

ASSEMBLY, No. 2758

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1997

By Assemblymen LeFEVRE and BLEE

1 AN ACT establishing a conflict of interest law for county prosecutors
2 and employees in county prosecutors offices, authorizing the
3 Attorney General to promulgate a code of ethics implementing the
4 law, authorizing the Attorney General and the several county
5 prosecutors to enforce the code, supplementing Title 2A of the
6 New Jersey Statutes, amending P.L.1991, c.29 and repealing
7 P.L.1964, c.168.

8
9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:

11
12 1. This act shall be known and may be cited as the "Conflict of
13 Interest Law for County Prosecutors."

14
15 2. The Legislative finds and declares that:

16 a. In New Jersey's criminal justice system, county prosecutors and
17 the employees of their offices perform vital and highly sensitive duties;

18 b. Integrity and impartiality of county prosecutors and the
19 employees of their offices are critical to public confidence in our
20 criminal justice system;

21 c. Public confidence in the criminal justice system is eroded
22 whenever the public perceives that county prosecutors or their
23 employees are not performing their duties in an impartial, professional
24 and unbiased manner or that the private interests of county
25 prosecutors and their employees influence the performance of those
26 duties;

27 d. Government has a duty to provide its citizens with standards by
28 which they may determine whether the functions of county
29 prosecutors' offices are being properly performed and a duty to apprise
30 county prosecutors and their employees of the course of conduct
31 which is expected of them while conducting their duties;

32 e. It is the purpose of this act to foster public confidence in the
33 criminal justice system, by establishing Statewide standards of
34 conduct for county prosecutors and the employees of county

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 prosecutors' offices, by affirming the Attorney General's authority
2 under the "Criminal Justice Act of 1970," P.L.1970, c.74 (C.52:17B-
3 97 et seq.) as chief law enforcement officer of the State, to promulgate
4 and enforce a Statewide Code of Ethics for county prosecutors and the
5 employees of their offices, by expressly authorizing the Attorney
6 General to promulgate and enforce a Code of Ethics for County
7 Prosecutors implementing this law, and by affirming and strengthening
8 the Attorney General's authority to exercise general supervision over
9 the several county prosecutors, consistent with the status of the county
10 prosecutors as constitutional officers, in order to secure the benefits
11 of uniform, impartial and efficient enforcement of the criminal law and
12 administration of criminal justice throughout the State;

13 f. This law prohibits conflicts that are substantial and material or
14 that may bring government into disrepute. This law is not intended to
15 prohibit conduct in the normal course of government business. This
16 law recognizes that it is appropriate for county prosecutors, as chief
17 law enforcement officers of their respective counties, to inform the
18 public about crime and the criminal justice system and to express
19 opinions on matters related to crime and the administration of criminal
20 justice, and this law is not intended to prohibit or restrict such
21 conduct.

22

23 3. As used in this act:

24 a. "County prosecutor" means the county prosecutor or a person
25 acting as county prosecutor;

26 b. "Employee of a county prosecutor" means any person who is
27 employed by a county prosecutor's office, including but not limited to
28 assistant county prosecutors, detectives, investigators and clerical
29 staff.

30 c. "Code of Ethics" or "ethics code" means the code of ethics to
31 be promulgated by the Attorney General pursuant to section 10 of this
32 act.

33 d. "Member of the immediate family" means the spouse of a county
34 prosecutor or of an employee of a county prosecutor or a dependent
35 child of the prosecutor or of an employee of a county prosecutor who
36 resides in the same household as a county prosecutor or an employee
37 of a county prosecutor.

38 e. "Financial interest" means (1) the ownership or control of more
39 than 10% of the profits or assets of a firm, association, or partnership,
40 or more than 10% of the stock in a corporation for profit other than
41 a professional service corporation organized under the "Professional
42 Service Corporation Act," P.L.1969, c.232 (C.14A:17-1 et seq.); or
43 (2) the ownership or control of more than 1% of the profits of a firm,
44 association, or partnership, or more than 1% of the stock in any
45 corporation, which is the holder of, or an applicant for, a casino
46 license or in any holding or intermediary company with respect

1 thereto, as defined by the "Casino Control Act," P.L.1977, c.110
2 (C.5:12-1 et seq.). The provisions of this act governing the conduct
3 of individuals are applicable to shareholders, associates or professional
4 employees of a professional service corporation regardless of the
5 extent or amount of their shareholder interest in such a corporation.
6

7 4. a. Every county prosecutor and employee of a county
8 prosecutor shall make official decisions and take official action on a
9 fair and impartial basis and without regard to race, color, sex, religion,
10 age, handicap, national origin, marital status, affectional or sexual
11 orientation, political, familial or social affiliation, or other improper
12 consideration such as the personal interests of the prosecutor or
13 employee.

