

STATE OF NEW JERSEY

REPORT

OF THE

Legislative Commission
on Conflicts of Interest

TO

The Senate and the General Assembly
of the State of New Jersey

Members of the Commission:

SENATOR JAMES F. MURRAY, JR., *Chairman*
ASSEMBLYMAN BENJAMIN FRANKLIN, III,
Vice-Chairman

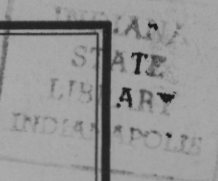
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DECEMBER 31, 1957



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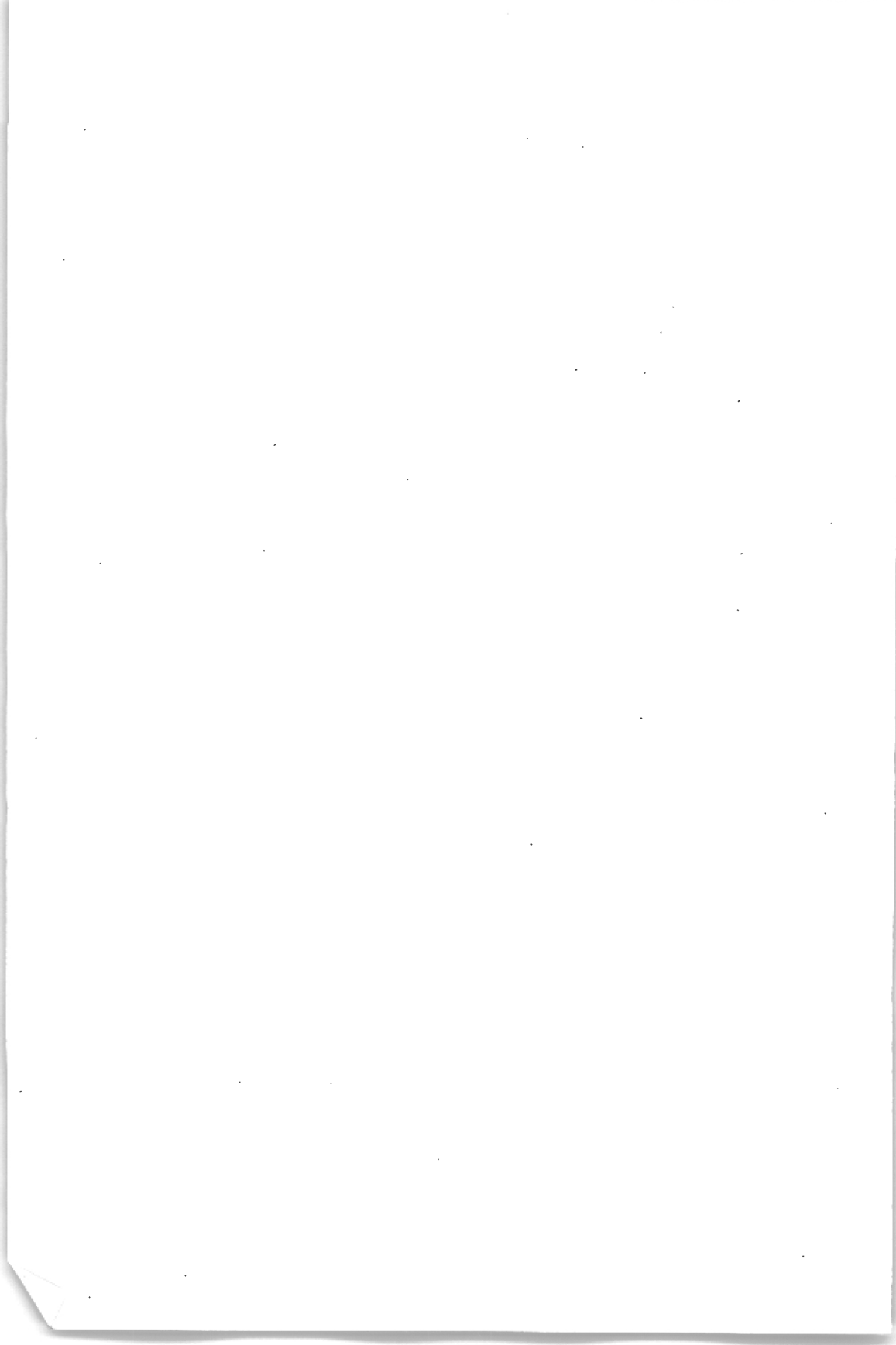
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JAMES F. MURRAY, JR.
SENATOR, HUDSON COUNTY
JERSEY CITY, N. J.

NEW JERSEY SENATE

January 3, 1958.

TO THE MEMBERS OF THE SENATE AND
GENERAL ASSEMBLY OF THE
181ST LEGISLATURE

In compliance with Senate Concurrent Resolution 18 (1956) and Senate Concurrent Resolution 9 (1957), I submit herewith the final report and recommendations of the Legislative Commission on Conflicts of Interest.

Ours has been a stern and exacting responsibility. Almost without exception we have encountered sensitive issues which, until now, have never been adequately examined in this State and which in large part have engendered contradictory and controversial opinions.

In finalizing our decisions we have scrupulously endeavored to be guided only by the paramount consideration of public interest.

We sincerely hope that our recommendations will prove to be both realistic and effective in the solution of a problem of surpassing importance to our way of life.

Respectfully,

A handwritten signature in dark ink, appearing to read "James F. Murray, Jr.", written in a cursive style.

