

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1824

STATE OF NEW JERSEY

ADOPTED FEBRUARY 10, 1997

Sponsored by Senators GORMLEY and SINAGRA

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

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

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

24

25 3. As used in this act:

26 a. "County prosecutor" means the county prosecutor or a person
27 acting as county prosecutor;

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

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

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

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

1 corporation, which is the holder of, or an applicant for, a casino
2 license or in any holding or intermediary company with respect
3 thereto, as defined by the "Casino Control Act," P.L.1977, c.110
4 (C.5:12-1 et seq.). The provisions of this act governing the conduct
5 of individuals are applicable to shareholders, associates or professional
6 employees of a professional service corporation regardless of the
7 extent or amount of their shareholder interest in such a corporation.
8

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

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

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

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

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

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

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

1 county prosecutor, an employee of a county prosecutor may practice
2 law or engage in any other business, trade, profession or occupation
3 if the conduct is expressly authorized by the Code of Ethics
4 promulgated by the Attorney General pursuant to section 10 of this
5 act.

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

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

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

27 k. Except as authorized or required for proper performance of
28 duties, no county prosecutor or employee of a county prosecutor may
29 disclose any confidential information, not available to the public and
30 acquired in the course of duties or by virtue of his public employment.
31

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

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

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

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

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

8 c. For purposes of the section, “political activity” means:

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

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

12 (3) Any participation in any political campaign;

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

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

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

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

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

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

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

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

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

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

46 b. A former county prosecutor or former assistant prosecutor and

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

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

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

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

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

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

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

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

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

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

1 prosecutor; and

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

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

13

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

23

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

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

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

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

42 15. All hearings required pursuant to this act shall be conducted in
43 conformity with the rules and procedures, insofar as they may be
44 applicable, provided for hearings by a State agency in contested cases
45 under the "Administrative Procedure Act," P.L.1968, c.410 (C52:14B-
46 1 et seq.).

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

3 3. As used in this act:

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

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

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

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

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

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

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

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

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

1 household.

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

3

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

5

6 18. This act shall take effect immediately except that the Attorney

7 General shall have 90 days from the effective date of this act to

8 promulgate the Code of Ethics required by section 10 of the act.

9

10

11

12

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