The Governor also stated that Associated Industries, its officers and directors were “by no means on trial here” but rather present as witnesses to aid Smith in his investigation. Smith had requested the presence of each of the three members of the Industrial Board as well as a number of departmental employees including Commissioner Shientag. The department staff, sitting in the front grouped about Commissioner Shientag, was dubbed “the arch criminals” by the reporters covering the hearing.

Prior to calling witnesses former New York State Supreme Court Judge Arthur E. Sutherland, counsel for Associated Industries (taking advantage of the Governor’s willingness to let his clients be represented by counsel) filed an amendment to the original complaint of January 10 by Associated Industries, which Governor Smith placed in the record. The amended “allegations” restated much of the initial complaint with

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192 Associated Industries Hearing, 1924, 10.


194 Associated Industries Hearing, 1924, 10-20.
the noted exception of withdrawing its point that State Fund exceeded its expense rations in 1923 and would do so again in 1924.\textsuperscript{195}

The Governor began his questioning with the President of Associated Industries, Alfred Swan, in regards to the State Insurance Fund’s alleged profligate spending. Governor Smith ignored Judge Sutherland’s plea to forgo this topic, exhibiting the first instance of several more to come over the next few days, of Smith’s desire to question the witnesses along his own lines of inquiry. Governor Smith wanted to know, first from President Swan, then from the full board, and finally from Mark Daly, where Associated Industries received its information on the excessive spending at the State Fund. Swan informed Governor Smith – in an exchange that would be repeated numerous times throughout the hearing - that the board took Daly’s word regarding the information supporting the complaints. Additionally none of the board knew for certain what proof justified the allegations nor did the board have any personal knowledge any of the misdeeds upon which it based its complaints.\textsuperscript{196} Governor Smith gladly accepted Swan’s admission that his association may have proceeded too hastily in condemning the State Fund and lodging false accusations against the Department of Labor without first checking their facts. After questioning President Swan, the Governor called out to the directors of Associated Industries seated before him and asked them if anyone had any testimony to offer that would support the charges offered by their group. No one responded.\textsuperscript{197}

\textsuperscript{195} Associated Industries Hearing, 1924, 13-19.

\textsuperscript{196} Associated Industries Hearing, 1924, 22-25.

\textsuperscript{197} Associated Industries Hearing, 1924, 24-25.
It should be noted that even though Associated Industries withdrew its allegations that the State Fund exceeded the legal expense limit set by the legislature in 1923 and its contention that the State Fund would exceed its legal expense limits in 1924, Governor Smith proceeded to question the witnesses anyway. The Governor wanted to know what led them to pose the initial charges; where did they get their information even if it proved erroneous; and who checked up on these alleged facts before they wrote the Governor and publicly released charges of wasteful spending at the State Fund in excess of levels set by law. Smith did not let up on his questions, at one point stating to Swan, “Isn’t it true that you withdraw them [charges] because they are not a fact?” to which Swan had to reply “as the statement [of January 10, 1919] first read, I don’t think it would be a fact.” Within a matter of minutes Governor Smith had proven that two of Associated Industries’ eight charges had proven to be false.

In what may have appeared excessive, Governor Smith called to the stand J. Charles Andrews, the Vice Chair of the State Fund Advisory Committee, to comment on the expense ratio even after Associated admitted its error. Andrews testified that Associated Industries’ claim that the fund exceeded its expenses ratios were “false and cannot be substantiated by the facts.” Andrews produced a fiscal accounting showing the ratios well below the legal limits. Andrews also stated that under Commissioner Shientag the department established a service department, gained new business, and


199 The Advisory Committee, comprised of employers utilizing the State Insurance Fund, provided the fund, and the Industrial Commission, advice on matters relevant to both workmen’s compensation and insurance issues.

200 Associated Industries Hearing, 1924, 26-30. Andrews testified to expense ratios for calendar year 1923 of 19.9% and an estimated ratio of 20.2 % for 1924, both well below the 25% allowed by law.
undertook major internal overhauls. Andrews stated that “politics are no longer considered” and the majority of the advisory board were appointed not by Governor Smith but by Republican Governor Miller – Andrews included. Governor Smith paraded a series of fellow advisory board members before the hearing, all of whom testified in support of the department and Andrew’s statement.\(^\text{201}\)

Over the course of January 22 (the first day if the hearing) Smith refuted five more of the remaining seven allegations made by Associated Industries one by one. Smith recalled President Swan, placed on the stand several of Associated Industries’ directors, and Mark Daly. Governor Smith took great pains to methodically bolster his case for the department by also calling witnesses from the Department of Labor, members of the Industrial Board, and Industrial Commissioner Bernard Shientag. The Governor’s witness list included a variety of persons to bolster Smith’s case including the Research Director of the Board of Estimate and Control (a precursor to the Budget Director) and the Secretary of the Ways and Means Committee of the State Assembly, both of whom testified that no one from Associated Industries ever asked them for financial data on the State Insurance Fund.\(^\text{202}\)

The Governor also called Mark Daly to the stand several times over the two day hearing to explain his charges and where he received his information. In regards to his informant – perhaps a fall back to his days as a reporter - Daly stated he received it from a “confidential source” that he refused to reveal. Smith berated Daly stating that “there isn’t any confidential source of public information, affecting the public welfare.” Daly,

\(^\text{201}\) *Associated Industries Hearing, 1924*, 31-32, 34-35, 87. The board members included Salle Singer, Thomas Larkin, Frank Morse, John Weiss, Paul Fitzpatrick, and Edmund Huyck.

\(^\text{202}\) *Associated Industries Hearing, 1924*, 60-61,
however, refused to provide the name despite repeated questioning. When Smith asked Daly how he checked the validity of the information from his confidential source – particularly since the entire case of Associated Industries depended on this information – Daly stated he had no way to do so. Smith thereupon stated “you could have come to me.” Smith stated that when he came to office President Swan wrote to him stating it “was the desire of your [Daly’s] association to cooperate with me.” Smith stated he maintained an open door and that no one ever has a problem coming to see me. But instead Daly chose to embarrass both the Governor and the department by lodging false charges against the administration without first giving Smith the opportunity to discuss them. The Governor produced a political cartoon sent to New York State newspapers by Associated Industries portraying the Governor “with a big cigar in my mouth, trying to run the Department of Labor.” Governor Smith obtained the evidence linking the press release to associated Industries from an employee of the Catskill Enterprise. The clear anger of the Governor at Daly caused Judge Sutherland to interrupt the investigation whereupon he apologized on behalf of the Associated Industries for Secretary Daly’s “over-zealousness.”

To further underscore Daly’s recklessness Governor Smith called to the stand

\[203\] Associated Industries Hearing, 1924, 36-38.

\[204\] Associated Industries Hearing, 1924, 37-43. The political cartoon cited by Governor Smith appeared in many newspapers throughout New York State on the days following its circulation by Associated Industries as part of a press release on January 10, 1924, the same day Associated Industries wrote to the Governor. Governor Smith obtained a copy of “the plate matter” from the Catskill Enterprise. George Van Namee relayed to Mr. Galtt of the Enterprise after the hearing that Associated Industries regretted sending it out and Mr. Daly “had to back water.” George Van Namee to F. Galtt, January 31, 1924. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3. The Adirondack News, (St. Regis Falls), January 12, 1924; Caledonia Advertiser, January 17, 1924; Chemung Valley Reporter, January 17, 1924, Albany Evening Journal (without the cartoon), January 14, 1924.

\[205\] Associated Industries Hearing, 1924, 41-47.
several of Associated Industries board members who had not been present at the January 10, 1919 meeting. Each one of them claimed they lacked any knowledge of any wrongdoing at the Department and Labor. Some board members stated they were generally pleased with the local Department of Labor branch offices, while one director stated he had some experienced some problems with the department, but nothing akin to the level expressed by Daly. Governor Smith found similar responses from the directors who had attended the meeting on January 10 with each director claiming they had no personal knowledge of any of the problems outlined in the letter sent to Governor Smith. Smith even chided Judge Sutherland by stating “don’t you think it would be well to suggest an amendment to the by-laws of your Association so that when” this kind of thing happens again you will not have to “obey a subpoena and not know a single thing about it?”

Smith ended his first day of his inquiry by focusing on the charges of politics, breakdown, and allegations of fiscal excess in the department’s budget. Upon detailed questioning by Smith, Daly claimed little if any knowledge of the operations of the various offices within the Department of Labor. Smith methodically went through each bureau asking Daly if he had information on breakdowns, to which Daly responded he had none. Daly seemed to characterize the entire department as broken due to eight employees of the Department of Labor he (Daly) claimed had no previous training or were appointed through politics. Smith himself read of the list incredulously asking Daly if the hiring of “these eight men has caused the complete domination of the department

206 Associated Industries Hearing, 1924, 47-59. These directors included Alderman, Anderson, Bowen, Bruce, Chase, Cluett, Perkins, Forbes, and Swan.

207 Associated Industries Hearing, 1924, 44-47.

208 Associated Industries Hearing, 1924, 61-63.
by politics?” Daly simply stated “No, sir.”209 Failing to find anything in Daly’s testimony or his allegations as proof of a “serious breakdown” and “political domination” of the department Smith proceeded to refute the remaining allegations.

In regards to the department’s “increased appropriations” not corresponding to an “advantage of the people” Smith called Daly’s attention to the fact that budget bills had to pass both houses of the legislature. Smith questioned Daly: “could there be any politics in view of the fact that that bill had to pass two Houses that were politically opposite?” The response of the leading lobbyist for the state’s leading business association, “I don’t know much about politics,” drew laughter from the entire hearing which only died down once Governor Smith resumed his questioning.210 Smith shot back, “oh, no: you don’t!” The cathartic exchange led Daly to confess he believed that Smith thought the entire exercise was created by Associated Industries to embarrass the Governor. Smith retorted that “if the man is big enough for the job he is not embarrassed” and continued to hammer away at Daly. Smith reasoned that if the department required more people to handle more duties, and the department had been severely cut by Governor Miller, then the legislature, the Governor, and the department were acting responsibly by increasing staff to improve service. “Where is the extravagance?” asked Smith. Smith mocked Daly and asked him if he “ever looked into the question of whether or not we had too many game protectors?” Daly’s logic on the other hand made no sense – did he want fewer people working in the department and greater delays in workmen’s compensation hearings and other services or did he want the lowest possible appropriations made and a

209 Associated Industries Hearing, 1924, 66-68.

210 Buffalo Express, January 23, 1924; Associated Industries Hearing, 1924, 70-71.
deficient and ineffective department? All Daly could do was state he believed adding more people was “extravagant” and again volunteer to Smith that he had no intention of trying to make this a political issue.211

Before ending his first day of testimony Governor Smith called on Frances Perkins (a member of the Industrial Board) and Industrial Commissioner Bernard Shientag. Perkins refuted that the Industrial Board “assumed unwarranted powers and exceeded its authority” in adopting an amendment governing the classification of buildings five stories or less in regards to fire escapes. When Commissioner Perkins explained the argument made by Associated Industries against certain fire escape regulations Smith, who had worked on such legislation while on the Factory Investigation Commission, became so amused that even Judge Sutherland had to admit that if the only complaint brought by Associated centered on this issue nobody would be at the hearing.212

Shientag himself proved an aggressive witness attacking Associated Industries and Governor Miller’s administration for a “disorganization” of the department in 1921 and 1922 resulting is chaos, a disintegration of morale, and decline in services.213 At one point Shientag answered a question of Governor Smith on the condition of the department of factory inspectors by stating “from the standpoint of the secretary of the Associated Industries it might be better if there were no factory inspectors at all, I

211 Associated Industries Hearing, 1924, 71-76.


presume.” Shientag claimed that the previous administration at the urging of the business lobby “practically destroyed” the bureau of women in industry as well as many others.214

Shientag was particularly taken aback by the methods used by Associated Industries stating that he had worked with them before, spoken at their meetings but never once did they complain to him or seek his help in addressing any alleged problems at the department. The allegations made on January 10, 1924 completely surprised Shientag who believed great progress had been made since he took office in 1923.215

Shientag’s testimony refuted every allegation lodged by Associated Industries with particular attention to the issue of the workmen’s compensation program. In an office by office review Shientag explained not only how the department worked better now as compared with the Miller administration but also that the department practically had to be rebuilt after being stripped bare by budget cuts, restructuring, and a culture more sympathetic to the business interests than injured workers. With so many positions cuts under Governor Miller (due to Miller’s alleged attempts to both save money and create efficiencies), Shientag had to rehire persons fired by Miller or add new people. Shientag increased the number of inspectors from 123 to 185 with “homework” inspectors increasing from 11 to 21. The total number of factories inspections, building surveys, compliance visits, and mercantile examinations had increased significantly from 1922 to 1923.216 Further, employees to fill these positions came from civil service lists when applicable. Shientag even revealed a letter he received in December 1923 from Mr.

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214 *Associated Industries Hearing, 1924*, 89-90, 94-95.


216 *Associated Industries Hearing, 1924*, 89-93.
Edward Barcalo, one of the directors of Associated Industries, recommending a person for a position in the Buffalo office of the Department of Labor. Shientag read into the record the letter from “one of the directors of the Associated Industries, whose name appears attached to the charges that politics has dominated the administration of the department.” Shientag had hired the man because he had been on the appropriate civil service list stating “that is the kind of politics that has been played in the Department since I took office.” At the end of his questioning of Shientag, Smith mused aloud to the board of directors that there does “not seem the slightest evidence of a breakdown.”

After hearing Shientag’s strong refutation of Associated Industries Judge Sutherland then asked for a recess in order to seek additional information to bolster the association’s case. The Governor, eager to continue to pull apart the allegations made by Daly, ruled Judge Sutherland out of order. The Governor asked Judge Sutherland whether he thought that after all of the refutations by the department that the charges lodged by Associated Industries should be dropped. Judge Sutherland responded that if they were “given a free hand and given a chance to get the evidence we hope to find through the Labor Department and then fail we will come in here and pin a blue ribbon on your commissioner.” Commissioner Shientag sarcastically stated he did not want their blue ribbon. The Governor stated that his Commissioner “does not want any influential group of influential business men making charges involving a breakdown of the labor

217 Associated Industries Hearing, 1924, 94-95.
218 Associated Industries Hearing, 1924, 110.
Department and then after the charges have been made saying that they have no evidence to support them, but they are going around to see if they cannot find some.”

The Governor reasoned that testimony from staff at the department, the Advisory Committee of the State Fund, and the various witnessed called made an investigation by Associated Industries unnecessary. Judge Sutherland’s desire to hear Daly’s accusations on specific workmen’s compensation was greeted by Smith with openness since Smith stated that after refuting every allegation by Associated “that is all there is left to your charges.” A chorus of “no, no’ from all parts of the executive chamber” greeted Sutherland’s persistent pleas for ending the hearing in favor of an investigation of the department with Associated Industries’ help. Smith, to the pleasure of the “jury” of supportive and vocal by-standers attending the hearing, announced that an additional day of hearings would take place. Smith reminded Associated Industries and Judge Sutherland of his [Smith’s] magnanimity just before he adjourned on January 22. Smith stated to the Associated Industries’ board “that as a matter of just good, fair, square American fair play, when you have pulled a bone, why don’t you admit it?"

The charges of fiscal mismanagement, corruption, and inefficiency at the Department of Labor were shown to be nonexistent, and Smith refuted each allegation openly. Instead of revealing a department teetering on the brink of collapse or

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220 Associated Industries Hearing, 1924, 110-111.

221 The Governor called twenty witnesses over two days with two lengthy statements placed in the record, those of the Industrial Commissioner and the Vice Chairman of the Advisory Council.


223 Associated Industries Hearing, 1924,111. Governor Smith also reminded Associated of his allowance of counsel reiterating he expressed “no objection to your being represented by counsel – something unheard of in the investigation of a department.”
experiencing problems such as those exposed under Smith’s Moreland Act investigation of 1919, the board was told that they vindictively tried to embarrass the Governor and the Department, had paid little attention to facts in preparing their case, and placed their trust in an employee who refused to prove his allegations or reveal the sources of information that turned out to be false. Smith granted Daly and Associated Industries one last chance to make their case.

On January 23, 1924 Governor addressed the alleged breakdown of the Bureau of Workmen’s Compensation. Governor Smith asked Daly to make his case and back up his criticisms regarding the slowness of the workmen’s compensation system, whereupon Daly discussed a few isolated instances and generalizations. Smith quickly pointed out that considering what Daly brought forward, there did not seem to be much evidence to support the charges. Daly protested at which time Smith deflated Association’s charges when he revealed Mark Daly’s January 18 letter to Associated Industries’ board stressing the urgent need for evidence to support the allegations submitted to Governor Smith on January 10.

Please telephone your members to immediately request their compensation insurance carrier to furnish Mark Daly, Teneyck Hotel, Albany by Monday, January twenty-first, if possible, brief synopsis of any compensation cases which they have handled for them showing unnecessary hearings, delay, inefficiency or incompetency on part of officials. Send in any cases yourself that you think are important as evidence of inefficiency of Labor Department. Please make extra effort as we need evidence.224

224 Undated note marked “Copy” from Mark Daly to board members of Associated Industries in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3. Also, Associated Industries Hearing, 1924, 118, 124.
Ironically, noted Governor Smith, the note from Daly soliciting evidence to support claims of inefficiency and incompetence at the Department of Labor came after Associated Industries lodged its complaints. This note verified Smith’s contentions that Associated had very little first-hand knowledge of any wrong doings at the Department of Labor with the exception of a few understandable exceptions.  

The Governor refuted Daly each time Daly stated he had concerns regarding the operations of the workmen’s compensation program. When Daly stated these problems have been around since 1921 Governor Smith asked him why he never asked Governor Miller for an investigation. The same pattern of accusation without evidence repeated itself in the areas of poor filing systems, politics in the department, and “runners’ (something addressed under the 1919 Moreland Act investigation of labor). Smith again asked for evidence to which Daly replied he had none. At one point Daly’s accusation that “many cases” of injured workers and claimants having to travel long distances in order to attended hearings turned out to be “two cases.” At that point Governor Smith asked Commissioner Shientag how many cases are disposed of each year. Shientag answered “109,000 cases this last calendar year.” Under Shientag more staff, referees, and stenographers were hired to handle the increased case load; hearing rooms in New York City had doubled from 5 to 10; “runners” had been curtailed; and a general reorganization to adjust to the more than 370,000 industrial accidents had been made.

225 Associated Industries Hearing, 1924, 119.

226 Associated Industries Hearing, 1924, 119, 122, 123.

227 Associated Industries Hearing, 1924, 126-127.
Shientag claimed that industrial deaths rose by over 500 from 1922 to 1923 thus necessitating even more hearings.  

Part of the problem of the department, Shientag claimed, was its constant restructuring, particularly under Governor Miller who not only changed the system but slashed its budget and staff. Echoing Smith’s earlier contentions Shientag claimed the Labor Department “has been reorganized and reorganized to death” but “if given a chance to function without interruption, without these constant attacks upon it, I believe would function efficiently.” Shientag wanted to stabilize his department, create efficiencies, and determine after a few years whether or not the state needed a new system. Smith rhetorically asked Daly if he merely brought charges with the hope that Commissioner Shientag would somehow supply evidence of a breakdown in his own department.

Smith stated that he would “go to the very limit to improve this Compensation Act in every way.” The problem with the labor department was that it had been made the “football of politics, legislated in and legislated out, without rhyme or reason, since 1915.” This situation bothered Smith since he “happened to be Speaker of the Assembly when it [workmen’s compensation] was born” and he had a deep personal interest in the act. Smith stated he would work with anyone, anywhere, at any time to improve the act, however, Associated Industries had claimed a breakdown in the administration of

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229 In addition to his testimony Commissioner Shientag submitted a 64 page statement with several statistical charts for inclusion in the official record. Associated Industries Hearing, 1924, 184-247.

230 Associated Industries Hearing, 1924, 176-177.
workmen’s compensation, but upon review they failed to prove it. And, many of the
problems could be traced to either the previous Republican administration or situations
currently being remedied under Smith’s administration. But, added Smith, “nobody will
ever attack this government while I am here. I won’t let them do it. If they are right I will
go right over the precipice at Niagara Falls with them; but if they are wrong, it has got to
be shown.” Daly’s case collapsed for good mostly because Smith had shown that “this
whole thing was done to create an atmosphere around this building against pending
legislation.”

Governor Smith would not let the hearing end without publicly chastising
Associated Industries for its bold attack on the department and speculating as to why they
did so. Quoting from Association Industries’ own publications Smith read into the record
statements condemning Smith’s pro-labor and social welfare agenda including
compulsory health insurance, a minimum wage commission, an eight-hour day law, and
“other extravagant and unnecessary ‘uplift’ measures.” Smith indicated that the real
reason for Daly’s attack stemmed from Associated Industries’ opposition to both Smith
and his legislative agenda – as evidenced by Associated Industries own publications.

Charges of politics led to a key exchange touching on the limits of the Executive Law in
regards to its investigatory scope. Judge Sutherland interrupted Governor Smith when

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231 Associated Industries Hearing, 1924, 140-141; Press Release by George Van Namee, Secretary to the
Governor, “Governor Smith’s reply to Judge Sutherland at the Investigation of the Labor Department,
January 23, 1924,” Official Correspondence of Governor Smith, Central Subject and Correspondence file,

232 Associated Industries Hearing, 1924, 137-142. Governor Smith referenced a November 10, 1922
bulletin sent by Mark Daly to all members of Associated Industries. This letter, “Bulletin No. 36-F,
November 10, 1922” was found in Official Correspondence of Governor Smith, Central Subject and
Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3
Smith read into the record the statements by Associated Industries attacking the Governor. Sutherland stated “this is interesting; but I do not see that it has got anything to do at all with the question as to whether there is anything to investigate in the Labor Dept.” Sutherland also asked Governor Smith “can we not relieve this thing from the nature of a trial and complaint by my association as plaintiff against Comr. Shientag as defendant.” “From all the evidence given and everything that has taken place here”, concluded Governor Smith, no one could disagree that “there was just a little political attack in these charges.”

By the close of the hearing Smith moved towards a more conciliatory stance with Associated Industries, even declaring that Thomas Curtis from the Federation of Labor, should not be heard because according to Smith, “labor is not a party to it [the hearing] in any way, shape, or manner.” Though, it should be noted, when Curtis interrupted the hearing and expressed his gratitude on behalf of labor anyway, Smith stated “we will take that for granted.” Smith concluded the hearing by again stressing “that we have an infinitely better Labor Department in this State than I thought we had” and “this hearing has been worth every dollar it cost the taxpayers [$660].” The only issue sustained in the least was an understandable concern regarding a continued slowness – due to the previous administration’s cuts in personnel – in the hearing of workmen’s compensation cases. Smith promised to address this slowness stating “justice delayed, is justice denied.”

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233 Associated Industries Hearing, 1924, 138-a, 139-143.

234 Associated Industries Hearing, 1924, 181-182.
The plan by Associated Industries had backfired. Even the experienced lobbyist Mark Daly had been caught off guard by the quick and thorough investigation by Governor Smith. Smith stated to Daly and the Board of Associated Industries if you “searched the Labor Department from cellar to garret and not a paper would have been denied you if you had been looking for the truth.” Instead Associated Industries used the request for an investigation and trumped up charges to try to blemish both Governor Smith and the department. Smith concluded that the whole incident was just the latest business attacks upon the Labor Department and another avenue to try to disrupt pending labor legislation, especially the forty-eight hour bill.

While conducting the investigation Governor Smith never let the inquiry get out of hand. He speedily called the investigation, presented the facts, deflected the attack of Associated Industries, and pointed out the true nature of their motives. Probably the most important political outcome of the investigation was Smith’s exposure of Associated Industries as an obstructive, often conniving force in New York State politics. By calling a Moreland Act investigation Governor Smith successfully turned the tables on Associated Industries and put them on trial. Associated Industries faced a severe and public rebuki ng, and for a time many wondered if Albany’s premiere business lobbyist, Mark Daly, would face termination. Daly later admitted to the Governor, apologetically, that he received “a very thorough and substantial spanking for his testimony.” Daly reminded Governor Smith that the “fiasco of the last couple of days

235*Albany Times Union*, January 23, 1924.

236*New York Times*, January 24, 1924.

didn’t hurt you at all” and hoped Smith “would not think I [Daly] am quite as stupid as I proved myself to be.” Though Daly retained his post with Associated Industries, his efforts to place the Governor in a poor light backfired and resulted in newspapers around the state referring to him as a “goat”, “a fluent and persuasive agent” who misled usually astute businessmen, and the lobbyist whose accusations demanding an inquiry proved a “farce.” Smith’s magnanimity may have saved Daly from an embarrassing legislative investigation – and possibly his job. Smith replied to Daly’s letter of January 24 the following day stating “Executive clemency issues forthwith. When I was young, I used to hear my father say, “Look before you leap.” Smith also asked Senator Straus to hold off on his resolution seeking a legislative investigation of Associated Industries, at least until after the Moreland inquiry.

Once Smith completed his two day inquiry, Smith’s aides stated the Governor too busy to consider another investigation during the legislative session, though the legislature could do as it pleased. A subsequent legislative investigation never

238 McGuire, “A Catalyst for Reform: The Women’s Joint Legislative Conference (WJLC) and Its Fight For Labor Legislation in New York State,” 187-188, 193; Mark Daly to Alfred E. Smith, January 24, 1924, George Graves Papers, B1383-93, Box 15, “Mark Avery Daly.”


240 Alfred E. Smith to Mark Daly, January 25, 1924, George Graves Papers, B1383-93, Box 15, “Mark Avery Daly.” Daly replied to this note to the Governor stating simply: “To make the record complete I want to say to you that standing out from a lot of big things you have done, your letter of the 25th ever will be to me an illustration of how big a real man can be.” Mark Daly to Alfred E. Smith, January 28, 1924.

241 Poughkeepsie Eagle News, January 22, 1924; Buffalo Express, January 25, 1924; The Gloversville Morning Herald, January 26, 1924. It would have been unlikely that the Republican Assembly would have cooperated with the Democratic-controlled Senate in an investigation into Associated Industries anyway. The Binghamton Press reported, however, that prior to one session of the hearing Governor Smith met with Democratic Senate Majority Leader James Walker and Industrial Commissioner Bernard Shientag for ½ hour behind closed doors. The conference followed a ½ private talk with Associated Industries’ counsel Judge Sutherland. Binghamton Press, January 23, 1924.
materialized though the Women’s Joint Legislative Conference wrote to, and received from Governor Smith, Daly’s testimony in its on-going battle for the forty-eight hour bill. The positive public reaction Governor Smith garnered can be summed up in an editorial published in the *Albany Times Union*.

Governor Smith is also to be congratulated for the admirable manner in which he handled the affair. He departed from the usual procedure followed in such cases and conducted a personal investigation instead of delegating someone else to do it. He wanted to get at the truth and he got at it in short order with the result that the State Labor Department and its officials were exonerated and full justice done to efficient and capable men. Gov. Smith has a way of doing things that produces quick results.

Smith received the editorial happily, even writing to former Governor Martin Glynn, owner of the *Times Union* on January 25 thanking Glynn for both publishing it and sending him a copy. The *Weekly Underwriter*, the official publication of the insurance carriers, wrote on February 2 that Governor Smith, Commissioner Shientag, and the Labor Department were the clear winners in the investigation.

Associated Industries President Alfred Swan also paid his respect to Governor Smith on January 29, 1924 when he wrote Smith to thank him for his “courtesy and consideration in the hearings held” in Albany the previous week. Swan apologized for the

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242 Lydia E. Sayer to Alfred E. Smith, February 21, 1924; J. F. Walsh to Lydia E. Sayer, February 28, 1924. Mr. Walsh served as the stenographer of the hearing. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3.

243 *Albany Times Union* January 24, 1924.

244 Alfred E. Smith to Martin Glynn, January 25, 1924, George Graves Papers, B1383-93, Box 25, “Martin Glynn.”

245 *Weekly Underwriter* clip from February 2, 1924 enclosed in letter from Bernard Shientag to Alfred E. Smith, February 11, 1924 in George Graves Papers, B1383-93, Box 36, “Industrial (State) Commission (Hon. Bernard Shientag).”
incident and the publicity afforded the matter and praised Smith for being “so broad-minded and fair to us.” Swan further stated that Smith could count on Associated Industries “in whatever your Excellency may undertake for strengthening and continuing the improvement which is now going on in the Compensation Bureau.”

Local Associated Industries board member Edmund Huyck of Albany thanked Governor Smith for acting “very magnanimous” during the investigation. Judge Sutherland, who later became a social friend of Governor Smith, wrote to apologize for the embarrassing hearing and the manner in which his clients initiated it through the press. Smith, as he did with the directors and Daly, forgave Sutherland. Internally, Associated Industries placed its own spin on the hearing informing its membership “the method adopted by the association in instigating the investigation has been criticized but the hearing ended with abundant evidence of good will on all sides.” Quite possibly this favorable slant on the hearings had been influenced by Smith’s series of forgiving responses to the letters sent him from Daly, Sutherland and various directors.

As in 1919, the 1924 Moreland Act investigation of the labor department laid the groundwork for a succeeding investigation. Greatly embarrassed by the Governor’s investigation, Associated Industries and the Republican Party found a frontal attack on

246 Alfred Swan to Alfred E. Smith, January 29, 1924; Florence Kelley to Alfred E. Smith, January 28, 1924; Mrs. Percy Jackson to Alfred E. Smith, January 28, 1924; Owen Lovejoy to Alfred E. Smith, January 28, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-3


248 Arthur Sutherland to Alfred E. Smith, January 24, 1924, Alfred E. Smith to Arthur Sutherland, February 1, 1924 in George Graves Papers, B1383-93, Box 71, “Arthur Sutherland.”

