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SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1824

STATE OF NEW JERSEY

ADOPTED FEBRUARY 10, 1997

Sponsored by Senators GORMLEY, SINAGRA, Inverso, Martin, Matheussen, Bark, Kosco, Schluter, Cardinale, Palaia, Connors, Cafiero, Sacco, Rice, Kenny, Adler, Lesniak, Scott, Ciesla, LaRossa, Kyrillos, Lynch, O'Connor, Bryant, MacInnes, Littell, Bennett, Codey, Casey, Zane, McGreevey, Baer, Lipman, Singer, Ewing, McNamara and DiFrancesco

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

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 and their employees influence the performance of those
2 duties;

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

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

23 f. This law prohibits conflicts that are substantial and material or
24 that may bring government into disrepute. This law is not intended to
25 prohibit conduct in the normal course of government business. This
26 law recognizes that it is appropriate for county prosecutors, as chief
27 law enforcement officers of their respective counties, to inform the
28 public about crime and the criminal justice system and to express
29 opinions on matters related to crime and the administration of criminal
30 justice, and this law is not intended to prohibit or restrict such
31 conduct.

32

33 3. As used in this act:

34 a. "County prosecutor" means the county prosecutor or a person
35 acting as county prosecutor;

36 b. "Employee of a county prosecutor" means any person who is
37 employed by a county prosecutor's office, including but not limited to
38 assistant county prosecutors, detectives, investigators and clerical
39 staff.

40 c. "Code of Ethics" or "ethics code" means the code of ethics to
41 be promulgated by the Attorney General pursuant to section 10 of this
42 act.

43 d. "Member of the immediate family" means the spouse of a
44 county prosecutor or of an employee of a county prosecutor or a
45 dependent child of the prosecutor or of an employee of a county
46 prosecutor who resides in the same household as a county prosecutor

1 or an employee of a county prosecutor.

2 e. "Financial interest" means (1) the ownership or control of more
3 than 10% of the profits or assets of a firm, association, or partnership,
4 or more than 10% of the stock in a corporation for profit other than
5 a professional service corporation organized under the "Professional
6 Service Corporation Act," P.L.1969, c.232 (C.14A:17-1 et seq.); or
7 (2) the ownership or control of more than 1% of the profits of a firm,
8 association, or partnership, or more than 1% of the stock in any
9 corporation, which is the holder of, or an applicant for, a casino
10 license or in any holding or intermediary company with respect
11 thereto, as defined by the "Casino Control Act," P.L.1977, c.110
12 (C.5:12-1 et seq.). The provisions of this act governing the conduct
13 of individuals are applicable to shareholders, associates or professional
14 employees of a professional service corporation regardless of the
15 extent or amount of their shareholder interest in such a corporation.

16

17 4. a. Every county prosecutor and employee of a county
18 prosecutor shall make official decisions and take official action on a
19 fair and impartial basis and without regard to race, color, sex, religion,
20 age, handicap, national origin, marital status, affectional or sexual
21 orientation, political, familial or social affiliation, or other improper
22 consideration such as the personal interests of the prosecutor or
23 employee.

24 b. No county prosecutor or employee of a county prosecutor shall
25 take official action in any matter if he, or a member of his immediate
26 family, or a business organization in which he has a financial interest,
27 has a direct or indirect personal or financial involvement that might
28 reasonably be expected to interfere with the impartial performance of
29 official duties or that might reasonably be expected to impair
30 objectivity or independence of judgment.

31 c. No county prosecutor or employee of a county prosecutor's
32 office may use an official position to secure unwarranted privileges,
33 benefits, or advantages for any person or to impose unwarranted
34 burdens or disadvantages on any person.

35 d. No county prosecutor, employee of a county prosecutor, or
36 member of the immediate family of a county prosecutor or of an
37 employee of a county prosecutor shall have a financial interest in a
38 business organization or engage in any business, transaction, or
39 professional activity, which is in substantial conflict with the proper
40 discharge of duties in the public interest.

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

46 f. Except in performance of official duties no county prosecutor

1 may practice law and except as otherwise expressly authorized by the
2 Code of Ethics promulgated by the Attorney General pursuant to
3 section 10 of this act, no county prosecutor may engage in any other
4 business, trade, profession or occupation, whether or not for
5 compensation.