JAMES F. MURRAY, JR., *Chairman.*

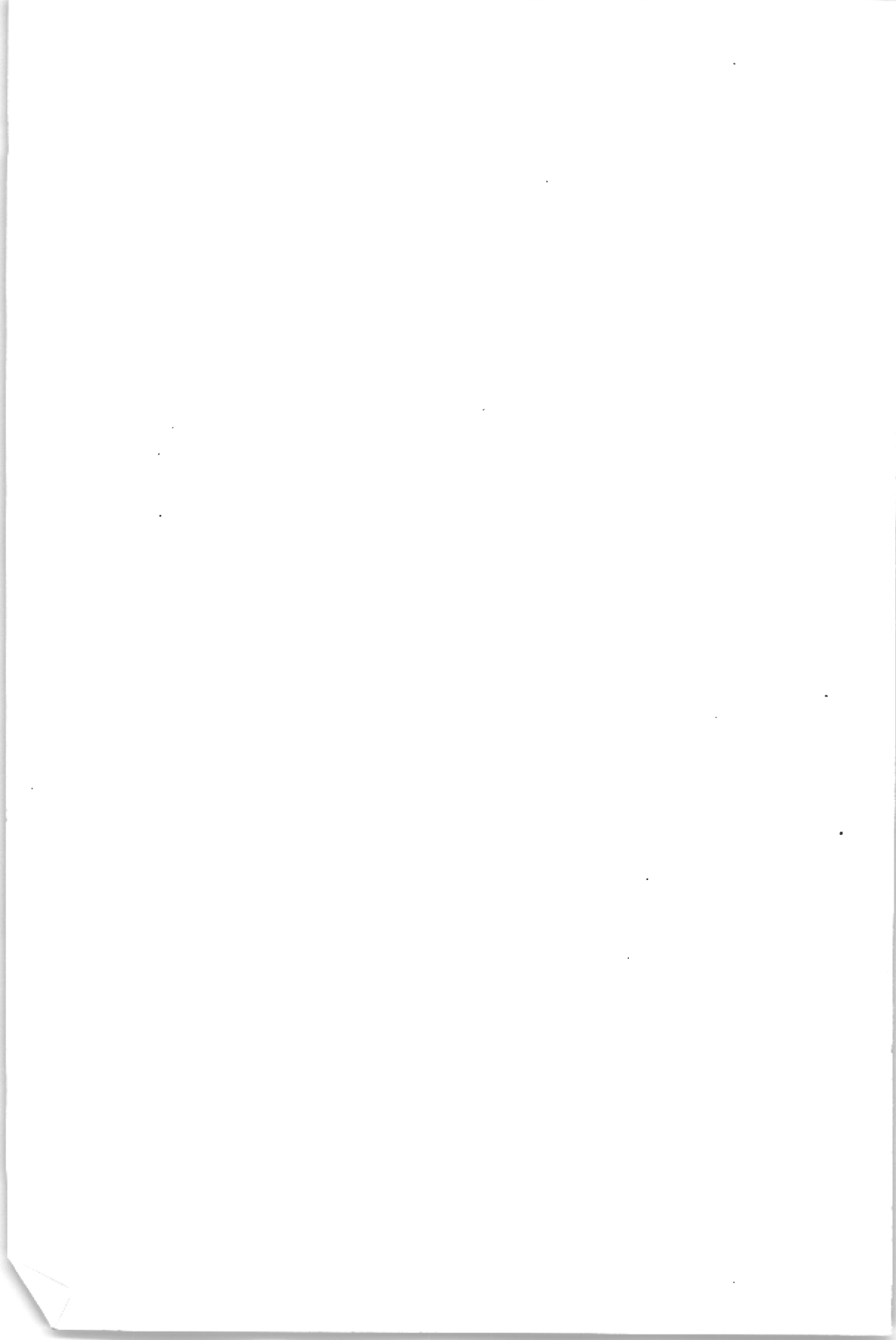


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FOREWORD

This Commission was created to study conflicts of interest by persons holding public office, position or employment in the State of New Jersey, under a frame of reference set forth by Senate Concurrent Resolutions S-18 (1956) and S-9 (1957), unanimously passed by the Senate and General Assembly.¹

Since its formal organization in August, 1957, the Commission, after engaging Counsel and Associate Counsel and undertaking preliminary investigations, conducted four public hearings in the Senate Chamber in Trenton on September 4, 16, 27 and October 21, 1957.

The Commission also met with New York State Senators who served with the New York Senate Committee on Ethics and, through counsel, engaged in considerable correspondence with the office of the New York Attorney General concerning the activities of the executive departments in that State.

Numerous executive sessions and conferences were held to review testimony, formulate policy and draft statutory proposals and recommendations.

Witnesses at the public hearings included representatives of the New Jersey State Bar Association, New Jersey State Chamber of Commerce, State Federation of Labor, New Jersey State C.I.O., Effective Citizens Organization, Directors of many major departments of the State Government, a member of the New Jersey Senate and a former Senator, and professors from Rutgers University School of Law and St. Peter's College. A record of the testimony and of the exhibits and statements offered is available in four volumes and an appendix.

In addition to the hearings, the Commission has obtained an abundance of information from research and from other

¹ The text of the resolutions appears in the Appendix of this report.

sources. We have studied both the final report and the transcript of the hearings of the New York State Committee on Ethical Standards in Government; the report and the transcript of the hearings of the study of ethical standards in government made by the United States Senate Subcommittee of which Senator Douglas was chairman; and the report of the Texas Legislative Council. In addition we have had available valuable material in the recommendations of the New Jersey State Bar Association and a bill introduced in the Legislature by Senator John Waddington of Salem County.

Much other material was collected, including reports of committees, proposals for ethical codes in State and local government, and codes adopted by labor organizations. Research was made into the laws of the Federal Government relating to conflicts of interest, and into the laws and constitutions of other States. The writings of experts in the field were examined, including especially valuable articles on the Federal conflicts of interest laws from the Harvard and Columbia Law Reviews. The Canons of Ethics of the American Bar Association were also studied.