249 Meeting Minutes of Associated Industries, February 7, 1924, 2.
Smith and the Department of Labor had proven ineffective. With Governor Smith firmly in control of the executive branch, the business lobby had to find an avenue for investigation more amenable to their point of view. In February 1925 Bernard Shientag, by then a New York City Court Judge, predicted the business lobby under Mark Daly would attempt to supplant the Industrial Board’s control of the workmen’s compensation bureau with a board appointed by employees of the Labor Department. Such a move would create a bureaucracy more easily controlled than that of a board of appointees of a Democratic governor.  

In 1926 the situation presented itself in the form of a joint legislative inquiry into the labor department – without the executive’s participation - under an “Industrial Survey Commission.” This move went far beyond Shientag’s expectations of boldness on behalf of the business lobby and placed the entire department under the microscope of a legislatively-appointed labor investigation.

1928 - Moreland Act Investigation of Workmen’s Compensation

The 1928 investigation of the administration of the Department of Labor would be Smith’s last Moreland Act investigation. The investigation brought full circle Smith’s four-term long focus on the administration of one of his favored areas of state government: the administration of the state’s labor laws. The 1928 investigation would also be one of the longest investigations commissioned by Smith, spanning all of 1928 with its final report issued after Smith had lost his election for President of the United States and within a few weeks of his leaving the governor’s mansion.  

250 Bernard Shientag to Alfred E. Smith, February 26, 1925 in George Graves Papers, B1383-93, Box 66, “Hon. Bernard Shientag.”

251 Only Sullivan Jones’ investigation of public buildings spanning parts of 1924, all of 1925, and parts of 1926 would last longer than Rogers’ yearlong 1928 investigation.
recommendations from the final report would be submitted to the legislature by Smith’s successor, Governor Franklin D. Roosevelt. The Moreland Act investigation also operated side-by-side with a legislative investigation examining the same subject: the operations of the workmen’s compensation system. Each investigation had the administration of the labor laws, particularly the workmen’s compensation statute, as its focus. However, each investigation uncovered the obstructionist methods of those opposed to the department and workmen’s compensation: neglect by Republican Governor Charles Whitman’s administration which in turn, weakened the office from within; a business conspiracy seeking to discredit and destroy the department; and Republican legislative efforts to undercut the department through a sort of shadow executive agency fostering a negative image of labor issues on a full-time basis – the Industrial Survey Commission. Smith’s recourse to the Moreland Act helped uncover this oft repeated disingenuous business lobby and Republican pattern of attempting to demolish the department of labor under the guise of public appeals to curtail government waste and spending.

For two full years the Republican-controlled Industrial Survey Commission published reports casting doubt on the efficiency of the workmen’s compensation program and the Department of Labor. The Commission, established by the Republican-controlled legislature, served as a means to exert legislative influence over an executive department. The annual reports of the Survey undermined the labor laws, generally claiming New York’s liberal attitude in regards to labor weakened the state’s competitive edge in the areas of industry, agriculture, and commerce. Though not universally successful, the legislature often used the reports of the Commission to weaken labor law
and hinder Smith’s pro-labor agenda. In December 1927 and early January 1928 several members of the Industrial Survey Commission, firmly in the hands of pro-business Republican legislators, made disparaging remarks about the department and its employees alleging theft and fraud. The wide dissemination of the remarks in various newspapers across New York State cast doubt upon the honesty of the employees and the effectiveness of the department. In a pattern similar to 1924 when Associated Industries alleged fraud and urged an investigation, legislative leaders considered appointing an investigation into the department after several Survey members’ comments made the press. In an effort to exert control over the Industrial Survey, Governor Smith named a Moreland act investigation into departmental operations. On January 24, 1928 Governor Smith appointed Professor Lindsay Rogers of Columbia University to examine and investigate the labor department under section 8 of the Executive Law.252

The speed by which Smith appointed the investigation again shocked those who made statements alleging corruption within an executive department. For a few tense weeks in early 1928 rumors of both legislative and executive investigations swirled with many wondering who would appoint an inquiry first. After two Industrial Survey reports claimed the workmen’s compensation system - and the Department of Labor generally - wasted money and created a drag on New York State industry, the Survey’s further allegations of corruption placed Governor Smith in a position to justify a full investigation. Further, Smith did not want another legislative investigation of his department, particularly since the Industrial Survey had already shown its propensity to align with Associated Industries and the National Industrial Conference Board. Therefore

252 Smith Public Papers, 1928, 422.
Smith appointed a nationally known and widely respected legal and labor law expert to undertake an inquiry. And, this investigator – like Smith himself in 1924 – would investigate both the department and the claims made against the department. By investigating allegations made by members of the legislature serving on the legislatively-appointed Industrial Survey Commission, Smith’s Moreland Act commissioner would investigate the legislature’s actions. This interpretation of the Executive Law’s authority circumvented the spirit of the Moreland Act as a tool to investigate executive departments by going after both the allegation makers – members of the legislature as well as the department employees they publically accused of misdeeds and malfeasance.

On February 25, 1926 the state Senate adopted a resolution establishing the New York State Industrial Survey Commission “to investigate conditions under which the manufacturing and mercantile business is conducted.” The Assembly adopted the same resolution on March 9, 1926. This new body, to be comprised of three Senators and five Assemblymen, could in turn appoint an additional three members from the public (one representative each from the working peoples, employers, and the general public). The resolution stated that with nearly two hundred labor and workmen’s compensation bills introduced each session; millions of dollars expended in assisting health, welfare, and safety; and, “the controversy regarding equality for men and women in industry,” the legislature would be greatly aided by comprehensive data and information regarding

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253 The Survey appointed Emanuel Koveleski of the State Federation of Labor as the labor representative; Merwin Hart, a manufacturer and a member of the board of Associated Industries as its business representative; and James W. Gerard, former Ambassador to Germany (and a Democrat) as the public representative. Besides knowing Smith through political circles Gerard and Governor Smith served on a number of civic boards together. George Graves Papers, B1383-93, Box 25, “James W. Gerard.”

254 The court cases include Adkins v. Children’s Hospital (1923) and Radice v. New York (1924).
these issues. The legislature granted the new entity an appropriation of $25,000, “all the powers of a legislative committee as provided by the Legislative Law, and requested a final report by February 15, 1927. The new body provided the business lobby a forum it had asked for during Smith’s 1924 Moreland Act investigation – an investigation into the Department of Labor. However, this investigation precluded any role for Governor Smith in its deliberations.

The Industrial Commission met for the first time on June 18, 1926 and elected Republican Assemblyman Jasper Cornaire of Jefferson County as chairman. The body also appointed former Industrial Commissioner Henry D. Sayer as its executive secretary and added a labor representative, a businessman, and a public representative. The commission allowed token recommendations from the Federation of Labor to be placed in the record as a hollow gesture towards inclusion.

The commission announced that it would hold public hearings throughout the state to gather information. Through the business representative, Merwin K. Hart (a member of the board of Associated Industries and former Republican member of the Assembly), Associated Industries presented its offer to engage the services of the National Industrial Conference Board in order to “undertake a complete survey of the industries of the State, with particular reference to” business regulations and workmen’s

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compensation. The Commission “gladly accepted the offer” of Associated Industries and, once completed, included the study in its 1927 report.\textsuperscript{257}

The Industrial Commission based its report of February 15, 1927 on the testimony of well over one hundred witnesses at thirty-three hearings.\textsuperscript{258} Representatives of business, labor unions, the various bureaus within the Department of Labor, and interested citizens gave their opinions on issues pertaining to labor and industry. The Commission’s final report addressed dozens of particular bills and amendments coming before the legislature with special attention to the workmen’s compensation law. The report commended the State Insurance Fund for its “exceptional service” and a workmen’s compensation system that “seems to be working well in this State.”\textsuperscript{259} Nonetheless, the Industrial Commission gave its suggestions in such areas as appeals, medical costs, third party actions, reportable accidents, cessation of payments, referees, and runners. Many of these issues had been discussed in the 1919 Moreland Act investigation of the workmen’s compensation system or during the eight succeeding legislative sessions.\textsuperscript{260} Ironically, despite the preponderance of Republicans on the Commission, the report suggested a major compromise in the area of the forty-eight hour bill, which found little support amongst the business representatives. However, some


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supporters of labor objected to the various pro-business suggestions such as limiting claims or mandating certain training requirements for labor department referees.\textsuperscript{261}

The work of the Commission found enough support within the legislature to secure its continuation in 1927. The legislature reauthorized the Industrial Survey Commission in March 1927 requesting it report no later than February 15, 1928. After nearly a full year of investigation and hearings the Survey issued a final report – though it did so after the legislature granted it more time, extending its deadline an additional month due to the controversial findings it would soon report.\textsuperscript{262}

The 1928 report largely mirrored the 1927 report with an emphasis placed on the results of the National Industrial Conference Board. Stating that business competition between the states had intensified, thus necessitating the work of the Industrial Survey, methods to improve New York’s business position vis-à-vis other states formed the focus of the 1928 report. The five keys areas, as uncovered by the business-backed and Survey-sponsored study, centered on workmen’s compensation, regulations, the state’s fiscal problems, wage earnings, and education. In each area the Survey found evidence to back its contentions that New York State suffered a competitive disadvantage due to excessive costs of doing business as compared with other states. New York, the Survey stated, “has the most liberal workmen’s compensation law in the United States.” Higher benefits, they further claimed, equated to higher costs. In a similar fashion the Survey linked New York’s “more severe and more numerous regulations,” higher taxes, an expanding


\textsuperscript{262} The legislature directed the Industrial Survey Commission to issue its report on February 15, 1928. However, after members of the Survey publicly made charges of fraud in December 1927 and January 1928 the legislature extended the date of the final report to March 12, 1928.
government, and increasing public debt to a poor business climate. The Survey, however, claimed New York workers compared favorably with other states in the area of wages despite New York’s higher costs of living. The Survey credited employers’ generosity for New York’s higher wages.263

Due to the data gathered by the National Industrial Conference Board, the report of the Industrial Survey emphatically reaffirmed their 1927 suggestion to the legislature that further amendments to, or an expansion of benefits under, the workmen’s compensation program be held in abeyance for five years.264 The report uncovered numerous problems in the Workmen’s Compensation Bureau. These charges included the on-going presence of runners, “fraudulent claims”, “perjury”, “improper applications for so-called lump sum settlements,” and a ring of medical and hearing schemes involving kick-backs and false documents.265 Some of the problems uncovered appeared very similar to the issues found by the Moreland Act investigation of the Department of Labor in 1919: repeated adjournments and rehearsings”, unqualified staff, a poor filing system, mismanagement of records which led to fraud and “tampered files,” a corrupted lump sum settlement system, and a long backlog of cases.266

However, the dynamics of the inquiry into the Department of Labor by the Industrial Commission Survey changed considerably in 1928. As the Survey wound


down its hearings in December 1927 and January 1928 in preparation for its 1928 report, and in the midst of the publication of some of its criticisms of the Department of Labor, newspaper report began to publish quotes from members of the Survey claiming fraud and corruption within the department.

On December 2, 1927 Henry Sayer, the executive secretary of the Survey, stated after several days of hearings that fraudulent claims, fake stamps, and forgery has created “something terrible” within the Department of Labor. A few weeks later after hearings in New York City a number of downstate newspapers reported similar allegations from members of the Industrial Survey. The New York Sun reported on a series of claims that had been stamped falsely; the Brooklyn Eagle reported widespread graft and corruption, and the New York Times recounted fraudulent claims under the lump sum settlement procedure.267 However, most damaging were the quotes from members of the Survey which appeared in the newspapers. Senator Truman, Assemblyman Cornaire, and Executive Secretary Sayer all provided statements to the newspapers charging fraud, graft, and corruption within the department as well as links between “runners”, doctors, and lawyers and both department staff and claimants. Cornaire demanded an investigation by the legislature because “hundreds of thousands of dollars are being stolen” due to “the crooked honeycomb [within] the Workmen’s Compensation Bureau.” Senator Truman, chairman of the Survey, stated “false claims are paid and in some instances by collusion with some one (sic) in the Department of Labor.”268 In a statement


reminiscent to Jeremiah Connor’s initial investigation into the State Insurance Fund in 1919, Cornaire claimed the Survey’s initial investigation “only scratched the surface.”

With the Survey not scheduled to issue its report until February 15, 1928 the controversy created by the newspaper reports led many to speculate the legislature would appoint a legislative investigation into the department. Even members of the Survey began to argue with one another at public hearings about the next step in the hearing process and the possibility of a legislative investigation. On January 20, Assembly Democratic Minority Leader Maurice Bloch, who also served on the Industrial Survey Commission, accused the Republican members of the Survey of “playing politics” and seeking to use the controversy to help elect a Republican governor in 1928. By the third week in January the debate centering on the workmen’s compensation program and allegations of corruption, created a heightened sense of urgency.

On January 24, 1928 Governor Smith decided to invoke the Moreland Act stating “if what assemblyman Cornaire said is true, nobody is more anxious for the facts than I am.” The investigation would, in the words of the Brooklyn Eagle, first “call the hand” of those on the Survey making charges about the department and second, position the Governor to “stamp out the malpractices” should the charges prove true. At the same

269 Brooklyn Daily Eagle, January 17, 1928.


time Governor Smith also challenged the lead role the Industrial Survey had played in the public eye after two years of investigation into one of Smith’s departments.

One day after Smith’s announcement of an investigation, Republican Majority Leader John Knight in the Senate and Republican Speaker Joseph McGinnies in the Assembly decided to extend the Industrial Survey through March 12, 1928 rather than its scheduled date of termination, February 15, 1928. After numerous discussions, some of which even included the State Republican Chairman, the Senate and Assembly pledged support for the Governor’s inquiry though it did so in language that attempted to insure the Republicans would have the last word by requesting the record of the Moreland Act inquiry should Governor Smith’s investigation issue its final report after the 1928 session.\footnote{\textit{New York Times}, January 24, 1928. As an aside, Jasper Cornaire, counsel to the Survey, claimed the Industrial Survey Commission would ignore the Governor’s investigation.} Senate Leader John Knight insisted upon the language extending the Survey beyond the life of the Moreland Act investigation stating “we respect the Governor’s rights to investigate and will help if we may, but we expect him to respect our rights also.”\footnote{\textit{New York Times}, January 27, 1928, January 31, 1928, February 1, 1928. The Senate resolution added language seeking an extension of the Industrial Survey if the Moreland Investigation did not issue its report prior to the end of the 1928 legislative session. Initially Speaker McGinnies resisted the adoption of the Senate resolution’s more stringent wording favoring instead language offering mere support of the Governor’s investigation. However on January 31 the Assembly changed course and adopted the Senate resolution by a vote of 73 to 40. Part of this change of heart was attributed to Senator Knight’s appeals to his colleague to endorse his resolution in the name of coordinate power over the investigation of state agencies. Further, Assembly Majority Leader Russell Dunmore called Smith’s investigation a “white wash” of his “pet baby” (the department) on the Assembly floor thus adding to support for Knight’s resolution.} Faced with a gubernatorial investigation legislators did their best to portray themselves as cooperative while also attempting to insure their own investigation would outlast that of the Governor.
In response to the legislature’s extension of the Industrial Survey and resolutions purporting support, Smith stated “investigating committees are cumbersome and slow-moving. I believe Professor Rogers will be able to get at the truth quickly and in a way that will command the confidence of all the people.” Smith directed Rogers to “step on the gas and get started.” Within a few days of his commission and while the legislature debated how they would respond to the Governor’s investigation, Lindsay Roger began his first hearings.

Lindsay Rogers held many important positions in education and government at the time of his appointment as a Moreland Act commissioner. Formerly a newspaper reporter, a fellow in political science at Johns Hopkins (where he received his PhD) and an adjunct member of the faculty at the University of Virginia, Rogers served as a member of the law faculty at Columbia University since 1920. Rogers also served as an official with the Cloak, Suit and Skirt Manufacturers, a budget and finance advisor on Mayor Jimmy Walker’s Plan and Survey Commission, the author of numerous books and articles, and a lecturer on politics and economics. Roger’s expertise on labor law and union matters made his appointment a logical choice. Though press reports stated his political connections and affiliation as “unknown,” Rogers’ friendship with Governor Smith seems obvious and newspaper stories in the presidential campaign of 1928 recount his traveling with the Governor and service as a campaign advisor. Rogers, along with


Henry Moskowitz, husband of Smith’s close advisor Belle Moskowitz, also edited Smith's biography for use in the 1928 presidential election.278

Rogers began his investigation the day following his appointment by Governor Smith (January 25, 1928) in New York City at which time he read into the official record the allegations made by several members of the Industrial Survey Commission.279 Rogers made it clear from the start the investigation he would attempt to find the source upon which the public charges had been made by members of the Survey.280 Assembly Majority Leader Russell Dunmore (a Republican), protested the Governor’s investigation claiming the investigation a mere “ whitewash.”281

In response to charges of whitewash Governor Smith defended both Rogers and his investigation claiming that if any member of the Assembly, such as those who served on the Industrial Survey, had any information pertaining to problems at the Department of Labor, Rogers would be happy to hear about it. Smith charged that the investigation was brought about by “a statement by a member of the Assembly printed in the

278 New York Times, April 18, 1928, April 23, 1928, July 18, 1928, August 7, 1928, September 13, 1928,

279 Edward G. Griffin to Lindsay Rogers, January 23, 1928; Lindsay Rogers to Edward G. Griffin, January 25, 1928. Griffin, who worked on Governor Smith’s staff, sent Rogers his oath of office, the workmen’s compensation law, subpoena forms, and a copy of the Moreland Act on the day before the announcement was made public. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-4.

280 New York State Legislative Documents, One Hundred and Fifty-Second Session, 1929, Vol. XVIII, (Albany: J.B. Lyon Company, 1929), No. 49, Message of the Governor Transmitting Report of Lindsay Rogers Appointed to Examine and Investigate the Administration of the Department of Labor, Report # 1, Charges of Fraud, 7. Rogers issued three separate reports as follows: Report #1 - Charges of Fraud (issued on June 1, 1928), Report #2 – Bureau of Workmen’s Compensation (issued June 15, 1928), Report #3 – Medical Problems (issued December 1, 1928). Hereafter referred to as: Rogers Report, Charges of Fraud, 1928; Rogers Report, Bureau of Workmen’s Compensation, 1928; Rogers Report, Medical Problems, respectively.

newspaper” therefore anyone even tangentially connected to the charges should welcome the inquiry, particularly Dunmore who exhibited a “palpable lack of brains.” As to a whitewash – inferring that Rogers and Smith would use the investigation to make the department look good after crimes had been alleged - Rogers stated to the New York Times, “the best answer to that is Mr. Cornaire’s own testimony.”

John Crary, the Albany reporter for the New York Sun, testified that he had quoted Assemblyman Cornaire accurately and that no objection by Cornaire had been made. When Rogers called Cornaire to the stand Cornaire stated that his words in the press were “very much exaggerated” and that “I have never said anything to the effect that any person in the department had accepted graft.” Each of the members of the Industrial Survey who claimed fraud in newspaper reports repeated the same pattern which led Rogers to state in his report that only after the investigation commenced “was it announced that the members of the Industrial Survey Commission had been misquoted.” All of them retracted their statements in the press completely.

With politics shunted to the side – at least by Rogers who deflated the Republicans’ charges of a department riddled with fraud – the investigation spent the next four months examining the Department of Labor and its six bureaus, particularly the Workmen’s Compensation Bureau. Rogers also interviewed dozens of witnesses from every aspect of the workmen’s compensation system including insurance carriers,


284 New York Times, February 1, 1928; Rogers Report #1, 7-8.

285 Rogers Report, Charges of Fraud, 1928, 8.
businessmen, lawyers, physicians, employees of the department, and members of the Industrial Survey Commission. Frances Perkins’ cooperation and pleasure with the “thorough but constructive” investigation was noted in her private letter to Governor Smith in mid-February stating “it was a brilliant idea to appoint him [Rogers].” Rogers utilized the records of the Survey, insurance carriers, and the New York Claims Association, a group of insurance representatives investigating workmen’s compensation claims.

On June 1, 1928 Rogers issued his first report which primarily served to clear the department as a whole against sweeping accusation of fraud while focusing on select areas requiring improvement within both the department and the workmen’s compensation system. Generally, claimed Rogers, with over 518,000 claims received in the past year alone, and 347,368 cases closed in the past two years, the fact that 10 cases of fraud were uncovered by the Survey seemed not surprising. In the ten cases cited, only five resulted in overpayment. Further, in the areas of forgery of false stamps, none of those involved could be linked to employees of the department and all of the evidence had already been handed over to the United States Attorney’s office. Sixty insurance companies testified during which time they unanimously claimed the “department was honest from top to bottom.”

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286 Frances Perkins to Alfred E. Smith, February 17, 1928, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-4.


289 Rogers Report, Charges of Fraud, 1928, 10, 12-17.
Rogers stated that he spent months detailing the operations of the department from the mail room all the way to the Industrial Commissioner’s office. His “observations and informal inquiry” failed to uncover any evidence of fraud. Rogers stated that even after examining hundreds of letters directed to him after he opened his investigation he found that almost all of the complaints directed to him pertained to reversals of rulings made by referees in order to gain higher awards. Few of these letters contained allegations of wrongdoing or crime, and fewer still had any importance attached to them since they dealt with rumor or innuendo.²⁹⁰

Roger’s announcement of a “clean bill of health” did not preclude him from pointing out several issues that required attention at the Workmen’s Compensation Bureau. Rogers stated that several recurrent problems plagued the department. “Runners” continued to dupe injured workers into granting them unnecessary fees for unneeded representation and some “lump sum” fraud continued unabated. Rogers claimed the Industrial Commissioner should keep better track of “runners” possibly by adding a “special index” of repeat offenders. A general laxity in regards to dealing with lawyers, physicians, insurance representatives pervaded the system leading to either “bear gardens” (chaotic battles in the hearing rooms) or “love feasts” (a settlement which “smacks of fixing rather than of even handed justice”). Cluttered hearing rooms, crowded offices, and a fetid and dirty atmosphere pervaded the New York City offices. Rogers also stated that the hostile and cold relationship between the current Industrial Commissioner and the insurance carriers generally created a poor working relationship in

the workmen’s compensation arena. All of these small yet interconnected shortcomings added to a drag on the successful administration of the department and required a more vigilant attitude in the discharge of the workmen’s compensation law.

Rogers issued ten conclusions in his first report, largely recounting the issues outline above, most of which detailed small areas of administrative shortcomings. However, one area involved an alleged conflict of interest directly touching on the Industrial Survey Commission and the allegations that led to Roger’s thorough study of the department. Rogers claimed that Henry Sayer, the current Executive Secretary of the Industrial Survey, engaged in an obvious conflict of interest by virtue of his being the president of a company (Wolff Medical) directly benefiting from the laws and regulations the Industrial Survey examined and oftentimes supported in the legislature. Sayer currently enjoyed business relations with many of the carriers who utilized his company’s services, and many of the situations Sayer wanted investigated directly benefited both his company and the carriers looking to the Industrial Survey for relief. Rogers even stated that had the poor relationship between carriers and the Industrial Commissioner not existed, Sayer - acting to please his clients - would not have urged a full investigation of the department. Further, if Sayer were an attorney, Rogers speculated, Sayer would never have been allowed to serve both as an employee (executive secretary) of the Survey and counsel for his own company. This conflict monetarily benefited both Sayer and Wolff Services while at the same time Sayer directed a state body investigating the Department of Labor. Rogers even produced testimony recounting that Sayer and others had discussed this potential conflict between Sayer, Wolff Services, and the Industrial Survey

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291 Rogers Report, Charges of Fraud, 1928, 21-28, 30-32.
in 1926 – prior to Sayer accepting the government job. During the course of the Investigation the Kings County Medical Society complained to the Moreland Act investigation about Sayer seeking a full investigation of the medical practices under the workmen’s compensation system. Sayer denied any wrong-doing stating that some of the charges against Wolff such as fee-splitting occurred prior to his taking the job at the Survey. Rogers submitted his report to Smith and then moved into his investigation of the Workmen’s Compensation Bureau.\footnote{Rogers Report, Charges of Fraud, 1928, 32-35; New York Times, March 19, 1928.}

On June 15, only two weeks after Rogers issued his first report, he issued another report dedicated to his inquiry into the Bureau of Workmen’s Compensation. The tone of the report mirrored much of the first in that it defended the overall system of workmen’s compensation in New York State while pointing out a number of areas Roger believed in need of change.\footnote{“Workmen’s Compensation” (Editorial), New York Times, June 18, 1928.} Generally, Rogers stated, the “New York workmen’s compensation law is as good as any, if not the best, in the United States.”\footnote{Rogers Report, Bureau of Workmen’s Compensation, 1928, 45.} However, the lack of communication and some of the inherent flaws within the workmen’s compensation law, had created isolated departments and an “illogical structure” in several areas.

Rogers believed that since the legislature had changed the structure of the Department of Labor when it created an Industrial Commissioner (administrative head) and an Industrial Board (judicial body), several areas under the workmen’s compensation law existed in a legal “twilight zone.” For example, when a major insurance carrier failed the Industrial Commissioner pursued payouts and coverage under one option, whereas the
Industrial Board desired another. Without clear lines of legal authority the Attorney General had to step in. The delays and losses to all involved – not the least of whom were the injured workers – was compounded by the lack of communication between the executives within the department.  

In many other areas Rogers pointed out shortcomings of the current workmen’s compensation law and system such as lack of training for referees, a substandard statistics department, a culture of delays in the hearing process, the cessation of staff meetings since the previous Industrial Commissioner (Shientag) left office, low salaries leading to loss of quality personnel, and a lack of understanding of budgeting procedures. Each interconnected area led to further problems after years of neglect. For example, the lack of communication between upstate and New York City offices led to isolation in the hearing offices. The twenty-eight full-time referees ruled on about $1 million in awards each but had little knowledge of how other referees ruled in similar cases. In a similar vein, after referees served their apprenticeship, they had little encouragement or opportunity to further their training. Lack of good statistics led to poor information on which to base future budgets, lack of staff meetings between executives led to an end to the meetings between upstate examiners, and low salaries led to high turnover.

To remedy the problems within the department Rogers suggested granting the Industrial Board the administrative and judicial control of the workmen’s compensation

297 Rogers Report, Bureau of Workmen’s Compensation, 1928, 64, 68-69.
Additionally, Rogers suggested making the Workmen’s Compensation Bureau fiscally independent of the legislature thus enabling the program to operate within the budgetary parameters of a Workmen’s Compensation Expense Fund, similar to that of the State Insurance Fund which had received such authority in 1922. Rogers claimed that since the legislature merely allocated funds earmarked under formulas set by the program already, this change would curtail legislative interference. Rogers also wanted to establish a meaningful advisory committee, something he modeled on the Survey’s Compensation Conference of industry and insurance advisors. Legislative reordering, Rogers claimed, would improve the system and get rid of many problems.299

In a pattern similar to his first report, Rogers took great issue with the role played by the Industrial Survey Commission. Rogers stated that if the Survey were to continue it should do so as exclusively as a legislative committee “and should not have among its members or employees individuals who have axes to grind.” Roger believed it natural for legislators to form committees and investigate laws and government, however, it seemed “improper for this committee to be composed in part of representatives of the interests affected by the administration of the law.” Having members of the public participate as members of a legislative committee led to a number of very questionable undertakings such as Associated Industries enlisting and then paying for the services of a pro-business study on behalf of a government body. Such a study would naturally be tainted whether procured by business, labor or any other biased group and had no right being placed in the record as a government study. Suppose, pondered Rogers, the labor unions


commissioned an “impartial” study finding a “40 hour work week” optimal – would Associated Industries sit idly by? If the methods employed by the Survey were “imitated by other legislative committees, there would be little or no need for lobbyists in Albany. Lobbying would be transformed into boring from within legislative committees.” 300

Rogers summed up the 1928 charges against the Department of Labor by members of the Industrial Board as very similar to charges made in 1924 against the department by Associated Industries. Rogers even produced several articles from Associated Industries’ publication *The Monitor* from 1926 which openly touted the work of the Survey in curbing regulation and insurance costs. 301 Overall, the first two reports issued by Commissioner Rogers cleared the department from any wrong doing while pointing out several areas of possible legislative improvements. At the same time both reports criticized the Industrial Survey, the business lobby, and the recurrent problems uncovered in several previous investigations such as runners, lump sums, long delays in the hearings process, and the medical aspects of the workmen’s compensation system. After a series of interviews and hearings detailing an Attorney General’s on-going investigation into improper conduct by physicians, Rogers turned to the last phase of the inquiry: doctors in the compensation system. 302

In March 1928 the Legislature reauthorized the Industrial Survey Commission for another full year. After Rogers issued his first two reports, accompanied by detailed press


301 Rogers Report, Bureau of Workmen’s Compensation, 1928, 75, 77.

statements, Industrial Survey Commission chairman Senator Truman wrote Rogers inviting him to explain his findings. In a letter he made public Senator Truman took great issue with Rogers stating that even though Rogers reported many criticisms of the department, such as runners, his public statements seemed “at variance with the full facts found by you.” Truman criticized Rogers’ public statements and suggested Governor Smith exercised control over the investigation. While the press release detailing Rogers’ reports came from George B. Graves, Secretary to the Governor, Lindsay Rogers accepted Truman’s invitation to testify before the Survey and explain the press reports and his own findings. Rogers first wrote to Truman stating that once again Truman appeared “again in the newspaper with statements that must be corrected.” Rogers defended his reports, his statements to the press, and his attacks on the work of the Industrial Survey and its executive secretary. In correspondence between George Graves and Lindsay Rogers prior to Rogers’ appearance before the Industrial Survey, Rogers asked Graves for a list of newspaper reporters who requested copies of his report from the Governor’s office. Rogers explained to Graves that he wanted these reporters to “Flash” on Truman” (presumably focus) when he (Rogers) testified before the Survey on July 10.


