
Minutes of the Meeting of the Joint Legislative Committee of the State of New York to Investigate Seditious Activities (Clayton R. Lusk, Chairman), November 15, 1919.

Lusk Committee Hearing Testimony & Executive Session Minutes, NY State Archives,
collection L0026-89, reel 1, pp. 1035-1046.

*City Hall, City of New York,
Saturday, November 15th, 1919.*

Present:

Assemblyman Peter P. McElligott.
Assemblyman William W. Pellet.
Assemblyman Edmund B. Jenks.

Appearances:

Hon. Frederick R. Rich, Special Deputy Attorney
General
Hon. Samuel A. Berger, Deputy Attorney General.
Archibald E. Stevenson, Esq., Associate Counsel.

*(Acting Chairman: Assemblyman Peter P.
McElligott.)*

(The Committee was called to order at 11:35 am.)

Chairman McElligott: The Committee will come to order. In the absence of Senator Lusk, Chairman, I have been asked to preside at this meeting.

The Committee issued a subpoena which was served upon Ludwig C.A.K. Martens, who represents himself to be the representative to the United States of America of the Russian Socialist Federal Soviet Republic. The subpoena directed the attendance of Mr. Martens today at this meeting and also required him to bring with him certain documents, letters, and other papers for the inspection of this Committee in connection with our investigation. Mr. Martens sent a letter to this Committee and it will be read. It is on the

stationery of the Russian Socialist Federal Soviet Republic.

Before proceeding with the reply of Mr. Martens, I think it well to show that a subpoena was served upon Mr. Martens, and his reply to the subpoena.

Mr. Berger: Mr. Chairman, I call Mr. Wexler.

Isidor Wexler, having been duly sworn, testified as follows:

Mr. Berger: Will you give us your full name?

Mr. Wexler: Isidor Wexler.

Mr. Berger: And you are a corporal in the State Constabulary of the State of New York?

Mr. Wexler: Yes, sir.

Mr. Berger: And you are assigned to the Legislative Committee Investigating Seditious Activities in the State of New York?

Mr. Wexler: Yes, sir.

Mr. Berger: Did you on the 14th day of November, 1919, at 110 West 40th Street, serve a subpoena upon Ludwig C.A.K. Martens?

Mr. Wexler: Yes, sir.

Mr. Berger: Of which is a copy (handing paper to witness)?

Mr. Wexler: Yes, sir. I served it at 11:35 am.

Mr. Berger: And did you at the same time tender, give, and leave with Martens said subpoena and 2 dollars and a half in cash?

Mr. Wexler: yes, sire; it was pinned right on the subpoena.

Mr. Berger: Where was the subpoena served?

Mr. Wexler: At 110 West 40th Street, Room 303.

Mr. Berger: That is in this borough and city?

Mr. Wexler: Yes, this borough and city.

Mr. Berger: How did you know that the person you served with that subpoena was the Ludwig C.A.K. Martens mentioned therein?

Mr. Wexler: I have seen Martens in Madison Square Garden at one of the meetings there.

Mr. Berger: That was on June 30th, 1919?

Mr. Wexler: Yes, sir.

Mr. Berger: And you heard him speak there?

Mr. Wexler: Yes, sire; he was introduced as Mr. Martens, Ambassador from the Soviet Government in Russia.

Mr. Berger: And the person you served was the same person you saw there as Martens, Ambassador from the Soviet Russian Government?

Mr. Wexler: Yes, sir.

