

Dames & Moore

**Commissioners Murphy, Macduff and Conlon**

**Solomon Sies, Hearing Officer**

**DAMES & MOORE (New York Regional Office)**

**Applications for Revision or Refund of  
Unincorporated Business Taxes Under**

**Article 16-A of the Tax Law in Effect  
for the Fiscal Year Ending March 31, 1960  
and Article 13 of the Tax Law for the  
Fiscal Year Ending March 31, 1961.**

A hearing with respect to the above matter was held before me at 80 Centre Street, New York, N. Y. on February 23, 1966. The appearances and evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether an engineering partnership, conducting business both within and without the State of New York is entitled to a professional exemption from unincorporated business taxes where all of the partners are not licensed to practice professional engineering in this State.

Dames & Moore, a California partnership, was organized in its present partnership form in 1933. It maintains its general or main office in Los Angeles and has branch or regional offices in 14 major cities in the United States, including the City of New York and in foreign countries. The partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems. During the years in issue the firm consisted of 3 senior general partners, 11 general partners and 2 corporate general partners. Sound Corporation (Dames spelled backwards) is solely owned by one of the senior general partners, Mr. Dames. Groen Corporation (Moore spelled backwards) is owned and controlled by the other senior general partner, Mr. Moore. Both of these corporations are investment corporations having no employees or offices. Neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the Regional New York Office of the partnership. The other two partners of the firm who are not engineers are Richard D. McCowan and John W. Maloney. Mr. McCowan is an accountant and has no engineering background. His functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm. Mr. Maloney does have some engineering background

the first time in the history of the world, the whole of the human race has been gathered together in one place, and that is the city of Rome.

Now, you may say, "What is the use of all this? What does it profit us?" Well, I will tell you. It profits us in many ways. First of all, it gives us a chance to see and learn about other countries and their customs. We can travel easily from one part of the world to another, and we can buy and sell goods with people from all over the place. This makes our country richer and more powerful.

Secondly, it gives us a chance to work together as a team. When we work together, we can accomplish things that we could never do alone. For example, we can build big cities, roads, and bridges, and we can also help to solve problems like poverty and disease.

Thirdly, it gives us a chance to spread our culture and ideas to other parts of the world. We can do this through our art, music, literature, and science. This helps us to understand and appreciate different cultures and ways of life.

Fourthly, it gives us a chance to protect ourselves from enemies. We can have a strong army and navy, and we can also form alliances with other countries to defend ourselves.

Fifthly, it gives us a chance to live comfortably and safely. We can have good schools, hospitals, and infrastructure. We can also have a stable government that protects our rights and freedoms.

So, as you can see, there are many benefits to living in a large, modern city like Rome. It is a place where we can live, work, and play, and where we can make a better life for ourselves and our families.

but is not a licensed engineer. His functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations. Neither Mr. McGowan nor Mr. Maloney performs any engineering services nor do they sign any engineering reports or perform any services within this State.

The Regional New York Office of the partnership is located at 100 Church Street, New York City. During the years in issue, the services rendered by the New York Regional Office of the partnership were at all times under the supervision and control of two general partners, John F. Brennan and Gardner M. Reynolds, both of whom performed services on behalf of the firm in the New York office. Mr. Reynolds has a degree in civil engineering from Cornell University. He received his license to practice professional engineering in the State of New York by the New York State Education Department in 1953. Mr. Brennan has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York. The other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices. During the years 1959 through 1961 the New York Regional Office employed approximately 18 or 19 engineers. Some were licensed in the State of New York and some were not. However, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York. During the years 1959 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brennan as the partners in the New York office.

The partnership filed unincorporated business tax returns for fiscal years ending 3/31/60 and 3/31/61 and paid unincorporated business taxes computed thereon. Thereafter it filed applications for refund thereof on the ground of professional exemption. The applications for refund were denied because all of the partners were not licensed to practice professional engineering in this State.