306 Lindsay Rogers to George Graves, July 2, 1928; George Graves to Lindsay Rogers, July 5, 1928; Lindsay Rogers to George Graves, July 6, 1928; Lindsay Rogers to George Graves (telegram), July 5, 1928, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Labor,” Reel 35, 200-20-4.
Rogers stood by his reports and statements to the press when he voluntarily testified before “an admittedly hostile” Industrial Survey on July 10, 1928.\textsuperscript{307} Rogers’ appearance before the Survey came after that body re-elected Henry Sayer as executive secretary despite Rogers’ contention that the employment of Sayer in such a capacity represented a serious conflict of interest. Senator Truman (Survey Chair), Senator Knight (the Senate Republican Leader) and Merwin Hart (the business representative on the Survey) took turns accusing Rogers of “misleading” the newspapers and “omitting details” from his findings. Rogers skillfully turned the tables on the panel stating that his report went much further than the Survey’s findings and that if anyone seemed to be “wielding the whitewash bush” it was Senator Truman and all of those in the legislature who vocally opposed the Governor’s investigation. Rogers stated that his investigation, from the point of view of the Survey, may have gone too far. Rogers again questioned the Survey’s use of data paid for by the business lobby, and upon questioning about this by Merwin Hart, Roger replied that Hart’s very presence on the committee made the acceptance of such information “injudicious.” Rogers noted the committee did not discuss the issue of Wolff Services, nor did they allow the Democratic Assemblyman Maurice Bloch to ask questions. Rogers suggested his entire report be placed in the record “without the making of speeches by Senator Knight.” Rogers stood by his characterization that the department, while experiencing some troubles, could be summed up as “efficient” despite need for some minor legislative and administrative changes. The fact that his report specifically and methodically pointed out errors in the department

bolstered Rogers’ claim his report was not a “whitewash” and indeed went further than the Survey’s findings of the previous year. Rogers reminded Senator Truman who claimed a whitewash, while simultaneously admitting the report found errors, “you can’t eat your cake and have it too, Senator.”

For the remainder of 1928 the two investigations would operate simultaneously, yet independently of each other.

Lindsay Rogers purposely separated the issue of physicians and medical services from the other areas researched because of “its special importance” within the workmen’s compensation system. Since the law mandated that all injured employees receive prompt medical treatment under the auspices of program and paid for by the employers, the medical aspect of workmen’s compensation held a particular significance for employees. As part of their workmen’s compensation coverage, injured workers were not just eager to insure compensation for loss of salary, but also medical treatment to insure recovery from injury. In regards to medical cost, since approximately 30% of the cost of the workmen’s compensation program involved medical expenses, employers and insurance companies paid almost $8 million per year in this one area. Due to its significant monetary value, companies, insurance carriers, and medical professionals explored a number of systems to keep costs low or at least control the expansion of medical-related expenditures.

The medical systems within the workmen’s compensation program grew very large and extensive in the 1920s. High cost led many insurance carriers to hire doctors full time, establish clinics to treat injured workers, and to work with favored doctors who


specialized in industrial and workmen’s compensation case injuries. Rogers claimed he uncovered a system under which insurance carriers attempted to keep costs low such as retaining doctors who submitted lower bills and funneled injured workers to favored clinics and doctors. In turn, this scenario fostered a cottage industry of doctors working with insurance carriers to secure steady employment in the area of workmen’s compensation medicine. This situation gave rise to “fee-splitting” (carriers and doctors splitting fees), “reciprocal” arrangements between doctors and specialists who referred patients to each other, “unethical advertising,” and “liquor prescriptions to bribe foremen” to send injured workers to certain doctors. Rogers uncovered cases of doctors engaging in “overtreatment” to increase fees, hospitals overcharging for dressings and overnight stays, and instances of doctors treating injured workers in order to bill carriers even if the procedures were beyond their skills level. Rogers found much of his evidence in a study commissioned by the American College of Surgeons in 1926. Rogers singled out Wolff Medical Services, Henry Sayer’s company, as one of the medical concerns engaging in the system of controlling expenses to such a degree that it denied proper medical care and compensation to injured workers. Some conniving physicians worked in collaboration with lawyers specializing in negligence cases. Rogers found that the Manhattan District Attorney’s office had already uncovered doctors “chasing” clients to obtain additional compensation claims with the physicians often

310 Rogers Report, Medical Problems, 1928, 130-133.

311 Rogers Report, Medical Problems, 1928, 132-133.

312 Rogers Report, Medical Problems, 1928, 140, 146.
filing multiple claims from the same address, listing their practices at multiple addresses, and employing various names.\footnote{\textit{New York Times}, June 21, 1928.}

To remedy the situation Rogers proposed a number of recommendations including mandating that all “medical examinations be made by impartial State doctors,” increase the salaries of state doctors who had been “grossly underpaid,” and commence communication between medical offices within the department to share best practices. The report also called for rooting out unscrupulous doctors from the system (some of whom were well known perjurers), establishing “free choice of physicians” to end favoritism of select industry-insurance carrier doctors, and creating a code of billing and practices to cut down on the “lifting” of cases between doctors to obtain lower rates. The various county Medical Societies favored many of these reforms. Doctors themselves, Rogers claimed, needed to take the lead on improving conditions, ethics, the image, and the performance of those engaged in industrial medicine.\footnote{\textit{Rogers Report, Medical Problems}, 1928, 135-148; \textit{New York Times}, December 24, 1928.}

Lindsay Rogers’ investigation of the Department of Labor, specifically the Bureau of Workmen’s Compensation, resulted from the open hostility of the legislatively-appointed Industrial Survey Commission and the allegations made by members of that body in December 1927 and January 1928. As in the case of the 1919 and 1924 Moreland Act investigations of the workmen’s compensation system, the 1928 investigation owed its existence to calls for investigation from outside of the department. In all three cases, rumors or allegations of fraud, corruption, or wrong doing led Governor Smith to appoint a commissioner to investigate under Section 8 of the
executive Law. In each of these cases, as in 1928, the Governor publicly claimed that segments of the business community and the Republican Party attempted to exploit the controversy – whether real or imagined – to embarrass the Smith Administration and weaken the workmen’s compensation system.

Just before the 1928 Presidential election in which Smith was the Democratic nominee, Governor Smith stated that the Republicans had attempted since the 1910s to oppose new labor laws. When they found they could not fight the progress being made in labor and workmen’s compensation, the Republicans attempted to cripple the administration of the Department of Labor by reducing its appropriations. When fiscal restraint would not work Smith claimed the Republicans attempted to reorganize the department – which they did to such a degree that it had “been organized, reorganized, and each time thoroughly disorganized, and all for political purposes and political reasons.” The last recourse for the Republicans when all else failed was to charge the Department with corruption, fraud, waste, and mismanagement in the hopes that the public would rally against the Department of Labor. This course of action failed.

Smith summarized his experiences under the Moreland Act in regards to the 1924 and 1928 accusations made against the Department of Labor in November 1928. Smith noted his shrewd use of subpoena power in 1924 stating his critics “rushed up to Albany with charges against the Labor Commissioner” but “I took full advantage of the executive law and appointed myself commissioner and in less than twenty-four hours I had a subpoena in the hands of every one of the directors.” In 1928 Smith recalled the “Assemblyman from Jefferson County stood up on the floor of the Assembly and talked about graft in the Labor Department.” Smith stated that the Assemblyman “hardly had the
words out of his mouth when I appointed Lindsay Rogers,… as a Moreland Commissioner…, and he went right upstairs and put the sub poena in his hand and said: ‘Come downstairs and explain that’ And when he got down there, he couldn’t do it.”

However, vindication of his departments, even after some revelations of problems, did not deter Smith’s Republican foes. After Smith left office Rogers’ reports, officially transmitted to the legislature by Governor Franklin Roosevelt, found a cool reception. Senate Republican Leader John Knight claimed the reports vindicated the charges made by the Survey of problems in the department - charges his Republican colleagues ironically and inconsistently withdrew when placed under oath by Commissioner Rogers. Senator Knight would have everyone believe the Survey, not the Moreland Commissioner, had helped investigate and recommend changes to the department while at the same time neither the Senator nor members of the Survey would or could detail the exact problems within the department. Instead, the Survey focused on weakening the workmen’s compensation program and refusing to entertain the legislative changes recommended by Commissioner Rogers to improve the Department of Labor. Senator Truman stated the legislature would not enact laws giving more power to the Industrial Board, create an advisory committee from insurance carriers to assist the Board, nor would they change the composition of the Industrial Survey Commission. In an extremely strong defense of legislative prerogative Senator Knight ended his comments on Rogers’ accusation of “influence of certain members as now constituted” on the Survey as “ none of the business of the examiner and what he says on the subject

is and should be resented by the Legislature.\textsuperscript{316} Apparently the only external influence on the Department of Labor or the legislature Truman and the Republicans would entertain would be the business lobby – not a Moreland commissioner or Democratic Governor.

In March 1929 the Rogers-Knight episode ended with the issuance of the final report of the Industrial Survey Commission. The Survey membership had also changed between 1928 and 1929 with the retirement of two Assemblymen and Senator James Truman, who ironically became the Survey Counsel in January 1929.\textsuperscript{317} As the legislative session neared its completion the report rejected – as did the legislature – almost every one of Rogers’ recommended changes to the Department of Labor and the Bureau of Workmen’s Compensation. The Survey agreed on only the very minor point of mandating that all lump sum awards be presented to the Industrial Board before award. As a final jab at Rogers and Smith, the Survey stated that while both the legislature and the Governor had the right to investigate the department, the legislature magnanimously yielded to Smith once it became apparent Rogers would continue past the 1928 legislative session. However, when both parties finished their inquiries, the Survey announced, “an examination of the Rogers report discloses a striking similarity in its findings to those in the report of your Commission relative to conditions in the Department of labor.” The Survey claimed that only after the Survey uncovered these problems did the Moreland Commissioner enter the picture to largely retrace the steps taken by the Survey. Additionally, and in a slight to Governor Smith, the Survey claimed

\textsuperscript{316} \textit{New York Times}, January 8, 1929.

\textsuperscript{317} \textit{Industrial Survey Report, 1929}, 8-9.
if the Governor had only waited a few weeks longer, the Survey could have saved the state the time and cost of another investigation. Since “both investigations [the Moreland and Survey] disclosed that fraudulent claims were being passed through the department” and revealed “no firm hand was disclosed guiding the Department.” The Survey claimed Rogers merely recreated what the Survey would soon disclose. In essence the Survey took credit for all of the good work done by the Moreland Act commission such as pointing out internal flaws in the workmen’s compensation system, however, the Survey strategically ignored the criticisms that could possibly compromise the Survey’s own reputation such as the conflicts of interest inherent in the Survey’s membership.318

The Survey claimed that its three year history resulted in several key legislative initiatives with particular success in 1928. The Survey credited itself for a number of workmen’s compensation changes such as expanding coverage to certain occupational diseases, expanding appeals, curbing runners, and extending the statute of limitations (all supported by Governor Smith).319 Despite Smith’s Annual Message in 1928 in which he detailed the great strides made in the area of labor over his four terms - much of it over the objections of the Republican Party - the Survey claimed credit for many recent labor law and workmen’s compensation amendments.320 The Survey claimed the recent passage of many labor and workmen’s compensation bills due to the atmosphere of cooperation foster by the Survey. The Survey’s report would have readers believe they were responsible for “liberalizing its [workmen’s compensation] benefits, clarifying and


simplifying procedures.” Additionally they laid claim to great diplomatic skills in guiding their program through the legislature.

The unanimous agreement of these parties [labor and industry] for a legislative program was a somewhat novel procedure in the matter of compensation legislation and the passage of the proposals thus unanimously agreed to was accomplished without controversy of without the irritation or friction on the one hand or the other that is so frequently in evidence in legislative matters.322

However, the Survey betrayed the disingenuous of this statement throughout its final report by claiming they had steadfastly adhered to the principle “that the schedule of benefits under the Workmen’s Compensation Law be not materially increased” and that all legislative proposals should be weighed considering “what is best for industry as a whole, and therefore, best for our industrial workers.”323 Workers, according to this logic, served as pawns of industry not citizens of the state due protection under the law.

By 1929 Governor Smith had retired to private life. The series of Moreland Act investigations into labor in 1919, 1924, and 1928 faded into the background. The Department of Labor and the workmen’s compensation programs, however, continued whereas the legislature failed to reauthorize the Industrial Survey Commission. In that sense Smith’s forceful use of the Moreland Act to defend the department and its programs helped bolster workmen’s compensation at a time when it definitely needed support – the early and mid-1920s. By 1929 attacks on a labor, employment, and

321 Industrial Survey Report, 1929, 44.
322 Industrial Survey Report, 1929, 12.
323 Industrial Survey Report, 1929, 53-54.
workmen’s compensation – largely due to the onslaught of the Great Depression – became less common and certainly less vitriolic.

Smith used the Executive Law to defend labor beyond just investigating employees of the executive branch. He compelled members of the legislature and the private sector to testify before his commissioners and explain their statements and allegations about his department. This precedent, upheld by the Attorney General in the 1924 case of Associated Industries board being compelled to testify, and not challenged by members of the legislature to testify in 1928, may have important historical ramifications. Missal in his work on the Moreland Act explained this fact by stating, as noted above, the legislature claimed the executive possessed no superior claim to investigations, yet the department existed “within the province of his supervision” therefore they yielded – though temporarily – to the Moreland commissioner.324 Controversy arose not over the scope of the investigation but rather who should investigate. Once Smith determined he would proceed, his investigations framed the problems, assessed the blame, and published the conclusions reached by its commissioner.

Chapter 6 – Public Works, Canals and Transit, 1923-1925

Between October 1923 and November 1924 Governor Smith appointed three Moreland Act investigations into areas involving transportation - public works (purchasing), the barge canal system, and New York City transit. These three investigations mirrored the “small investigations” of 1919-1920 in the sense that Smith’s commissioners unearthed mismanagement rampant in various state agencies making the case that limited gubernatorial oversight of subordinate executive departments contributed to poor government. The Moreland Act investigations of the mid-1920s underscored Smith’s desire for restructuring New York State government through constitutional amendments with these inquiries providing excellent examples of New York State’s convoluted government structure. However, since necessary constitutional changes were not adopted by the voters until November 1925, with the implementation of a cabinet-style executive branch not becoming a reality in New York State until 1927, Smith again relied on the Moreland Act to police state government. Smith’s investigation into the Transit Commission also portended the coming of state authorities and the gray area between state and local government involving independent state bodies performing local public functions.

Public Works - 1923

During his first term in office (1919-1920) Governor Smith’s Reconstruction Commission studied the structure and functions of the various departments, board, and agencies responsible for public works. The Reconstruction Commission found that fifteen
separate entities had some jurisdiction or responsibility for public works and transportation including a bi-state commission and an independently elected State Engineer and Surveyor who did not report to the Governor.¹ The Reconstruction Commission recommended consolidating many of these agencies and the elimination of others, including several changes requiring constitutional amendments. For example, under the state constitution the State Engineer exercised responsibility for engineering, surveys, and construction work on the Barge Canal, however, the Department of Public Works also carried out similar functions such as executing “all laws relating to the maintenance, construction, and navigation of canals, except so far as such construction is placed by statute under the jurisdiction of the State Engineer.” The murky divide between the independently elected State Engineer and an executive department under the Governor overseeing canal contracts created questions regarding responsibility. Further, a Canal Board existed to supervise various canal functions such as contracts, and a separate body, the Commissioners of the Canal Fund, oversaw finances. In many instances joint responsibility over certain functions led to lack of accountability with various agencies blaming each other when things went wrong. Other striking duplications, inconsistencies, and illogical scenarios existing in the area of public works included a State Architect responsible for plans and construction of state buildings but with the Trustees of Public Buildings having jurisdiction over certain state office buildings; two separate entities overseeing bridges; and five entities exercising some form of oversight of New York

¹ Reconstruction Commission Report, 1919, 85. These fifteen entities included the Department of State Engineer and Surveyor, Department of Public Works, Department of Highways, Department of Architecture, Commissioners of the Canal Fund, The Canal Board (ex Officio), Trustees of Public Buildings, New York Bridge and Tunnel Commission, Interstate Bridge Commission, Commission on West Side Improvement, New York-New Jersey Port and Harbor Development Commission, Long Island Waterway Improvement Board, Port Wardens, and Harbor Masters.
State’s waterways and ports. To confuse matters more, the administrators of these various offices and departments were appointed through a variety of means with terms often overlapping administrations.²

In an effort to better organize public works agencies Smith and the Reconstruction Commission suggested consolidating these offices into a Department of Public Works with a commissioner appointed by, and at the pleasure of, the Governor with two deputies to assist him. The new department would reorganize the various public works, building, and transportation-related fields under a new schematic with five new bureaus reporting to the Commissioner of Public Works: engineering, waterways, administration, highways, and architecture.³ However, despite its logic, the legislature refused to implement the Reconstruction Commission’s recommendations under Governor Smith in 1919-1920 or Governor Miller in 1921-1922.

In 1923, elected after two years out of office, Governor Smith again advocated many of the Reconstruction Commission’s recommendations in the area of public works. Stating that a reconfiguration of the various state agencies responsible for public works, canals, and highways would both save money and improve efficiency, Smith proposed a legislative change mirroring many of his earlier suggestions. In his January 1923 annual message to the legislature and again in special messages to the legislature recommending the abolition and consolidation of “scattered” and “ramshackle” state departments in February, March, and May 1923, Governor Smith suggested “re-grouping” and

² Reconstruction Report, 1919, 85-89.

³ Reconstruction Report, 1919, 90-98. See Appendix G for the proposed reorganization chart for public works.
“consolidating” all public work agencies. Smith hoped that exposing the waste and duplication found in the current configuration of state public works offices would underscore the need for executive branch restructuring. Smith’s two-step process in changing the executive branch involved the immediate enactment of state laws establishing gubernatorial oversight of the agencies not requiring constitutional changes, as well as a long-term solution under a constitutional reconfiguration of the several outdated or inefficient offices mandated under the current constitution. With the assistance of Senator Jimmy Walker, Democratic Majority Leader of the Senate, a bill passed the legislature in early May 1923 to reconfigure the various departments related to public works and transportation as advocated by Governor Smith. The new Department of Public Works consolidated many statutory agencies such as public works, canals, highways, and buildings while leaving intact the constitutionally mandated offices, such

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5 *Bills of the Senate of the State of New York, Nos. 1037 to 1319, Inclusive, Printed During the One Hundred and Forty-Seventh Session of the Legislature, Vol. IV*, (Albany: J. B. Lyon Company, 1923), No. 1142, Introduction 1045; *New York Legislative Record and Index, A Complete Record Of all Bills Introduced in the Senate and Assembly During the 146th Annual Session of the Legislature of the State of New York Beginning January 3, 1923* (Albany: The Legislative Index Publishing Company, 1923), 82; *New York Times*, April 24, 1923, May 6, 1923, August 31, 1923. Ironically, Governor Smith’s new consolidation forced the elimination of several departments heads he appointed to posts only months earlier including Colonel Frederick S. Greene of the Highway Department, Edward Walsh of Public Works, and John McNulty of Buildings. However, in August 1923 Governor Smith appointed Greene as the new Superintendent of Public Works and Walsh and McNulty as the new commissioners in the same departments, Public Works and Building respectively, but now reporting to Greene as overall superintendent.
as the State Engineer, Canal Board, and Commissioners of the Canal Fund, which would have to await the 1925 constitutional amendments on executive branch re-organization.6

Soon after Smith reconfigured the public works department along the lines of the Reconstruction Commission plan, new superintendent Frederick S. Greene informed Governor Smith of alleged bidding and purchasing irregularities in the Albany offices of the Bureau of Canals.7 In early October 1923 Superintendent Greene claimed that purchases had been made far in excess of market value by staff of the Bureau of Canals - previously the Department of Public Works until its reorganization on July 1, 1923 as the Bureau of Canals within the Department of Public Works now headed by Greene. On October 1 Superintendent Greene fired both Assistant Deputy J. William Grady and the chief of the financial staff Harry Holsapple for allegedly favoring a particular vendor doing business with the department.8 On October 2, 1923 Governor Smith appointed former New York State Supreme Court Justice Joseph A. Kellogg of Glens Falls as commissioner under the Moreland Act to investigate the Department of Public Works, particularly its purchasing irregularities.9

Governor Smith moved very quickly in his investigation into the Department of Public Works. The New York Times reported that Governor Smith had “an hour’s conference” with Superintendent Greene on October 2 after which the Governor immediately appointed Judge Kellogg a Moreland Act commissioner. Within an hour of

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6 Chapter 857 of the Laws of 1923.

7 Smith appointed Frederick S. Greene Commissioner of Highways in February 1923 and Superintendent of the expanded Department of Public Works after its creation on July 1, 1923.


his appointment Judge Kellogg began his hearings calling Superintendent Greene to testify. The quick issuance of Kellogg’s commission so soon after Smith’s conference with Greene, as well as the immediate commencement of hearings by Kellogg on the same day of his appointment, implies Governor Smith’s advance planning of the investigation well before October 2. The *Albany Times Union* stated Smith’s appointment of a hearing came with “suddeness that fairly swept official Albany off its feet.”\(^\text{10}\)

Smith’s choice of investigators also reveals his continued reliance on noted lawyers as Moreland Act commissioners. Judge Joseph Kellogg possessed extensive experience in politics, government, and the law having served as a member of the State Assembly, Deputy New York State Attorney General, State Supreme Court Justice, and Counsel to Governor Smith during his first term. Kellogg and Smith also enjoyed a personal and professional friendship.\(^\text{11}\)

In less than three weeks Kellogg ended his preliminary investigation and sent a draft report to George Van Namee, Secretary to the Governor, requesting Governor Smith review it and “make any suggestions deemed proper before it is submitted.” On October

\(^\text{10}\) *Albany Times Union*, October 2, 1923.

\(^\text{11}\) *New York Times*, July 10, 1918, June 14, 1924, September 9, 1929, September 11, 1929. Joseph Kellogg graduated from Columbia University Law School in 1895. In 1891 he served in the State Assembly. Kellogg then served as Deputy Attorney General of New York State (1892-1893), State Supreme Court Justice (1911), First Deputy Attorney General (1912-1914), Chair of the State Democratic Party and manager of Alfred E. Smith’s gubernatorial Campaign in 1918. Kellogg himself received several votes for the gubernatorial nomination in the Democratic up-state caucus known as the “committee of forty-two” in July 1918 prior to the state convention. He was elected State Democratic Chairman in 1918 and served as Smith’s campaign manager that fall. Upon election as governor Smith named Kellogg his counsel. Kellogg later served as a Public service Commission and advisor in Smith’s failed bid for the Democratic Presidential nomination in 1924. A successful Wall Street attorney during his time out of public service, Kellogg maintained a strong friendship with another Smith Moreland Act commissioner, George Gordon Battle.
20, 1923 Kellogg then issued his preliminary report to Governor Smith and the press.\textsuperscript{12} Kellogg revealed that between 1922 and 1923 the Department of Public Works, now the Bureau of Canals, had engaged in a series of wasteful and exorbitant purchases of equipment and materials. One firm, General Mill & Contractors Supply Company of Albany, had consistently sold goods to the state at rates far in excess of market value. While General Mill employees claimed “the prices for materials were fair and reasonable” Kellogg believed most prices proved exorbitant upon research. Kellogg also wondered why this one Albany firm supplied goods to canal outposts as far as 200 miles away and why the department did not engage local vendors offering better prices. By August 1923 over two-thirds of all state canal supply business was being awarded to General Mill.\textsuperscript{13}

Kellogg detailed a variety of excessive prices charged the state by General Mill including a $960 generator that had been nationally advertised at $560 and had been purchased by General Mill only a few days before delivery to the state for only $435. Additionally, the manufacturer of the generator contacted the department asking if his firm could sell its products directly to the state rather than through General Mill. A public works employee stated - erroneously - that only General Mill, under contract, could sell generators to the department. General Mill also charged the state $850 for an air

\textsuperscript{12} Joseph A. Kellogg to George Van Namee, October 20, 1923, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Public Works,” Reel 37, 200-22-1. Even though the letter from Kellogg to Van Namee bears the date October 20, 1923 the report, though supposedly subject to Smith’s input prior to release as expressed in the letter, is also dated October 20, 1923. However, on October 25, 1923, the Governor’s Office issued the press release detailing the preliminary report on October 25, 1923. The press release included the entire preliminary report running nine typed, single-spaced pages.

compressor valued at $495 to $550; chain at $67.20 per length versus its true value of $9.60 per length; dredge chains at $940.80 which could have been purchased elsewhere for about $500, and; a variety of tools and materials such as rope, tapes, wrenches, and wire at double the market rates. In one instance Kellogg found duplicate bills for materials for which the state had already paid.\(^{14}\) Upon questioning by Kellogg Colonel Greene claimed that $70,000 worth of goods purchased from General Mill would have cost only $25,000 if bought from other firms.\(^{15}\) At one point Greene claimed that the only way chain link purchased from General Mill could cost so much was if it were “made of precious metal.”\(^{16}\)

Kellogg also uncovered the practice of the state reimbursing General Mill for “wear and tear” on dredging equipment - an unreasonable, costly, and questionable contractual obligation on the part of the state. Further, Kellogg revealed contracts for tugs and dredges involving two firms that failed to provide its boats “in good condition, ready to go to work.” Instead the repairs to the boats to get them in working condition cost the state tens of thousands of dollars. In one instance, the department purchased one of the dilapidated dredges against the advice of the department’s inspector of dredges. The Canal Bureau also purchased sixteen cranes but only utilized one on the canal system.

\(^{14}\) Kellogg Preliminary Report, 1923, 408-409, 411.

\(^{15}\) Albany Times Union, October 3, 1923.

\(^{16}\) New York Times, October 3, 1923.
Colonel Greene stated that most of the cranes were “not only useless for our purposes on the canal, but they are actually in the way.”

Kellogg claimed that the system of checks and balances in the department’s finance division had broken down with employees “claiming to have supposed the other had approved the amounts to be paid.” When questioned by Kellogg many employees simply stated they assumed someone else in the department had checked prices or authorized the purchases. While stating that the abuses had been checked by newly appointed Superintendent Greene, Kellogg believed the system “permeated [the department] with a deepening and spreading dry rot.” Various departmental officials testified that they merely approved what had been sent them from subordinates, including Edward Walsh, the bureau director, and even the state comptroller’s office. Frustrated by the testimony of subordinates, including his secretary, who handed him requisitions to sign which he never read but assumed had been vetted, Walsh claimed the state “should have a central purchasing agency.” Though it did not make his preliminary report, Kellogg’s hearings revealed that suspended state employee Harry Holsapple had “borrowed $50” from one of the owners of General Mill on several occasions and William Grady, also dismissed, had a brother who once worked for General Mill. Kellogg, with the assistance of Deputy Attorney General Edward Griffin, even subpoenaed banks in Syracuse and Albany for records relating to Grady and Deputy

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Commissioner James Doyle.\textsuperscript{21} With growing evidence seeming to indicate serious overbilling and collusion with state employees, one of the owners of General Mill, Edward Swazey, refused to answer many questions on the grounds that he might incriminate himself.\textsuperscript{22}

Kellogg’s inquiry heard testimony from dozens of witnesses from the Department of Public Works relating to all parts of the canal system. In many cases witnesses blamed other state employees for wrongdoing only to hear from those accused later in the day who then proceeded to claim that the previous witness was the culprit. On one occasion a canal employee characterized the purchasing practices at the department as “duplicating and reduplicating” followed by his statement that he wished he never took employment with the department.\textsuperscript{23}

Based on the department’s payment of such exorbitant prices for items advertised for much cheaper elsewhere, Kellogg believed the venders violated the Penal Law by submitting padded, possibly fraudulent bills, and sworn statements that “the prices for products were fair and reasonable.” In one instance a department employee notarized a vender’s certification attesting to the validity of a bill being submitted thus exposing the department to complicity in the system. Kellogg therefore suggested that Governor Smith forward his report to the Albany County District Attorney for “the propriety of instituting criminal proceedings.”\textsuperscript{24} Kellogg desired getting a preliminary report into the hands of

\textsuperscript{21} \textit{Albany Times Union}, October 9, 1923.

\textsuperscript{22} \textit{New York Times}, October 4, 1923, October 10, 1923; \textit{Albany Times Union}, October 3, 1923.

\textsuperscript{23} \textit{Albany Times Union}, October 10, 1923.

the Governor as soon as possible since he feared he “would never be able to cover all of
the ground in one final report.”

After the publication of Kellogg’s preliminary report Greene announced the
acceptance of the resignations of both Edward Walsh and John Doyle, the top two people
at the Bureau of Canals. Both had tendered their resignations voluntarily. Greene also
permanently eliminated the position of Chief Auditor in the Bureau of Canals thus
depriving Harry Holsapple of a job in the new administration. Greene further stated
“there is no position in the department which Harry Holsapple is fitted to fill.” Greene
also announced the eliminations of over 120 jobs, the removal of “high salaried men who
had the use of automobiles,” and a reorganization of the department to save over
$241,000 after an accountant’s audit – all the results of Smith granting Greene a “free
hand.”