Mr. Berger: I will read the subpoena into the record:

The People of the State of New York

To Ludwig C.A.K. Martens,
110 West 40th Street,
New York City

GREETING:

We command you, That all business and excuses being laid aside you be and appear in your own proper person before the Committee of the Legislature of the State of New York, appointed pursuant to the resolution duly passed on the 26th day of March, 1919, at the Aldermanic Chamber, in the city Hall, Borough of Manhattan, City of New York, on the 15th day of November, 1919, at 10:30 o'clock in the forenoon of that day, to testify and give evidence in a certain investigation now pending of seditious activities within the State of New York; and bring with you the following books, papers, and other documents now in your possession and control, which the Committee deems relevant and material to the investigation, the check books, bank books, books of account, both of yourself, and of the Soviet Bureau, located at 110 West 40th Street and elsewhere, and also all documents, letters, and other papers received by you and your Bureau from Soviet Russia, as well as copies of letters, documents, and other papers sent by you and your Bureau to Soviet Russia, all between January 1st, 1919 and this date, also copies and records of all so-called passports and credentials issued by you to the agents of yourself and your Bureau, and for a failure to attend you will be deemed liable to the penalties prescribed by law and hereof fail not at your peril.

Witness, Hon. Clayton R. Lusk, Chairman of our said Committee, at New York City this 14th day of November in the year of our Lord, one thousand nine hundred and nineteen.

Clayton R. Lusk,
Chairman.

Charles D. Newton,
Attorney General, Counsel.
A true copy.

Chairman McElligott: Mr. Berger, does this require him to be here at a certain hour?

Mr. Berger: It requires him to be here in his own proper person at 10:30 o'clock in the forenoon of today and requires him in addition to bring all his books and papers. It is a personal subpoena and *subpoena duces tecum*.

Chairman McElligott: Was that communication of which you spoke received by the Committee today?

Mr. Berger: Yes, received today.

Archibald E. Stevenson, having been duly sworn, testified as follows:

Mr. Berger: Mr. Stevenson, are you an attorney at law?

Mr. Stevenson: I am.

Mr. Berger: And Associate Counsel to the Joint Legislative Committee Investigating Seditious Activities, are you not?

Mr. Stevenson: I am.

Mr. Berger: Do you know of your own knowledge whether or not Senator Clayton R. Lusk, Chairman of the Committee, signed a subpoena of which this is a copy? (Showing witness paper.)

Mr. Stevenson: He did, in my presence.

Mr. Berger: And did you pursuant to the instructions given you by Senator Lusk, Chairman of this Committee, cause that subpoena to be served upon the person therein named, Ludwig C.A.K. Martens?

Mr. Stevenson: I did. I received instructions from Senator Lusk at the Murray Hill Hotel yesterday morning at 9:15, to take this subpoena and cause it to be served upon the said Ludwig C.A.K. Martens, wherever he was to be found.

Mr. Berger: And it was duly served as you have heard in the testimony this morning to the said Mar-

tens?

Mr. Stevenson: Yes, sir.

Mr. Berger: Mr. Chairman, a letter was received this morning purporting to come from L. Martens, which, with permission, I will read into the record.

The letter is on the letterhead of the Russian Socialist Federal Soviet Republic, Bureau of the Representative in the United States of America. Address: World's Tower Building, 110 West 40th Street, New York, November 15, 1919. No. D-10-9.

Honorable Clayton R. Lusk, Chairman,
Committee of the Legislature of New York,
New York City.

Sir:

I respectfully decline to comply with that part of the subpoena served by your order upon me which requires me to produce "all documents, letters, and other papers," received by me and my Bureau "from Soviet Russia, as well as copies of letters documents and other papers" sent by me and my Bureau "to Soviet Russia," also "copies and records of all so-called passports and credentials" issued by me to "the agents" of myself and my bureau.

1. I take the position that your request for the production of copies of my correspondence with "Soviet Russia" which is evidently intended to designate the Russian Socialist Federal Soviet Republic, which I have the honor to represent in the United States, is clearly in excess of the jurisdiction of your Committee and without warrant in law. Under the rules of international laws the communications between my government and myself are privileged and not subject to the examination by the government of any other nation or state.

2. If any inquiry into my relations and correspondence with Soviet Russia were warranted by law, the State Department of the United States government would be the sole authority vested with jurisdiction in the matter.

3. Your Committee was created for a definite and limited purpose, which cannot under any circumstances be held to include matters of an international character.

For the reasons stated I hereby decline to comply with the above quoted portions of your subpoena.

Respectfully,

L. Martens,
Representative in the United States of the
Russian Socialist Federal Soviet Republic.

Mr. Stevenson: Mr. Chairman, I think it might be wise to have the corridors of the building searched.