Although the Education Department of the State of New York has raised a question as to whether the partnership firm may engage in the practice of professional engineering in this State where all of the member partners do not hold New York State professional engineering licenses, the Division of Law of the State Education Department wrote the attorney for the taxpayers on October 13, 1964 that there is no particular problem involved in relation to the subject partnership of professional engineers so long as no practice of engineering is carried on in the State by the persons not licensed in New York State.

The memorandum of Commissioner Edward D. Igou, dated February 15, 1964, applicable to audit or conference matters pending before the Income Tax Bureau, states that professional status is not to be denied to a partnership consisting of one or more licensed or certified indi-

and the first time I have seen it. It is a very large tree, and the trunk is about 10 feet in diameter. The bark is smooth and greyish-white, with some horizontal lenticels. The leaves are large, elliptical, and pointed at the tip, with serrated edges. The flowers are small, white, and bell-shaped, growing in clusters along the branches. The fruit is a small, round, yellowish-orange drupe, with a single seed inside. The tree is found in the tropical rainforests of Central America and South America, and is used for its timber and as a source of medicine.

viduals and one or more unlicensed parties, unless the unlicensed or uncertified individuals are actually held out to the public as being engaged in the practice of the profession. In addition, it further states that professional status is not to be denied to a partnership consisting of both individuals licensed or certified by New York State and parties licensed or certified by another state if the partnership has offices both within and without New York State; that the final decision with respect to unincorporated business tax purposes may be denied if the Education Department refuses to grant the license or to endorse the out of state license or certificate.

I am, therefore, of the opinion that the taxpayers are entitled to an exemption from unincorporated business tax in accordance with the provisions of Section 386, Article 16-A of the Tax Law with respect to the fiscal year ending 3/31/60 and subdivision (e) Section 703, Article 23 of the Tax Law with respect to the fiscal year ending 3/31/61.

For the reasons stated above, I recommend that a determination be made by the Tax Commission in the form submitted herewith.

APR 17 1967

**SOLOMON SIES**

**Writing Office**

**Approved**

**Approved**

the first time in the history of the world, the whole of the  
population of the United States has been called into the field,  
and the whole of the resources of the country have been  
called into play to meet the emergency. The result is that  
we have a surplus of men and supplies, and we can afford  
to give away a large amount of our surplus to the  
people of Europe.

The result of the war will be to bring about a great  
change in the political and social condition of Europe.  
The war will end in the destruction of the German Empire,  
and the creation of a new German Empire, which will be  
a powerful force in Europe, and will be able to control  
the destinies of the continent.

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~~NAME OF FIRM~~

~~NAME OF PARTNER~~

~~NAME AND ADDRESS OF THE ASSOCIATION~~

~~CP~~

~~NAME AND NUMBER (SEE THIS SECTION ONLY)~~

~~THE PARTNERSHIP OR PARTNERS OF THE FIRM  
DID NOT FILE WITH THE STATE THE STATEMENT  
OF THE STATEMENT OF UNINCORPORATED BUSINESS  
FOR THE FISCAL YEAR ENDING MARCH  
31, 1960.~~

The above named partnership having failed to file statement for taxation or refund of unincorporated business tax under Article 16-A of the Tax Law in effect for the fiscal year ending March 31, 1960 and Article 83 of the Tax Law for the fiscal year ending March 31, 1961 and a formal hearing having been held in connection therewith at the office of the State Tax Commission at 26 Center Street, New York, N. Y. on the 25th day of February, 1964, before Robert G. Hwang, Hearing Officer of the Department of Taxation and Finance at which hearing Gardner H. Reynolds, one of the general partners appeared and testified and the partnership having been represented by Paul, Weiss, Ricciard, Thurgood & Waite, Esq., by Alton Bernstein, Esq., and Morris B. Rosen, Esq., of Counsel, and the matter having been duly examined and considered,