As Kellogg continued with his investigation and Greene moved forward with his
reorganization of the department, Governor Smith found the Albany County District
Attorney unresponsive to calls for prosecuting the misdeeds uncovered by Kellogg.
District Attorney Charles Herrick acknowledged the receipt of Kellogg’s report on
October 25 and promised that he would present the case to the grand jury scheduled for

25 Kingston Daily Freeman, October 19, 1923.

26 New York Times, October 30, 1923, November 8, 1923, November 9, 1923, November 10, 1923
November 13, 1923, December 7, 1923, December 27, 1923; Albany Times Union, October 24, 1923.
Greene’s elimination of Holsapple’s position and Greene’s refusal to discuss the firing drew immediate
condemnation from Holsapple’s attorney former Deputy State Attorney General Vincent Ryan. When
Greene refused to discuss the termination or attend a hearing on Holsapple’s firing Ryan, called Greene’s
behavior “atrocious.”
November if he found any evidence “showing that a crime has been committed.”27 The
*Albany Times Union* reported Herrick would likely take up the canal case editorializing
Herrick’s “batting average of 1,000 per cent” in such criminal matters.28 However, weeks
passed before Smith received news from the District Attorney, though it was reported in
the press that after the November elections Smith would likely meet with Kellogg and
Deputy Attorney General Griffin on the canal issue.29 By early December rumors that
Herrick would not pursue the case “leaked out of the Court House” but could not be
confirmed.30

After several weeks District Attorney Herrick wrote to Smith (well after the
November Grand Jury session) informing the Governor that he believed the evidence too
weak to present to a grand jury and that such an exercise would not likely lead to a
conviction in court. “The evidence disclosed,” according to Herrick, “was almost
shocking, but there is no evidence that…any of these officials acted in criminal collusion
or conspiracy.” Additionally, Herrick stated his investigation uncovered other venders
agreeing that some of the prices charged by General Mill were not too high. Herrick
claimed that rather than pursue Swazey, who in refusing to testify had so far saved
himself from self-incrimination, “it may be better policy to blame palpable carelessness
and negligence on the State officials who handled this business for the loss of so much
money.” In regards to perjury, Herrick stated that Swazey could not be prosecuted since

27 Charles Herrick to George Van Namee, October 25, 1923, Official Correspondence of Governor Smith,


29 *Albany Times Union*, November 17, 1923.

30 *Albany Times Union*, December 6, 1923.
specific instances of making Swazey swear an oath in the presence of either an agent or
commissioner of deeds could not be recalled. Overall, Herrick claimed, if his office were
to present the case it “would be laughed out of court.”

One day after Herrick wrote Smith, Judge Kellogg sent a draft of his final report
to the Governor seeking suggestions and changes. Kellogg, unaware of Herrick’s letter to
Smith claiming the State lacked a case, requested a date from the Governor for release of
the Moreland Act investigation’s final report. Governor Smith, while reviewing
Kellogg’s report, released the District Attorney’s letter to the press on December 10,
1923. Once Kellogg read the account in the newspapers he wrote to Smith stating the
final report should include “some reference” to the District Attorney’s refusal to pursue
the case. Kellogg admitted to Smith that his eagerness to refute the District Attorney
stemmed partly from Herrick’s contentions that the case would be “laughed out of court.”
Kellogg proceeded to draft a new three-page addition to his final report challenging some
of Herrick’s doubts about the case, such as his belief that a perjury conviction could not
be obtained. Kellogg again stated to Smith that due to the continuous practice of

31 Report of the District Attorney, District Attorney’s Office, Albany County, December 4, 1923 in Smith
Public Papers, 1923, 420-424.

32 Joseph A. Kellogg to George Van Namee, December 5, 1923, Official Correspondence of Governor
Smith, Central Subject and Correspondence file, 13682-53A, “Department of Public Works,” Reel 37, 200-
22-1.

33 “Governor Smith Received a letter from Hon. Charles J. Herrick District Attorney of Albany County in
Conducted, Press Release, December 10, 1923. Official Correspondence of Governor Smith, Central
overbilling and false statements attesting to fair prices, the case merited presentation to a grand jury. \(^{34}\)

Kellogg’s final report, issued on December 24, 1923, reiterated the preliminary report’s findings. In addition to pursuing charges of fraud against Swazey, Kellogg stated charges should be brought against an additional contractor, and several other employees involved in the bidding system should be terminated. Kellogg outlined a new departmental bidding system and suggested all bid work fall within the responsibility of the new Department of Purchase as soon as that agency expanded. Kellogg also inserted into the report much of his letter to Governor Smith regarding the District Attorney’s refusal to bring the case to a grand jury. Kellogg stated that “inasmuch as the learned District Attorney of Albany County has expressed his unwillingness to present the matter to the Grand Jury” Governor Smith should bring the matter to the Attorney General pursuant to the Executive Law. Under provisions of the law, the Governor could petition the Attorney General to bring the case before the term of the Supreme Court in Albany County. \(^{35}\)

One additional recommendation uncovered by Kellogg involved the Black Lake Bridge and its purchase by the State of New York in early 1923. Kellogg used the bridge purchase as an example of the state’s broken budgeting system. The Black Lake Bridge sale also exposed the role played by the Senate Republicans in manipulating the

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\(^{34}\) Joseph A. Kellogg to George Van Namee, December 10, 1923, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Public Works,” Reel 37, 200-22-1.

Department of Highways while in power, especially Senate Republican Leader Clayton Lusk. In 1921, at the request of the St. Lawrence County Legislature and a private bridge company, State Senators Warren Thayer and Clayton Lusk amended the Highway Law to allow the State of New York to purchase a local bridge. Since Lusk and Thayer actively pursued the purchase of the bridge under a scenario that guaranteed the sale at replacement cost, not assessed value, the owners of the bridge secured a tremendous profit. Senators Lusk and Thayer had the appropriation amendment slipped into the state budget and passed without anyone knowing about it, something Kellogg stated would not escape “adequate investigation” under an executive budget system as suggested by Smith.\footnote{Kellogg Final Report, 1923, 466.} Further Kellogg revealed, the State Treasurer performed the assessment of the property, a lawyer employed by Lusk’s Senate office undertook the legal work, and Lusk’s private law firm represented the bridge company in various legal and tax matters. Senator Thayer also received a payment for his services from the bridge company. Kellogg condemned former Highway Commissioner Herbert Sisson who ignored “all rules governing the determination of compensation at its [the bridge’s] fair value for property taken for public use.” The “sensational” revelations of payments to top Republicans, the manipulation of the state budget, and the legal fees to several persons for little work in the purchase of a dilapidated bridge further underscored Kellogg’s findings of corruption in the canals and highways bureaus.\footnote{Albany Times Union, October 24, 1923.} Kellogg skirted the direct indictment of the elected legislative and executive branch officials by stating the “ideals” and “public morals of Members of the Legislature or State Officers not connected with
the Department of Public Works, does not come within the purview of this Commission to investigate that Department.” However, Kellogg suggested Sisson be investigated by the Attorney General.

Colonel Greene lent credence to Kellogg’s condemnation of the bridge purchase by characterizing the bridge as “worthless.” Greene used the questionable bridge deal to again underscore the reform of the Department of Public Works under Governor Smith. Since Senator Lusk and Colonel Greene shared a mutual dislike for each other (in February 1923 Lusk unsuccessfully fought Greene’s confirmation as head of the then Highway Department) Greene was able to exact some revenge on Lusk by helping to expose the bridge deal. Lusk, however, questioned many of Greene’s administrative actions after Governor Smith consolidated highways, public works, and canals into one department under Greene.

On December 27, 1923 George Van Namee forwarded a copy of Kellogg’s final report to Attorney General Carl Sherman. Governor Smith stood by Kellogg’s final report stating he would exhaust all possible remedies. Since the Albany County District

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38 Kellogg stopped short of stating the Moreland Act did not grant commissioners the power to investigate independently elected state executive branch officials such as the State Treasurer or members of the legislature. Rather Kellogg stated he was limited by his commission to investigate the Department of Public Works. In 1927 Governor Smith directly addressed the issue Kellogg refused to entertain in 1923 by investigating the Secretary of State, an independently elected state official.


42 Charles O’Connor, Secretary to the Attorney General, to George Van Namee, December 28, 1923, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Public Works,” Reel 37, 200-22-1.
Attorney proved unwilling to pursue indictments, Governor Smith announced that he would confer with Attorney General Sherman. District Attorney Herrick publicly announced his respect for both Governor Smith and Judge Kellogg, stressing his desire not to appear as an impediment or a source of embarrassment for either the investigation or those undertaking it. Herrick stated his “professional opinion should not be regarded by anyone as calculated to embarrass or offend the Governor…it has no political significance.” Instead, Herrick stated he simply disagreed with Kellogg and Governor Smith that the case merited pursuit. With Herrick opposed to pursuing the case Smith informed Attorney General Sherman of his intention to have the State of New York proceed with charges. Herrick found himself in an awkward situation and released to the press his letter to the Governor and a detailed statement explaining his position. Stating “it embarrassing to differ with him [Kellogg] publicly” Herrick also defended Governor Smith’s actions when given two differing legal opinions claiming “I should do exactly what he proposes to do – submit it for final disposition to the Attorney General.” Though Herrick’s refused to carry out the Governor’s wishes, the Democratic Albany Times Union smoothed over the issue by summarizing the exit of the Democratic District Attorney under the misleading headline “Herrick To Help State Prosecution.”

On January 16, 1924 Governor Smith empowered the Attorney General under the Executive Law to replace the Albany County District Attorney “for the purpose of managing, or conducting,” the criminal charges being sought under Judge Kellogg’s


45 “Sherman Is Told To Act,” *Albany Times Union*, December 29, 1923.

investigation. Deputy Attorney General Edward Griffin, representing the state, appeared before State Supreme Court Justice Staley seeking a warrant for Edward Swazey for “presenting a false voucher with perjury.” Judge Staley issued a warrant for the appearance of Swazey and arraigned him on charges of perjury. Governor Smith followed the “somewhat extraordinary procedure” of replacing a sitting District Attorney with the State’s Attorney General and having the Attorney General petition a Supreme Court Justice rather than a “City Magistrate” due to its “State-wide importance.” Deputy Attorney General Griffin stated that having a Supreme Court Justice rule on whether or not the facts “warrant” charges would determine if the case would proceed.\footnote{Designating the Attorney General to represent the People at a term of the Supreme Court in the County of Albany for the Purpose of Managing and Conducting criminal Actions and Proceedings Relating to the Investigation of the Management and Affairs of the Department of Public Works of the State of New York, January 16, 1924, in Smith Public Papers, 1923, 415; Press Release from George Van Namee on January 17, 1924 on Governor Smith’s directive to the Attorney General to supersede the District Attorney, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, Reel 37, “Department of Public Works,” 200-22-1; New York Times, January 11, 1924, January 18, 1924.}

On January 28 Justice Staley ruled that the evidence, as presented by Judge Kellogg, insufficient to warrant a trial of the recently indicted Edward Swazey. Ironically, one of the cases cited by Justice Staley in dismissing the charges involved Herrick’s own father D-Cady Herrick under the case O’Reilly v. People.\footnote{Albany Times Union, January 28, 1924.} The ruling upheld District Attorney Charles Herrick and ended Governor Smith’s pursuit of the contractors investigated by Kellogg. Deputy Attorney General Griffin stated on behalf of the State “that Justice Staley gave the question the most conscientious and exhaustive study and investigation” and that since no other evidence could be found, the case had run its course. The trial ended before it began. Likewise, the investigation ended with
Kellogg and Smith unable to prosecute any of the contractors they believed had bilked the state out of thousands of dollars.\textsuperscript{49}

As an addendum to the prosecutorial aspects of the 1923 Moreland Act investigation of the Department of Public Works, eminent Albany jurist D-Cady Herrick (father of District Attorney Charles Herrick), wrote to George Van Namee on January 31, 1924 to offer some thoughts on the case and investigation. Herrick stated that the Governor, Colonel Greene, and Judge Kellogg should not feel slighted by the results of Justice Staley’s ruling since the flawed laws regarding the nature of notary and commissioner of deed affidavits, not the actual evidence of overcharging, led to the dismissal of the case. Since Swazey could not be successfully prosecuted due to the lax enforcement of laws regarding sworn statements, obvious overbilling and collusion went unpunished. Herrick stated better laws regarding sworn statements, as well as improved purchasing procedures – which Governor Smith and Colonel Greene had instituted as a result of the investigation – would be the fruits of the investigation.\textsuperscript{50}

Governor Smith’s investigation into the Department of Public Works, despite not securing the conviction of allegedly corrupt private contractors, did result in the reshaping of the department. The investigation coincided with a restructuring under Colonel Greene who vigorously pursued efficiency, going so far as to remove or fire both Democrats and Republicans in a drive for a logically order Department of Public Works.

\textsuperscript{49} \textit{Albany Times Union}, January 28, 1924; \textit{New York Times}, January 29, 1924.

\textsuperscript{50} D-Cady Herrick to George Van Namee, January 31, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Department of Public Works,” Reel 37, 200-22-1; \textit{New York Times}, January 11, 1924, January 18, 1924. D-Cady Herrick, the father of Charles Herrick, had served as District Attorney of Albany County, State Supreme Court Justice, and in 1904 was unsuccessful as the Democratic nominee for Governor.
Smith used the investigation to root out corruption and institute better purchasing and administrative procedures in a massive department responsible for millions of dollars of public works projects, the state canal, and the growing network of roads and bridges spurred by the automobile. Smith touted all of these accomplishments and savings to the state of over $200,000 in a lengthy press release in early December 1923 just as Kellogg finished his final report. The investigation also tangentially helped end the career of Senator Clayton Lusk by exposing his role in the sale of the Black Lake Bridge - the latest in a line of legislative incidents benefitting Lusk financially. Ironically, even the scandal-plagued Jimmy Walker questioned Lusk’s ethics. After the 1924 session Lusk retired, partly because the Republican caucus became increasingly more uncomfortable with him as their leaders in light of his past scandals.

The Barge Canal – 1924

Construction of the Erie Canal connecting the Hudson River with Lake Erie began in 1817 and ended in 1825 with the official opening by Governor DeWitt Clinton. The canal served as one of the greatest engineering and transportation accomplishments of its day providing an all-water route from the Port of New York City to the Great Lakes. Throughout the nineteenth century the canal served as a major transportation route for business and commerce. Greatly expanded in the early twentieth century, the renamed “New York State Barge Canal” opened in 1918 after major improvements to the existing


52 New York Times, January 5, 1922. Lusk had admittedly received gifts from parties seeking legislative help including a silver serving set for his wife valued at over $1,000.
When Governor Smith took office in 1923 part of his reorganization plan included better oversight of the executive branch departments responsible for the canal. Smith’s 1923 reorganization included placing the state agency responsible for canal work (the Department of Public Works) under the supervision of a Superintendent of Public Works responsible for all major state construction including highways, bridges, canals, waterways, and buildings.

In early January 1924 Governor Smith, along with newly appointed Superintendent of Public Works Colonel Frederick S. Greene and Commissioner of Canals and Waterways Royal Fuller (reporting to Greene), drew the praise of the Canal Operators’ Association as the Smith Administration continued the consolidation of public works with a renewed focus on canal improvements. The resolution condemned “the attacks which have been made against the present administration of canal affairs.” Smith promptly released the letter of praise to the press on January 10, 1923. Underscoring the importance of the Barge Canal to New York State’s economy, Governor Smith announced on March 20, 1924 the creation of a commission to prepare to mark the occasion of the 100th anniversary of the canal a full year in advance of the celebration. However, by July 1924 several trade associations presented complaints to Governor

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Smith regarding the poor conditions and operations of the barge canal. The change from support to condemnation of the Smith Administration between January and July 1924 by businessmen dependent on the canal system led the Governor to investigate the complaints.

Formed in 1918 by “representatives of municipal and commercial organizations located along the waterway” to advocate for canal issues before federal and state officials, the New York State Barge Canal Conference worked closely with other organizations such as chambers of commerce, large manufacturers, and agricultural interests.\(^\text{56}\) On July 16, 1924 the Executive Committee of the Canal Conference met in Albany to discuss various issues relating to the canal. Those present at the conference, including Edward Walsh, former Superintendent of Public Works (Canals) prior to Smith’s reorganization of the department, discussed “several written statements received from operators on the canals” claiming the “the present management as inefficient and the canals as being in a worse condition than in years past.” Further, the executive committee discussed the predicted loss of tonnage and business due to the alleged deteriorating conditions of the canals and the “futile efforts to have imperative work done on the canals.”\(^\text{57}\) The committee decided to call a general meeting of the Canal Conference for September 12, 1924. The committee also commenced circulating flyers stating that the worsening conditions of the canal led to commerce being “withheld” from

\(^{56}\) *New York Times*, June 27, 1918, July 7, 1918.

\(^{57}\) Executive Committee, New York State Barge canal Conference, July 16, 1924, Meeting Minutes, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, Reel 37, “Barge Canal,” 200-22-2
New York businesses. The September conference would “adopt such measures as are necessary to restore our canals to an efficient condition.”58

Following the publication of the Canal Conference’s criticism of the canals, the Canal Committee of the Maritime Association of the Port of New York and the New York Produce Exchange adopted resolutions also condemning the condition of canal system under Governor Smith. The resolutions recounted damage to boats and equipment due to obstructions and the need for a deeper dredging of the canal. The Maritime Association specifically requested “an investigation of prevailing conditions be made and suitable remedies applied with the least possible delay.”59

In early August 1924 Governor Smith decided to investigate the allegations made by the various canal and commercial associations. Without announcing his intention of appointing an investigation or appointing himself a commissioner under the Moreland Act, Smith worked with New York State Attorney General Carl Sherman to prepare subpoenas for a hearing. Letters from Attorney General Sherman to his top aides on August 8, 1924 state that subpoenas for a hearing to be conducted by Governor Smith on August 26 “are to be served on August 19th, but not before that date” (underline original). Sherman also requested confirmation of successful service on each individual either by


59 C. Parker Runyon, Secretary Maritime Association of the Port of New York, to Alfred E. Smith, July 23, 1924; W.C. Rossman, Secretary New York Produce Exchange, to Alfred E. Smith, August 7, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.
telephone or telegraph.\textsuperscript{60} In the case of George Clinton, Chairman of the Canal Conference, the attorney assigned to serve Clinton reported Clinton’s comments and relayed them to the Attorney General. Clinton stated that the Governor had taken the complaints out of context and the blame for the canal problems is not Smith’s but rather “the fault was with the Legislature.”\textsuperscript{61} Ironically, Clinton, with the assistance of Edward Walsh, served as the impetus for the investigation when he (Clinton) called the initial meeting of the Canal Conference to criticize Smith and the canal.\textsuperscript{62}

With knowledge that the subpoenas had been served no earlier or later than August 19, Governor Smith publicly announced (through his Secretary George Graves) on August 19 that the Governor would invoke the Moreland Act to investigate canal complaints on August 26 in New York City. The Governor claimed that Superintendent of Public Works Colonel Greene and Canal Commissioner Royal Fuller requested the investigation. In order to “ascertain the facts regarding the present condition of the Canal, so that if conditions are bad they may be righted,” Governor Smith desired to take the testimony himself. All of the complainants from the canal organizations, state officials connected with canal operations, and any interested person were invited to testify.\textsuperscript{63}

\textsuperscript{60} Carl Sherman to Michael Montesano, Special Deputy Attorney General, August 8, 1924; Carl Sherman to John Dwyer, Deputy in Charge, August 8, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.

\textsuperscript{61} Michael Montesano to Carl Sherman, August 19, 1924; “Memorandum, Canal Investigation, August 20, 1924” by Edward G. Griffin, Deputy, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.

\textsuperscript{62} Oswego Daily Palladium, August 19, 1924. Walsh resigned from the Canal Conference on August 18, 1924 “so that there could not laid any charges of self-interest in his work as a member of the executive committee of the Canal Conference.”

\textsuperscript{63} Press Release for morning papers August 19, 1924 announcing Governor Smith’s investigation of the barge canal in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2; New York Times, August 19, 1924.
As in the case of Associated Industries only nine months earlier, many directors and board members of the three organizations that lodged complaints found themselves surprised by subpoenas from the Attorney General’s office on August 19. Several of those subpoenaed wrote to Governor Smith disclaiming anything to do with the comments of their association leaders or the resolutions issued by their trade groups; some wishing to be excused for reason.\textsuperscript{64} In the case of the Maritime Association, President John Dowd, claimed the Canal Committee alone - not the entire Maritime Association – submitted its complaints to Governor Smith. On August 22 President Dowd called a special meeting of the Maritime Association and proceeded to investigate the matter. Upon review the Maritime Association adopted a new resolution praising Smith’s handling of the canals and the “intelligent supervision” by Smith’s staff. President Dowd claimed “that conditions on the Canal are better now than at any other time in its history.”\textsuperscript{65}

On August 26, 1924 at 11 A.M. in the offices of Port Authority of New York Governor Smith opened his inquiry into the Barge Canal. Governor Smith proceeded to call witnesses from each of the trade associations that had written him in late July and early August with complaints about the canal. Governor Smith began by reading the July resolution from the Maritime Association alleging the canal had greatly deteriorated.

\textsuperscript{64} Roger Black to Carl Sherman, August 22, 1924, John Reynolds (Counsel to Herbert Bodman) to Deputy Attorney General Edward Griffin, August 23, 1924, W. C. Rossman to Alfred E. Smith, August 22, 1924, Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.

\textsuperscript{65} John Dowd to Alfred E. Smith, August 22, 1924; John Dowd to Alfred E. Smith, August 25, 1924, Minutes of a Special Meeting of the Board of Directors of The Maritime Association of the Port of New York held on Friday, August 22\textsuperscript{66}, at 1 P.M., in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.
Eugene Moran, a Director of the Maritime Association, asked to be recognized and entered into the record the Association’s official refutation of its earlier resolution (previously mailed to Smith by President Dowd). Smith then questioned members from each of the protesting associations quickly uncovering that each, in succession, merely echoed what the Canal Conference had adopted in July. The succession of testimony from nearly a dozen witnesses, including canal boat operators, insurance agents, and fleet owners, revealed a general consensus that the State – specifically Superintendent Greene, State Engineer La Du, and Canal Commissioner Fuller – had improved the canal to a condition better than any previous administration in memory. The evidence for the complaints had not been verified prior to the lodging of complaints nor did anyone request confirmation from the state regarding the current condition of the canal system.⁶⁶

Governor Smith, upon finding that most of the complaints stemmed from a select few individuals who then influenced others to make public statements without any evidence of problems focused his investigation on former canal chief Edward Walsh, canal boat operator E.G Warfield, and long-time canal advocate George Clinton, Sr., the three who had prompted the Canal Conference meeting on July 16 in Albany. When asked why Warfield sent letters to the Canal Conference about alleged state non-responsiveness to obstructions in the canal, Warfield was forced to admit he had not been entirely truthful. Smith recounted the new system put in place by both Greene and Fuller under which a memo to all operators established a system of immediate removal of obstructions based on reportage to state personnel at the canal lock system. Further,

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Smith uncovered letters from Warfield to Greene in which Warfield acknowledged that his company did not report problems on the canal to the state. Instead, Warfield decided to antagonize Greene and Fuller and successfully sought to publicly embarrass the Smith’s administration with the help of the shipping and commerce community under false pretenses. Though former canal official Edward Walsh seemed a part of the conspiracy, Smith did not subpoena him.\(^{67}\)

Governor Smith called his staff to the stand and revealed that not only had the canal undergone major dredging, placing it in excellent condition, but the recent Moreland Act investigation by Judge Kellogg had helped move the canals from contracting for dredging per diem to contracting based on cubic yards of debris removed. This change had increased the depth of the canal at lower cost. State Engineer La Du, Superintendent Greene, and Canal Bureau Commissioner Fuller all attested to the coordinated engineering and administration of the state offices under Smith’s reorganized Department of Public Works.\(^{68}\)

Smith mused aloud during the hearing that if individuals or associations had issue with the state’s operation of the canals, why didn’t they come to him or his staff? Smith wanted to know why no one invited the state canal staff to any of the meetings called to complain about the canal? Smith even told the association men gathered before him that the initial meeting in July to condemn the canal took place in Albany “within a stone’s

\(^{67}\) 1924 Canal Hearing, 443-444, 460-461; E.G. Warfield to Royal Fuller, August 1, 1924; “To All Canal Boat Operators, June 26, 1924” memorandum from Royal Fuller to operators containing Form 64 for Report of Obstruction, Collision, or Hazardous Physical Condition, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Barge Canal,” Reel 37, 200-22-2.

\(^{68}\) 1924 Canal Hearing, 459, 463-464.
throw from the capitol itself” yet no one from the state was invited to “check up on the statements in a circular” before it went out to the press. In what amounted to an ironic replay of the Associated Industries investigation in January 1924 Smith reduced the entire episode to “a strong temptation on the part of some person to find fault with the state in order to satisfy their own ends.” Finding nothing but retractions from witnesses and strong evidence from staff that the canal had been greatly improved, recently dredged, and in better condition than ever, Smith ended the hearing the same day it began (August 26) with the statement “the canal has been better handled this year than at any time during my experience in Albany….The record speaks for itself.”

The press reported Smith’s victory, the progress made in the canal system, and the conniving on the part of several of the canal-related trade associations. Many upstate papers in regions dependent on the canal ran headlines praising Smith such as “Canal Charges Withdrawn at Smith Hearing”, “Governor Smith Flays Critics of Canal Operation”, “Barge Canal Management Upheld, Critics Condemned”, and “Charges Retracted At Canal Hearing.” The *New York Times*, aware of the strong similarities between Smith’s successful battle with Associated Industries in January 1924 and his exposure of the canal associations’ charges in August, ran an editorial “Pulling A Bone” condemning Smith’s critics after the hearing. The editorial, in recounting how the board of Associated Industries were led “by the nose” by their general secretary into publishing accusations without reliable information, wondered how this display failed to “teach them [the canal critics] the folly of intermeddling ignorantly in State affairs?” Smith’s recourse

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to the Moreland Act again compelled those with allegations of government
mismanagement to confess their error and, in this instance, to admit “the canal this year is
better than it has ever been before.”

To further his case for a clear understanding of “all the facts” Governor Smith
suggested the Legislature create a temporary state commission with legislative and
gubernatorial appointees to “conduct a study of the whole operations of the canal.” Accordingly, the Legislature passed a bill creating the Barge Canal Survey Commission
in 1925. This new commission issued two reports (majority and minority) praising the
system and offering further suggestions to improve the canal and attract more commercial interests.

Transit Commission – 1924-1925

Governor Smith’s investigation of the transit system in New York City capped
several years of debate regarding subways and the role of New York City and State
government in transportation and mass transit. Many advocated for local government
ownership of city subways, a plank long-favored by William Randolph Hearst and his
Municipal Ownership League, and New York City Mayor John Hylan. Governor Smith
also favored New York City autonomy in the realm of subways and transit regulation and


72 Annual Message, 1925, in Smith Public Papers, 1925, 45.

73 Chapter 213 of the Laws of 1925; Preliminary Report of the Barge Canal Survey Commission, 1926
(Albany: J.B. Lyon Company, 1926), Legislative Document Number 65; Minority Report of the Barge
advocated such in his 1923, 1924, and 1925 annual messages. Conversely, many upstate Republican legislators favored state oversight as a means to limit the autonomy of Democratic New York City. By 1924 and 1925 various studies, panels, boards, as well as laws and numerous legislative proposals, made the operations and governance of the subway system similar to the situation seen in the Labor Department and workmen’s compensation. Each new City and State administration brought new points of view regarding how best to build and regulate subways often leaving the public confused and ill-served. Smith’s 1924-1925 investigation uncovered the structural, logistical, and political shortcomings of the current transit system; sorted out the various conflicting plans; and, developed a template for a coordinated subways system based on logic and accountability. Smith’s investigation also enabled the Governor to exercise influence over an independent state agency regulating New York City subways by providing Smith a platform from which he exercised significant power over the government of New York City.

With the growth of urban train lines and advent of subways the legislature established a commission to oversee the building of subways in New York City in the late nineteenth century. In 1907 Governor Charles Evans Hughes established a Public Service Commission to both regulate subways and supervise construction. The legislature separated regulatory (Public Service Commission) and construction oversight (Transit Construction Commissioner) establishing a dual system of state regulation in 1919. In 1921 Republican Governor Nathan Miller and the Republican-dominated legislature

passed laws to replace one government body, the office of Transit Construction
Commissioner, and replaced it with a three-member state body, the Transit Commission
for New York City while keeping intact a Public Service Commission. Under the new
law the Governor, with the advice and consent of the Senate, appointed the
commissioners to five year terms. The new commission supplanted the Public Service
Commission and all other regulatory bodies in the area of planning, construction, rates,
and coordination of subways, rails, and other modes of public transportation but with
contracts for new lines dependent upon the Board of Estimate and Apportionment\(^{75}\) and
Mayor for approval. This new system placed local subway and mass transit issues under a
state body with power to nullify contracts between the two major subway companies (the
so-called “dual contract” system) and the City of New York - an obvious slight to home
rule.\(^{76}\) The Transit Commission also depended on an approval by the Mayor for a “route
or general plan” with contracts also requiring a separate approval by the Board of
Estimate thus creating a drag on quick approval – if approval at all – on new routes and
construction.\(^{77}\) As early as 1922 the Transit Commission and Mayor John Hylan clashed
over plans to construct and regulate subways.\(^{78}\)

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\(^{75}\) The New York City Board of Estimate and Apportionment served as the budgetary and land use approval
body for New York City. It was comprised of the Mayor, President of the Board of Aldermen, City
Comptroller and the five Borough Presidents. The three city-wide officials exercised two votes each with
the Borough Presidents having one vote each.

\(^{76}\) Joel Fischer, “Urban Transportation: Home Rule and the Independent Subway System in New York City,
1917-1925,” (PhD Diss., St. John’s University, New York City, 1978), 57, 252-255.