14 b. No county prosecutor or employee of a county prosecutor shall
15 take official action in any matter if he, or a member of his immediate
16 family, or a business organization in which he has a financial interest,
17 has a direct or indirect personal or financial involvement that might
18 reasonably be expected to interfere with the impartial performance of
19 official duties or that might reasonably be expected to impair
20 objectivity or independence of judgment.

21 c. No county prosecutor or employee of a county prosecutor's
22 office may use an official position to secure unwarranted privileges,
23 benefits, or advantages for any person or to impose unwarranted
24 burdens or disadvantages on any person.

25 d. No county prosecutor, employee of a county prosecutor, or
26 member of the immediate family of a county prosecutor or of an
27 employee of a county prosecutor shall have a financial interest in a
28 business organization or engage in any business, transaction, or
29 professional activity, which is in substantial conflict with the proper
30 discharge of duties in the public interest.

31 e. No county prosecutor or employee of a county prosecutor's
32 office shall engage in any transaction, business, trade, occupation,
33 service or professional activity, with or without compensation, which
34 is or which might reasonably be expected to be in substantial conflict
35 with the proper discharge of official duties.

36 f. Except in performance of official duties no county prosecutor
37 may practice law and except as otherwise expressly authorized by the
38 Code of Ethics promulgated by the Attorney General pursuant to
39 section 10 of this act, no county prosecutor may engage in any other
40 business, trade, profession or occupation, whether or not for
41 compensation.

42 g. No employee of a county prosecutor may practice law or engage
43 in another business, trade, profession or occupation, except in the
44 performance of official duties, except that with the approval of the
45 county prosecutor, an employee of a county prosecutor may practice
46 law or engage in any other business, trade, profession or occupation

1 if the conduct is expressly authorized by the Code of Ethics
2 promulgated by the Attorney General pursuant to section 10 of this
3 act.

4 h. No county prosecutor, employee of a county prosecutor,
5 member of the immediate family of a county prosecutor or of an
6 employee of a county prosecutor, or business organization in which he
7 has a financial interest may solicit, receive or accept any gratuity, gift,
8 favor, loan, political contribution, service, promise of future
9 employment or other thing of value based upon an understanding, or
10 under circumstance in which it would be reasonable to infer an
11 understanding, that such thing of value was offered or given for the
12 purpose of influencing the prosecutor or employee of the prosecutor,
13 directly or indirectly, in the discharge of official duties.

14 i. No county prosecutor or employee of a county prosecutor may
15 knowingly act in any way that might reasonably be expected to create
16 an impression or suspicion among the public having knowledge of the
17 acts that he is engaged in conduct violative of his trust as the county
18 prosecutor or as an employee of a county prosecutor.

19 j. No county prosecutor or employee of a county prosecutor may
20 attend any conference, convention or meeting relating to the duties
21 and responsibilities of his position at the expense of any organization
22 or agency other than the office of the county prosecutor unless
23 expressly authorized by the Code of Ethics promulgated by the
24 Attorney General pursuant to section 10 of this act.

25 k. Except as authorized or required for proper performance of
26 duties, no county prosecutor or employee of a county prosecutor may
27 disclose any confidential information, not available to the public and
28 acquired in the course of duties or by virtue of his public employment.

29

30 5. a. No county prosecutor or employee of a county prosecutor
31 may provide bail or bail costs to any person accused of a criminal
32 offense except as expressly authorized by the Code of Ethics
33 promulgated by the Attorney General pursuant to section 10 of this
34 act.

35 b. No county prosecutor or employee of a county prosecutor shall
36 voluntarily testify as a character or reputation witness on behalf of any
37 person accused of a criminal offense and no employee of a county
38 prosecutor, except in the performance of official duties or in
39 accordance with the provisions of Code of Ethics promulgated by the
40 Attorney General pursuant to section 10 of this act, shall testify in a
41 civil or criminal proceeding.

42 c. No county prosecutor or employee of a county prosecutor shall
43 recommend, contact or assist in obtaining counsel to represent any
44 person accused of a criminal offense.

45

46 6. a. A county prosecutor, assistant county prosecutor or

1 investigator who is an employee of a county prosecutor shall not
2 engage in any political activity.