The existing statutes and decisions of the courts of New Jersey relating to conflicts of interest were examined. Inquiry also centered on the relationships between the conflicts of interest problem and the existing structure of the State Government of New Jersey, including constitutional provisions, the organization of executive departments, the status of independent authorities and commissions and civil service provisions governing removal and discipline of State officials.

Very valuable and excellent information was culled from a unique study on the conflicts of interest problem in Great Britain compiled by the Legislative Services Commission. Other source material was examined in the State Library, the Rutgers Law School Library and the Seton Hall Law School Library.

ACKNOWLEDGMENTS

The Commission wishes to express its profound gratitude to all those who assisted us, particularly our distinguished counsel, John H. Yauch, Jr., and his excellent associate counsel Daniel A. Degnan.

The members of the Commission unanimously share the conviction that their efforts would have suffered immeasurably without the unique talents and experience of Mr. Yauch. As a former president of the New Jersey State Bar Association and as one of the State's most distinguished practitioners he brought, in addition to his talents, a capacity for work and a devotion to our task which would have been impossible to equal.

Not only the Commission but, we feel, the Legislature and the people of New Jersey, interested in the solution of the problem of conflicts of interest, owe an abiding gratitude to Mr. Yauch and Mr. Degnan.

We wish to thank as well Mr. Charles DeF. Besoré, executive secretary of the Law Revision and Legislative Services Commission; Mr. Ralph Eisenberg of the Legislative Services Commission for his excellent report on Great Britain; Mr. Roger McDonough, Librarian of the State Library; Mr. Vincent Fiordalisi, Librarian of the Rutgers Law School Library and Mr. Donald Martin, Librarian of the Seton Hall Law School Library. We acknowledge as well the excellent professional assistance rendered by Miss Jane Brown and Mr. George Harkins during our public hearings.

SUMMARY OF RECOMMENDATIONS

A. LEGISLATION

1. Condemnation

A statute prohibiting members of the Legislature and State officers, employees and appointees from participating for compensation in condemnation negotiations and in proceedings before condemnation commissioners. Practice in the courts is not prohibited. The prohibition extends to firms in which the State official serves, and includes lawyers, accountants, engineers, real estate experts, and any others.

2. Practice Before Certain State Agencies

A statute prohibiting members of the Legislature and State officers, employees and appointees from personally appearing for compensation before State agencies which deal in matters of vital public interest. These agencies are:

- Department of Banking and Insurance;
- Department of Public Utilities;
- Department of Civil Service;
- In the Department of Law and Public Safety:
 - Division of Alcoholic Beverage Control,
 - Division of Motor Vehicles,
 - Division of Professional Boards,
 - Bureau of Tenement House Supervision;
- In the Department of the Treasury:
 - Division of Investment,
 - Division of the New Jersey Racing Commission,
 - Division of Tax Appeals,
 - Division of Taxation, excepting Transfer Inheritance Tax Bureau;
- In the Department of Agriculture:
 - Office of Milk Industry;
- In the Department of Institutions and Agencies:
 - State Parole Board;
- In the Department of Labor and Industry:
 - Bureau of Engineering and Safety,
 - Wage and Hour Bureau;
- In the Department of Conservation and Economic Development:
 - Division of Water Policy and Supply;
- North Jersey District Water Supply Commission;
- Passaic Valley Sewerage Commissioners.

3. Dual Agency

A statute prohibiting a member of the Legislature, a State officer, employee, or appointee when he acts as an agent for the State, from dealing with himself or with a firm or business in which he has a financial interest.

4. Contracts with the State

A statute prohibiting members of the Legislature, State officers, employees or appointees from entering into contracts with the State without public bidding.

5. Dealing with Own Agency and Department

A statute prohibiting State officers, employees or appointees from serving any private interest directly or indirectly for compensation before the department of government in which they are employed.

6. Former Employees Dealing with State Agencies

A statute prohibiting a former State officer, employee or appointee from receiving compensation for services in any matter which he handled or passed upon while he was in State service. The statute would apply for two years after the termination of State service.

7. Codes of Ethics for Each State Agency

A statute requiring the heads of each State agency to adopt a code of ethics for his agency, designed to suit the particular problems which arise in such agency, but conforming to certain general principles. Violators of such codes will be subject to discharge or other disciplinary proceedings.

8. A Commission on Ethical Standards for State Officers and Employees

A statute creating a non-salaried five-member commission of persons not holding public office, appointed by the Governor with the consent of the Senate, to receive complaints

of unethical conduct by State officers, employees or appointees, to render advisory opinions guiding and assisting those in State service, to review and approve codes of ethics adopted by State agencies and to make recommendations for codes of ethics and future legislation relating to conflicts of interest.

B. SUPPLEMENT TO SENATE AND ASSEMBLY RULES

The Commission recommends that the Senate and General Assembly adopt as part of their rules, a code of ethics for the members of each house and for legislative employees including the following:

The establishment of a standard to avoid conflict of interest in the exercise of legislative duties.

The establishment of a standard for the elimination of undue influence or advantage from legislative office.

Prohibition against voting on any bill in which there may be direct pecuniary or personal interest.

Prohibition against serving as compensated lobbyist for any person or group seeking the passage or defeat of any bill.

Prohibition against acceptance of any gifts or favors intended to influence discharge of official duties.

Prohibition against disclosure of confidential information.

C. COMMITTEES ON ETHICS AND GUIDANCE

The Commission recommends that the Senate and General Assembly each create a committee on ethics and guidance to consider complaints of unethical conduct by legislators and legislative employees, to render advisory opinions, and to recommend future rules or legislation relating to conflicts of interest. The committee shall have the power to recommend removal or censure of members of the Legislature, and discharge or other discipline of legislative employees.

I. GENERAL ANALYSIS

1. The Problem of Conflict

During the origins of our nation, the concept of public service as a public trust was a fundamental assumption requiring neither defense nor definition in doctrine and producing few difficulties in actual practice.

