

The Commonwealth of Massachusetts

PRELIMINARY REPORT

OF THE

SPECIAL COMMISSION ESTABLISHED TO STUDY AND
INVESTIGATE COMMUNISM AND SUBVERSIVE
ACTIVITIES AND RELATED MATTERS
IN THE COMMONWEALTH

UNDER CHAPTERS 89 OF THE RESOLVES OF 1953 AND 123 OF
THE RESOLVES OF 1954

APRIL 11, 1955

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The Commission of General Land Office

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GENERAL COMMISSION OF THE LAND OFFICE
PROPERTY RECEIPTS FOR THE YEAR
ENDING 1918

THE COMMISSION OF THE LAND OFFICE
WASHINGTON, D. C.

Printed in 1918

The Commonwealth of Massachusetts

PRELIMINARY REPORT OF THE SPECIAL COMMISSION ESTABLISHED TO STUDY AND INVESTIGATE COMMUNISM AND SUBVERSIVE ACTIVITIES AND RELATED MATTERS IN THE COMMONWEALTH.

APRIL 11, 1955.

To the Honorable Senate and House of Representatives.

The Commission recognizes its obligation and is preparing to include in its Report "the names and all other identifying data available to the Commission of any individual, concerning whom, the Commission, during the course of its investigation, has received credible evidence that such individual was or is a member of the Communist Party, a Communist or a subversive." The inclusion of these data is in accordance with the order of the Legislature as set forth in the last paragraph of chapter 123 of the Acts and Resolves of 1954.

The Commission has become aware of a petition for Writ of Mandamus that was filed with the Clerk of the Supreme Court for the Commonwealth of Massachusetts, by five citizens and taxpayers of Massachusetts which seeks to arrest or impede the lawful action of the Commission of its duties in carrying out the mandate of the Legislature. A copy of the petition is annexed and marked Appendix A.

Upon the filing of the petition (Appendix A), an Order of Notice issued returnable in that Court on Wednesday, the twentieth day of April, at 9.30 o'clock A.M. A copy of the Order, is attached, marked Appendix B.

Several members of the Commission have already been served in accordance with that Order and it is anticipated that all the members will be served.

As a result of said court action the members of the Commission are deeply concerned with the question of the propriety or right of its members, or the Commission Counsel, to so appear without first getting leave of your Honorable Bodies. This concern is engendered by the belief of the Commission that such unauthorized appearance may be construed as a waiver of the constitutional privilege accorded the Legislative branch of our government under the provisions of Article XXX of Part the First of the Constitution. In view of the foregoing the Commission respectfully requests further instruction and answers to the following questions:

1. Is the Commission, or any member thereof, correct in assuming that the right to appear in response to said summons, or any subsequent summons, must be specifically granted by the General Court for the reason that such appearance involves the privilege of your Honorable Bodies?

2. If the answer to the foregoing question is in the affirmative, is it the will of your Honorable Bodies that the question of so appearing be left to the judgment or discretion of the Commission acting as a whole, or of any member thereof?

3. If permission is granted to appear at such hearing, or any subsequent hearing, may the Commission, or any member thereof, including its counsel, submit to the court any or all documents or other papers in possession of said Commission in relation to said investigation?

4. May the individuals mentioned in the foregoing question disclose to the said court information relating to possible, or probable, action of the Commission in connection with said investigation, or relate what took place in executive sessions of said Commission?

Your Commission has agreed to take no further action relating to appearing in response to the said summons until it is advised of the pleasure of your Honorable Bodies. It feels that if the privilege of the Legislative Branch is in-

volved it must ignore the summons until such time as it is authorized by the General Court to make such an appearance.

Respectfully submitted,

PHILIP G. BOWKER,

Chairman.

JOHN E. POWERS.

JOHN T. TYNAN,

Vice Chairman.

ROGER A. SALA.

GEORGE CASHMAN.

WILLIAM I. RANDALL.

APPENDIX A.

The Commonwealth of Massachusetts

SUFFOLK, SS.

SUPREME JUDICIAL COURT.

JACOB J. KAPLAN,
 WILLARD B. LUTHER,
 RICHARD WAIT,
 ALEXANDER WHITESIDE AND
 B. LORING YOUNG,

*Petitioners.**vs.*

PHILIP BOWKER,
 RICHARD BUCKLEY,
 GEORGE W. CASHMAN,
 JOHN E. POWERS,
 WILLIAM I. RANDALL,
 ROGER A. SALA AND
 JOHN T. TYNAN,

Respondents.

PETITION FOR WRIT OF MANDAMUS.

To the Honorable the Justices of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Now comes Jacob J. Kaplan of Brookline in the County of Norfolk, Willard B. Luther of Cambridge in the County of Middlesex, Richard Wait of Harvard in the County of Worcester, Alexander Whiteside of Boston in the County of Suffolk and B. Loring Young of Weston in the County of Middlesex:

1. The petitioners are citizens of Massachusetts and taxpayers and are duly qualified and registered voters in the cities and towns in which they respectively reside, and are lawyers admitted to practice before the courts of the Com-

monwealth, and as citizens, voters and members of the bar, are interested in the execution of the laws and enforcement of the Constitution as an absolute rule of action and binding on the legislative, executive and judicial departments and all officers of the government.