3 b. An employee of a county prosecutor, who is not an assistant
4 prosecutor, detective or investigator, shall not engage in political
5 activity unless authorized by the Code of Ethics promulgated by the
6 Attorney General pursuant to section 10 of this act.

7 c. For purposes of the section, "political activity" means:

8 (1) Any candidacy for elective public or political office;

9 (2) Any holding of an office in, or employment with or working on
10 behalf of any political party, organization or club;

11 (3) Any participation in any political campaign;

12 (4) Any exhibiting of signs concerning political candidates on one's
13 person, vehicle or home;

14 (5) Any use of one's name in connection with any political material;

15 (6) Any purchase, sale or distribution of tickets to any affair held
16 for any political purpose whatsoever;

17 (7) Any contribution to a political party or candidate;

18 (8) Any soliciting or accepting of any contribution either directly
19 or indirectly to or on behalf of any political organization or for any
20 other political purpose whatsoever;

21 (9) Any use of one's official influence to modify the political action
22 of another; and

23 (10) Any working at the polls during election time or as an election
24 official at any time.

25

26 7. A county prosecutor or employee of a county prosecutor's
27 office may not participate in the activities of a charitable, civic or
28 professional organization, association or committee unless the
29 participation is authorized by the Code of Ethics promulgated by the
30 Attorney General pursuant to section 10 of this act.

31

32 8. A county prosecutor, assistant prosecutor or a detective or
33 investigator who is an employee of a county prosecutor shall not
34 privately retain or be represented in personal legal affairs by any
35 attorney who maintains an active criminal practice within the county
36 in which the person is employed.

37

38 9. a. A former county prosecutor or former assistant prosecutor
39 shall not appear in any criminal matter in any capacity against the State
40 in the county by which he was employed for a period of six months
41 from the date of termination of his public employment. This
42 prescription does not foreclose such appearances by a law firm with
43 which the former county prosecutor or former assistant prosecutor is
44 associated.

45 b. A former county prosecutor or former assistant prosecutor and
46 any law firm with which he is associated shall not represent any person

1 in any matter (1) in which he participated to any extent while acting as
2 a county prosecutor or an assistant prosecutor including but not
3 limited to any aspect of investigation, trial preparation or trial; (2) for
4 which he had any responsibility, whether exercised or not; or (3) about
5 which he became aware of any facts or other information.

6
7 10. a. The Attorney General shall promulgate a Code of Ethics for
8 county prosecutors and employees of county prosecutors that includes
9 the standards set forth in this act, implements this act and includes any
10 additional general or specific standards of conduct that the Attorney
11 General deems appropriate to the proper administration of criminal
12 justice and the preservation of public confidence therein. Where the
13 Attorney General is authorized to establish exceptions to general
14 provisions of this act, the Attorney General is to be guided by the
15 general principle that every county prosecutor and employee of a
16 county prosecutor should avoid conduct that might reasonably be
17 expected to cast doubt on the integrity, impartiality and independence
18 of the office of the county prosecutor and by the general principle that
19 this act prohibits conflicts that are substantial and material or that
20 bring government into disrepute.

21 b. For purposes of the "Administrative Procedure Act," P.L.1968,
22 c.410 (C.52:14B-1 et seq.), the Code of Ethics promulgated pursuant
23 to this act shall be considered a statement concerning internal
24 discipline not subject to the rulemaking provisions of the
25 "Administrative Procedure Act."

26 c. With respect to the implementation of the provisions of the
27 ethics code, the Attorney General shall have the following powers:

28 (1) To initiate, receive, hear and review complaints and hold
29 hearings with regard to possible violations of the ethics code;

30 (2) To issue subpoenas for the production of documents and the
31 attendance of witnesses with respect to investigation of any complaint
32 or to the holding of a hearing;

33 (3) To render advisory opinions as to whether a given set of facts
34 and circumstances would constitute a violation of this act or the Code
35 of Ethics;

36 (4) To enforce the provisions of the Code of Ethics and to impose
37 penalties for the violation thereof as are authorized by this act;

38 (5) To adopt, except as provided in subsection b. of this section,
39 rules and regulations pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.) and to do such other things as
41 are necessary to implement the purposes of this act;

42 (6) To delegate any power provided in this section to the Director
43 of the Division of Criminal Justice or, in the case of a complaint
44 involving or a request for an advisory opinion from an employee of, a
45 county prosecutor, to delegate the power to the appropriate county
46 prosecutor; and

1 (7) To require every county prosecutor and employee of a county
2 prosecutor to file an annual statement disclosing financial matters in
3 a form to be prescribed by the Attorney General.