\(^{77}\) Chapters 134 and 335 of the Laws of 1921; Message to the Legislature 1923 in Smith Public Paper,
1923, January 3, 1923, 53-56; Report of Commissioner McAvoy In the Matter of The Examination and
Investigation of the Management and Affairs of the Transit Commission, February 6, 1925, in Smith Public

\(^{78}\) Fischer, “Urban Transportation: Home Rule and the Independent Subway System in New York City,
In April 1924 Governor Smith and a split legislature (a Democratic Senate and a Republican Assembly) passed a law partially restoring local control (home rule) to the City of New York under a bill establishing a Board of Transportation appointed by the Mayor.\textsuperscript{79} The compromise bill establishing a new local Transportation Board did not give Smith and Hylan the total independence they desired for New York City transit. With responsibilities such as regulation, subway contracts, and expansion of commuter routes delegated to the Transit Commission, and the new Board of Transportation\textsuperscript{80} overseeing the building of new subway lines (the so-called Independent Subway System or IND) with “a 5 cent fare within self-sustaining limits,” trouble erupted.\textsuperscript{81} Charges and counter charges between the antagonistic factions (Mayor Hylan and the three members of the Transit Commission) appeared almost daily in the New York City press. Since Governor Smith desired the elimination of the Transit Commission with corresponding New York City government authority to regulate all phases of railroads and subways, the Governor found himself in a difficult situation. Smith wanted to empower the locality (Transportation Committee and the Board of Estimate and Apportionment), but the state agency (Transit Commission) had legal authority to carry out the regulatory functions required to oversee the system. Mayor Hylan, who advocated more local control, often

\textsuperscript{79} New York Times, April 9, 1924.

\textsuperscript{80} Mayor Hylan appointed John H. Delaney as Chairman of the Board of Transportation. Delaney held a variety of state and local offices throughout his career even serving as Governor Sulzer’s Commissioner of Efficiency and Economy and as a Moreland Act Commissioner under Governor Sulzer to investigate any department, board, bureau, or commission (January 1913). Delaney had served a Transit Construction Commissioner from 1919 until 1921 when the office was abolished under the new Transit Commission law. Between 1921 and his appointment as Transportation Chairman Delaney served under Mayor Hylan as New York City Dock Commissioner.

\textsuperscript{81} Quote is from Republican Assembly Speaker Edmund MacHold. New York Times, April 9, 1924; May 3, 1924; Clifton Hood, 722 Miles: The Building of the Subways and How They Transformed New York (New York: Simon & Schuster, 1993), 204-205.
portrayed the system of state oversight as corrupt and inefficient. Hylan’s flamboyant accusations about Wall Street control of the subways (similar to Hearst) combined with the lack of legal authority to construct subways, forced Governor Smith to step into the fray and make sense of the competing plans and two levels of regulation (state and city).  

Smith also distrusted Hylan and had clashed with him on several occasions, particularly in 1919 when Hylan attacked Smith over teachers’ salaries and again in 1922 when Hylan managed Hearst’s unsuccessful campaign for either U.S. Senator or Governor at the State Democratic convention when Smith flat out refused to run on the same ticket as Hearst. Smith, who had served as President of the New York City Council during Hylan’s first term as Mayor, believed Hylan never learned the issues and relied on Hearst, one of Smith’s most hated political opponents, for advice. Hylan, Smith believed, relied more on demagoguery and Hearst’s newspaper support than on intellect and facts in determining public policy. 

New York City Mayor John Hylan served as one of the chief critics of the Transit Commission going so far as to blame the Transit Commission for rail accidents, outdated train cars, and failure to compel private companies, primarily the Brooklyn Manhattan Transit Corporation (BMT) and the Interborough Rapid Transit Company (IRT), to reinvest its profits in the transit system. Hylan believed that the Transit Commission

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impeded improvements to the subway system in New York City by failing to compel the privately-owned rail lines to upgrade the system, lower fares, and modernize its rolling stock. In October 1924 Hylan, along with the other members of the New York City Board of Estimate and Apportionment, charged the Transit Commission with neglect and inefficiency and requested Governor Smith remove the commissioners under the Public Officers Law.\footnote{Peter J. McGowan, Secretary of the Board of Estimate and Apportionment, to Governor Alfred E. Smith, November 6, 1924 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “In the Matter of Charges Against Transit Commissioners,” Reel 15, 200-10-2. The Commission members included George McAneny, Leroy T. Harkness, and General John F. O’Ryan.} Transit Commission Chairman George McAneny countered Hylan’s charges stating he welcomed an investigation to get “the whole story.”\footnote{New York Times, October 19, 1924, December 1, 1924.}

Governor Smith returned to Albany after a brief vacation in late November 1924 stating to the press that “there are a number of things that will need careful attention, and the traction system in New York City is one of these.”\footnote{New York Times, November 21, 1924.} On November 29 Smith appointed State Supreme Court Justice John V. McAvoy as Moreland Act commissioner to conduct a thorough investigation into the transit situation in New York City.\footnote{Smith Public Papers, 1924, 465.} Citing the recently filed charges against the Transit Commission by the Board of Estimate and potential charges by the Transit Commission against the Mayor, Smith stated he wanted to proceed under the Executive Law rather than the Public Officers Law. Under the Public Officers Law a trial would have to be conducted whereas under the Moreland Act the Governor could investigate the entire transit matter, including the various charges, to determine what action should be taken in a variety of areas. Smith stated the “problem is
acute. The present intolerable conditions must be remedied at the earliest possible moment. The people must have the facts.” The *New York Times* explained the power of the Moreland Act investigation into the transit issue by reporting that McAvoy could use the inquiry to compel the attendance of city, state, and industry officials. Further, if McAvoy uncovered evidence of wrong doing by public officials Governor Smith would likely ask Judge McAvoy to proceed with their removals under the Public Officers Law.88

Judge Joseph A. McAvoy proved a wise choice for the investigation due to his vast experience as a judge. A graduate of Manhattan College (1897) and New York Law School (1899) McAvoy won election to a ten-year term as a City Court Judge in 1908. In 1918 McAvoy won election to the State Supreme Court and was elevated to the Appellate Division by Governor Smith on January 1, 1923. McAvoy’s fifteen years of judicial experience as well as his key role in the grand jury hearings into post-World War I housing shortages and restraint of trade issues provided McAvoy with the appearance of judicial indifference in his role as commissioner in the 1924-1925 Transit hearings.89

Smith’s use of the Moreland Act into the affairs of a local government hinged on the right of the Governor to investigate state agencies, in this case the recently established Transit Commission.90 Thus, by examining the Transit Commission Governor Smith used

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88 *New York Times*, December 1, 1924.

89 *New York Times*, April 13, 1937. McAvoy served as a judge from the age of 29 until he died at age 58 – a judicial career spanning 29 years.

90 Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “In the Matter of Charges Against Transit Commissioners,” Reel 15, 200-10-2. Smith’s preparation for the announcement included both research into the legality of appointing a sitting Supreme Court Justice of the Appellate Division and the proper phrasing of the appointment document under the Moreland Act. Smith’s staff believed the appointment of the justice legal under case law and the appointment itself “to investigate and report the actual facts regarding the transit situation in the City of New York” was altered to “examine and investigate the management and affairs of the Transit Commission.” It is likely that Governor Smith
his power under the Executive Law to probe all aspects of the transit situation including the activities of New York City officials. This apparent bridge between state and local government sovereignty had been feared by some of the legislators who voted on the Moreland Act in 1907. Under his 1924 Transit investigation Smith took the opportunity to examine the New York City transit system after an acknowledged political enemy, Mayor John Hylan, petitioned the Governor to remove gubernatorial appointees to the Transit Commission. Smith decided the circumstances merited investigation beyond just the charges posed by Hylan and expanded the investigation under the Moreland Act. The New York Times reported “it was said to be doubtful if the Governor could have compelled the Mayor to testify before a Moreland act commissioner if the latter [Hylan] had not” instigated the entire matter by placing charges before Smith.

In early December 1924 Mayor Hylan wrote Governor Smith protesting the Moreland Act investigation of the transit situation stating it more appropriate to try the three transit commissioners under the Public Officers Law. Hylan argued that the commissioners neglected their duty, allowed private rail companies to profit at the expense of the public, wasted funds on patronage, obstructed the construction of new lines, and placed the public at risk by failing to compel the rail companies to upgrade the system. Echoing the speculation published in the New York Times regarding the

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91 See Chapter One, The Moreland Act.

limitations of the Moreland Act, Hylan stated to Smith his strong belief that “there is no power conferred to direct any investigation of any municipality or of any of the subdivisions, bureaus or boards of any municipality of the State.” Sensing he would be pulled into a general investigation that could possibly embarrass him, Hylan protested the “fishing expeditions and oratory and mud-slinging” Smith’s inquiry would produce. Unless Smith limited his investigation to the charges against the Transit Commissioners the investigation “neither has my approval nor will have my participation, save to the extent required by law.”

Smith responded to Hylan by expressing strong confidence in Judge McAvoy’s ability to clear up the matter and help everyone “remedy the intolerable conditions of which you so bitterly complain.” The short public correspondence between Governor Smith and Mayor Hylan quickly placed Hylan on the defensive with Smith informing Hylan that the complaints regarding the Transit Commission are “within the scope of the wider inquiry I have directed” and “I trust you will lay before Judge McAvoy, when he requests it, the proof of the charges which in your letter you say you are prepared to proceed with.” When informed that Mayor Hylan would seek an injunction against McAvoy’s investigation Smith promptly queried “What’s he going to enjoin?” Smith entertained “no doubt” that McAvoy possessed the power under the Moreland Act to compel Hylan and other city officials to testify and Smith would not limit himself to a mere hearing on the charges presented by Hylan. Upon reading Smith’s letter in the press many Hylan allies began to desert him realizing the Mayor “had been caught in a trap of

93 John Hylan to Alfred E. Smith, December 2, 1924 in Smith Public Papers, 1924, 591-594.
his own setting.” With Democratic Mayor Hylan up for re-election in 1925 an open break with Democratic Governor Smith forced many in Tammany Hall to choose sides or attempt to avoid being placed between the two Democratic leaders.95

During the first week of December 1924 Judge McAvoy appointed Henry L. Sherman as counsel to the investigation at which time Sherman began his preliminary work gathering evidence and meeting with officials from the Transit Commission, Corporation Counsel’s Office, and Board of Transportation.96 Very soon after Sherman’s appointment Mayor Hylan (now publicly on record as stating he would comply with the investigation) and many of the parties to be called before the investigation announced they had retained counsel for the hearings.97 On December 15 the hearing opened with Judge McAvoy very quickly exercising strong control over the deliberations and procedures. McAvoy stated “in two minutes” that no cross-examination from counsel for the parties would be allowed and only questions submitted through Henry Sherman (the


96 New York Times, December 11, 1924. Henry Sherman, a thirty-year friend of McAvoy, graduated from Yale University in 1890, attended Columbia University School of Law for one year, and graduated from New York University Law School. Primarily a trial lawyer and partner in his own law firm (Hirsch, Sherman and Limburg), Sherman served on the New York City Bar Association’s Ethics Committee. While not active politically and never holding any government jobs until the investigation, Sherman was a member of Tammany Hall’s Law Committee and had served as a delegate for Wilson at the 1912 Democratic National Convention. McAvoy’s father, however, served as a key leader in Tammany Hall.

97 New York Times, December 12, 1924, December 13, 1924, December 14, 1924. Each of the major parties retained their own attorneys for the Transit investigation: Max Steuer, Corporation Counsel George Nichols (Mayor Hylan); Edmund Mooney, William DeFord (formerly an attorney for Hearst and currently a member of the Board of Transportation) (Board of Transportation Chair John Delaney); Clarence Shearn (Transit Commission), Harry A. Gordon (Board of Estimate and Apportionment regarding Charges against the Transit Commission). The privately owned railroad companies also sent attorneys to observe the hearings. Hylan’s public acknowledgment that he would participate and aid the investigation came after his lawyers informed him that Commissioner McAvoy possessed the power to compel city officials to testify on matter relating to transit. Governor Smith allegedly met with Chairman Delaney in mid-December informing him that McAvoy would be after the facts and would not treat the administration unfairly. It was alleged that this information had been relayed to Hylan to enlist his participation in the investigation. Delaney denied this story.
investigation’s counsel) would be allowed if deemed relevant. In only a few days
McAvoy had proceeded to build the investigation, making it clear that the goal would be
to “arrive at a full and clear comprehension of the transit needs of New York” and what
obstacles have prevented new construction. McAvoy wanted an inquiry to uncover facts,
not a hearing full of “angry recrimination and wild assertion.” After a few days of
sitting idly watching Sherman question witnesses and conduct the investigation many of
the retained counsels protested their lack of involvement and withdrew from the
hearing.

For the next four weeks McAvoy and Sherman heard testimony from dozens of
witnesses and reviewed hundreds of documents relating to the New York City rapid
transit system. The hearings often descended into personal attacks with Judge McAvoy
having to restore order and warn witnesses and counsel (who again protested their limited
role) from veering off the line of questioning or making unsolicited comments. At one
point Clarence Shearn, counsel for the Transit Commissioners, sarcastically asked if
Mayor Hylan’s employment record (he had once been fired as a train operator) would be
included in the hearing only to be informed by McAvoy that such “old matters” were not

98 “A Good Beginning” (editorial) in New York Times, December 16, 1924; “Inquiry Not Trial” (editorial),
New York Times, December 17, 1924.

99 New York Times, December 17, 1924; “Precedent Cited For M’Avoy’s Stand: No Counsel Except
Investigator’s Ever Allowed to Cross-examine, Says Sherman,” New York Times, December 18, 1924;
Harry A. Gordon, Subway Nickels: A Survey of New York City’s Transit Problem, Submitted to Hon. John
Hylan, Mayor of the City of New York and Board of Estimate and Apportionment of the City of New York
(New York: Printed by the Office of Special Corporation Counsel, January 29, 1925), 7-8, 190-200, Exhibit
B, Harry A. Gordon to Henry L. Sherman, January 6, 1925. Harry Gordon, special Corporation Counsel of
the City of New York for the charges by the Board of Estimate against the Transit Commission, and Max
Steuer, Counsel for Mayor Hylan, protested the prohibition of cross-examination during the McAvoy
hearing as a violation of “an inherent right under our Anglo-Saxon Jurisprudence.” Gordon wrote Sherman
to make detailed comments on many of the matters covered during the hearings but also to again plead for a
hearing on the charges made against the Transit Commissioners.
City Controller Charles Craig also seemed to turn on Mayor Hylan by stating that the charges against the Transit Commissioner in October 1924 were, in his opinion, “purely a political move intended to embarrass Governor Smith in his candidacy for re-election in New York City.” Mayor Hylan proved to be an animated witness demanding his 39-page opening statement be read into the record, stating he would not allow Sherman to “let you lead me into a trap.” Hylan also confessed his open distrust of Transit Chair McAneny to the broad laughter of the several hundred in attendance – and the anger of McAvoy who threatened to clear the room. Though the inquiry did not focus exclusively on the charges and countercharges between Mayor Hylan and the Transit Commission, over the course of the hearing the Hylan-Transit Commission controversy factored into almost everyone’s testimony.

In addition to the hearings and study of the various transit plans for the building of new subway lines, McAvoy visited the stations and shops throughout the system. McAvoy also heard testimony from the presidents of the two privately-owned subway companies and allowed any member of the public to present grievances. McAvoy entered into the record complaints of overcrowding, high fares, and unsanitary conditions

100 *New York Times*, December 30, 1924. Hylan had worked for the BMT for nine years prior to being discharged for an accident while operating a train.

101 *New York Times*, January 6, 1925. Controller Craig served on the Board of Estimate and Apportionment but claimed he had nothing to do with the charges sent to the Governor in late October 1924 even going so far as to state he did not read the charges until after the McAvoy hearing began.


103 *New York Times*, January 10, 1925.

from dozens of civic and business groups.\footnote{New York Times, January 3, 1925. Many groups and individuals also sent letters to Governor Smith complaining about the subways and praising the Governor for calling the hearing. For example, the Real Estate Board of New York (December 9, 1924), Broadway Association (December 5, 1924), East Richmond Hill South Civic Association (December 15, 1924), and the Taxpayers’ Improvement Association (December 4, 1924) wrote to express support for the Moreland Act investigation of transit. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “In the Matter of Charges Against Transit Commissioners,” Reel 15, 200-10-2; Business groups generally, and the Merchants Association specifically, opposed Hylan’s vilification of the subway owners as the “Transit Trust.” The business community launched a public relations campaign in 1923 for expansion of the subways and condemning the inaction of government officials drawing the ire of both Hearst and Hylan. Brooks, Subway City: Riding The Trains, Reading New York, 101-102.} Just prior to the end of the hearings the state’s National Republican Committeeman Charles Hilles also entered the fray publicly blaming Hylan for the poor state of the subways and acting as a “fake reformer.”\footnote{New York Times, January 5, 1925.}


On February 6, 1924 Judge McAvoy released his final report containing twenty-one conclusions. The first two findings cleared the Transit Commissioners of any blame for the delays in new subway construction lines and further stated that the charges lodged by the Board of Estimate and Apportionment “are without foundation and that no cause exists for the removal from office of the Commissioners.” McAvoy stated that the “repeated and persistent refusals of the mayor and other members of the board of estimate and apportionment to adopt proposals” for new routes and contracts proposed by the
Transit Commission meant that Mayor Hylan and the Board of Estimate - not the Transit Commission - created the subway expansion problem. In tracing the history of transit regulation in New York City McAvoy pointed out the obvious – the vicissitudes in government oversight due to numerous changes in regulatory structure led to gridlock. Most recently, between 1921 and 1924 the Transit Commission submitted thirty-one plans for approval to the Board of Estimate and Mayor, of which only six were approved, with only one proceeding to the construction phase.\(^{108}\) Contracts were let but then expired prior to award, the construction of shops and yards lagged for at least eighteen months, and the lack of inspection shops resulted in fewer cars on the lines.\(^{109}\) The relationship between the Mayor and the Transit Commission had deteriorated to such an extent that McAvoy stated “there was a deadlock which has resulted in no real important additional subways being constructed since the transit commission took office.”\(^{110}\) The absence of cooperation between the Board of Estimate - particularly the Mayor - and the Transit Commission, worsened after the ratification of home rule amendments to the Constitution in 1923 and the creation of the Transportation Committee in 1924 to assume many of the Transit Commission’s responsibilities.\(^{111}\)

To remedy the problems McAvoy advocated a number of solutions including the completion of various shops and lines; a lengthening of platforms; more frequent trains on existing lines on off-peak hours; and, a comprehensive, master plan for the entire


\(^{109}\) Transit Commission Report, 1925, 140-142.


\(^{111}\) Transit Commission Report, 1925, 150.
system. Some of McAvoy’s suggestions seemed so obvious they underscored the neglect present in the current system, such as more guards and better lighting to curtail crime, improved sanitation, and station stop announcements by loudspeaker.\textsuperscript{112} In regards to long-term subway line building McAvoy recommended increasing New York City’s borrowing capacity, a master plan of coordinated expansion of the subways, and a municipal bus line plan.\textsuperscript{113}

The New York press split between condemning Hylan (the Hearst organs especially the \textit{New York American}) and praising the revelations of the McAvoy report, particularly in their condemnation of Hylan’s tactics (notably the \textit{Herald Tribune, World, New York Times}).\textsuperscript{114} After reading the report Governor Smith issued a nine page press release praising McAvoy’s work and final report. The press release contained Smith’s message to the legislature concerning transit and a letter to the Board of Estimate and Apportionment stating his (Smith’s) concurrence with McAvoy’s contentions that “no cause exists for the removal from office of the [Transit] commissioners. Smith stated to the legislature his support – as in the past – for local control over transit issues. Smith noted that “there is no need for such an agency of government as the Transit Commission,” however, “there is…a sharp distinction between the removal from office of individual commissioners upon charges of misconduct and the abolition of a Commission itself as an agency of government.” Smith stressed the need to abolish the Commission but concurred with Judge McAvoy that the Commission, as authorized

\textsuperscript{112} \textit{Transit Commission Report, 1925}, 135-137.


under law, had done nothing meriting the removal of its commissioners from office. This last point directly attacked Hylan as responsible for bringing false charges against the Commission. Smith ended his statement with the comment that “the immediate question, therefore, is relief and relief at the earliest possible moment.” To that end Smith advocated yet again for local control and urged the legislature to restructure the Transit Commission as a local body.  

Smith’s concurrence with McAvoy also spelled the end of Hylan politically. Not surprisingly, Harry Gordon, the special corporation counsel hired by the Board of Estimate and Apportionment, released his own report laying the blame for the city’s subway ills on the Transit Commission and the subway companies. Gordon initially framed the problem correctly: how does New York City build new subways due to the tremendous growth in ridership? But, instead of answering this question Gordon attacked the Transit Commission as “glib-tongued garrulous orators” and Chairman McAneny as the “Dean of the School of Mental Gymnastics.” Gordon attacked the subway companies as wasteful Wall Street manipulators who spent more on lawyers than improvements. Gordon complained again about not being able to cross-examine witnesses during the hearing and characterized McAvoy’s investigation as a “futile and fruitless” recounting of “ancient history.” Gordon did not address his key question – who is to blame for the slowness in the building of new subways? Gordon conceded that during his entire tenure Mayor Hylan had no legal authority to plan and build subways. Hylan even challenged in

court the legality of the Transit Commission. Thus, while Hylan attempted to push his own subway plans, he blocked the legal entity responsible for planning, building, and regulating subways (Transit Commission). Gordon also praised Governor Smith’s efforts to establish municipal control even going so far as to commend the creation of the Transportation Committee as a first step in the process. Gordon’s summation of the home rule issue made it appear that Hylan had actively obstructed the Transit Commission lending credence to the belief by McAvoy, Smith and others that Hylan had trumped up charges against the Commission in an effort to grab power from the unpopular but legal entity responsible for subways.116

Smith’s championing of the McAvoy report added to the growing unpopularity of Mayor Hylan. In April 1925 Governor Smith, now the de facto leader of the State Democratic Party after the death of Tammany Boss Charles F. Murphy in 1924, urged his Tammany Hall allies not to re-nominate Hylan. Governor Smith stated he would openly oppose Hylan and urged a series of alternative candidate eventually settling on State Senator James “Jimmy” Walker.117 In the Democratic primary Walker beat Hylan and then went on to win the mayoralty.

After the investigation Smith also continued his efforts to revamp the local transit authority. In 1926 the legislature enacted a new system of New York City transit regulation and local authorities. The Transit Commission reverted back to the Department of Public Service becoming the Metropolitan Division on January 1, 1926.118 Ultimately,

117 Josephson and Josephson, Al Smith: Hero of the Cities, 320.
118 Chapter 351 of the Laws of 1926.
the long struggle to grant local autonomy would come to fruition under successor governors and mayors and take the form of a new state authority.

The investigation of transit served as another example of Smith’s ability to use the Moreland Act to uncover evidence in an obscure executive branch agency. Citing the composition of the New York City Transit Commission as gubernatorial appointees Smith invoked the act with little legal opposition. Smith also used the occasion to again surprise his critics just as he had done during his investigations of Associated Industries and the New York State Barge Canal. When Mayor Hylan asked for an investigation of the Transit Commissioners under the Public Officers Law Governor Smith instead insisted on investigating all aspects of the transit situation. Mayor Hylan believed he would limit the Governor by phrasing his charges in a certain manner, however, as in previous instances Governor Smith used the call for investigation as an entering wedge to invoke the Moreland Act.
Chapter 7 - The Moreland Act Investigations After Restructuring, 1925-1928

As Governor Smith began his third term the legislature passed for the required second time the resolution to place the executive branch restructuring amendments to the state constitution on the November 1925 ballot. After years of advocacy the electorate ratified Smith’s plan to restructure New York State’s executive branch.¹ In 1926 as Governor Smith awaited the Hughes Commission’s report on the new structure of the government, Smith discovered several areas requiring investigation.² First, Smith found the methods governing public buildings wasteful and poorly structured. To that end he asked the state architect to undertake a study of bidding and bonding procedures. Second, Smith found the prison system chaotic and in need of immediate attention despite changes scheduled for January 1927. Lastly, Smith found the Secretary of State had allegedly squandered moneys appropriated for the 1925 census. Each of these areas demanded Smith’s attention in addition to the 1925 Constitutional changes, the Hughes Commission, and in the case of state buildings, the 1925 Bond Act for public works.³

Public Buildings – 1924-1926

On December 17, 1924 Governor Smith appointed State Architect Sullivan W. Jones a Moreland Act commissioner to investigate the management and affairs of the

¹ Amendment of article 5, and section 11 of article 8. Reorganization of State departments as Amendment 3 on November 3, 1925. New York Times, November 1, 1925.

² Chaired by Charles Evans Hughes and comprised of leading government and political figures, the so-called Hughes Commission drafted the necessary bills to enact the Constitutional amendments passed in November 1925. In 1926 the Legislature passed these bills instituting a restructured executive branch effective January 1, 1927.

³ Section 15, article 7, $100,000,000 bond issue for public buildings as Amendment 1 on November 3, 1925. New York Times, November 1, 1925.
New York State Arsenal Commission. Smith appointed Jones after a series of construction companies had refused to accept contracts despite the submission of the lowest bid.¹ Jones protested the ease with which bidders simply declined to accept awards and proceed with construction.⁵ In reviewing the current status of state construction Jones informed Governor Smith that since his appointment as State Architect in March 1923 only one in more than one hundred building projects had been completed on time. In seeking an investigation Jones requested the power to probe the reasons for building contracts finishing between two months to two years late.⁶ Smith expanded Sullivan’s commission on December 24, 1924 to include the State Hospital Commission, the Office of the Adjutant General, the Department of Purchase, and the Department of Prisons.⁷ Smith targeted the state agencies most active in construction and preparation of bids for public buildings. Unique amongst the Moreland Act investigations appointed by Smith, the Public Buildings inquiry was in many ways a preventative measure designed to protect future building projects under Smith’s massive bond acts.

¹ Sullivan W. Jones served as New York State Architect from 1923 to 1928. Born on Staten Island he attended public school in New York City and graduated from Massachusetts Institute of Technology in 1900. During World War I Jones worked to help settle strikes in the electrical industry in Boston, Cleveland, Indianapolis, and Schenectady. Jones also served as supervising engineer in charge of construction at the U.S. Naval Base in Jamestown, Virginia. During his tenure as State Architect Jones helped rewrite and standardize institutional building codes and designed a number of state buildings including the A.E. Smith State Office Building in Albany. The Herald Statesman (Yonkers), January 27, 1955; New York Times, January 27, 1955.

⁵ New York Times, December 18, 1924.


⁷ Smith Public Papers, 1924, 465-466. The Jones investigation is the only Moreland investigation by Governor Smith with a supplemental commission expanding its scope.
Jones’ background as an architect and labor relations expert aided his investigation of bidding, bonding, and the construction of state buildings. Smith capitalized on Jones’ expertise just as New York State began a massive building campaign involving several multi-million dollar bond acts (1923 and 1925). Jones’ investigation, combined with his active support for state building under long-term indebtedness, added credibility to Smith’s building program. The study made by Jones would add an aura of prudence and fiscally sound stewardship to Smith’s bonding and building program.

Throughout 1924 Jones, as a result of the passage of a $50 million state bond act in November 1923 targeting improvements to state facilities, reviewed various building plans and bids to construct state buildings, notably several arsenals and state hospitals.\(^8\) While Jones worked on various plans he also advocated for more standardized procedures in the building industry, served on the Governor’s Commission on Regional Planning, and planned the construction of a new state office building in Albany.\(^9\) As early as September 1924 Jones echoed Smith’s calls for an additional $100,000,000 in state bonds to provide modern medical facilities based on thorough study of existing conditions.\(^10\)

In late December 1924 and January 1925 Jones and his counsel William J. Mahon began public hearings into the recent phenomenon of bidders refusing to accept state

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\(^10\) *New York Times*, September 23, 1924.
contracts after submitting the lowest bid. Jones also delved into the surety bond business and the finances of many bonding and insurance companies in New York City and Albany.\(^{11}\) Jones and his staff also began a year-long study of the building procurement procedures then in use by the state and the construction industry. The investigation resumed its public hearings in December 1925 with the stated goal of exposing “fly-by-night contractors” colluding with surety companies to bilk the state of hundreds of thousands of dollars.\(^{12}\)

Jones uncovered an extremely wasteful system of public buildings and a very questionable method of construction bonding. Jones characterized most construction companies engaging in state work as “incompetent, unbusinesslike and indifferent.” Rather than limiting the pool of contractors to those with the best finances and reputations as found in private sector construction, the mere submission of the lowest bid combined with the ability to secure a surety bond largely guaranteed a contractor an award on public projects. Jones revealed that even the state Attorney General had to concede that current law dictated that the “test of low bidders responsibility and competency was his ability to secure a surety company bond.” Thus, if a company could


\(^{12}\) *New York Times*, December 15, 1925.
get a bond, it was assumed the job would be guaranteed. However, as Jones stated, only one job in over one hundred actually finished on time.\textsuperscript{13}

In his report Jones detailed the collusion between surety bonding companies and contractors. Under New York State law contractors were required to advance to the state 5\% of the total project as part of the terms of contract. In many cases the contractor would borrow the funds from a surety company and remit it to the state to satisfy the 5\% requirement. The state, under law, also required a surety bond valued at 2\% of the project. This bond would be paid by New York State to the company willing to underwrite the bond. When the state paid the premiums on the bond, the surety company would in turn advance the money to the contractor to finance the construction project.

The system of collusion cost the public millions in payments for a product (bonds) Jones believed had no impact on public construction. Jones believed bonds provided no guarantee that a project would be finished on time. Many construction companies, Jones claimed, were misled by bond agents representing themselves “as influential with the heads of various State departments.” Several company representatives stated that graft riddled the bonding company operations. In the private sector, Jones explained, bonds were rarely used since the reputation and finances of the contractor, not the possession of a bond, mattered more to the owner of the project.\textsuperscript{14}

Jones discovered a coordinated system under which many firms turned down their awards after winning public bids in order to force the state to rebid. In recounting several examples Jones found that the winning low bidder often claimed an error in its

\textsuperscript{13} Jones Final Report, 1926, 225-226.