For most of our citizens this same positive standard of morality in government is equally valid today. Unfortunately, however, the adaptation of our traditional democratic form to the expanding economy of modern society has wrought a state structure of awesome magnitude and complexity, drastically altering the frame of reference between government and governed and at the same time ensnaring those in public life in bewildering new areas of possible offense against public interest.

It has become increasingly clear that if our democratic process is to retain its vigorous appeal it is of supreme importance that the conduct of public officials and employees enjoy the full respect and confidence of the citizen electorate.

In any study of the problem of conflicts of interest certain fundamental distinctions become apparent. Firstly, substantial conflicts between the official duties of a public servant and his personal and private interests must be prevented. Secondly, although perhaps it is more truly an issue of personal and public ethics, the principle must be affirmed that a State official should not allow use of his position with the government to obtain unwarranted privileges for himself or others.

Some situations, of course, present a more complex problem since they involve both conflict of interest and the possibility of undue influence. Applying these broad concepts to the reality of a functioning State government is, however, a difficult task. In approaching it the Commission

has adopted the attitude expressed in the report of the United States Senate Sub-Committee headed by Senator Douglas of Illinois, wherein it was stated:

“The problem of ethical standards in government is one which thoughtful men approach with both reluctance and humility.”

In view of this we feel that any regulations in the form of Legislation or a code of ethics intended to assist in the solution of the conflicts of interest problem should have two basic purposes:

- (a) To make practical rules available as a guide for the conscientious public servant.
- (b) To be the means of deterring or punishing the unfaithful public servant.

The Commission has followed the policy that our recommendations should be the means of preventing conflicts of interest in areas where the need has been demonstrated. On the other hand, we have tried to avoid the use of a broad brush which would unfairly affect the great majority of honest public servants and would result in difficult problems of interpretation and application. We have sought to provide machinery for a permanent commission on ethics so that this important subject will have continuing attention. If need for additional Legislation develops, the remedy can be provided through this commission.

2. Basic Conclusions

From the public hearings, extensive research and exchange of views with experts in New Jersey and other jurisdictions were drawn two basic conclusions upon which are founded the Commission's final recommendations.

Firstly, it is clear that in addition to actual conflicts of interest, certain conduct creates in the public mind a reasonable impression of a violation of the public trust. Our recommendations are therefore directed not only at situations where actual or probable conflicts of interest arise,

but also at conduct which justifiably brings the government into disrepute in the minds of its citizens.

A second fundamental conclusion is that any regulation of conflicts of interest in government raises important questions of the extent to which public officials should be restricted in their public and private activities. Obviously, we are all affected by every action of government, by every reduction or increase in taxation. Moreover, its control and activity reach into almost every phase of our daily lives. To demand a complete absence of private interest on the part of our officials would automatically exclude many of our finest men and leave public affairs to those who live in a bureaucratic vacuum, out of touch with the day-to-day life of our free society.

A fundamental approach of this Commission, therefore, has been that we should deal with substantial and material conflicts of interests, that is, with true conflicts of interest. Interests which are common to all men or which are unavoidable in a free society are not properly the subject of regulation. The problem is to determine where and how the line may be drawn.

Expert witnesses, who appeared before the Commission, were in agreement that there are certain clear situations which can be dealt with by specific legislation. These experts warned, however, that there is also a broad area where complex activity and a variety of circumstances make it difficult to discern on which side of the line certain conduct falls. In such instances it is impossible to draft specific legislation. The Commission's study and research have confirmed this view.

Our recommendations, therefore, are designed to deal either with clear cases of conflict or with specific, well-defined situations where the possibility or the appearance of undue influence is sufficiently great to warrant a statutory prohibition. Those areas which are more complex or less well-defined, on the other hand, have been dealt with by codes of ethics.

It should be made clear, moreover, that the recommendation of a prohibition against certain conduct, such as practice before a condemnation commission or before certain State agencies, does not mean that such conduct has been wrong up to now. On the contrary, there is nothing inherently improper in a State official's practicing before State agencies. Such conduct is improper only if a State official takes advantage of his position or is given unwarranted privileges. The danger lies in the possibility of abuse. The Commission therefore recommends that because of this danger such practice be banned. There is no intent thereby to brand as improper all such practice which has taken place up to now. On the other hand, certain conduct which it is proposed to prohibit was never proper. Acting as agent for the State in dealing with one's self, for example, or with a firm in which there is a personal financial interest, was always wrongful.

The commentary which follows explains the specific recommendations more fully. These proposals demonstrate that we have not completely adopted the policy that all transactions with the State or any of its agencies should be barred to State officials, nor have we accepted the opposite view that nothing should be attempted in this field because "you cannot legislate good morals", or that we must rely uniquely on a simple code of ethics.

II. SPECIFIC RECOMMENDATIONS

The Commission submits three major recommendations.

The first proposal consists of a group of statutes, which deal with problems arising from dual agency, contracts with the State, participation in condemnation matters, and practice before certain State agencies. The second establishes a permanent Commission on Ethical Standards in Government, and provides for separate codes of ethics for State officers and employees to be established in the executive agencies of the State Government. The third provides that the Senate and General Assembly adopt codes of ethics for legislators and legislative employees, and that each house establish a standing committee on ethics. These recommendations and some of the reasoning behind them are set forth more fully below.

A. RECOMMENDED STATUTES

1. Condemnation

The proposed statute prohibits any participation by a member of the Legislature or a State officer or employee in negotiations in condemnation or in proceedings before a condemnation commission. Participation in court actions is not prohibited. The prohibition also extends to firms in which the State official is a member. It includes not only lawyers, but engineers, accountants, real estate brokers, appraisers and others.

Condemnation matters in this State present a difficult problem relating to conflicts of interest. The Hinds investigation conducted in 1941 demonstrated that grave abuses may arise when members of the Legislature or other State officials have represented private parties before the State highway department.