**The State Tax Commission hereby finds:**

**(1) That Paul & Weiss New York Regional Office**

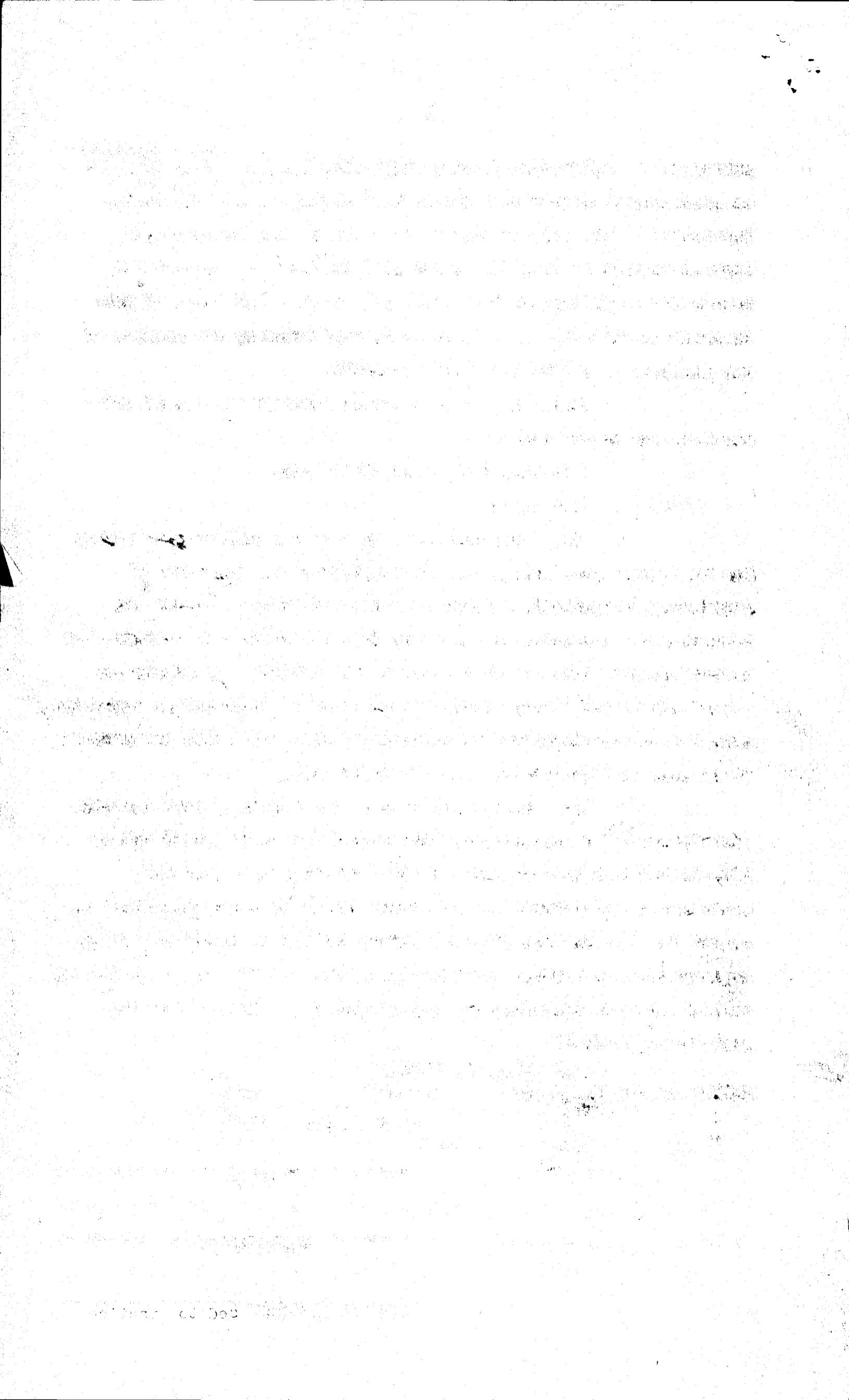
**of Partnership and Unincorporated Business Tax Returns for the**  
**fiscal years ending 3/31/60 and 3/31/61 on July 25, 1960 and July 26,**  
**1961, respectively, and paid unincorporated business taxes in the sum**  
**of \$3,445.11 for fiscal year ending 3/31/60 and \$3,375.00 for fiscal**  
**year ending 3/31/61; that on July 26, 1961, the partnership filed**  
**applications for refund of the unincorporated business taxes paid for**  
**the aforementioned years, claiming exemption therefrom upon the**  
**ground that they are engaged in the practice of professional engi-**  
**neering; that the applications for refund were denied because all of**

the partners were not licensed to practice professional engineering in the State of New York.