The respondent Philip Bowker of Brookline in the County of Norfolk is the Chairman and the respondents Richard Buckley of Boston in the County of Suffolk, George W. Cashman of Wellesley in the County of Norfolk, John E. Powers of Boston in the County of Suffolk, William I. Randall of Framingham in the County of Middlesex, Roger A. Sala of North Adams in the County of Berkshire and John J. Tynan of Boston in the County of Suffolk, are members of the Special Commission established to Study and Investigate Communism and Subversive Activities and Related Matters in the Commonwealth.

2. By chapter 89 of the Resolves of 1953, there was established by the General Court, and by chapter 123 of the Resolves of 1954, there was revised and continued by the General Court, the Special Commission to Study and Investigate Communism and Subversive Activities and Related Matters in the Commonwealth (hereinafter referred to as the Commission).

3. The Commission was revived and continued by the said Resolve of 1954 for the purpose of "continuing its investigation and study of the extent, character and object of Communism and subversive activities and related matters within the Commonwealth; the diffusion within the Commonwealth of subversive and un-American propaganda that is instigated from foreign countries, or of a domestic origin, and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid the General Court in enacting any necessary remedial legislation."

4. By the said Resolve of 1954, the Commission was directed to "report its findings to the General Court at such time or times as it may deem advisable, or in any event, should file a final report not later than May 15th, 1955."

5. By said Resolve of 1954, the Commission was further directed as follows:

“Such report shall include the names and all other identifying data available to the Commission, of any individual concerning whom, the Commission, during the course of its investigation, has received creditable evidence that such individual was or is a member of the Communist Party or Communist or a subversive.”

6. The Commission, during the course of its investigation, has received information from various sources, that numerous individuals allegedly are or have been members of the Communist Party, Communists or subversives.

7. It is a felony punishable by imprisonment and fine to “advocate . . . the overthrow, by force or violence or other unlawful means of the government of the Commonwealth or of the United States” (G. L., chapter 264, section 11, as amended by chapter 160 of the Acts of 1948, and further amended by chapter 584, section 1, of the Acts of 1954) or to be a member of the Communist Party or to engage in Communist or subversive activities as provided by chapter 805 of the Acts of 1951, as amended by chapter 584, sections 3, 4 and 5 of the Acts of 1954 (G. L. chapter 254, sections 16–23).

8. The inclusion in the Report of the said names would constitute a determination of conclusion by the Commission that there is “credible evidence” that the named persons are guilty of a felony. It would be a legislative declaration in violation of Article XXV of the Declaration of Rights, Constitution of Massachusetts, part the First, which provides:

“No subject ought, in any case or in any time, to be declared guilty of treason or felony by the legislature.”

9. The inclusion of the said names would be an exercise solely of the executive or judicial power and would not be an exercise of the legislative power, nor would it be incidental to any exercise of the legislative power. It would violate Article XXX of the Declaration of Rights, Constitution of Massachusetts, Part the First.

10. The inclusion in the report of the said names would subject citizens of the Commonwealth, the number and identity of whom are indeterminable, to a deprivation of their liberty, immunities and privileges without due process of law in violation of Article XII of the Declaration of Rights, Constitution of Massachusetts, Part the First.

11. There is no legal or equitable process, other than this petition for mandamus to protect the people from a violation of the constitutional separation of powers and to protect individual citizens from deprivation of their constitutional rights and privileges.

Wherefore the petitioners pray:

1. That there be issued a temporary restraining order restraining the respondents from including in the report the names and all other identifying data available to the Commission of any individual, concerning whom, the Commission, during the course of its investigation, determines that it has received credible evidence that such individual was or is a member of the Communist Party, a Communist or subversive, except when, if ever, the inclusion of the name of any such individual is necessary for the purpose of recommending proposed legislation.

2. That there be issued a Writ of Mandamus commanding the respondents to refrain from including in any report of the Commission the name and all other identifying data available to the Commission of any individual, concerning whom, the Commission, during the course of its investigation, determines that it has received credible evidence that such individual was or is a member of the Communist Party, a Communist or subversive, except when, if ever, the inclusion of the names of any such individual is necessary for the purpose of recommending proposed legislation.

/s/ ALEXANDER WHITESIDE, Boston, Mass.

/s/ B. LORING YOUNG.

/s/ JACOB J. KAPLAN, Brookline, Mass.

/s/ WILLARD B. LUTHER.

/s/ RICHARD WAIT.

APPENDIX B.

The Commonwealth of Massachusetts

SUFFOLK: SS.

SUPREME JUDICIAL COURT.
DOCKET No. 54734.

In the foregoing petition it is ordered that the petitioners give notice to the respondents to appear before the Justices of this Court to be holden at Boston within and for said County of Suffolk, on Wednesday, the twentieth day of April current, at 9:30 A.M., by serving them with an attested copy of said petition and of this order forthwith, that they may then and there show cause why the prayers of said petition should not be granted.

By the Court,

COUNIHAN, J.
CHESTER A. DOLAN,
Clerk.

April 1, 1955.