Moreover, the nature of condemnation lends itself to the possible use of undue influence. A monetary dispute exists between the State and the private party. When a State official represents a private person in condemnation, he is in the position of having the State as his opponent. Thus an official identified with the State engages in a direct adversary proceeding against the State.

In addition, condemnation usually involves informal negotiations for the purchase of property, and these are subject to a great deal of discretion. The value of real estate is at best a matter of inexact measurement and differing opinions. In point of fact and in the public mind condemnation proceedings are more directly adverse to the State's interest than any other matters coming before State agencies.

In New Jersey there has been no law or clearly defined code to guide legislators and State officials on this problem. The action of a member of the Legislature in representing a property owner has not been unethical up to now, unless undue influence was exerted. Our recommendations in this field will provide a clear cut limitation for the future.

2. Appearance Before Certain Agencies

The proposed statute prohibits personal appearances or negotiations by legislators, State officers and employees and State appointees for compensation before specified State agencies.

Most practice before State agencies does not raise a direct issue of representing the adverse interests of opposing parties, as in condemnation. A principal question presented by this type of practice is one of possible undue influence or wrongful advantage. The issue is whether appearance before a particular agency may create a sufficient probability of undue influence, or a sufficient justifiable impression in the public mind of such influence, to warrant prohibition. The need for adopting such a rule must be strong enough to overcome the legitimate objections to such proscription.

Some instances may also involve an element of an adverse interest. This varies with the agency and with the matter before it. The Alcoholic Beverage Control Division, for example, may act to revoke a license, upon investigation and prosecution by its own staff. The Board of Public Utilities, in a different type of matter, may act to recover excessive charges. Where the agency exercises a regulatory or supervisory function, as distinguished from one which is principally administrative, there may be an adverse interest. In other agencies, on the other hand, this problem does not arise. In workmen's compensation the dispute is between the employee and the employer, with the agency functioning as a court. Many other State agencies, such as the Departments of Health and State, perform administrative functions which do not raise this issue.

The question is one of degree and judgment. An important test is the degree of the State's direct interest in matters before it. Another is the extent to which the decisions of an agency are discretionary. Perhaps the most important test is the reasonable impression which different activities create in the public mind. Almost all seem to agree that practice before an agency such as the workmen's compensation division should not be prohibited. On the other hand, the impression created by appearance of State officials before some of the State's regulatory bodies may be one of doubt or suspicion.

The agencies cited are those in which the possibility of the exercise of undue influence or the possibility of adverse interest seem sufficient to justify the prohibition against personal appearances before them by State officials and employees. The rule adopted singles out such agencies, without barring all transactions with State agencies. The rule further attempts to deal with the major issue, the use of direct personal influence, without unduly broadening the prohibition to include every possible indirect advantage.

3. Dual Agency

The proposed statute prohibits a State official from dealing with himself or with a firm in which he has an interest, when the official is acting as agent for the State. The statute applies to all public officials, whether or not they receive compensation for their services.

This section rests on the principle that no man can serve two masters. In a transaction between the State and a private firm, the State official handling the transaction cannot be allowed to have an interest in the firm with which he deals. Even if there is no wrongdoing in fact, a trustee may not deal with himself, and the appearance of integrity must be preserved as an aspect of the responsibility of public office. Dual agency is a basic conflict of interest situation of the type which was presented in the South Amboy Trust Company case (*State vs. South Amboy Trust Co.*, 46 N. J. Super. 497 (Law Div., 1957)). In his opinion in that case, Judge Hughes said:

“These proofs establish beyond doubt, whatever the mechanism which powered these frauds or the subterfuge which concealed them, that their basic origin and accomplishment alike resulted in the dual agency of Hoffman as an executive officer of the bank and as an influential officer of the State which was its depositor.” (page 517)

The recommended statute will prevent such dual agency. No statute of this type appears in the recommendations of the N. J. State Bar Association, or in the New York enactments. However, the bill is closely modeled after Section 434 of Title 18 of the United States Code, with modifications designed to meet some justified criticism of that section.

4. Contracts with the State

The proposed statute prohibits members of the Legislature, State employees and State appointees from entering into contracts with the State, unless pursuant to public bid.

A negotiated contract between the State and a State officer or employee acting in a private capacity gives the impression of undue influence or advantage. It is true that in many cases the contract may be made with an agency of the State remote from that in which the State official serves, and that in actuality there was no undue influence or advantage, or even the possibility of such. However, the fact that the contract is a negotiated one leads to the impression of undue influence or advantage. The possibility of abuse and the impression of abuse should be removed.

Since public, competitive bidding eliminates much of the possibility of undue influence, an exception is made for such contracts. The exception for public bidding follows the New York State statute and the State Bar Association's bill.

5. Practice Before Own Agency

The proposed statute prohibits an officer or employee of a State agency from receiving compensation for services in matters which come before the particular department in which his agency functions. It also bars firms in which the State officer or employee is a member.

It seems clear that a State employee should not represent or be employed by private parties in matters before the department in which he serves. The probability of undue influence or advantage is obvious. Moreover, such representation or employment would run counter to the familiar principle that an employee should not represent interests conflicting with those of his employer.

The bill limits the prohibition against practice by a State official and his firm to matters before the official's particular department. If this limitation were not followed, a law firm or other business entity with which a State officer or employee was connected would be unduly restricted. It is important to note that there is a wide variety of State commissions, boards and bureaus, on which serve State officers or employees who must retain their private pro-

fessions or businesses. It is recognized that legislators themselves serve in a part-time capacity, and must have other sources of income. The statute is therefore designed to eliminate clear cut conflicts of interest while at the same time enabling such officials to serve State Government without restricting unjustifiably their sources of income.

6. Practice by Former Employees

The proposed statute prohibits practice by a former State official for compensation in connection with any matter he handled or worked upon while he was in the public employ.