4 d. Nothing in this act is intended or shall be construed to limit or
5 restrict the Attorney General's authority under the "Criminal Justice
6 Act of 1970," P.L.1970, c.74 (C.52:17B-97 et seq.), to impose duties,
7 responsibilities and restrictions related to the conduct of county
8 prosecutors and their employees as the Attorney General deems
9 appropriate to foster the proper administration of criminal justice and
10 public confidence therein or to limit or restrict the Attorney General's
11 authority to take appropriate action to address any misconduct.

12
13 11. A county prosecutor or employee of a county prosecutor may
14 request and obtain from the Attorney General an advisory opinion as
15 to whether any proposed activity or conduct would in the Attorney
16 General's opinion constitute a violation of the provisions of the ethics
17 code. Advisory opinions of the Attorney General shall not be made
18 public, except when the Attorney General directs that the opinion be
19 made public. Public advisory opinions shall not disclose the name of
20 the requester unless the Attorney General in directing that the opinion
21 be made public so determines.

22
23 12. The Attorney General, upon receipt of a signed written
24 complaint by any person alleging that the conduct of a county
25 prosecutor or an employee of a county prosecutor is in conflict with
26 the provisions of the ethics code, shall acknowledge receipt of the
27 complaint within 30 days of receipt and initiate an investigation
28 concerning the facts and circumstances set forth in the complaint. The
29 Attorney General shall make a determination as to whether the
30 complaint is within the Attorney General's jurisdiction, whether it is
31 frivolous or without any reasonable factual basis, or whether the
32 violation is de minimis and technical in nature. If the Attorney General
33 shall conclude that the complaint is outside the Attorney General's
34 jurisdiction, frivolous or without factual basis, or that the violation is
35 de minimis and technical in nature, the Attorney General shall reduce
36 that conclusion to writing and shall transmit a copy thereof to the
37 complainant and to the county prosecutor or employee of a county
38 prosecutor against whom the complaint was filed. Otherwise the
39 Attorney General shall notify the county prosecutor or employee of a
40 county prosecutor against whom the complaint was filed of the nature
41 of the complaint and the facts and circumstances set forth therein. The
42 county prosecutor or an employee of a county prosecutor shall have
43 an opportunity to present the Attorney General with any statement or
44 information concerning the complaint. Thereafter, if the Attorney
45 General determines that a reasonable doubt exists as to whether a
46 county prosecutor or employee of a county prosecutor is in conflict

1 with the provisions of this act or the Code of Ethics promulgated by
2 the Attorney General, the Attorney General, except in cases in which
3 the county prosecutor or the employee of a county prosecutor
4 acknowledges the violation, shall conduct a hearing in the manner
5 prescribed by section 15 of this act concerning the possible violation
6 and any other facts and circumstances which may have come to the
7 attention of the Attorney General with respect to the conduct of the
8 prosecutor or employee of a prosecutor. The Attorney General shall
9 render a decision as to whether the conduct of a county prosecutor or
10 employee of a county prosecutor is in conflict with the provisions of
11 the ethics code. A final decision of the Attorney General may be
12 appealed in the same manner as any other final State agency decision.
13

14 13. A county prosecutor or employee of a county prosecutor found
15 by the Attorney General to have violated any provision of this law or
16 of the Code of Ethics promulgated by the Attorney General, shall be
17 fined not less than \$100.00 nor more than \$500.00, which penalty may
18 be collected in a summary proceeding pursuant to "the penalty
19 enforcement law" (N.J.S.2A:58-1 et seq.). The Attorney General may
20 also, as the Attorney General deems appropriate, recommend the
21 person's removal, demotion, suspension or disciplinary action or may
22 take any other action pursuant to the "Criminal Justice Act of 1970,"
23 P.L.1970, c.74 (C.52:17B-97 et seq.).
24

25 14. A finding by the Attorney General that a county prosecutor
26 has violated this act or the Code of Ethics promulgated by the
27 Attorney General shall be sufficient cause for removal pursuant to the
28 provisions of section 14 of P.L.1970, c.74 (C.52:17B-110). A finding
29 by the Attorney General that an employee of a county prosecutor has
30 violated this act or the Code of Ethics promulgated by the Attorney
31 General shall be sufficient cause for his removal, suspension, demotion
32 or other disciplinary action. When a person who is in the career
33 service or who is within the scope of a collective bargaining agreement
34 is charged with violating the provisions of the Code of Ethics, the
35 procedure leading to removal, suspension, demotion or other
36 disciplinary action shall be governed by any applicable procedures of
37 Title 11A of the New Jersey Statutes and the rules promulgated
38 pursuant thereto or of the collective bargaining agreement.
39

