

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, Nos. 2758 and 2749

STATE OF NEW JERSEY

ADOPTED DECEMBER 15, 1997

Sponsored by Assemblymen LEFEVRE, BLEE and BARNES

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 conduct  
34 for county prosecutors and the employees of county prosecutors'

1 offices, by affirming the Attorney General's authority under the  
2 "Criminal Justice Act of 1970," P.L.1970, c.74 (C.52:17B-97 et seq.)  
3 as chief law enforcement officer of the State, to promulgate and  
4 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  
34 county prosecutor or of an employee of a county prosecutor or a  
35 dependent child of the prosecutor or of an employee of a county  
36 prosecutor who resides in the same household as a county prosecutor  
37 or an employee 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  
43 engage in another business, trade, profession or occupation, except in  
44 the 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 ;except that nothing in this  
45 subsection shall prohibit a union representative from recommending,  
46 contacting or assisting in obtaining counsel to represent any county

1 prosecutor or employee of a county prosecutor accused of a criminal  
2 offense.

3

4 6. a. A county prosecutor, assistant county prosecutor or  
5 investigator who is an employee of a county prosecutor shall not  
6 engage in any political activity.

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

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

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

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

15 (3) Any participation in any political campaign;

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

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

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

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

22 (8) Any soliciting or accepting of any contribution either directly  
23 or indirectly to or on behalf of any political organization or for any  
24 other political purpose whatsoever;

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

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

29

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

35

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

41

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

1 which the former county prosecutor or former assistant prosecutor is  
2 associated.

3 b. A former county prosecutor or former assistant prosecutor and  
4 any law firm with which he is associated shall not represent any person  
5 in any matter (1) in which he participated to any extent while acting as  
6 a county prosecutor or an assistant prosecutor including but not  
7 limited to any aspect of investigation, trial preparation or trial; (2) for  
8 which he had any responsibility, whether exercised or not; or (3) about  
9 which he became aware of any facts or other information.

10

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

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

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

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

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

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

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

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

46 (6) To delegate any power provided in this section to the Director

1 of the Division of Criminal Justice or, in the case of a complaint  
2 involving or a request for an advisory opinion from an employee of, a  
3 county prosecutor, to delegate the power to the appropriate county  
4 prosecutor; and

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

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

16

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

26

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

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

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

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

44  
45 15. All hearings required pursuant to this act shall be conducted in  
46 conformity with the rules and procedures, insofar as they may be

1 applicable, provided for hearings by a State agency in contested cases  
2 under the "Administrative Procedure Act," P.L.1968, c.410 (C52:14B-  
3 1 et seq.).

4  
5 16. Section 3 of P.L. 1991, c. 29 (C. 40A:9-22.3) is amended to  
6 read as follows:

7 3. As used in this act:

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

10 b. "Business organization" means any corporation, partnership,  
11 firm, enterprise, franchise, association, trust, sole proprietorship, union  
12 or other legal entity;

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

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

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

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

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

46 h. "Local government officer or employee" means a local

1 government officer or a local government employee;

2 i. "Member of immediate family" means the spouse or dependent  
3 child of a local government officer or employee residing in the same  
4 household.

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

6

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

8

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

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15

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