It is fundamental that an employee who acted for the government on a particular application or other matter which came before his agency, should not later represent private parties in the same cause. The Canons of Professional Ethics of the American Bar Association provide, for example, that a lawyer should not accept employment in connection with any matter which he has investigated or passed upon while in public employ. (Canon 36.)

The proposed bill applies to services rendered within two years after leaving government service. The limitation of two years is found in present conflicts of interest laws and proposals. It is the consensus that handling of matters by former employees after two years should be left to codes of ethics and rules and regulations of the particular agencies involved.

B. CODES OF ETHICS FOR STATE EMPLOYEES AND THE CREATION OF A COMMISSION ON ETHICAL STANDARDS IN GOVERNMENT

The second major recommendation of the Commission is a provision for separate codes of ethics to be adopted in the principal agencies of the State Government, each code conforming to certain general standards set forth by statute. Because State agencies perform a wide variety of functions, the specific problems relating to conflicts of interest and ethical conduct differ with the agency.

A code drawn by a Director, who knows the needs and problems of his own agency, will in our opinion make possible more specific and effective rules of conduct. Provision is made for discharge or discipline of violators of such codes.

An equally important part of the proposal for codes of ethics for State employees is the recommendation for the establishment of a Commission on Ethical Standards in Government. The Commission would consist of persons who are not public officials, appointed by the Governor with the consent of the Senate. The Commission will have the duty to review and approve the codes of ethics adopted by the State agencies, to render advisory opinions as to whether certain facts would be improper conduct, and to recommend needed revisions and additions in the code of ethics or Legislation relating to conflicts of interest. Another useful function of the Commission will be to receive complaints of improper conduct. Citizens will probably be more willing to approach such a Commission than they would be to approach officials in State Government.

The rendering of advisory opinions may prove to be one of the Commission's most important functions. These opinions can provide a valuable guide to the conscientious public servant, who may often find it difficult to determine in advance the propriety of particular conduct.

The Commission will provide continued vigilance in the important field of conflicts of interest. It may recommend new measures or revisions in present Legislation or codes as the need arises.

**C. CODES OF ETHICS FOR LEGISLATORS AND LEGISLATIVE
EMPLOYEES AND COMMITTEES ON ETHICS IN
EACH HOUSE**

The third major recommendation proposes that a code of ethics for legislators and legislative employees be embodied in the rules of each house. This code will deal not only with general standards of conduct but with problems particularly relevant to legislation. The code contains a prohibition against voting on bills in which a legislator has an interest. It also bars improper lobbying.

Separate standing committees on ethics are suggested for each house. These committees will have the power to receive and investigate complaints of improper conduct and to recommend censure or removal in the case of legislators, and removal or discipline in the case of legislative employees. An important function of these committees will be to render advisory opinions which can serve as a guide in particular situations. The opinions of these committees and of the Commission provided for by statute could build an important body of ethical standards. These committees should also serve as a forum for the airing of conflicts of interest problems.

The recommendation for separate committees on ethics in the two houses of the Legislature is grounded in the provisions of the State Constitution, which provides that each house shall be the judge of the qualifications of its own members (Article 4, Section 4, paragraph 2), and that each house of the Legislature may expel a member by two-thirds vote of all of its members. (Art. 4, Sec. 4, par. 3.)

III. TEXT OF PROPOSED STATUTE

AN ACT to prohibit certain activities by legislators, State officers and employees and State appointees and to regulate the conduct of said persons with respect to conflicts of interest between their public duties and their personal, business or professional interests, and providing penalties, and establishing a Commission on Ethical Standards in Government and prescribing its powers and duties.

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

1. Declaration of Intent. In our democratic form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must therefore avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that it violates that trust. To this end, conscientious public officials should have specific standards to guide their conduct, and the few unfaithful officials a deterrent, by statutory prohibition where the matter is sufficiently clear or defined, or by code of ethics where demanded by complexity and variety of circumstances. It is at the same time recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed.

2. As used in this chapter, except as may be otherwise indicated by the context:

(a) "State agency" means any of the principal departments of the State Government, and any division, board, bureau, commission or other instrumentality within such department and any independent State authority, commission, instrumentality or agency, but it does not include an

authority, commission, instrumentality or agency created pursuant to compact or agreement between or among the State of New Jersey and another state or states.

(b) "Officer or employee of a State agency" means a person holding an office, position or employment in a State agency, but it does not include persons who serve without salary or other payment for their services.

(c) "State appointee" means a person (other than an officer or employee of a State agency) who holds an office, position or employment in the State Government and who was appointed to such office, position or employment by the Governor, by the Legislature, or by any officer, board, bureau, commission or other instrumentality in the executive or legislative branch of State Government. It does not include persons who serve without salary or other payment for their services, nor does it include members of the judiciary or officers or employees of the judicial branch of the government, nor does it include officers and employees of an authority, commission, instrumentality or agency created pursuant to compact or agreement between or among this State and another state or other states.

(d) "Department" means one of the principal departments of the State Government provided for in Article 5, Section 4, paragraph 1 of the Constitution.

(e) "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered, but it does not include the salary or other payment provided by law or appropriation for services rendered in a public office, position or employment.

3. No member of the Legislature, officer or employee of a State agency, or State appointee shall knowingly receive or agree to receive, directly or indirectly, compensation for any services to be rendered, either by himself or another, in negotiations with the State or a State agency for the purchase by the State or a State agency of an interest in real property, or in proceedings before a condemnation commission. This section shall not apply to appearances before

any court, except that negotiations shall be prohibited as aforesaid at any time.