40 15. All hearings required pursuant to this act shall be conducted in
41 conformity with the rules and procedures, insofar as they may be
42 applicable, provided for hearings by a State agency in contested cases
43 under the "Administrative Procedure Act," P.L.1968, c.410
44 (C.52:14B-1 et seq.).
45

46 16. Section 3 of P.L.1991, c.29 (C.40A:9-22.3) is amended to read

1 as follows:

2 3. As used in this act:

3 a. "Board" means the Local Finance Board in the Division of Local
4 Government Services in the Department of Community Affairs;

5 b. "Business organization" means any corporation, partnership,
6 firm, enterprise, franchise, association, trust, sole proprietorship, union
7 or other legal entity;

8 c. "Governing body" means, in the case of a municipality, the
9 commission, council, board or body, by whatever name it may be
10 known, having charge of the finances of the municipality, and, in the
11 case of a county, the board of chosen freeholders, or, in the case of a
12 county having adopted the provisions of the "Optional County Charter
13 Law," P.L.1972, c.154 (C.40:41A-1 et seq.), as defined in the form of
14 government adopted by the county under that act;

15 d. "Interest" means the ownership or control of more than 10% of
16 the profits, assets or stock of a business organization but shall not
17 include the control of assets in a nonprofit entity or labor union;

18 e. "Local government agency" means any agency, board, governing
19 body, including the chief executive officer, bureau, division, office,
20 commission or other instrumentality within a county or municipality,
21 and any independent local authority, including any entity created by
22 more than one county or municipality, which performs functions other
23 than of a purely advisory nature, but shall not include a school board;

24 f. "Local government employee" means any person, whether
25 compensated or not, whether part-time or full-time, employed by or
26 serving on a local government agency who is not a local government
27 officer, but shall not mean any employee of a school district or any
28 employee of a county prosecutor as defined in section 3 of P.L.1997,
29 c. (now pending before the Legislature as section 3 of this bill);

30 g. "Local government officer" means any person whether
31 compensated or not, whether part-time or full-time: (1) elected to any
32 office of a local government agency; (2) serving on a local government
33 agency which has the authority to enact ordinances, approve
34 development applications or grant zoning variances; (3) who is a
35 member of an independent municipal, county or regional authority; or
36 (4) who is a managerial executive or confidential employee of a local
37 government agency, as defined in section 3 of the "New Jersey
38 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3),
39 but shall not mean any employee of a school district or member of a
40 school board or any county prosecutor;

41 h. "Local government officer or employee" means a local
42 government officer or a local government employee;

43 i. "Member of immediate family" means the spouse or dependent
44 child of a local government officer or employee residing in the same
45 household.

46 (cf: P.L.1991, c.29, s.3.)

1 17. P.L.1964, c.168 (C.2A:158-21) is repealed.

2

3 18. This act shall take effect immediately except that the Attorney
4 General shall have 90 days from the effective date of this act to
5 promulgate the Code of Ethics required by section 10 of the act.

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STATEMENT

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10 This bill would establish the "Conflict of Interest Law for County
11 Prosecutors." This law would apply both to county prosecutors and
12 all persons employed in their offices. The law would generally prohibit
13 county prosecutors and their employees from engaging in business or
14 professional activities which conflict with the proper discharge of their
15 duties.

16 The law would specially prohibit county prosecutors and any
17 employees of county prosecutors from using their official position to
18 secure unwarranted privileges for themselves or others and from acting
19 in an official capacity in matters in which they have a direct or indirect
20 financial interest.

21 Other provisions of the law would prohibit county prosecutors and
22 their employees from accepting gifts and from engaging in political
23 activities.

24 In addition, the law would establish restrictions on certain
25 charitable and civic activities and establish post-employment
26 restrictions for assistant prosecutors.

27 The bill further provides that the Attorney General would be
28 responsible for promulgating and enforcing a Code of Ethics for
29 county prosecutors and their employees. Violations of the code and
30 the Conflict of Interest Law would be punishable by a fine of between
31 \$100.00 and \$500.00. Violations could also be punished by
32 disciplinary actions such as removal, suspension or demotion.

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36

37 Establishes the "Conflict of Interest Law for County Prosecutors."