\textsuperscript{14} Jones Final Report, 1926, 228-229, 231; New York Times, December 17, 1925
calculations leading them to petition for withdrawal. The re-bidding process then led to new bids with the winning low bidder realizing an increase in his award as compared to the first bid. Jones believed many companies willing to bid government work colluded to trigger rebids in order to increase the amount they would gain from the same project after the first round revealed the cost range submitted by all bidders. In regards to surety bonds, a similar system arose under which surety bond agencies set rates arbitrarily under a self-appointed bureau, the Towner Rating Bureau. With state law requiring 2% of the project total in bond cost as compared to New York City projects mandating .75%, Jones claimed the state lost in excess of $900,000 from 1908 through 1925 with an estimated potential cost of $2.2 million over the next ten years due to public construction under various state bond acts.  

To remedy the situation Jones suggested eliminating the bond requirement, defining “responsible” bidder in state law to deter substandard contractors with questionable finances, enacting legislation governing “false statements” and the submission of fraudulent bids, and mandating the forfeiture of deposits in the case of withdrawn bids. Jones also advocated the creation a system of diminishing retention of payments until contract completion to insure timeliness of construction and to protect subcontractors and materialmen. Lastly, Jones also suggested the legislature grant the State Architect the power to subpoena records to better police construction firms and surety bond companies.  

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Governor Smith received Jones’ report in early March 1926 and relayed it to the Legislature a few weeks later. In his letter of transmittal to the legislature Smith endorsed Jones’ findings and recommended legislation to correct the abuses found.\(^{17}\) Though the requirement for surety bonds remained unchanged the State Insurance Commissioner reduced surety bond rates from 2% to 1% in accordance with Jones’ recommendations. However, none of Jones’ other suggestions passed the legislature. More than a full year later Jones’ continued his call for a complete elimination of bonding requirements on state and municipal construction characterizing bond agents as “unscrupulous men.”\(^{18}\)

In 1926 and 1927 Sullivan Jones found himself in a very difficult situation during Governor Smith’s executive branch restructuring. Considered a close advisor to the Governor and one of the greatest supporters of Smith’s massive state building program, Jones felt betrayed when the office of the State Architect became subservient to the Department of Public Works under the restructured executive branch. In early February 1928 various architectural organizations and supporters of Jones testified before a legislative hearing seeking the restoration of an independent State Architect outside the Public Works Department. Letters flooded into Governor Smith seeking an independent state office for Jones.\(^{19}\) However, Jones found himself outmatched by two other advisors

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\(^{18}\) *New York Times*, March 14, 1927, August 1, 1927.

\(^{19}\) Governor Smith received letters from numerous architectural societies advocating the restoration of the office of the State Architect independent of the Department of Public Works. These state societies included, among others, Indiana, North Carolina, Kentucky; locals including Columbus, Ohio, Brooklyn, N.Y., and Pittsburgh, Pa, and the national office in Washington, D.C. Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “State Architect,” Reel 83, 200-201.
to the Governor advocating an elimination of the independent architect’s office: Public Works Commissioner Frederick S. Greene and Secretary of State Robert Moses. The Reconstruction Commission, Hughes Commissions, and legislature also backed the consolidation of the office of State Architect under the Public Works Commissioner. Smith, who initially favored Jones’ point of view, decided to acquiesce. 20

Jones then met with Governor Smith and resigned his office in person stating he could not work under Colonel Greene. In a show of support for Jones the state’s next two ranking architects resigned as well. 21 Governor Smith issued a press release announcing Jones departure that included Jones’ letter of resignation. In the letter Jones again protested the subjugation of the State Architect to the Department of Public Works and stated he could not continue in a department that would “make a puppet of the State Architect and will throw architecture in connection with the State’s vast building program into the patronage grab bag.” Despite his criticisms Jones thanked Smith for the opportunity to serve as part of Smith’s “official family.” 22 Smith wrote to Jones after the architecture and public works bill had passed the legislature – and after Jones resigned - stating “it is perfectly all right to battle for a principle but when you are licked, you must conform to the decision.” Magnanimously, Smith also wrote Jones to congratulate him on


his successful return to the private sector.\textsuperscript{23} For the remainder of Smith’s tenure
collection, engineering and architecture, now subject to greater scrutiny due to Jones’
investigation, would fall under the restructured Department of Public Works. It is
possible that Jones’ investigation improved the caliber of contractors just as it also helped
lower the premiums for surety bonds.

Prisons and Parole – 1926

In April 1926 the State Board of Parole announced the pending release of Izzy
Presser five years before the completion of his sixteen year prison sentence for
manslaughter. Presser had been in trouble with the law since 1905 and had served time at
Elmira, Welfare Island, Sing Sing, Dannemora, Auburn, and Great Meadows for crimes
including robbery, burglary, murder, assault, and rum-running. The circumstances
surrounding the parole of Presser, as well as Presser’s extensive criminal record, soon
aroused public opposition. Governor Smith, astounded by the press reports on Presser,
sent a telegram to State Prison Superintendent James L. Long ordering him to call a
meeting of the Parole Board and revoke Presser’s parole “pending an investigation by me
[Smith] into the whole matter.”\textsuperscript{24}

The Parole Board hearing on May 5, 1926 ordered by Governor Smith publicly
recounted the story of Presser’s escape and parole. Presser, who had a reputation as rule
breaker in prison, had escaped from Great Meadows prison on August 2, 1921. New
York State authorities located Presser three and a half years later in New Jersey where

\textsuperscript{23} Alfred E. Smith to Sullivan Jones, March 16, 1928 and Alfred E. Smith to Sullivan Jones, March 15,
1928 in George Graves Papers, B1383-93, Box 37, “Sullivan Jones.”

\textsuperscript{24} \textit{New York Times}, April 23, 1926, April 30, 1926, May 1, 1926.
Presser had been serving time for a conviction in that state. Returned to New York in May 1925 prison officials did not add – as was customary - additional time to Presser’s sentence for an escape. Less than a year later in April 1926 Superintendent Long issued a secret letter to the Warden at Sing Sing claiming Presser had not actually escaped in 1921 but rather had been the victim of a kidnapping. The change in Presser’s status from escapee to victim of a kidnapping facilitated Presser’s parole.25

The revelation of strange circumstances surrounding Presser and contradictory testimony introduced at the May 5 hearing ordered by Governor Smith resulted in the Parole Board voting to “defer” Presser’s parole, though not “revoke” it as Governor Smith directed. Superintendent Long, though not chairman of the Parole Board, dominated the session (as he apparently was accustomed to) and defended both Presser and Presser’s story despite the deferral of Presser’s parole.26 A few days after the May 5 hearing tales of Presser bribing prison officials for favorable parole treatment and revelations that Presser helped uncover a drug ring inside Auburn Prison leading to the firing of several guards appeared in the press. Superintendent Long also continued to insist that Presser had contacted him right after being treated for an alleged gunshot wound Presser suffered during his alleged kidnapping in 1921. Superintendent Long claimed the reason why he hesitated so long to reveal the alleged Presser kidnapping was

25 *New York Times*, May 1, 1926, May 2, 1926.

26 *New York Times*, May 6, 1926.
to protect the doctor who treated Presser. Long feared the doctor would face criminal charges for not reporting an escaped convict.  

On May 8, 1926 Governor Smith officially announced the appointment of George W. Alger as commissioner under the Moreland Act to investigate the Presser case and the entire system of prisons, parole and reformatories. Governor Smith tasked Alger with examining the current system so “that the whole prison and reformatory system may be thoroughly gone into, and the new Department of Corrections may function properly on the first of the year [1927].” George Alger, an attorney and Republican, had previously served as counsel to a prison investigating committee Smith appointed during his first term. Alger also served on the Prison Committee of the New York Association. Smith wanted Alger to work under a two-step process: first, to investigate the Presser case and, second, to develop recommendations for the structure of the system of parole for New York State. Smith reminded Alger that the Hughes Commission suggested eliminating the parole board as currently structured. The legislature in 1926 decided to continue the present parole board until their terms expired, however, the Legislature provided that the new Commissioner of Corrections in consultation with the Governor could recommend new rules for parole and reformatory systems in the future. Therefore, Alger’s report

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27 New York Times, May 1, 1926, May 2, 1926, May 9, 1926, May 15, 1926. Later press reports stated the story of bribery of prison officials may have been only “hearsay.”


29 George Alger, originally from Vermont, graduated from University of Vermont in 1892 and New York University Law School in 1895. After graduating law school Alger practiced in New York City building a reputation as a labor lawyer with particular interest in modernizing the child labor laws. Alger also championed the settlement house system and prison reform. After the 1930s Alger became active in both the garment and motion picture industries. The only Moreland Act commissioner under Governor Smith who served as a commissioner under another governor, Alger investigated the mortgage guarantee industry under Governor Herbert Lehman in 1933-1934. Breuer, Moreland Act Investigations in New York State, 79-82; New York Times, April 20, 1967.
would influence the future structure of New York State’s parole system under the newly reconfigured state government in 1927.\textsuperscript{30}

Alger’s first report (June 10, 1926) recounted the entire saga of Izzy Presser. Superintendent Long based the removal of the 924 days added to Presser’s sentence for an escape attempt and the 240 days added for miscellaneous misconduct charges on his (Long’s) belief that Presser had not escaped but rather had been kidnapped. Upon review Alger stated that Presser’s claim to have been kidnapped could not be verified or corroborated. Further, Alger stated that Long failed to follow the proper procedures in reevaluating commutation of time based on an alleged escape. Lastly, Alger stated that even if Presser’s story of kidnapping had been true, it failed to explain why Presser never reported to authorities after free of his captors. Instead Presser returned to crime. Alger stated the handling of the matter by Long completely improper, including Long’s successful blocking of the Warren County’s District Attorney’s indictment of Presser for escape. Presser, Alger stated, should be returned to prison to serve his entire sentence and face a new indictment for escape in Warren County.\textsuperscript{31} Just prior to the release of Alger’s June 1926 report, the State Board of Parole met and officially revoked Presser’s parole. The meeting had been attended, coincidentally, by Smith advisor and former Moreland Act commissioner Judge John V. McAvoy.\textsuperscript{32}


\textsuperscript{32} \textit{New York Times}, May 22, 1926.
Alger split his final report of December 3, 1926 into two sections, parole and prisons. Alger’s report on parole detailed the operations and structure of the current system, largely unchanged in 37 years, and how it failed to serve both prisoners and the public. Alger stated that the system in place largely granted parole to inmates once they reached their minimum sentence if they exhibited good behavior. The Parole Board, comprised of the Superintendent of Prisons and two gubernatorial appointees, largely ratified the reports granting parole without much deliberation or background information. Since the Parole Board employed only four parole officers (one for each state prison), and the board met only ten times per year, hundreds of inmates were released each year once they reached their minimum sentence. Parole officers spent most of their time performing clerical duties and Parole Board members spent little time reviewing cases. Alger claimed the system unnecessarily placed the public at risk by releasing dangerous criminals in need of either further prison time or more supervision once freed. Very little state-supervised rehabilitation took place, rather, the state depended on numerous charities to provide half-way houses, job training, and coping skills in the transition back to freedom.33

Alger suggested to Governor Smith that the system of parole be modernized stating “the system has not grown” to keep pace with its modern day responsibilities. A more attentive system of parole with state supervision of released prisoners should be instituted. Alger claimed, the state should either establish a “cohesive State-wide

33 Report of the Commissioner on Board of Parole and Parole System of the State of New York, December 3, 1926 in Smith Public Papers, 1926, 520-525, 527-528. Hereafter Alger Parole Report, 1926. Many charities such as the Salvation Army sent detailed information on their supervision and rehabilitation efforts to Alger during his investigation. Salvation Army Report in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Exhibits received on hearing before Commissioner on Board of Parole, Case of Izzy Presser” Reel 123, 200-529.
organization” of parole or keep prisoners in jail longer. Since Alger strongly favored the former, he suggested that Governor Smith increase the budget for the parole system, hire more parole officers, create a permanent parole board with the necessary staff to document and examine inmate behavior, and establish a network of state parole offices. Alger claimed it was the “appropriate time to modernize the whole [parole] system.”

In the section of his final report on state prisons and reformatories Alger again stressed a theme of reform. Alger believed that with the advent of a new Department of Corrections no longer would New York State blindly “follow uncritically the tradition of an established but archaic routine in a badly organized system.” In a manner similar to his criticisms of the parole system, Alger stated the prison system in New York State lacked any coordinated statewide approach to corrections. To back up his contentions Alger recapped a few antiquated customs including depending on chaplains for statistical assistance, placing all women convicts in a central location despite the varying nature of their criminal offenses, and mixing youthful offenders with older, hardened criminals. To remedy the situation Alger suggested two key overarching solutions: first, create a centralized system of prison administration and second, improve the physical infrastructure of the prisons themselves.

Alger believed that with a central, organized management system all of the prisons in the state would better coordinate the housing and supervision of its inmates.

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34 Alger Parole Report, 1926, 527-531, 533.
Rather than having state prisons operate independently, they should be coordinated and interlocking. A system of prisoner classification based on numerous factors such as age, offense, and mental state, would insure the best placement in the system. Better recordkeeping and improved training of the clerical staff would insure uniformity throughout the system. Alger also stressed the need for an improved prison industry system in order to put convicts to work to keep prisoners occupied, provide training for post-prison careers, and remunerative enterprises for prisons to offset the cost of operations.37

Alger took the opportunity to stress the need for the prison system’s inclusion in the massive $100 million construction program launched by Governor Smith. In addition to seeking new facilities to address the structural decay at some of the prisons, Alger believed “harmonizing” the Prison Law with the Department of Correction Law should be undertaken now that the Hughes Commission had provided the encouragement to modernize state government. Combining his pleas for modernizing parole and prisons with a call for centralized coordination under a Commissioner of Corrections, Alger foretold of a unified state system of prisons, parole, and probation. Alger ended his report with a statement claiming the responsibilities of the new Commissioner of Corrections far exceed the abilities of the current Superintendent of Prisons. Basically Alger suggested replacing Long in a reorganized department.38


Belle Moskowitz summarized the Alger report for the benefit of Governor Smith sending Secretary to the Governor George Graves a 10-page “story on the Prison Report” on December 10, 1926. Graves followed Moskowitz’s report with a press release outlining and praising Alger’s report on December 13. Governor Smith, in the 6-page press release repeatedly cited Alger’s suggestions to modernize the parole board. The press release also used Alger’s report to criticize the “laxity” and questionable activities “on the part of the members of the Board of Parole.” Citing the report as proof that the parole system in New York State “has not grown as it should” Governor Smith suggested enacting Alger’s plan to improve the system of parole and prisons in the state.39 The ongoing State Senate’s investigation into crime – the so-called Baumes Commission – concurred with most of Alger’s recommendations in late December 1926 leading to a revamping of the parole system and placing it under the Commissioner Corrections.40

Already restructured in 1926 according to the Hughes Commission recommendations, the 1927 legislature further amended the laws relating to Department of Corrections under its new head, Dr. Raymond Kieb. The revamped department placed all related prison, parole, and correctional facilities under a Department of Corrections with five sub-divisions: administration, prison industries, parole, probation, and criminal identification, records and statistics.41 The new structure followed the recommendations

39 Belle Moskowitz to George Graves, December 10, 1926 and Press Release of December 10, 1910 “Summary of Report of Commissioner Alger on the Board of Parole and parole system of the State of New York, the same being for the convenience of the press and is not to be considered as an official document. It accompanies the Commissioner’s report on the subject,” in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Exhibits received on hearing before Commissioner on Board of Parole, Case of Izzy Presser” Reel 123, 200-529.


of both the Alger Report and the Hughes Commission and followed through with many of the consolidations suggested by the Reconstruction Commission of 1919.\(^{42}\)

Throughout December 1926 Superintendent Long found himself at the center of a public debate regarding the restructured state prison and parole system.\(^{43}\) Despite criticisms in the press and the Alger report, letters of support for Long inundated Governor Smith.\(^{44}\) In early February 1927, Long tendered his resignation letter to Smith stressing that under the reorganized department “a technical man” may be more appropriate as the new commissioner. Long cited the recent criticisms of him during the Alger investigation as a contributing factor in his decision to resign. Smith – who had been actively searching for Long’s replacement – accepted Long’s resignation and released both his and Long’s letters to the press.\(^{45}\)

The attention generated by Alger’s hearing resulted in Presser’s 1926 indictment and trial in Warren County on escape charges dating back to 1921.\(^{46}\) Ironically, the trial for escape – during which Superintendent Long testified in defense of Presser - resulted in


\(^{44}\) For example: Jack M. Sternberg to Alfred E. Smith, December 21, 1926; Corona Board of Trade, James B. Thompson, Secretary to Alfred E. Smith, December 18, 1926; General Engineering and Management Company, New York to Alfred E. Smith, December 20, 1926; Haryy F. Cohen (Gloria Costume Company) to Alfred E. Smith, January 17, 1927 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Exhibits received on hearing before Commissioner on Board of Parole, Case of Izzy Presser” Reel 123, 200-529.


\(^{46}\) *New York Times*, June 22, 1926, November 24, 1926.
in Presser’s acquittal. However, despite the acquittal the State Board of Parole would not release Presser. Presser appealed the board’s refusal to release him all the way to the Appellate Division of the State Supreme Court which ultimately upheld the “Governor’s power to revoke commutation.” Presser served the remainder of his term only to be arrested by New Jersey detectives in 1928 who transported Presser back to New Jersey to serve the reminder of a two year prison sentence for carrying a concealed weapon and burglar’s tools. Presser did not live long after his release from New Jersey state prison. Found dead from gunshot wounds on April 30, 1932 in an automobile in front of a factory in Newark, police speculated Presser was shot at close range by rivals in the liquor rackets.47

The Alger investigation served a dual purpose for Governor Smith. First, it assisted Smith’s restructuring of the executive branch, specifically the departments of prisons and parole, by exposing the illogical system of prisons, parole, and reformatories. Second, by exposing the complicity, relaxed structures, and over-familiarity between administrators and the incarcerated, the investigation highlighted the need for professionalization in state government to insure dangerous criminals were treated as such and remained segregated from the general public.

The Secretary of State – 1927-1928

The strange plight of New York’s last popularly elected Secretary of State unfolded during Governor Smith’s last term. Spurred by concerns of fraud and theft of government funds during the 1925 state census, Governor Smith decided to appoint a

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commissioner to investigate the actions of Florence Knapp, the former Secretary of State who oversaw the census project. Though Governor Smith sought the advice of the Attorney General prior to invoking the Moreland Act - and Smith only appointed an investigation after the Secretary of State had left office - the investigation remains the only Moreland Act investigation in New York State history to examine the actions of an independently elected state official.

A constitutionally mandated officer, the Secretary of State served as the chief clerk for New York State and keeper of the Great Seal. The office maintained the official records and publications of the state and undertook a vast spectrum of record keeping including the recording of patents, land records, election results, notifications of candidates elected to office, incorporations, and numerous functions relating to motor vehicles. As a statewide official the Secretary of State also served on various State commissions and boards including the Land Office, Canal Fund, Board of Canvassers, Printing Board, and Board of Equalization and Assessment. One additional major function of the Secretary of State included the administration of the official decennial state census held each mid-decade.  

The Reconstruction Commission proposed reorganizing the office and making the Secretary of State an appointee of the Governor. Various functions unrelated to the largely clerical responsibilities of the office were to be moved into other more

48 Under the state constitution New York undertook a decennial census each mid-decade (i.e. 1925) while the federal government depended on a census commencing at the start of each decade (i.e. 1920). Some in New York State government, including Governor Smith, wanted to end the custom of holding a state census and relying on the federal census to save money and avoid unnecessary duplication. Governor Smith advocated an end to the state census in his Annual Message to the Legislature in 1926, 1927, and 1928. Smith Public Papers, 1926, 69; Smith Public Papers, 1927, 65; Smith Public Papers, 1928, 37.
appropriate agencies, (e.g. motor vehicles to the Tax Department) or placed under the
direct control of subordinates within the department, (e.g. elections under a Bureau of
Elections).\textsuperscript{49} Under New York’s government reorganization pursuant to the restructuring
amendments to the state constitution in 1925 and Hughes Commission in 1926, the
Secretary of State ceased as an elected officer and became an appointee of the Governor,
as also suggested by Smith’s Reconstruction Commission.\textsuperscript{50}

In November 1924 Florence Knapp became the first women elected to statewide
office when she bested her Democratic opponent for the Office of Secretary of State.
Prior to election Knapp spent most of her professional career in academia. A life-long
resident of Syracuse, Knapp received her education at Syracuse University and began
teaching after she married. Upon her husband’s death in 1913 she pursued graduate work
at Columbia and Cornell. In the late-1910s Knapp focused her attention on establishing a
College of Home Economics at Syracuse while simultaneously advancing in both the
Onondaga and New York State Republican Parties. After suffrage Knapp assisted the
Republican Party in the recruitment of women and in 1920 she served as a state delegate
to the Republican National Convention. The only public office Knapp held in addition to
her one term as Secretary of State was as a local school district superintendent in 1911.\textsuperscript{51}

In 1924 Knapp used her influence within the Republican Party and amongst
newly enfranchised Republican women to advance her political career by obtaining her

\textsuperscript{49} Reconstruction Commission Report, 1919, 81-84.

\textsuperscript{50} Hughes Commission Report, 1926, 29.

\textsuperscript{51} New York Red Book, 1926, 57-58; New York Times, October 27, 1949; Lauren Kozakiewicz, “Political
Episodes 1890-1960: Three Republican Women In Twentieth Century New York State Politics” (Ph.D.
Diss, SUNY Albany, 2006), 175-176.
Party’s nomination for Secretary of State. According to Knapp scholar Lauren Kozakiewicz, Knapp capitalized on her popularity with Republican women as well as the Party’s hesitancy to openly oppose Knapp at a time when many male political leaders were unsure of the voting strength of newly enfranchised women. Considering the work Knapp performed in recruiting women to the Party, Knapp’s support of Senator Wadsworth, and the fact that the office of Secretary of State would soon become an appointed position, Knapp obtained the nomination with regular Party support. Knapp’s victory was “the product of a specific time and place” attributable to the blending of “homemaker and caretaker” with a strategy “that would let her have all of the positives of being a woman in politics without any of the negatives.”

Knapp served one term (1925-1926) leaving office when the Secretary of State ceased as an elected statewide office.

In 1927 Governor Alfred E. Smith appointed his long-time aid Robert Moses as Secretary of State to replace the outgoing incumbent, Florence Knapp. Almost immediately upon taking office in 1927 Moses began investigating the status of the 1925 state census, a responsibility of the previous Secretary of State. Since only the enumeration portion of the census had been completed (i.e. the total number of citizens) and additional funds had been requested for additional tabulations and figures, Governor Smith and Moses wanted a full accounting of the project. In February 1927 Moses appointed a committee chaired by Tax Commissioner Mark Graves to examine the finances of the 1925 state census. Additionally, the Cities Census Committee, a New York State legislature body, also initiated a study of the 1925 census.

York State chartered private educational and scientific corporation, commenced its own study of the census, partly as a means to push for additional tabulations.\textsuperscript{53}

The Cities Census Committee found that Secretary of State Knapp had not properly administered the $1.2 million allocated by the State legislature in 1925 to conduct the state census. In its letter of transmittal to new Secretary of State Robert Moses, Cities Census Committee Chair Haven Emerson and Executive Secretary Walter Laidlaw stated “Mrs. Knapp has been guilty, in our judgment, of an absolute nonfeasance in carrying out the intent of the Legislature” in census-taking. In their “honest judgment” they further believed Knapp guilty of “misfeasance and malfeasance” necessitating them to urge the Governor to act accordingly. However, part of Laidlaw’s complaints stemmed from his own failures to both obtain tabulation information he wanted from the census and his own inability to secure additional funding from the Legislature for further census studies. Thus, Laidlaw, who had worked with Knapp on the census attacked Knapp with additional attacks coming from Haven Emerson, chair of the Cities Census Committee.\textsuperscript{54}

The Cities Census Committee report detailed a myriad of problems including Knapp employing at least seven relatives and 230 more employees than authorized by state law.\textsuperscript{55} Additionally, Knapp failed to institute any significant administrative or budgetary systems, “took liberties” in granting travel expenses of questionable nature,

\textsuperscript{53} Report of the Cities Census Committee, Accompanying Letter of Transmission to Robert Moses, Secretary of State, September 12, 1927 in Smith Public Papers, 1927, 251-253. Hereafter Cities Census Committee Report, 1927. The Cities Census Committee advised the New York State government in census matters such as cost estimates for undertaking a state census.

\textsuperscript{54} Haven Emerson and Walter Laidlaw to Robert Moses, September 12, 1927, in Smith Public Papers, 1927, 250-251; Kozakiewicz, “Political Episodes 1890-1960: Three Republican Women In Twentieth Century New York State Politics.” 200-203.

\textsuperscript{55} Chapter 191 of the Laws of 1925.
kept a clerk on her payroll for personal tasks, and used public relations money to promote herself, not the census. The excessive payroll added over $96,000 to the cost of the project which, by Cities Census Committee estimates, brought the final expenditures to approximately $1,198,000, leaving a balance of only $2,128. Considering that Knapp had left some portions of the census unfinished and had also requested another $300,000 to complete them, the committee believed “Mrs. Knapp’s financial administration of the census appropriation was illegal.”

With reports detailing to so-called census scandal Smith, Attorney General Ottinger, the State Republican Party, the public in general and women in particular, were drawn into an uncomfortable political situation. The New York Times summarized it as “a peculiar irony for those who had looked to her [Knapp] to demonstrate what could be accomplished in public life by a woman with a broom.” Previously viewed as a hero to women with a reputation for twinning the traditional role of homemaker with that of a newly-enfranchised woman serving as an efficient government executive, Knapp soon appeared as another hack politician.

After reading the City Census Report Governor Smith met with Republican Attorney General Albert Ottinger on October 5 to discuss possible courses of action.


57 Cities Census Committee Report, 1927, 270, 273-274; Haven Emerson and Walter Laidlaw to Robert Moses, September 12, 1927, in Smith Public Papers, 1927, 250. The census had completed the official count of residents within the state but, it had not completed the tabulations in a number of additional categories such as age, sex, occupation, and nativity.

Ottinger wrote Smith later the same day claiming that the Cities Census Committee report required extensive study and additional investigation. Further, Ottinger stated:

As you know, the Attorney-General has no power to conduct investigations outside his own department; that is, Governor, he has no power to compel the assistance of witnesses and to take testimony, and without some ascertainment of ultimate facts any action to recover state moneys be futile.

Therefore Ottinger “recommended to [Smith] along the lines of our conversation this morning, the appointment of a commissioner under section 8 of the Executive Law, commonly known as The Moreland Act.” Ottinger stated the use of the Moreland Act “lends itself in my judgment to the situation we now have.” Attorney General Ottinger took care to explain the use of the Moreland Act to investigate any “department.”

Though “enacted with the intent to exclude elective state officials from examination under the Moreland Act” Ottinger believed that the Moreland Act suited the situation confronting the state in regards to the Governor and the Secretary of State – two independently elected state officials. Since the “public documents of an earlier elected officer [Secretary of State] had been transferred by law” to a Secretary of State appointed by the Governor, Smith could use the Moreland Act to investigate Knapp and the 1925 census. Ottinger informed Smith that the Attorney General’s Office would use any report compiled under the Moreland Act in “bringing whatever action is necessary to protect the interest of the State.” On October 6, one day after Attorney General Ottinger suggested


60 Ottinger underlined department in the original letter, it was italicized in Smith’s correspondence records. Albert Ottinger to Alfred E. Smith, October 5, 1927, in Smith Public Papers, 1927, 278-279; Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a.
the use and propriety of the Moreland Act, Governor Smith announced the appointment of Randall J. LeBoeuf, Jr. to investigate the management and affairs of the Department of State in relation to the 1925 state census.61

Randall J. LeBoeuf, Jr., a Republican and member of the New York State Attorney General’s staff at the time of his appointment by Governor Smith, enjoyed a reputation as expert litigator and investigator.62 Educated at Cornell University Law School after military service in World War I, LeBoeuf worked as an attorney in private practice in Albany until 1925.63 Within a few days of his appointment LeBoeuf held a series of public hearings lasting into late October 1927. The hearings gathered testimony from dozens of witnesses and thousands of documents.

As in previous Moreland Act investigations under Governor Smith, the commissioner did not permit attorneys for those investigated to participate directly in the hearings and the examination of witnesses.64 Knapp did not voluntarily appear at the hearings when invited by LeBoeuf to answer the charges made by various witness. LeBoeuf did not subpoena Knapp since he believed “had her testimony been forced in

61 “Appointment of Commissioner to Examine and Investigate the Management and Affairs of the Department of State in Relation to the 1925 Enumeration of Inhabitants of the State, October 5, 1927” in Smith Public Papers, 1927, 279-280; New York Times, October 6, 1927.

62 Governor Smith discussed the appointment of one of Attorney General Ottinger’s top assistants, either the solicitor general or the first deputy, as commissioner under the Moreland Act in October 1928. Ottinger told Smith that the appointment of either would “cripple his office.” After the discussion of various assistants in the Attorney General’s Office Smith and Ottinger settled on Randall LeBoeuf of Albany, who had “carried on some of the most difficult investigations and litigations” for the State according to Ottinger. Undated summation of LeBoeuf investigation as it relates to the role of the Attorney General and Albany District Attorney, probably in March 1928, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a.