6 g. No employee of a county prosecutor may practice law or
7 engage in another business, trade, profession or occupation, except in
8 the performance of official duties, except that with the approval of the
9 county prosecutor, an employee of a county prosecutor may practice
10 law or engage in any other business, trade, profession or occupation
11 if the conduct is expressly authorized by the Code of Ethics
12 promulgated by the Attorney General pursuant to section 10 of this
13 act.

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

24 i. No county prosecutor or employee of a county prosecutor may
25 knowingly act in any way that might reasonably be expected to create
26 an impression or suspicion among the public having knowledge of the
27 acts that he is engaged in conduct violative of his trust as the county
28 prosecutor or as an employee of a county prosecutor.

29 j. No county prosecutor or employee of a county prosecutor may
30 attend any conference, convention or meeting relating to the duties
31 and responsibilities of his position at the expense of any organization
32 or agency other than the office of the county prosecutor unless
33 expressly authorized by the Code of Ethics promulgated by the
34 Attorney General pursuant to section 10 of this act.

35 k. Except as authorized or required for proper performance of
36 duties, no county prosecutor or employee of a county prosecutor may
37 disclose any confidential information, not available to the public and
38 acquired in the course of duties or by virtue of his public employment.
39

40 5. a. No county prosecutor or employee of a county prosecutor
41 may provide bail or bail costs to any person accused of a criminal
42 offense except as expressly authorized by the Code of Ethics
43 promulgated by the Attorney General pursuant to section 10 of this
44 act.

45 b. No county prosecutor or employee of a county prosecutor shall
46 voluntarily testify as a character or reputation witness on behalf of any

1 person accused of a criminal offense and no employee of a county
2 prosecutor, except in the performance of official duties or in
3 accordance with the provisions of Code of Ethics promulgated by the
4 Attorney General pursuant to section 10 of this act, shall testify in a
5 civil or criminal proceeding.

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

9
10 6. a. A county prosecutor, assistant county prosecutor or
11 investigator who is an employee of a county prosecutor shall not
12 engage in any political activity.

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

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

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

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

21 (3) Any participation in any political campaign;

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

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

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

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

28 (8) Any soliciting or accepting of any contribution either directly
29 or indirectly to or on behalf of any political organization or for any
30 other political purpose whatsoever;

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

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

35
36 7. A county prosecutor or employee of a county prosecutor's
37 office may not participate in the activities of a charitable, civic or
38 professional organization, association or committee unless the
39 participation is authorized by the Code of Ethics promulgated by the
40 Attorney General pursuant to section 10 of this act.

41
42 8. A county prosecutor, assistant prosecutor or a detective or
43 investigator who is an employee of a county prosecutor shall not
44 privately retain or be represented in personal legal affairs by any
45 attorney who maintains an active criminal practice within the county
46 in which the person is employed.

1 9. a. A former county prosecutor or former assistant prosecutor
2 shall not appear in any criminal matter in any capacity against the State
3 in the county by which he was employed for a period of six months
4 from the date of termination of his public employment. This
5 prescription does not foreclose such appearances by a law firm with
6 which the former county prosecutor or former assistant prosecutor is
7 associated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22

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

33

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

1 promulgated pursuant thereto or of the collective bargaining
2 agreement.

3

4 15. All hearings required pursuant to this act shall be conducted in
5 conformity with the rules and procedures, insofar as they may be
6 applicable, provided for hearings by a State agency in contested cases
7 under the "Administrative Procedure Act," P.L.1968, c.410 (C52:14B-
8 1 et seq.).

9

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

12 3. As used in this act:

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

15 b. "Business organization" means any corporation, partnership,
16 firm, enterprise, franchise, association, trust, sole proprietorship, union
17 or other legal entity;

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

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

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

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

40 g. "Local government officer" means any person whether
41 compensated or not, whether part-time or full-time: (1) elected to any
42 office of a local government agency; (2) serving on a local government
43 agency which has the authority to enact ordinances, approve
44 development applications or grant zoning variances; (3) who is a
45 member of an independent municipal, county or regional authority; or
46 (4) who is a managerial executive or confidential employee of a local

1 government agency, as defined in section 3 of the "New Jersey
2 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3),
3 but shall not mean any employee of a school district or member of a
4 school board or any county prosecutor;

5 h. "Local government officer or employee" means a local
6 government officer or a local government employee;

7 i. "Member of immediate family" means the spouse or dependent
8 child of a local government officer or employee residing in the same
9 household.

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

11

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

13

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

17

18

19

20

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