Whoever violates this section is guilty of a misdemeanor and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

4. No member of the Legislature, officer or employee of a State agency, or State appointee shall, for compensation, personally appear before, negotiate with, or appear as an expert witness before, the following departments or State agencies:

- (a) Department of Banking and Insurance;
- (b) Department of Public Utilities;
- (c) Department of Civil Service;
- (d) In the Department of Law and Public Safety:
 - Division of Alcoholic Beverage Control,
 - Division of Motor Vehicles,
 - Division of Professional Boards,
 - Bureau of Tenement House Supervision;
- (e) In the Department of the Treasury:
 - Division of Investment,
 - Division of the New Jersey Racing Commission,
 - Division of Tax Appeals,
 - Division of Taxation, excepting Transfer Inheritance Tax Bureau;
- (f) In the Department of Agriculture:
 - Office of Milk Industry;
- (g) In the Department of Institutions and Agencies:
 - State Parole Board;
- (h) In the Department of Labor and Industry:
 - Bureau of Engineering and Safety,
 - Wage and Hour Bureau;
- (i) In the Department of Conservation and Economic Development:
 - Division of Water Policy and Supply;
- (j) North Jersey District Water Supply Commission;
- (k) Passaic Valley Sewerage Commissioners.

Whoever violates this section is guilty of a misdemeanor and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

5. No member of the Legislature, officer or employee of a State agency, or State appointee, including persons who serve without salary or other payment for their services, shall act as officer or agent for the State for the transaction of any business with himself, or with a corporation, company, association or firm in the pecuniary profits of which he has an interest, except that ownership or control of ten per cent or less of the stock of a corporation shall not be deemed an interest within this section.

Whoever violates this section is guilty of a misdemeanor and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

6. No member of the Legislature, officer or employee of a State agency, or State appointee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than ten per cent of the stock, or by any other person for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into, awarded or granted by any State agency, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

Whoever violates this section is guilty of a misdemeanor and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

7. No officer or employee of a State agency, or State appointee in a State agency, including persons who serve without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself or another, in any cause, proceeding, application or other matter which is before said State agency

or before the department of State Government in which said State agency functions.

Whoever violates this section is guilty of a misdemeanor, and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

8. No person who has served as an officer or employee of a State agency, or as a State appointee, including persons who have served without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself or another, within two years after the termination of his employment or service, in any cause, proceeding, application or other matter in which he has given an opinion, made an investigation, or has been directly concerned in the course of his duties.

Whoever violates this section is guilty of a misdemeanor and shall be fined not more than \$3,000, or imprisoned for not more than two years, or both.

9. (a) The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purpose hereinafter set forth, shall within six months from the effective date of this enactment, promulgate a code of ethics to govern and guide the conduct of the State officers and employees or State appointees, including persons who serve without salary or other payment for their services, in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply.

(b) A code of ethics formulated pursuant to this section, or any portion of such a code, shall not be effective unless it has first been approved by the Commission on Ethical Standards in Government. When a proposed code is sub-

mitted to the Commission, it shall be accompanied by an opinion of the Attorney-General which shall evaluate the code both as to form and substance. Nothing contained herein shall prevent officers of State agencies from consulting with the Commission or with the Attorney-General at any time in connection with the preparation or revision of such codes of ethics.

(c) Violations of a code of ethics adopted pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure shall be governed by any applicable provisions of the Civil Service Law and the Rules of the Department of Civil Service.

(d) A code of ethics for officers and employees and State appointees of a State agency shall conform to the following general standards:

(1) No State officer, employee or appointee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

(2) No State officer, employee or appointee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(3) No State officer, employee or appointee should engage in any transaction as representative or agent of the State with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(4) No State officer, employee or appointee should accept other employment that might reasonably tend to impair his independence of judgment in the exercise of his official duties.

(5) No State officer, employee or appointee should disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests.

(6) No State officer, employee or appointee should accept any gift, favor, service or other thing of value that might reasonably tend to influence him in the discharge of his official duties.

(7) No State officer, employee or appointee should engage in a course of conduct which might create a reasonable impression among the public that he is likely to be engaged in acts that are in violation of his trust.

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government, public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring the government into disrepute.

10. (a) There is hereby established in the Department of Law and Public Safety a Commission on Ethical Standards in Government.

(b) The Commission shall be composed of five members, who shall be appointed by the Governor, with the advice and consent of the Senate. Each member of the Commission, except for first appointments, shall be appointed for a term of five years and until his successor has qualified. Not more than three of the members of the Commission shall be of the same political party. No member of the

Commission shall hold any other office, position or employment under this State or any political subdivision thereof or under the United States. The Commission shall have a secretary, who shall be a person designated by the Commission. The first appointments shall be made for the following terms: two for a term of five years; three for a term of two years; thereafter appointments shall be for a full term.

(c) The Attorney-General shall act as legal adviser and counsel to the Commission. He shall, upon request, advise and assist the Commission in the rendering of advisory opinions by the Commission, in the approval and review of codes of ethics adopted by State agencies, and in the recommendation of revisions in codes of ethics or Legislation relating to the conduct of State officers and employees.

(d) The Commission shall:

(1) Receive complaints concerning violations of codes of ethics or other improper conduct. If the complaint warrants it, it shall transmit such complaint to the appropriate authority;

(2) Review and approve or disapprove codes of ethics or a portion thereof, formulated pursuant to section 9 of this chapter;

(3) Upon request render advisory opinions as to whether a given set of facts and circumstances would, in the commission's opinion, involve a violation of a code of ethics or of the provisions of this chapter. Such opinions shall be filed with the Secretary of State;

(4) Make such recommendations as it deems necessary for revisions in the codes of ethics and legislation relating to conflicts of interest in the performance of official duties by State officers and employees.

(e) Nothing contained herein shall prevent the receipt of such complaints directly by a State agency or officer or the taking of appropriate independent action by State agencies

or officers in cases involving charges of violations of a code of ethics, or other improper conduct.