64 New York Times, October 14, 1927; New York Sun, January 19, 1928.
this manner it could not have been used against her at a later date.” Knapp attempted to secure for her lawyer Alexander Otis the right to cross-examine witnesses in the investigation in return for testimony. Edward Griffin, Counsel to the Governor, explained the shortcomings of Knapp’s strategy by explaining that “Persons subpoenaed are not required to testify, if, as in the case of Mrs. Knapp, they claim immunity personally.” Since LeBoeuf would not acquiesce to Knapp’s demand that her attorney Alexander Otis be allowed to cross examine witnesses as a condition of appearing, the hearings ended in late October without any active participation by Knapp. LeBoeuf stated he would not grant counsel the right to participate since it would turn the investigation from one of fact-finding to that of a trial. At several points during the investigation Knapp offered the press and LeBoeuf affidavits which LeBoeuf returned to Knapp and her attorney. The information provided by Knapp focused more on questions than information. Therefore, LeBoeuf stated, the charges uncovered would remain, without Knapp’s testimony, “wholly uncontradicted.” After an additional two and a half months of investigation into the actions of former Secretary of State Florence Knapp and the state employees in charge of the 1925 census, LeBoeuf issued his report to Governor Smith on January 20, 1928.


66 Edward Griffin to Otis Alexander, January 31, 1928; Otis Alexander to Edward Griffin, February 1, 1928 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a. Missal reported that LeBoeuf secured waivers of immunity in every instance from witnesses. This enabled LeBoeuf to secure testimony yet “left the testimony free to be used subsequently.” Missal, The Moreland Act: Executive Inquiry in the State of New York, 64.


LeBoeuf’s report detailed the extensive problems within Secretary of State Frances Knapp’s administration of the 1925 New York State census. LeBoeuf found census payroll records in disarray, records destroyed by Knapp, no show jobs, rampant nepotism, false travel vouchers, and the payment of lump sum bonuses to favored employees. LeBoeuf focused part of his report on the system of patronage established by Frances Knapp during the 1925 census that in turn led to most of the criminal activities regarding payrolls, no show jobs, and forgery. While the legislature authorized the appointment of clerical staff and supervisors to oversee the census, Knapp hired dozens of “assistant supervisors,” most of whom performed little work. This particular title also led to allegations that the Civil Service Commission did not pay enough attention to the proliferation of jobs in the Secretary of State’s office. Knapp used her office to hire local Republicans whose “only educational test required was one of party loyalty.” Many of Knapp’s key census officials also served in top Republican Party positions who, in turn, used their positions to hire local party members for useless or no show jobs. Payments to individuals for work not performed totaled $110,470.48 according to LeBoeuf.

LeBoeuf uncovered several criminal activities by Knapp including paying her private lawyer with state funds for defending her after a potentially scandalous automobile accident. Knapp employed a butler paid for with public funds, hired seven family members who evaded subpoenas during LeBoeuf’s hearings, and had checks payable to family members cashed by staff and then credited to her private account at a

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69 LeBoeuf Final Report, 1928, 298, 300-301, 310, 319-321, 327-328.

70 LeBoeuf Final Report, 1928, 308-310.
Syracuse department store. In tracing the records of the Secretary of State’s office and the Civil Service Commission LeBoeuf found that 1 in 4 employees were paid illegally. Overall, the combination of nepotism, political cronyism, no show jobs, and Knapp’s personal gains through the cashing of checks issued to relatives who performed little if any work, led to “wasteful” and “illegal” spending totaling $197,833.02. Many of LeBoeuf’s findings mirrored those of the Cities Census Committee’s report lending credence to charges of fraud and other serious felonies on the part of Knapp.

While LeBoeuf condemned Knapp and her close advisors, he also stated that despite the excessive spending and waste of public funds, the field staff responsible for the enumeration of the state’s population performed very well. The results of the census, according to LeBoeuf, proved “substantially accurate” and the initial census report issued on January 15, 1926 could be used for reapportionment. LeBoeuf believed the problem with the census was one of wasteful spending not miscounting.

In his summation LeBoeuf suggested Governor Smith pursue charges against Knapp for false audits, forgery, grand larceny, and removal of public records. While LeBoeuf recommended indictments against several of Knapp’s key employees and accomplices, LeBoeuf also acknowledged “to get the proof in every case would involve a long investigation, costing the State as much as the sums which might be recovered.” Therefore, LeBoeuf stated, the Governor or the Attorney General as directed by the

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73 LeBoeuf Final Report, 1928, 344-347.
Governor, should request the Albany County District Attorney pursue charges against only the top administration of the 1925 census.  

On January 31, 1928 Attorney General Ottinger responded to the Civil Service Commission’s request for an opinion on the issue of job classifications and payroll systems in relation to the 1925 state census. Ottinger cleared the Commission of any wrong-doing in relation to Knapp’s hiring of “assistant supervisors” and the use of lump sum payments to census staff claiming neither the Secretary of State nor the Commission broke the law. Ottinger’s opinion did not clear Knapp in regards to the possible misuse of state funds, but it did make clear that the hiring and payment methods did not violate state law. Soon after Ottinger’s letter to the Civil Service Commission Governor Smith issued a public statement regarding the LeBoeuf report and the next steps in the Knapp case. The Governor praised LeBoeuf’s efforts and his thoroughness despite the “difficulties” encountered including “absence of records” and refusals by some witnesses to testify. Smith requested “with great reluctance” that the District Attorney pursue criminal charges against Knapp and “that a civil action be commenced against Knapp by the Attorney General if criminal action should not result in conviction.” Since Governor Smith believed that minor officials followed the instructions of Knapp, he suggested that the District Attorney focus on the actions of Knapp and forego prosecution of subordinates. Smith stated “it is the duty of the Governor under the Moreland Act to

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75 Frances Stanton Smith, President of the State Civil Service Commission to Albert Ottinger, January 30, 1928; Albert Ottinger to State Civil Service Commission, January 31, 1928 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a.
receive the report of the commissioner appointed by him and to take such action upon it as seems to him to be in the best interest of the State.”

Ottinger’s opinions on the legality of Knapp’s hiring practices and lump sum payments, as well as Smith’s public insistence that the state census should be discontinued despite LeBoeuf’s support for the continuation of a state census, led District Attorney Herrick to question whether Knapp’s case should be presented to a grand jury. With many differing opinions as to what constituted serious infringements, Herrick openly doubted whether pursuing the case would be worthwhile. In early March Governor Smith conferred with District Attorney Charles Herrick and Attorney General Albert Ottinger to review a course of action. Herrick reviewed the LeBoeuf report and then issued his own report explaining why the District Attorney’s Office would not seek indictments. Herrick’s report read more like “a brief for the defense” rather than an explanation for a “failure to prosecute.” District Attorney Herrick stated he was “unable to find any evidence to sustain any of the charges of crime set forth in the [LeBoeuf] report.” Herrick picked apart each charge going so far as to claim that many issues raised could not be supported by hard evidence. For example, the alleged destruction of records, according to Herrick, did not relate to transgressions involving state money nor did the excessive travel vouchers by Knapp automatically prove deceit or fraud. Herrick argued

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that the public humiliation suffered by Knapp due to the exposure of her “extravagant and wasteful” administration seemed merited, but “there is no actual evidence that Mrs. Knapp dishonestly took money that didn’t belong to her.”

In a scenario reminiscent of the 1924 Moreland Act investigation of the Department of Public Works, Smith found the Albany County District Attorney unwilling to pursue charges against a person investigated by the Governor under the Executive Law. Without the cooperation of the local district attorney Governor Smith turned to the Attorney General for legal action as he did in 1924. With public sentiment as expressed in the press and private letters favoring a prosecution of Knapp, Smith directed the Attorney General under the Executive Law to represent the state before the March 1928 grand jury in Albany County in place of the Albany County District Attorney. Ottinger designated George Z. Medalie, a progressive Republican lawyer with experience in both the New York County District Attorney’s office and the New York State Attorney General’s office, as special deputy in charge of the case. Ottinger stated at the time of


80 New York Times, March 8, 1928, “Failure To Prosecute” (editorial), March 9, 1928. The Times ran a story on March 9 containing headlines from Republican and Independent newspapers around the state attacking Herrick’s refusal to pursue charges against Knapp. These papers included the Albany Knickerbocker Press (Republican), Schenectady Union Star (Republican), Buffalo News (Republican), Utica Observer Dispatch (Independent), Buffalo Courier Express (Independent), Rochester Times Union (Independent), and Albany Evening News (Independent-Republican). The Times of March 8 editorialized that “the power of discretion lodged in a District Attorney will seem to most people to have been unhappily exercised by Mr. Herrick in Albany County in the case of the former Secretary of State, Mrs. Knapp.”

81 Governor Smith received many letters of complaint about District Attorney Herrick’s refusal to seek charges against Knapp. For example, S.D. Brummer claimed that if Governor Smith did not compel the District Attorney to prosecute Knapp “the ultimate responsibility for Mrs. Knapp’s escape from punishment will rest upon you.” S.D. Brummer to Alfred E. Smith, March 8, 1928 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a.

82 New York Times, March 10, 1928; Requiring the Attorney-General to represent the People at a Special and Trial Term of the Supreme Court in the County of Albany for the Purpose of Conducting All
Smith’s directive to have the Attorney General supersede the District Attorney, “I will seek the indictment of Mrs. Knapp. I was ready at any moment to take over this prosecution and try the case.” When asked his opinion on Governor Smith’s superseding his office, Albany County District Attorney Herrick merely stated, “I prefer to make no comment.”

Due to time constraints and the desire to present the case “to an entirely fresh Grand Jury” the Governor, at the request of Attorney General Ottinger, called a “special term of court” in Albany County and appointed Supreme Court Justice Stephen Callaghan of Brooklyn as presiding justice to hear charges against Knapp. Ottinger stated he feared that the Albany County grand jury now seated may have been “affected by the stand” of Herrick. By March 22 a new grand jury had been seated, the evidence from the LeBoeuf investigation in the possession of Herrick was forwarded to special prosecutor George Medalie, and the opening sessions scheduled for April 5.

On April 23 the grand jury returned indictments against Knapp including charges of forgery and larceny. The charges had been brought after the grand jury heard

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*Proceedings and Criminal Actions in Connection with the Enumeration of the Inhabitants of the State, March 8, 1928; Further Requiring the Attorney-General to represent the People at an Extraordinary Special and Trial Term of the Supreme Court in the County of Albany, for the Purpose of Conducting All Proceedings and Criminal Actions in Connection with the Enumeration of the Inhabitants of the State, March 12, 1928*, in *Smith Public Papers, 1928*, 263-265; Richard Norton Smith, *Thomas E. Dewey and His Times*, (New York: Simon and Schuster, 1982), 111-112, 130-131, 266, 458. Medalie, a graduate of Columbia Law School, later served as U.S. Attorney for the Southern District of New York, and as an unsuccessful candidate for U.S. Senator from New York in 1932. Medalie also helped launch, cultivate and support the career of Thomas Dewey from his early days as a lawyer all the way to the New York Governorship.


84 *New York Times*, March 13, 1928, March 22, 1928; *Calling Extraordinary Special and Trial Term of the Supreme Court in the County of Albany and Designating the Honorable Stephen Callaghan, March 12, 1928* in *Smith Public Papers, 1928*, 273.
testimony from Knapp’s relatives, some of whom characterized Knapp’s use of their paychecks as “pin-money.”85 Less than three weeks later the trial resulting from the indictments resulted in a “deadlock” over the charges of grand larceny. In a surprising twist, Judge Callaghan, upon hearing from the foreman that the jury could not reach a verdict declared he would order a second trial. Stating he was very “anxious to try this again as soon as possible” Judge Callaghan discharged the jury and set a new trial date for May 21. Visibly shaken Knapp exhibited signs of “depression” and left the court room.86

On May 21 the second trial of Knapp commenced. In less than one week the jury found Knapp guilty of grand larceny in regards to a $2,875.06 check made out to Clara Blanche Knapp – the former Secretary of State’s step daughter - but signed, cashed and spent by Florence Knapp. The testimony of Clara Knapp weighed heavily in the verdict. Previously unable to be located or subpoenaed, Clara Knapp testified in May 1928 that she had performed no work on the state census, resided in another state (Vermont), and was unaware that she had been placed on the Secretary of State’s payroll. Judge Callaghan delayed sentencing until September 4 but stressed that Knapp would not escape imprisonment of some kind. The delay in sentencing came after Judge Callaghan consulted with Knapp’s physicians who claimed she had physically and mentally deteriorated and required an extensive rest before beginning a jail term. Although visible upset upon hearing her fate Knapp maintained a “steel-like composure” until back in her


86 *New York Times*, May 9, 1928.
room at the Ten Eyck Hotel. Once out of sight of the public friends reported she sobbed and “broke down completely.”

After an extended vacation Knapp appeared before Judge Callaghan on September 4 to receive her sentence. Attorney General Ottinger wrote Judge Callaghan imploring him to grant a suspended sentence because Knapp “has suffered physically and mentally as a result of the indictment and conviction.” Despite the plea for leniency, Callaghan sentenced Knapp to 30 days in the Albany County Jail. After the sentencing, the Albany County Sheriff drove Knapp to the jail and Knapp began her 30-day sentence in an “improvised detention room” in the sheriff’s apartment adjoining the facility. Knapp’s meals were “ordered and brought to her from a nearby restaurant.” Robert Moses later claimed Smith unsuccessfully tried to help Knapp get a suspended sentence. When Knapp went to see Smith, as Moses recalled, she placed her hand on the Governor’s and said “You haven’t lost faith in me, Al.” Smith recalled later with sympathy that Knapp, wearing a completely pink outfit, “looked like a basket of peaches.”

Upon completion of her sentence Knapp moved to her sister’s home in Bedford, Massachusetts. Knapp later bought a house in her home town of Syracuse. Fired from her post as a Dean at Syracuse University, Knapp lived the rest of her life in obscurity. She suffered a heart attack and died on October 26, 1949 – almost twenty-five years after she

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had been elected Secretary of State and only nine days after her brother died in a Syracuse hospital.\textsuperscript{90}

The Moreland Act investigation of Florence Knapp by Governor Smith proved unique in many ways. The use of the Moreland Act to investigate an elected official, even if from the same branch of government (executive), seemingly contradicted the intent of the law. Smith prudently sought the advice of the Attorney General before proceeding with his appointment of an investigation to insure a supportive legal opinion from the state’s chief attorney.\textsuperscript{91} In a political sense the Democratic Governor’s recourse to a Republican Attorney General silenced many potential critics of an investigation into the actions of an independently elected statewide official from the Republican Party. In an effort to protect its image the Republican State Committee paid for Knapp’s legal services during the Moreland Act investigation, but the Party did not receive assistance or special treatment from any top ranking Republicans including Attorney General Albert Ottinger, Moreland Act commissioner Randall LeBoeuf, and special prosecutor George Medalie.\textsuperscript{92} Florence Knapp’s refusal to participate in the Moreland hearings “allowed the public to form an ungenerous opinion of her conduct.” In turn, this perception led to the Republican Party’s growing desire to get rid of Knapp after she proved to be an experiment that failed.\textsuperscript{93} When Knapp proved a liability she became expendable, even if

\textsuperscript{90} \textit{New York Times}, October 27, 1949.

\textsuperscript{91} Albert Ottinger to Alfred E. Smith, October 5, 1928 in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A, “Secretary of State, Census, Census Investigation,” Reel 75, 200-59-2-a. See Appendix H for original letter.

\textsuperscript{92} \textit{New York Times}, February 2, 1928.

\textsuperscript{93} Kozakiewicz, “Political Episodes 1890-1960: Three Republican Women In Twentieth Century New York State Politics,” 208, 213-219.
that meant risking alienating women voters. However, Knapp’s own behavior kept many from thinking she deserved special treatment as a women thus sparring the Republicans from appearing too harsh on their only female statewide office holder.

In an ironic political twist, the Democratic District Attorney from Albany County proved more helpful to Knapp’s cause by refusing to pursue charges, though Governor Smith superseded the local district attorney very quickly. Ottinger’s successful prosecution of Knapp did not however diminish his standing with the State Republican Party and in November 1928 Ottinger received the Republican nomination for the governorship. The Knapp investigation resulted in the conviction of a former statewide elected official, the dismissal from office of two junior state employees, and the vindication of Governor Smith in his recourse to superseding the local district attorney.

Smith’s use of the Moreland Act after the restructuring of the executive office foretold of a new chapter in the history of executive investigation. The investigations of public building procedures and state prison administration focused on state administration in a restructured executive branch. The investigations centered more on improving state government administration than on the finding of wrong-doing on the part of state officials. The unique case of the Secretary of State puzzled even Smith at first who hesitated to invoke the Moreland Act and only acquiesced when bolstered by an opinion of the Attorney General. In subsequent administrations such a massive undertaking to investigate an executive branch officer would not be viewed as necessary and other

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94 In one of the most crucial yet historically overlooked gubernatorial electoral contests in New York State Albert Ottinger barely lost to Al Smith’s handpicked successor, Franklin D. Roosevelt in 1928. Roosevelt beat Ottinger by slightly over 25,000 votes out of almost 4.5 million ballots cast.
checks and balances (i.e. an inspector general or charges under the Public Officers law) would be deemed more appropriate.
Conclusion

Governor Alfred E. Smith’s Moreland Act investigations during his four terms in office strengthened his efforts to reform and reshape the executive branch. Smith’s eight-year experiment in state government reform began in 1919 with his attempts under the Reconstruction Commission to carry forward the programs of the 1915 failed Constitutional Convention; it ended in 1928 with Governor Smith leaving office as the leader of a restructured, stronger executive branch. In the years between 1919 and 1928 Governor Smith depended heavily of the Moreland Act investigations in addition to his Reconstruction Commission to bolster his calls for reform. Each one of Smith’s Moreland Act investigations highlighted the shortcomings of New York State’s antiquated executive branch. Smith’s continuous recourse to investigation underscored his steadfast commitment to making state government an efficient vehicle for the delivery of services, particularly social welfare programs.

The first step in Smith’s reform crusade came while Smith still served in the State Assembly when the Legislature passed the Moreland Act. In 1907 Assemblyman Sherman Moreland drafted a law enabling New York Governors to investigate any and all executive branch departments, boards, bureaus, and commissions. Moreland pushed his investigation bill to assist the reform-minded Governor Charles Evans Hughes. Hughes had been elected Governor in 1906 largely as a result of his 1905 investigations into insurance and public utilities and the failure of state government to properly regulate these industries. However, once in the governorship Hughes found state government
chaotic and unresponsive. Armed with Moreland’s new gubernatorial investigation law, Hughes began a number of inquiries into the executive branch examining departments and bureaus previously beyond his reach. Starting with Hughes in 1907 through Smith in 1919 each New York Governor publicly advocated executive branch reform, with all but one empanelling Moreland Act investigations.\(^1\) However, even Governor Smith admitted that while the Moreland Act helped reform parts of state government, a complete overhaul was required.\(^2\)

Between 1919 and 1920 and again from 1923 to 1928 Governor Smith became the latest in a long line of Governors to call investigations to gather information on executive branch agencies. The key difference separating Smith from his predecessors was his steadfast desire to follow-through on a comprehensive plan of government reform. Smith’s plan for reform involved a series of Moreland investigations to address the on-going administrative problem rampant in the departments nominally reporting to the Governor while simultaneously pursuing a comprehensive Reconstruction Commission to study every facet of the executive branch. Both avenues provided Smith with the data needed to develop an alternative system for the executive branch that could be presented to the legislature and ultimately to the electorate as new constitutional amendments. Though Smith can be credited with success, he cannot be recognized as original in the area of state reform. Smith’s plans depended on the work of others notably the 1915 convention leaders. It was Smith’s determination to actually see reform though that made him the father of a reformed executive branch.

\(^1\) Only the three-month tenured Governor Horace White (October 1910-December 1910) failed to name any Moreland Act commissioners.

Smith appointed investigations to probe departments almost as soon as he took office on January 1, 1919. During his first term, Smith’s attempts to regulate the milk industry and protect workmen’s compensation exhibited his dedication to those most in need of government paternalism: children and labor. Smith also invoked the act three other times in his first term to correct abuses in a few scattered agencies sorely in need of oversight. A pattern soon developed which Governor Smith made almost routine. Smith would uncover a problem in an executive agency followed by calls from the Governor for corrective action. When directives for corrective action were ignored by staff, Smith would appoint an investigation. Once in place, Smith’s commissioners - all of them trusted advisors or experts in their respective fields - methodically gathered evidence, interrogated witnesses, and issued reports recommending changes. Armed with these reports Smith used public appeals and pressure to wear down the legislature which would enact the proposed reform.3

The subjects of Smith’s investigations ranged from small, obscure state agencies remotely located (e.g., the State Fair and the Soldiers’ and Sailors’ Home) to large departments overseeing hundreds of employees and millions of dollars in programs (e.g., Agriculture and Markets and the State Department of Labor). However, each investigation had one overarching commonality – each department demonstrated the weaknesses of the Governor in the areas of executive oversight. Smith found that just as the various boards and commissions such as the State Fair Commission, the Council of Farms and Markets, and Industrial Board failed to properly carry out its mission, these boards also refused to heed the Governor’s directives. In addressing multiple cases of

non-responsive commissioners and boards refusing to properly oversee state bureaus, Smith opportunistically seized the chance to use the Moreland Act to further his plan. Like the construction of large puzzle, Smith addressed each area piece by piece studying and then investigating. To insure he did not miss the larger picture and rebuild without a holistic approach, Smith employed a Reconstruction Commission to examine state government generally just as did the 1915 Constitutional Convention and the Hughes Commission of 1925. Thus, Smith’s bifurcated investigation process – individual inquiries and an all-inclusive reconstruction study – complimented and supplemented each other.

Smith’s choices for commissioners also formed a pattern characteristic of his reform efforts. Almost every Moreland Act Commissioner appointed by Smith was an attorney with only three exceptions: the State Commissioner of Education (John Finley), the State Architect (Sullivan Jones), and Smith himself. Most of the individuals served in either state or local government, were active in politics, and shared Smith’s desire to revamp state government. For example, Smith appointed experienced workmen’s compensation expert Jeremiah Connor in 1919 to investigate the Department of Labor. The following year Smith appointed Connor Secretary to the Governor (chief of staff) and later to Commissioner of Labor. In such roles Connor implemented the suggestions made during his investigation. Likewise, Smith’s appointment of Lieutenant Governor Harry Walker and former Governor Martin Glynn in 1919 showed Smith’s desire to appoint trusted allies who understood the executive branch and the need to reform it. In one instance, Smith believed the investigation of a Republican (Florence Knapp) necessitated the appointment of a Republican in order to proceed without the appearance
of partisanship. Thus, Smith appointed a Republican lawyer (Randall LeBoeuf) who had served under the Republican State Attorney General (Albert Ottinger). Each Moreland Act commissioner appointed by Smith possessed the expertise and professional training, as well as the political acumen and personal trust necessary for investigators representing the Governor. Despite appearances of independence letters to and from his commissioners reveal a behind the scenes role for the Governor in many of the investigations. In this sense Smith, like his Republican opponents who actively used state government to enact public policy desirous of the business lobby, utilized government (investigations) to reach his own ends. However, in the case of Smith, reform appeared more publically palatable than manipulation of state government by businessmen disingenuously claiming laissez faire while in reality seeking control of the government to insure favorable treatment of their interests.

Smith did not empanelled investigations merely to remove crooked or incompetent state employees in select departments, he used the Act to show that the Governor needed additional power to administer state government generally. For example, that Smith found the Council of Farms and Markets so negligent in its duty that children faced malnutrition due to preventable milk shortages served two points. First, investigation proved that the state’s agricultural and markets departments did not report to the Governor or even a logically structured governing body. Second, the investigation demonstrated that the Governor, if granted power, could both reform and police this agency and compel its employees to provide the services Smith believed state government should provide: safe and reliable milk markets. Similar scenarios could be found in the need for a financially sound workmen’s compensation program, a
trustworthy state police constabulary, canals and public roadway construction without padded bills, secure prisons, a system of parole protecting the general public, and public building projects without fear of waste and corruption. Combined, the reports generated by Smith’s Moreland Act investigations serve almost like chapters in his Reconstruction Commission Report outlining how state government desperately needed reform and how services could be provided to the people if only reform were enacted.

Smith’s astute use of the Act to halt the attempts of reactionaries also separated Smith from his predecessors. Smith battled not only intransigent state employees but reactionary opponents of change such as the business lobby and the Republican Party. For example, Moreland Act investigations of labor under Smith, such as the 1928 investigation of workmen’s compensation, proved that business meddling in state administrative offices proved more corrupting than actual corruption by government employees. Smith’s investigations attacked both the status quo in state government and those favoring the system of boards, bureaus, commissions, and departments reporting to legislatively-appointed chairs and commissioners. With almost 190 scattered agencies comprising state government and the Governor severely limited in his role as chief executive, many state employees reported to their true masters – the political or legislative bosses who gave them their job and the business interests who exercised influence over the bosses. Smith sparred neither of these groups the embarrassment of investigation and public revelation of their true actions – a chaotic government making business control of regulation and policy easier, not to mention graft.

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An added benefit Smith found under the Moreland Act came in the area of public relations. Unlike his processors Smith used the Moreland Act to gain public support for his administration.\(^5\) The letters and notes between the Moreland Act commissioners and Smith (and his staff) reveal a planned cultivation of positive press and a blueprint for enlisting public support. While not necessarily conspiratorial, the correspondence in many of the investigations reveals a coordinated plan to insure the investigation results were released at the proper time, provided solid facts, and suggested a new course of actions that would correct departmental failings and portray the Governor in a positive manner. Letters and telegrams often revealed public support and gratitude for addressing festering problems.

In three particular investigations Smith used the act to embarrass and silence critics while he gained favorable press. In 1924 Smith took the unique step of appointing himself a Moreland Act commissioner to personally investigate a Republican-aligned business trade group seeking an investigation of the Department of Labor. Smith used the occasion as a bully pulpit to unmask the conspirators seeking to embarrass Smith under the guise of investigating government waste and inefficiency. Ironically, in the 1924 investigation of Associated Industries and the 1924 investigation of the canal system, Smith used the Act to bolster reforms in state government being undermined not by state employees but by the private sector. In 1925 Smith again used the Act to unmask ulterior motives by a third party when he placed Mayor Hylan on the stand and had

\(^5\) For example, Charles Evans Hughes inaugurated the Act in August 1907 by investigating Insurance Commissioner Otto Kelsey after the Senate, at the request of Hughes, refused to remove Kelsey. Hughes’ Moreland Act investigation of Kelsey failed to spark any public outcry for the removal of Kelsey. Likewise, Sulzer’s numerous Moreland Act investigations in 1913 failed to gain public support even though he uncovered many cases of graft. Governor Glynn’s 1913 investigation into state operations also fell short of enlisting public support.
Commissioner McAvoy extract testimony exposing Hylan’s ulterior motives. Such incidents of political savvy by Smith prevented any backslides in Smith’s pursuit of reform while simultaneously depicting the Governor as a reformer. Smith appeared as a seeker of information in the cause for executive branch reorganization despite political attempts to embarrass him. Smith neatly turned the tables on his enemies and publically challenged them to prove their accusations alleging Smith did not administer state government properly.

In the process of debating his critics Smith solidified public support for reform. The timing of Smith’s use of the Act coincided with growing calls for reform, demands for more government services, and the increasing power of unions. Thus Smith’s calls for more checks on business, greater power for labor, and more government services in the 1920s fared much better than if they were undertaken in the 1890s or 1900s. After the 1915 Convention, a growth in reform organizations, and national movements seeking government reform, Smith found the atmosphere for change – though challenging – less hostile than if he had been seeking his program in the 1890s like Teddy Roosevelt or the 1900s as did Charles Evans Hughes. That Smith articulated his case, armed with data gathered under investigations favorable to reform, furthered his overall program. Without the Moreland Act such occasions of strategic investigation in pursuit of reform would not have been possible. Smith blended tenacity with opportunity.

By 1928 Smith could look back on his long tenure as Governor and claim his use of the Moreland Act improved both the efficiency of individual state departments and also bolstered his reform program. Smith stated he “used it with great effect upon many occasions where there were indications of abuse of power or dishonesty in public
office.”\footnote{Smith, \textit{Up To Now}, 83.} For example, in explaining his overhaul of the Council of Farms and Markets Smith stated the report produced under the Moreland Act investigation in 1919 revealed “the absurd system of an administrative department controlled by the Legislature...[and] permeated with politics.”\footnote{Smith, \textit{Progressive Democracy}, 341-342.}

Overall, Smith’s long series of Moreland Act investigations during his governorship assisted and supplemented his reform program. Smith’s use of his Reconstruction Commission, public appeals for reform, constant study, and recourse to the Moreland Act transformed New York State government from its antiquated and disorganized course in the nineteenth century to one of logical efficiency in the twentieth century. As Paula Eldot stated in her study of Smith’s career, that “until the long incumbency of Nelson Rockefeller, the state government remained essentially as Smith had reconstructed it.” Thus, Al Smith’s legacy as reformer of state government and protector of social welfare and labor programs lasted long beyond his exit from the public stage in 1928.\footnote{Eldot, \textit{Governor Alfred E. Smith}, 26, 409.}
Bibliography

Manuscripts and Special Collections

*Alfred E. Smith Private Papers, 1919-1944*, SC12626, in New York State Library, Manuscripts and Archives Division.


*George B. Graves Papers, 1922-1928, B1383-93*, in New York State Library, Manuscripts and Archives Division.


*Official Correspondence of Governor Alfred E. Smith*, Central Subject and Correspondence file, 13682-53A, in New York State Library.