Chairman McElligott: I was about to make the request that the name of Mr. Martens be called to see whether he is present. Is Mr. Martens present?

Mr. Berger: Mr. Wexler, will you call the name of Mr. Martens in the Aldermanic Chamber, across the hall, and in all the corridors. Call the name Ludwig C.A.K. Martens out loud.

Mr. Wexler: Yes, sir.

Mr. Stevenson: Mr. Chairman, I think it is well to have noted on the record, although Mr. Martens has presented his credentials to the State Department at Washington, the Russian Socialist Federal Soviet Republic has up to this time not been recognized as a government, and it has been publicly stated by the officials of the State Department that Mr. Martens had no standing in this country as an envoy of the government; and it is, therefore, not clothed with any of the privileges or immunities of a foreign representative.

Chairman McElligott: Yes, I think it is well to note that. I understood from Mr. Martens, when he appeared before this Committee some months ago that he had sent his credentials to Washington to the Department of State and that the only notice he received in connection with the receipt of his credentials at Washington was a newspaper despatch which he read the next day that his papers had been received; but he had never received any official recognition either of the receipt of his communication or any further action.

(Mr. Wexler stepped out from the room, and after a short absence returned.)

Mr. Wexler: No, sir, he is not in.

Mr. Berger: Have you called his name out loud?

Mr. Wexler: Yes, sir; three or four times.

Chairman McElligott: The Committee will note it is now 22 minutes to 12, on November 15, 1919, and the witness has failed to appear.

Mr. Berger: May I ask what the Committee desires done in reference to this witness, who has willfully, deliberately, and without reasonable cause failed to obey the subpoena duly issued under the hand and seal of the Chairman of this Committee?

Chairman McElligott: The Committee is empowered with certain rights in connection with its work; rights under the legislative law and rights under the penal law of the State of New York. The witness can be punished as for a contempt; and it is really necessary that the Committee should take some action in

this regard, because it is a defiance of the powers of the Committee; and also of the powers of the state of New York through its Legislature. The state of New York is engaged in a very serious effort just now to preserve the government of the state of New York, as well as the government of the United States of America, and the inquiry will be helpful to protect the government.

The witness has refused to produce these documents, and besides that, he has refused to attend personally. He has given something in the nature of a statement for his failure to produce these records, but I do think, and I respectfully submit to the members of the Committee, that his excuse is not sufficient to satisfy the members of this Committee. If he were recognized by the government of the United States as an ambassador of this so-called Russian Republic, he would have certain rights and certain immunities and he could not be compelled to testify or produce his records; but he has no standing of this kind, and he has never been recognized by the government. It is really a subterfuge, as far as we are concerned, on his part, to offer an explanation of that kind. I think the Committee should take such action as the law authorized for a contempt of the action of this Committee, and the Chair, with the agreement of this Committee, will authorize counsel for the Committee to proceed in accordance therewith.

Mr. Berger: We will, sir.

Mr. Stevenson: Do you think it would be wise to adopt a resolution directing counsel to prepare such papers as might be necessary.

Mr. Berger: I think the Chairman's statement, agreed in by the other members of the Committee, is sufficient.

Assemblyman Pellett: I make the motion that counsel be directed to take such proceedings as will be necessary.

Assemblyman Jenks: I second the motion.

(The motion was put to the Committee by the Chairman and carried.)

Chairman McElligott: The Chair directs counsel to proceed in accordance with this motion.

Is there anything else for the Committee today?

Mr. Stevenson: I think not.

Chairman McElligott: I wished to state further that the Committee may take both civil and criminal action in this regard, as provided by law.

Mr. Berger:—in view of the fact that the contempt is a violation of both the Code of Civil Procedure, and the code of Criminal Procedure.

Chairman McElligott: We will now adjourn to meet on Monday afternoon at 2 o'clock.

(At 11:45 am the committee took a recess to Monday, November 17, 1919, at 2:00 pm.)

Edited by Tim Davenport.

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