(f) The Commission shall every five years review in an advisory capacity the provisions of this chapter and the codes of ethics adopted pursuant thereto and make recommendations to the appropriate authorities.

(g) The Commission shall publish periodically its advisory opinions with such deletions as it may deem appropriate to prevent the disclosure of the identity of officers and employees involved.

(h) Each member of the Commission shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred by him in the performance of his official duties.

(i) The Commission shall be entitled to avail itself of the services of such State departments and personnel as it may require and as may be available to it. Within the limits of funds appropriated or otherwise made available, it may incur such expenses as it may deem necessary in order to perform its duties.

11. This act shall take effect immediately.

IV. TEXT OF THE PROPOSED SUPPLEMENT TO THE RULES OF THE SENATE AND GENERAL ASSEMBLY

A. CODE OF ETHICS

1. Declaration of Policy; Violations of Code

The following code of ethics is hereby declared to be the policy of the Senate (General Assembly). Violations of this code shall be cause for censure or removal of a member of the Senate, and for discipline, suspension or discharge of a legislative employee.

2. Conflicting Interests

No member of the Senate and no legislative employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Undue Influence or Advantage

No member of the Senate and no legislative employee shall use or attempt to use his official position to secure unwarranted privileges for himself or others.

4. Lobbying

No member of the Senate and no legislative employee shall for compensation act as agent or attorney for any person or persons, firms or corporations in relation to the enactment or defeat of any legislation or proposed legislation. This rule shall not be construed to prevent any legislator from sponsoring or opposing any legislation on behalf of any person or group of persons where there is no special relationship of attorney or agent between him and such persons.

5. Interest in Bills

No member of the Senate shall vote on any legislation in which he has a direct personal or pecuniary interest. When a member obtains knowledge of the introduction of such a bill, he shall forthwith record such interest in the Journal of the Senate.

6. Gifts or Favors

No member of the Senate and no legislative employee shall accept any gift, favor, service or other thing of value that might reasonably tend to influence him in the discharge of his official duties.

7. Confidential Information

No member of the Senate and no legislative employee shall disclose confidential information gained by reason of his official position, nor shall he use such information to further his personal interests.

(NOTE: It is proposed that a similar supplement to the rules of the General Assembly be adopted.)

B. COMMITTEE ON ETHICS AND GUIDANCE

The Commission recommends the creation of a standing committee of each house, to be known as the Committee on Ethics and Guidance. We recommend that the rules of each house prescribe the following duties of the committee:

1. The Committee on Ethics and Guidance shall receive any complaints or charges that a member of the Senate (General Assembly) or a legislative employee has violated the code of ethics or has otherwise conducted himself in relation to his official duties so as to warrant the censure of the Senate.

2. The committee shall, if the complaint warrants it, conduct investigations of said complaints or charges, and report its findings with appropriate recommendations to the Senate, and to the proper law enforcement officers if

criminal prosecution may be warranted, and to the Attorney-General in any case where a civil action may be maintained for the recovery of moneys or property received by a member or legislative employee in violation of his public trust.

3. The committee, upon request of any member or legislative employee, may render an advisory opinion as to whether a given situation comes within the prohibitions of the code of ethics.

4. The committee may make recommendations for revision of the codes of ethics and legislation relating to the conduct of legislators and public officers and employees in the performance of their official duties.

5. The committee shall publish periodically its advisory opinions and determinations with such deletions as it may deem appropriate to prevent the disclosure of the identity of persons involved. The committee shall publish annually a report of its activities containing any material it deems pertinent.

V. RECOMMENDATIONS FOR FURTHER STUDIES

In the course of its study, the Commission became aware that numerous phases of the problem of conflict of interest which might technically be considered as falling within its original frame of reference could not be adequately examined within the period of time allotted to us for our report. These areas are of considerable magnitude and complexity and differ essentially from the issues at the level of State Government.

The Commission has confined its recommendations to the State level. We are aware that persons appointed by the State or the Governor may function in areas of local government, but we concluded that legislation or codes reaching into local government must be specifically adapted to the problems and relationships arising there. Our study shows a variety of conflicts of interest laws relating to various forms of local government. Of particular interest would be an examination of the relationship to conflict of interest attendant upon the flow of State money to the municipal and county levels.

Moreover, we are aware that our recommendations exclude legislation governing independent bi-State or tri-State agencies such as the Port of New York Authority which must be the product of agreement between the States. The Commission recommends further study of the feasibility of legislation relating to conflicts of interest in connection with such agencies.

APPENDIX

SENATE CONCURRENT RESOLUTION S-18 (1956)

1. There is hereby created a joint commission of 5 members to consist of 1 Senator, 1 Assemblyman and 3 citizens of the State, to be appointed as follows: The Senator shall be appointed by the President of the Senate, the Assemblyman shall be appointed by the Speaker of the General Assembly, the 3 citizens shall be appointed by the President of the Senate and the Speaker of the General Assembly acting jointly. Vacancies in the membership of the Commission shall be filled in the same manner as the original appointments were made.

2. The Commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the Commission.

3. It shall be the duty of the Commission to make a study of the subject of conflicts in the performance of public duties by persons holding public office, position or employment, with their personal, business or professional interests. In making the said study the Commission shall give consideration to any and all legislative proposals now pending before the Legislature or which may be proposed to the present Legislature before the completion of the said study and also to any codes of public ethics which have been adopted in other States insofar as the said Commission may ascertain the existence of such codes.

4. The Commission may meet at such place or places as it shall designate during the sessions or recesses of the Legislature and shall report the result of its review and study to the present Legislature, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

5. The Commission shall be entitled to call to its assistance and avail itself of the services of such State departments and their personnel as it may require and as may be available to it for said purpose and within the limits of funds appropriated or otherwise made available to it to employ counsel and stenographic and clerical assistants. The Commission may also incur such expenses as it may deem necessary in order to perform its duties within the said limits.

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