(8) That Burns & Myers, a California partnership, was organized as the present partnership firm in 1955; that it maintains its general or main office in Los Angeles, Cal. and has branch or regional offices in 10 major cities in the United States including the City of New York and in foreign countries; that the partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems; that during the years in issue the partnership firm consisted of 8 senior general partners, 11 general partners and 2 corporate general partners; that the aforementioned corporations were organized under the laws of the State of California and do not conduct any business in this State; that Burn Corporation (Burn allied interests) is wholly owned by one of the senior general partners, Mr. Burns; that Burn Corporation (Burn allied interests) is owned and controlled by the other senior partner, Mr. Myers; that both of these corporations are investment corporations having no employees or officers; that neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the regional New York office of the partnership; that the other two partners of the firm who are not engineers are Richard E. McNamee and John K. Holman; that Mr. McNamee is the accountant and has no engineering background; that his functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm; that Mr. Holman does have some engineering background but is not a licensed engineer; that his functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations; that neither Mr. McNamee nor Mr. Holman performs any engineering services nor do they sign any engineering reports or perform any services within this state.

(3) That the regional New York office of the partnership is located at 100 Church Street, New York, N. Y., and the New York office renders consulting engineering services generally described, that during the years in issue, the services rendered by the New York regional office of the partnership were in all cases under the direct supervision and control of two general partners, John P. Brown and Gardner H. Reynolds, both of whom performed services on behalf of the firm in the New York office, that Mr. Reynolds has a degree in civil engineering from Cornell University; that he received his license to practice professional engineering in the State of New York by the New York State Education Department in 1938; that Mr. Brown has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York; that the other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices; that during the years 1949 through 1961, the New York regional office employed approximately 28 or 30 engineers, that some were licensed in the State of New York and some were not; that, however, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York; that during the years 1949 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brown as the partners in the New York office.

(4) That the partnership is engaged in the practice of professional engineering; that more than 90% of the income attributable to sources within this State is derived from the personal services actually rendered by the members of the firm licensed as professional engineers in the State of New York and this capital is not a material income producing factor; that the principal activities of the firm within the State of New York are directed wholly by the New York partners licensed to practice professional engineering in this State and by no one else; that it does not appear that any member of the partnership firm who is not licensed to practice



[REDACTED] engineering in this State has agreed to the practice of professional engineering within this State, that the Board of Engineers of the State of New York has ruled that the New York registered engineer of Texas and Maine be authorized to practice professional engineering in this State so long as no practice of professional engineering is carried on in this State by the members of the partnership not licensed in this State.

Ruled upon the foregoing charges and all of the evidence presented hereto.

**The State Tax Commission Inquiry**

[REDACTED]

(a) That the activities of the subject partnership for the fiscal year ending 3/31/60 constituted the practice of professional engineering except from unincorporated business not in connection with the fixing and setting of prices; Article 26-A of the Tax Law; that the activities of the subject partnership for fiscal year 3/31/61 constituted the practice of professional engineering except unincorporated business not within the areas and manner of subsection 703 (a), Article 26 of the Tax Law.

(b) That, notwithstanding, the minimum [REDACTED] fees paid by the taxpayer partnership for the fiscal years ending 3/31/60 and 3/31/61 were not lawfully due and owing the the corporation for which for said years are hereby assessed, and shall be referred to the taxpayer partnership, the sum of \$3,450.12, hereinabove, for the fiscal year ending 3/31/60 and the sum of \$3,450.12, with any interest thereon, due and owing for the fiscal year ending 3/31/61.

**AGREE TO AND SIGNED**  
ROBERT A. MURPHY, Esq., May, 1st day of May, 1967.

/s/

JOSEPH H. MURPHY

/s/

JAMES R. MACDUFF

/s/

WALTER MACLYN CONLON