Newspapers

*Adirondack News*, 1924
*Albany Evening Journal*, 1924
*Albany Evening News*, 1928
*Albany Times Union*, 1907, 1919, 1923-1924
*Auburn Citizen*, 1924
*Batavia Daily News*, 1919, 1927
*Binghamton Press*, 1924
*Boston Herald*, 1924
*Buffalo Evening News*, 1927
*Buffalo Express*, 1924
Brooklyn Daily Eagle, 1924, 1926, 1928
Caledonia Advertiser, 1924
Catskill Enterprise, 1924
Chemung Valley Reporter, 1924
Dansville Breeze, 1924
Elmira Telegram, 1919-1920
Geneva Daily Times, 1924,
Glens Falls Post-Star, 1932
Gloversville Morning Herald, 1924
Kingston Daily Freeman, 1923
Lockport Union-Sun & Journal, 1924
Niagara Falls Gazette, 1924
New York Evening Post, 1924
New York Evening Telegram, 1924
New York Herald, 1907
New York Sun, 1928
New York Tribune, 1907
New York World, 1924
Oswego Daily Times, 1924
Oswego Daily Palladium 1924
Poughkeepsie Eagle News, 1924
Rochester Democrat and Chronicle, 1919, 1933
Rochester Herald, 1919
Schenectady Gazette, 1924
Steuben Courier, 1919-1920
Syracuse Journal, 1919, 1924
Syracuse Post-Standard, 1919
Utica Daily Press, 1949
Utica Herald-Dispatch, 1918
Utica Observer-Dispatch, 1924
Watertown Daily Times, 1924
Yonkers Herald Statesman 1955

Public Papers of New York Governors


Public Papers of Nathan Miller, Governor, 1921. Albany: J.B. Lyons Company, 1924.

Public Papers of Nathan Miller, Governor, 1922. Albany: J.B. Lyons Company, 1924.


Legislative and Government Documents


Bills of the Assembly of the State of New York, Nos. 2239 to 2543 Inclusive, Printed During the One Hundred and Thirtieth Session of the Legislature, Vol. VII. Albany, N.Y.: J.B. Lyon Company State Printers, 1907.


Bills of the Senate of the State of New York, Nos. 1669 to 1881, Inclusive, Printed During the One Hundred and Forty-Seventh Session of the Legislature, Vol. IX. Albany: J.B. Lyon Company, 1917.


Cumulative Index to the Joint Legislative Committees and Selected Temporary State Commissions and Alphabetical List of Chairman and Vice-Chairman, 1900-1950. Albany, N.Y.: New York State Senate, 1966.


Documents of the Constitutional Convention of the State of New York, 1915, Begun and Held at the Capitol in the City of Albany on Tuesday the Sixth Day of April, Albany: J.B. Lyon Company, 1915, Document No. 11, Joint Meeting of the Committees on Governor and Other State Officers and State Finances with Hon. William Howard Taft, Ex-President of the United States.

Investigation of the Charges of Mismanagement and Cruelty at the Soldiers’ and Sailors’ Home, Bath, N.Y., Published by Order of the Board of Trustees. Bath, N.Y.: Press of the Steuben County Courier, 1883.

Laws of the State of New York, Vol. II, Passed at the One Hundred and Fifteenth Session of the Legislature, Begun January fifth, 1892, and ended April Twenty-First, 1892, In the City of Albany. Albany: Banks & Brothers, 1892.

Laws of the State of New York Passed at the One Hundred and Thirtyeth Session of the Legislature, Begun January Second, 1907, And ended June Twenty-Sixth, 1907, In the City of Albany, And Including Extraordinary Session, Begun July Eight, 1907, and ended July twenty-sixth, 1907, Vol. I. Albany: J.B. Lyon Company, 1907.


New York Legislative Index, Constituting a complete Record and Index of all Bills introduced in the Senate and Assembly during the 130th annual session of the Legislature of the state of New York beginning January 2, 1907. Albany: Published by the Legislative Index Publishing Company, 1907.

New York Legislative Record and Index, A Complete Record of All Bills Introduced in the Senate and Assembly during the 135th session of the Legislature of the State of New York beginning January 1, 1912. Albany, N.Y.: The Legislative Index Publishing Company, 1912.

New York Legislative Record and Index, A Complete Record of all Bills introduced in the Senate and Assembly during the 136th annual session of the Legislature of the State of New York beginning January 1, 1913. Albany: The Legislative Index Publishing Company, 1913.

New York Legislative Record and Index, A Complete Record, Of all Bills Introduced in the Senate and Assembly during the 142d annual session of the Legislature of the State of New York beginning January 1, 1919. Albany: The Legislative Index Publishing Company, 1919.


Joint Committee of the Senate and Assembly on Recodification and Revision of Labor Laws.


New York State Soldiers’ and Sailors’ Home at Bath, N.Y. Bath, N.Y.: A. Wittemann, Publisher of American Views, 1897.


Moreland Act Hearing Testimonies

In the Matter of Proceedings pursuant to section eight of the Executive Law, before – Joseph A. Lawson, As a Commissioner, to examine and investigate the management and affairs of the New York State Constabulary Troop stationed at Batavia, New York, including the conduct of its officers and members, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “NYS Troopers” Reel 152, 260-124.

In the Matter of the Examination and Investigation of Matters and Affairs of the New York State Soldiers’ and Sailors’ Home located at Bath, Steuben County, State of New York, by Harry C. Walker, Lieutenant Governor appointed Commissioner pursuant to the Provisions of the Moreland Act, Proceeding, Before Commissioner Harry C. Walker, 1919-1920, in Official Correspondence of Governor Smith, Central Subject and Correspondence file, 13682-53A “RE: Complaints Soldiers and Sailors Home”, Reel 151, 260-123.


In the Matter of Complaint of the Inefficient Operation and Failure of the Department of Public Works to Properly Maintain the Barge Canal System of the State, Hearing Record of August 26, 1924 in Smith Public Paper, 1924.


Moreland Investigation Reports


Message to the Legislature Transmitting Report of Justice McAvoy, Commissioner to Investigate the Management and Affairs of the Transit Commission, February 16, 1925, in Smith Public Papers, 1925.

In the Matter of the Examination and Investigation of Management and Affairs, New York State Arsenal Commission, New York State Hospital Commission, The Office of the Adjutant General in Connection with Armories, The New York State Department of Purchase, New York State Department of Prisons in Smith Public Papers, 1926.


Special Reports


Dissertations


Greenwald, Richard. “Bargaining for Industrial Democracy?: Labor, the State and the


Articles


*The Monitor*, Vol. 1, No. 7 (December 1914).


“Shientag Attacks Up-State Judiciary For Failure to Co-Operate With Him.” The Monitor, Vol. 6, No. 7 (December 1919).


Books


Davies, Audrey M. Moreland Investigations in New York State. New York: Institute of
Public Administration, 1936.


Forrest, Jay W. and James Malcolm. Tammany’s Treason: Impeachment of Governor William Sulzer (The Complete Story Written from Behind the Scenes, Showing How Tammany Plays the Game, How Men are Brought, Sold, and Delivered). Albany: Published by Jay Forrest, 1913.


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Appendix A - “The Moreland Act” of 1907
Executive Law, Section 7

The governor is authorized at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state. The governor and the persons so appointed by him are empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material. Whenever any person so appointed shall not be regularly in the service of the state his compensation for such services shall be fixed by the governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid by the treasurer out of any appropriations made for the purpose upon the order of the governor and warrant of the comptroller.

\[1\] Laws of the State of New York Passed at the One Hundred and Thirtieth Session of the Legislature, Begun January second, 1907, and ended June Twenty-Sixth, 1907, in the City of Albany, And Including Extraordinary Session, Begun July Eighth, 1907, and Ended July Twenty-sixth, 1907, (Albany: J.B. Lyon Company, 1907), 1126. The Moreland Act became section 8 in 1909, and Section 6 in 1928.
Appendix B - Moreland’s Original Investigation Bill of 1907

No. 2322, Int. 1678

Experts; appointment of, inspection by. – The governor may, at any time, and at intervals of not more than three years must, appoint one or more competent persons to examine and investigate each department, board, bureau, division and commission of the state, its methods and systems of bookkeeping and vouchering, its systems of purchasing supplies for the state, its systems of keeping records and documents, the number and grades of the employees thereof, the kind and nature of the work done by each employee, the salary paid therefor, and generally into the methods and systems of doing business of the state in vogue in said department, board, bureau, division and commission. A different person or set of persons may be appointed to examine and investigate each department, board, bureau, division and commission, or any number thereof, in the discretion of the governor. The person or persons so appointed are hereby authorized to take testimony under oath and require the production of books, papers and documents, and shall report to the governor with his or their recommendations. The governor is hereby authorized and empowered, in his discretion, to examine and investigate, in person, each department, board, bureau and commission of the state in the same manner and to the same extent as may the person or persons whose appointment is authorized hereunder. He is also authorized and empowered, in making examinations or investigations, to take testimony under oath, to subpoena and enforce the attendance of witnesses, and to require the production of all books, papers and documents. The governor shall transmit his own report, and the report or reports of such examiner or examiners, to the legislature with such recommendations as he may deem proper, and shall fix the compensation of each person or persons so appointed and report the same to the legislature. Such compensation and all necessary expenses incurred in any examinations or investigation shall be paid by the treasurer on the warrant of the comptroller on the order of the governor, and shall in no case exceed the amount appropriated for such purpose.

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STATE OF NEW YORK.

IN SENATE,

ALBANY, May 3rd, 1907.

Pursuant to section twenty-two of the Public Officers Law (chapter six hundred and eighty-one of the laws of eighteen hundred and ninety-two), we, Lewis Stuyvesant Chanler, President of the Senate and Lafayette B. Gleason, Clerk of the Senate, do hereby certify that, at the session of the Senate held on the second day of May, nineteen hundred and seven, the President put the following question:

"Shall the Senate concur in the recommendation of the Governor for the removal of Otto Kelsey from the Office of Superintendent of Insurance" and it was decided in the negative as follows:

AYES:

Mr. Agnew
Mr. Armstrong
Mr. Burr
Mr. Carpenter
Mr. Cassidy
Mr. Cobb
Mr. Cradit
Mr. Davis
Mr. Dunn
Mr. Feeke
Mr. Fuller
Mr. Gates
Mr. Gilchrist
Mr. Grattan
Mr. Heacock
Mr. Jefferson
Mr. Keese
Mr. Knapp
Mr. O’Neill
Mr. Page
Mr. Sage
Mr. Taylor
Mr. Travis
Mr. Wemple

NAYS:

Mr. Ackroyd
Mr. Allde
Mr. Boyce
Mr. Cohalan
Mr. Cullen
Mr. Eaken
Mr. Franchot
Mr. Frawley
Mr. Grady
Mr. Harte
Mr. Haasenburg
Mr. Hill
Mr. Hooker
Mr. McCall
Mr. Mccarren
Mr. McManus
Mr. Mullaney
Mr. O’Hara
Mr. Ramperger
Mr. Smith
Mr. Schmer
Mr. Sullivan
Mr. Thompson
Mr. Tully
Mr. White
Mr. Wilcox

IN WITNESS WHEREOF we have set our hands and caused the official seal of the Senate of the State of New York to be hereunto affixed this third day of May, 1907.

Lewis Stuyvesant Chanler
President of the Senate

Lafayette B. Gleason
Clerk of the Senate.
### Appendix D – Moreland Act Investigations 1907 – 1918

<table>
<thead>
<tr>
<th>Governor</th>
<th>#</th>
<th>Subject(s) of Investigation</th>
<th>Commissioner(s)</th>
<th>Appointment</th>
<th>Report(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hughes</td>
<td>1</td>
<td>Management and Affairs of the Insurance Department</td>
<td>Matthew Fleming</td>
<td>August 20, 1907</td>
<td>January 30, 1908</td>
</tr>
<tr>
<td>Hughes</td>
<td>2</td>
<td>Management and Affairs of the Board of Embalming Examiners</td>
<td>Owen L. Potter</td>
<td>July 17, 1908</td>
<td>June 14, 1909</td>
</tr>
<tr>
<td>Hughes</td>
<td>3</td>
<td>Matters relating to the preparation of the new state prison pursuant to chapter 670 of Laws of 1906</td>
<td>Edward Sandford</td>
<td>June 14, 1909</td>
<td>Unknown</td>
</tr>
<tr>
<td>Hughes</td>
<td>4</td>
<td>Management of the affairs of the office or department of the State Supervisor of Elections for the Metropolitan District</td>
<td>William H. Wadhams</td>
<td>September 21, 1909</td>
<td>April 5, 1910 though no copy of report found</td>
</tr>
<tr>
<td>Hughes</td>
<td>5</td>
<td>Management and affairs of the Forest, Fish, and game Commission and the Forest Purchasing Board being the board authorized to acquire lands in the Adirondack and Catskill parks under the Forest, Fish, and Game Law.</td>
<td>Roger P. Clark, H. LeRoy Austin</td>
<td>February 16, 1910</td>
<td>October 1, 1910</td>
</tr>
<tr>
<td>Dix</td>
<td>6</td>
<td>Management and affairs of the State Commission in Lunacy, of the State Prisons and Reformatories and of the Department of Excise and Highways; and of the Office of Fiscal Supervisor of State Charities.* <em>(appointed on July 24, 1911)</em></td>
<td>William Church Osborn, George E. Van Kennen, John D. McMahon*</td>
<td>January 31, 1911</td>
<td>June 9, 1911, July 10, 1911, December 26, 1911, September 3, 1912*</td>
</tr>
<tr>
<td>Dix</td>
<td>7</td>
<td>Management and affairs of the Public Service Commission, First District (New York City area)</td>
<td>John N. Carlisle</td>
<td>March 9, 1911</td>
<td>May 31, 1911</td>
</tr>
<tr>
<td>Dix</td>
<td>8</td>
<td>Management and affairs of the Department of the Health Officer for the Port of New York</td>
<td>Charles N. Bulger</td>
<td>May 29, 1911</td>
<td>November 29, 1911</td>
</tr>
<tr>
<td>Dix</td>
<td>9</td>
<td>The admission, maintenance, and deportation of alien insane in State hospitals</td>
<td>Spencer L. Dawes, M.D.</td>
<td>March 16, 1912</td>
<td>January 23, 1914</td>
</tr>
<tr>
<td>Dix</td>
<td>10</td>
<td>Management and affairs of the State Commission on Lunacy, now designated the State Hospital Commission and of the Bureau of Deportation in regard to the alien insane in the State of New York</td>
<td>Spencer L. Dawes, M.D.</td>
<td>August 6, 1912</td>
<td>Unknown but possibly covered in report of January 23, 1914.</td>
</tr>
<tr>
<td>Sulzer</td>
<td>11</td>
<td>Management and affairs of any and all departments, boards, bureaus, or commissions of the State</td>
<td>John N. Carlisle, John H. Delaney, H. Gordon Lynn</td>
<td>January 6, 1913</td>
<td>January 8, 1913, March 7, 1913, March 21, 1913</td>
</tr>
<tr>
<td>Sulzer</td>
<td>12</td>
<td>Management and affairs of all State prisons and reformatories in the State including the office of Superintendent of Prisons</td>
<td>George W. Blake</td>
<td>March 14, 1913</td>
<td>April 9, 1913 (Great Meadows), April 19, 1913 (Auburn), April 21, 1913 (Great Meadows supplementary), July 26, 1913 (Sing...</td>
</tr>
<tr>
<td>Sulzer</td>
<td>13</td>
<td>Management and affairs of the State Commission of Highways as constituted under chapter 30 of the laws of 1909, as amended by chapter 646 of the Laws of 1911 and chapter 83 of the Laws of 1912; and the Department of Highways, constituted under chapter 80 of the Laws of 1913, including the office of the former “State Superintendent of Highways” and of the “Commissioner of Highways”</td>
<td>John A. Hennessy</td>
<td>March 25, 1913</td>
<td>No report though Hennessy secured indictments of many contractors and state employees in several Counties. Governor Sulzer appointed an “Advisory Commission on Roads” on February 21, 1913 which issued a report on March 31, 1913.</td>
</tr>
<tr>
<td>Sulzer</td>
<td>14</td>
<td>Management and affairs of the Commissioners of the Palisades Interstate Park; and to collate facts, receive suggestions and make such recommendations as may seem fitting with regard to what changes, if any, are advisable in the laws of this State relating to or affecting the Commissioners of the said Palisades Interstate Park</td>
<td>John A. Hennessy Henry L. Stoddard Ernest Harvier</td>
<td>June 10, 1913</td>
<td>No report</td>
</tr>
<tr>
<td>Sulzer</td>
<td>15</td>
<td>Examine and investigate the subject of ventilating systems in the public schools and other buildings of the State, and the proper installation of the same to the end that a thorough and effective system, which will assure an adequate supply of fresh air, under the best conditions, will be maintained</td>
<td>Charles E.A. Winslow Edward Lee Thorndike James Alexander Miller Frederic S. Lee Earl B. Phelps D.E. Kimball</td>
<td>June 25, 1913</td>
<td>August 26, 1913 (?) This date is reported by Missall on page 138 but no report has been found.</td>
</tr>
<tr>
<td>Sulzer</td>
<td>16</td>
<td>Examine and investigate the management and affairs of the several State prisons and reformatories, the departments thereof, the prison industries, the construction and plans for adequate prison facilities, the employment of convict labor, and all subjects relating to the proper maintenance and control of the State prisons of the State of New York</td>
<td>Thomas Mott Osborne Margaret Wilson George W. Perkins George W. Kirchwey John B. Riley Mrs. John Jay Chapman Madeline Z. Doty Edward Bates Mary Garrett Hay Howard T. Mosher Mrs. Hannah Blum Charles N. Hough E. Stagg Whitin</td>
<td>June 21, 1913</td>
<td>October 26, 1913 though some materials in this report are dated as late as April 1914.</td>
</tr>
<tr>
<td>Sulzer</td>
<td>17</td>
<td>Management and affairs of any and all departments, boards, bureaus, or commissions of the State of New York</td>
<td>John A. Hennessy</td>
<td>July 31, 1913</td>
<td>No report</td>
</tr>
<tr>
<td>Glynn</td>
<td>18</td>
<td>To examine and investigate the management and affairs of any and all departments, boards, bureaus, or commissions of the State</td>
<td>James W. Osborne</td>
<td>November 28, 1913</td>
<td>March 17, 1914 but report not found</td>
</tr>
<tr>
<td>Glynn</td>
<td>19</td>
<td>To examine and investigate the management and affairs of the State Prison at Ossining, in the county of Westchester, in the State of New York</td>
<td>Stephen C. Baldwin</td>
<td>October 27, 1914</td>
<td>October 30, 1914 according to Missall yet no report found</td>
</tr>
<tr>
<td>Whitman</td>
<td>20</td>
<td>To examine and investigate the management and affairs of the Office of the Fiscal Supervisor of State Charities; the State Management and affairs of any and all departments, boards, bureaus, or commissions of the State Board of</td>
<td>Charles H. Strong</td>
<td>November 18, 1915</td>
<td>October 25, 1916</td>
</tr>
<tr>
<td>Name</td>
<td>Number</td>
<td>Description</td>
<td>Appointed by</td>
<td>Term Start</td>
<td>Term End</td>
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</tr>
<tr>
<td>Whitman</td>
<td>21</td>
<td>To examine and investigate the management and affairs of the Banking Department as constituted under the laws of the State of New York</td>
<td>Frederick J. Groehl* John J. Weiss appointed on January 13, 1916 to replace Groehl who resigned</td>
<td>November 30, 1915</td>
<td>February 11, 1916 according to Missall though no report found</td>
</tr>
</tbody>
</table>
### Appendix E - Moreland Act Investigations under Gov. Smith

<table>
<thead>
<tr>
<th>No.</th>
<th>Subject(s) Investigated</th>
<th>Commissioner(s)</th>
<th>Appointment</th>
<th>Report(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>To examine and investigate the management and affairs of the State Industrial Commission</td>
<td>Jeremiah F. Connor</td>
<td>February 21, 1919</td>
<td>March 26, 1919 May 27, 1919 November 15, 1919</td>
</tr>
<tr>
<td>23</td>
<td>To examine and investigate the management and affairs of the New York State Fair Commission</td>
<td>Charles E. Norris</td>
<td>March 28, 1919</td>
<td>June 6, 1919</td>
</tr>
<tr>
<td>24</td>
<td>To examine and investigate the management and affairs of the New York State Constabulary at Batavia, New York, including the conduct of its officers and members</td>
<td>Joseph A. Lawson</td>
<td>June 30, 1919</td>
<td>August 28, 1919</td>
</tr>
<tr>
<td>25</td>
<td>To examine and investigate the management and affairs of the State Department of Farms and Markets; to examine and investigate the extent to which said department has exercised the powers conferred upon the State Department of Farms and Markets by chapter 802 of the Laws of 1917 and acts amendatory thereof, in reference to securing of an ample supply of pure milk in centers of population in this State, and the production, transportation, storage, marketing and distribution of food sold, offered for sale, stored, or held within the State, and all other powers conferred upon the State Department of Farms and Markets by such chapter 802 of the Laws of 1917 and acts amendatory thereof</td>
<td>Martin Glynn John H. Finley</td>
<td>August 12, 1919</td>
<td>August 23, 1919</td>
</tr>
<tr>
<td>26</td>
<td>To examine and investigate all matters with reference to the management and affairs of the Council of Farms and Markets, and all related departments and bureaus</td>
<td>George Gordon Battle</td>
<td>August 25, 1919</td>
<td>October 9, 1919 December 11, 1919</td>
</tr>
<tr>
<td>27</td>
<td>To examine and investigate all matters with reference to the management and affairs of the New York State Soldiers’ and Sailors’ Home at Bath, New York</td>
<td>Lt-Gov. Harry C. Walker</td>
<td>December 1, 1919</td>
<td>May 7, 1920</td>
</tr>
<tr>
<td>29</td>
<td>To examine and investigate the management and affairs of the Department of Public Works</td>
<td>Joseph A. Kellogg</td>
<td>October 2, 1923</td>
<td>October 20, 1923 December 24, 1923</td>
</tr>
<tr>
<td>30</td>
<td>In the matter of charges by the Board of Directors of the associated Industries of New York State, Inc., concerning the Administration of the State Labor Department and the State Insurance Fund</td>
<td>Gov. Alfred E. Smith</td>
<td>January 16, 1924</td>
<td>No Report</td>
</tr>
<tr>
<td>31</td>
<td>In the matter of complaints of the inefficient operations and failure of the Department of Public Works properly to maintain the Barge Canal System of the State</td>
<td>Gov. Alfred E. Smith</td>
<td>August 18, 1924</td>
<td>No Report</td>
</tr>
</tbody>
</table>

3 Moreland Act Investigation #28 was appointed by Governor Nathan Miller in 1922 to investigate the management and affairs of the State Institute of Applied Agriculture on Long Island at Farmingdale, New York. Nathan Miller served as governor in 1921-1922 having unseated incumbent Governor Alfred E. Smith in 1920. Governor Miller lost in his bid for re-election in 1922 to former Governor Smith.
<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Name</th>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>To examine and investigate the management and affairs of the Transit Commission</td>
<td>John V. McAvoy</td>
<td>November 29, 1924</td>
<td>February 6, 1925</td>
</tr>
<tr>
<td>33</td>
<td>To examine and investigate the management and affairs of the New York State Arsenal Commission;* To examine and investigate the management and affairs of the New York State Hospital Commission, the Office of the Adjutant General in connection with armories, the New York State Department of Purchase, and the New York State Department of Prisons</td>
<td>Sullivan W. Jones</td>
<td>December 17, 1924</td>
<td>March 29, 1926</td>
</tr>
</tbody>
</table>
| 34 | To examine and investigate the management and affairs of the Board of Parole, Prison Department and State Reformatories | George W. Alger  | May 8, 1926      | June 10, 1926  
December 3, 1926 |
| 35 | To examine and investigate the management and affairs of the Department of State, in relation to the enumeration of the inhabitants of the State taken pursuant to article 3, section 4 of the Constitution of the State of New York and article 9 of the State Law as amended by Laws of 1925, chapter 191 | Randall J. LeBoeuf, Jr. | October 6, 1927 | January 20, 1928 |
| 36 | To examine and investigate the administration of the Department of Labor, of the State of New York | Lindsay Rogers  | January 24, 1928 | June 1, 1928  
June 24, 1928  
December 1, 1928 |
Appendix F – Reconstruction Commission Members, 1919

Abram I. Elkus, Chairman
Lawyer, Ambassador, Regent

Dr. Felix Adler
NY Society for Ethical Culture

John G. Agar
Lawyer, New York City

J. M. Beckley
Prominent citizen, Rochester

Edward F. Boyle
Judge, New York City

Peter J. Brady
Labor advocate

Mrs. Lewis S. Chandler
Wife of former Lt-Gov. Chandler

Dr. Henry Dwight Chapin
Physician, Child welfare advocate

Addison B. Colvin
Banker, Glens Fall

Mrs. Sara A. Conboy
Labor advocate

Henry Evans
Insurance executive

Michael Friedsam
Merchant, New York City

Mrs. William H. Good
Charity and civic leader

John Alan Hamilton
Legal Aid Leader, Buffalo

Mrs. Harry Hastings
Democratic Party Executive

Alfred. J. Johnson
City Chamberlain, New York City

Gerrit Y. Lansing
Banker, Albany

John C. McCall
Insurance executive

Norman E. Mack
Buffalo News Publisher

V. Everit Macy
National Civic Federation

Richard S. Newcombe
Lawyer, Long Island

William M.K. Olcott
Former District Attorney, New York City

Thomas V. Patterson
Coal, Produce executive

George Foster Peabody
Federal Reserve Bank, Saratoga

Thomas J. Quinn
Banker, Bronx

Charles H. Sabin
Banker, New York City

Mortimer L. Schiff
Banker and Philanthropist, New York City

Otto B. Shulhof
Manufacturer, New York City

Mrs. Walter W. Steele
War worker, Buffalo

Charles P. Steinmetz
Electricity, manufacturing, Schenectady

M. Samuel Stern
Formerly of Board of Education, New York City

Arthur Williams
Public Utilities, New York City

Mrs. Henry Moskowitz, Secretary

Robert Moses, Chief of Staff
Appendix G – Governor Alfred Smith to the Council of Farms and Markets, October 9, 1919

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

October 9, 1919

To the Council of Farms and Markets,
Albany, N.Y.

Gentlemen:

As you know, I have, as Governor, no control over the administration by you of the Department of Farms and Markets. I have no power to appoint or remove any member of the Council. I have no power to appoint or remove either the Commissioner of Agriculture or the Commissioner of Food and Markets, or any other officer or employee in your department.

Under the law creating your department, its control and management is exclusively in your hands and in the hands of your appointees. It was evidently the purpose of the Legislature in enacting the law that your department should be as far as possible independent of the Executive Department of the State.

In view of these facts, I have been reluctant to interfere in any way with you in the administration of your duties. However, because matters which have been brought to my attention, I thought it my duty to appoint a commissioner, under the Moreland act, to investigate into the management and affairs of your Council and its related departments and bureaus. To this end, on August 25th, I appointed George Gordon Battle as such Commissioner. He has retained as counsel in the investigation John Burlinson Coleman; and has proceeded with the investigation from the date of his appointment, holding public hearings in Albany and in the City of New York.

He has made and submitted to me a preliminary report, bearing the date October 9th, which is now on file in my office, and which has been carefully examined by me. I transmit herewith for your examination and consideration a copy of this report.

You will see that Commissioner Battle recommends that Eugene H. Porter, Commissioner of Food and Markets, be removed for incompetency and inefficiency, and states the grounds upon which he makes that recommendation.

It is unnecessary for me to report to you the evidence upon which this recommendation is based. The report states these carefully. It is enough for me to say that I consider the grounds of the recommendation to be sufficient, and that I concur therein, and, therefore, I recommend to you that you remove the said Eugene H. Porter as Commissioner of Foods and Markets.

Very truly yours,
(Signed) ALFRED E. SMITH

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Reconstruction Commission Report, 1919, 98.
October 5, 1927.

Honorable Alfred E. Smith,
Governor,
Executive Chamber,
Albany, N.Y.

My dear Governor:

Returning to my office after our conference this morning I am writing you in brief the course and action which our statutes recommend upon the communication to you from the Cities Census Committee relative to alleged irregularities in expenditures for taking the 1925 census.

The Report of the Committee contains an analytical statement of all expenditures for the State Census of 1925. It contains extended observations and charges, and requires much time for consideration. Its contents are not in the nature of proof or evidence, nor do I expect the Census Committee so regards the document. Only upon investigation may the facts disclose themselves.

As you know, the Attorney-General has no power to conduct investigations outside his own department; that is, Governor, he has no power to compel the attendance of witnesses and to take testimony, and without some ascertain-
Honorale Alfred E. Smith ———2.

tment of ultimate facts any action to recover state moneys would be futile.

A previous investigation, which as I say is here unavoidable, will involve the examination of thousands of records and papers in the Department of State, in the Department of Civil Service and in the Department of Audit and Control, together with the examination of innumerable witnesses.

I recommend to you, along the line of our conversation this morning, the appointment of a commissioner under Section 8 of the Executive Law, commonly referred to as The Moreland Act. This has been the practice for a decade of years when state departments have been investigated, and the statute lends itself in my judgment to the situation we now have. In part the statute provides:

"The governor is authorized at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state."

It has been suggested that the word "department" was used at the time the statute was enacted with the intent to exclude elective state officials from examination under the Moreland Act. However that may be, the examination with which we are now confronted has to do with the affairs of an appointive office, to whose custody all of the public documents of the earlier
Honorable Alfred E. Smith

The work of the 1925 census has not yet been completed and the affairs of the Department of State relative to census operations are open to your investigation under the Executive Law.

If you direct the investigation, the commissioner will take the evidence and upon his findings reported to you I shall be guided in bringing whatever action is necessary to protect the interests of the State.

Very truly yours,

[Signature]
Attorney-General.